IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 82

Civil Appeal No 210 of 2020

Between

VJP

… *Appellant*

And

VJQ

… *Respondent*

In the matter of HCF/District Court Appeal No 30 of 2020

Between

VJP

… *Appellant*

And

VJQ

… *Respondent*

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

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v
VJQ

[2021] SGCA 82

Court of Appeal — Civil Appeal No 210 of 2020
Andrew Phang Boon Leong JCA, Tay Yong Kwang JCA and Chao Hick Tin SJ
4 May 2021

12 August 2021 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction

1 This appeal is concerned with only one question: where an appellate court excludes certain assets that were originally included in the matrimonial pool by the lower court, should the appellate court recompute the distribution of the *reduced pool* of matrimonial assets by adopting the same division ratio adopted by the lower court?

2 The appellant wife and the respondent husband were married for eight and a half years before they were divorced in 2018. In the ancillary matters proceedings, the District Judge adopted the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*" and "the *ANJ* approach") in dividing the matrimonial assets and assessed the average division ratio to be 56:44 in favour

of the husband (see *VJP v VJQ* [2020] SGFC 62 ("the District Judge's decision")).

3 The parties filed cross-appeals against the District Judge's decision. The High Court judge ("the Judge") allowed both appeals in part and held that certain assets were to be excluded from the matrimonial pool (see *VJQ v VJP and another appeal* [2020] SGHCF 13 ("the Judge's decision")). However, the Judge did not adjust the division ratio that the District Judge had arrived at. It is this narrow aspect of the Judge's decision that the wife challenges.

4 In CA/OS 41/2020 ("OS 41"), we granted the wife leave to appeal on the issue set out at [1] above. Before analysing this issue proper, we first set out the decisions of both the District Judge and the Judge.

The District Judge's decision

5 As the husband and the wife were both working, it was undisputed that the *ANJ* approach applied to the division of matrimonial assets (see the District Judge's decision at [10]). The *ANJ* approach entails the following steps: (a) ascribing a ratio to the parties' direct contributions; (b) ascribing a ratio to the parties' indirect contributions; (c) deriving each party's average percentage contributions; and (d) if necessary, making further adjustments to the parties' average percentage contributions (see *ANJ v ANK* at [22]).

6 The District Judge valued the matrimonial pool at $2,305,219.75 (see the District Judge's decision at [11]). The pool of matrimonial assets comprised assets held by each party solely as well as two jointly-held assets, namely, a Housing and Development Board ("HDB") flat ("the HDB flat") and a condominium ("the Condominium"). Two assets are relevant for present

purposes: the Condominium and the husband's shares in Primefield Group Pte Ltd ("Primefield").

7 The District Judge held that the net value of the Condominium was $658,188.81 (see the District Judge's decision at [11]). This net value was arrived at after deducting the outstanding housing loan of $716,811.19 but not the undisbursed loan amount of $176,250. The District Judge explained that the value of the matrimonial assets ought to be ascertained as at the date of the ancillary hearing in February 2020, whereas the $176,250 loan would only be disbursed in around May 2020 (see the District Judge's decision at [11]).

8 The District Judge also valued the husband's Primefield shares at $140,000, which was the price at which he had purchased those shares. She noted that the husband's option to sell the Primefield shares at $168,000 had expired on 15 May 2017 (see the District Judge's decision at [11]).

9 Having valued all the matrimonial assets, the District Judge found that the ratio of the parties' direct contributions to the acquisition of those assets was 67:33 in the husband's favour (see the District Judge's decision at [16]). She also assessed the ratio of the parties' indirect contributions at 45:55 in the wife's favour (see the District Judge's decision at [19]). Taking the average of the two ratios, the District Judge held that the overall division ratio was 56:44 in the husband's favour (see the District Judge's decision at [21]).

10 The District Judge valued the husband's 56% share of the matrimonial pool at $1,291,531.89 (see the District Judge's decision at [22]). We note that this figure ought to have been $1,290,923.06, being 0.56 x $2,305,219.75. After deducting the husband's sole assets of $820,577.03, the District Judge found that he was entitled to a further sum of $470,954.86. As the husband wished to

take over the HDB flat, which was worth $535,000, the District Judge ordered him to pay the wife an approximate sum of $65,000, *ie*, $535,000 - $470,954.86 (see the District Judge's decision at [22]). The husband was also ordered to transfer his share in the Condominium to the wife for no consideration (see the District Judge's decision at [32]).

The Judge's decision

11 The husband and the wife filed cross-appeals against the District Judge's decision. Both appeals were allowed in part.

12 The husband claimed that the Primefield shares were worthless. According to him, the shares were an investment in which he was to receive $168,000 upon re-selling them back to the vendor by a certain date (likely 15 May 2017), but he had failed to do so and thus did not get his money back (see the Judge's decision at [2]).

13 The Judge accepted the husband's claim that the Primefield shares were probably worthless. He noted that the shares had been purchased two years before the divorce and accepted that the husband's investment had been lost either through the vendor's deception or the husband's own negligence (see the Judge's decision at [3]). The Judge thus held that the sum of $140,000, being the purchase price of the Primefield shares, ought to be excluded from the matrimonial pool (see the Judge's decision at [3] and [10(a)]).

14 The Judge also held that the undisbursed loan amount of $176,250 for the Condominium constituted an outstanding liability that ought to be deducted from the matrimonial pool (see the Judge's decision at [5] and [10(b)]).

The wife's applications for leave to appeal against the Judge's decision

15 In HCF/SUM 287/2020 ("SUM 287"), the wife sought leave from the High Court to appeal against the Judge's decision in respect of, among other things, his findings on the husband's Primefield shares. The Judge dismissed the wife's application. Counsel for the wife, Mr Low Hong Quan, appeared to have queried if the sum of $65,000 due from the husband to the wife, as held by the District Judge, ought to be revised. The Judge answered in the negative:

> Low: $65,000 to be paid by husband to wife. That's [District Judge].
>
> This court says the $176,250 should be taken out. So the wife's share should be reduced accordingly.
>
> Court: No change required – just the $65,000.

It is the Judge's decision that the amount due from the husband to the wife was to remain at $65,000 that has led to the present appeal.

16 After SUM 287 was dismissed, the wife applied to this court, by way of OS 41, for leave to appeal against the Judge's decision. We granted her leave to appeal on the following issue *only*:

> When an appellate court decides that certain items of assets should be deducted from the pool of matrimonial assets determined by the lower court and maintains the parties' percentage shares and the lower court has computed the distribution between the parties in those percentage shares based on the pool as found by the lower court, should the appellate court recompute the distribution on the same percentages based on the reduced pool as found by the appellate court?

The parties' cases

The wife's case

17 The wife's case is straightforward. She contends that the net value of the matrimonial pool has changed due to the Judge's exclusion of the Primefield shares and the undisbursed loan amount for the Condominium from the matrimonial pool. As such, the Judge ought to have recalibrated the ratio of the parties' direct contributions, as a consequence of which the final division ratio would also have changed. She submits that the overall division ratio should be recalculated as 44.8:55.2 in the husband's favour and that her share should be rounded up as 45%.

18 The wife also takes issue with the Judge's exclusion of the Primefield shares from the matrimonial pool as the shares were not acquired by way of gift or inheritance and the exclusion of the shares was not attributable to any fault of hers. She asserts that she did not receive any corresponding benefit or "compensation" on account of the exclusion of the shares from the matrimonial pool. In contrast, the husband retained "the full benefits of the shares as a paper asset (at a very minimum)". In this regard, she highlights that the Primefield shares "are not a total write-off" as Primefield is still a live company. The wife thus submits that the court ought to apply a 5% uplift to her 44.8% share of the matrimonial shares, thereby arriving at a final division ratio of 47:53 as between herself and the husband respectively.

The husband's case

19 The husband makes three main arguments. First, he submits that the ratio of the parties' direct contributions need not be recomputed because the division of matrimonial assets is a matter for the court's discretion. In exercising its

discretion, the court should adopt a "broad brush" approach instead of proceeding on "arithmetical logic". Second, he argues that there is no basis for appellate intervention because the overall division ratio (of 44:56 in his favour) derived by the District Judge is not clearly inequitable or wrong in principle. The re-computation of the parties' direct contributions would, according to him, amount to a backdoor for the wife to recalculate the division of the matrimonial assets. Third, he notes that the Judge did not adjust the *amount* that the wife was to receive as her share of the matrimonial assets. This means that, following the Judge's decision, the wife effectively obtained a *larger* percentage of the *reduced* pool of matrimonial assets. The husband thus submits that it would not be just and equitable to adjust the overall division ratio in the wife's favour to "compensate" her for the deduction of the Primefield shares from the matrimonial pool.

The issues before this court

20 The primary issue before us is whether the ratio of the parties' direct contributions and, consequently, the overall division ratio, should be adjusted in the light of the Judge's decision to exclude the Primefield shares and the undisbursed loan amount for the Condominium from the matrimonial pool. A secondary issue that arises for our determination is whether any further adjustment to the overall division ratio is warranted.

Our decision

21 We now address the main question in this appeal. In our judgment, the ratio of the parties' direct contributions *should* be reassessed on account of the reduced matrimonial pool.

22 As mentioned at [5] above, the *ANJ* approach consists of three main steps. First, the court ascribes a ratio that represents each party's relative direct contribution, having regard to the amount of *financial contribution* made by each party towards *the acquisition or improvement of the matrimonial assets*. Second, the court ascribes a ratio representing the parties' relative indirect contributions to the well-being of the family. Third, using the two aforementioned ratios, the court derives each party's average percentage contribution to the family, which then forms the basis for the division of the matrimonial assets (see *ANJ v ANK* at [22]). In so far as the first step of the *ANJ* approach is concerned, the documentary evidence often falls short of establishing the precise financial contribution made by each party. In such instances, the court exercises its broad discretion in that it makes a "rough and ready approximation" of the figures (see *ANJ v ANK* at [23]). In other cases, however, there is no dispute as to who financially contributed to the acquisition of the matrimonial assets or the exact amounts of those contributions. Where this is so, all that remains is for the court to translate the parties' financial contributions into a ratio representing their relative direct contributions. This computation is not a matter for the court's discretion but a *purely arithmetical exercise*. Where there is a subsequent reduction of the matrimonial pool (as is the case here), each party's financial contribution towards the acquisition or improvement of the matrimonial assets necessarily changes. It follows that the ratio of the parties' direct contributions should be recalibrated, which will, of course, have a bearing on the overall division ratio. This process, too, is a *purely arithmetical* exercise. However, our analysis is subject to the following three caveats.

23 First, the foregoing analysis only applies to cases where the *ANJ* approach applies – in other words, cases of dual-income marriages where both

spouses are working and are thus able to make both direct and indirect financial contributions to the household (see the decision of this court in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*") at [42]). Under the *ANJ* approach, the ratio of the parties' direct contributions recognises the parties' relative financial contributions to the acquisition or improvement of the matrimonial assets. The *ANJ* approach is, however, inapplicable to marriages where one spouse is the sole income earner and the other plays the role of a homemaker, *ie*, single-income marriages (see *TNL v TNK* at [46]). This is because the *ANJ* approach tends to unduly favour the working spouse over the non-working spouse by giving weight to the working spouse's financial contributions in the ascertainment of *both* the parties' direct and indirect contributions (see *TNL v TNK* at [44]). The court instead tends towards the equal division of matrimonial assets in single-income marriages (see *TNL v TNK* at [48]). Since the parties' relative financial contributions to the acquisition or improvement of matrimonial assets are not recognised by way of a separate or isolated ratio in cases of single-income marriages, the relationship between the parties' respective financial contributions and the overall division ratio is less linear. It may therefore not be appropriate or necessary to adjust the overall division ratio in single-income marriages even where certain assets have been excluded from the matrimonial pool on appeal, particularly where those assets are of a relatively low value.

24 This point is amply borne out in the case law. In other cases that adopted the *ANJ* approach, such as *TND v TNC and another appeal* [2017] SGCA 34 ("*TND v TNC*") and *TQU v TQT* [2020] SGCA 8, this court recomputed the division ratio after deducting certain assets that had originally been included in the matrimonial pool. In contrast, the overall division ratio was *not* recomputed in cases of single-income marriages such as *UJN v UJO* [2021] SGCA 39 and

TNL v TNK, even though certain assets were deducted from the matrimonial pool in those appeals. We therefore emphasise that where an appellate court excludes certain assets from the matrimonial pool, it is arithmetically necessary to reassess the parties' respective percentage shares of the reduced matrimonial pool *only* in cases of dual-income marriages to which the *ANJ* approach applies. Whether an appellate court should recompute the parties' respective percentage shares of a reduced matrimonial pool in cases of single-income marriages is an issue that does not arise on the facts of this case and falls to be determined in a suitable case in the future.

25 Second, there may be instances in which the re-computation would yield a difference so minuscule as to be trifling, whether in terms of each party's percentage share or the absolute amount that each party is entitled to as his/her share of the matrimonial assets. We consider that, in such cases, the appellate court would be perfectly entitled to decline to adjust the parties' percentage shares. After all, it is well established that an appellate court will be slow to make minor adjustments for idiosyncratic reasons (see the decision of this court in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [46]). It would, however, be prudent for the appellate court to expressly articulate its reason for declining to do so, in order to forestall allegations of arithmetical errors.

26 Third, our decision should not be construed as a licence for parties to re-litigate the values of the matrimonial assets or the amounts of their respective financial contributions. As explained in *ANJ v ANK* at [23] and at [22], at the first step of the *ANJ* approach, the court ordinarily ascertains the amount of each party's financial contribution in a "broad brush" manner. That remains unchanged by our present decision. It is trite that an appellate court will only interfere with a trial judge's exercise of discretion in exceptional circumstances (see the decision of this court in *Lock Yeng Fun v Chua Hock Chye* [2007]

3 SLR(R) 520 at [36]), and nothing in this decision should be interpreted as suggesting otherwise. What this case is concerned with is the specific question of whether the parties' respective percentage shares should be recomputed following the reduction of the matrimonial pool.

27 The husband does not advance any compelling argument in support of his position that the parties' percentage shares should not be recomputed. He merely submits that the apportionment of matrimonial assets is a matter for the court's discretion and that the court should adopt a "broad brush" approach to arrive at a "rough and ready approximation". We are unpersuaded by this submission. As we have already highlighted, the appellant is not challenging the District Judge's or the Judge's exercise of discretion in apportioning the matrimonial assets. Instead, the present dispute lies in whether the exclusion of the Primefield shares and the undisbursed loan amount for the Condominium warrants a concomitant recalculation of the ratio of the parties' direct contributions and, consequently, the overall division ratio. This is, in our view, a purely arithmetical exercise in which the court's discretion hardly features, save in the instances we have highlighted at [25] above. In any event, the husband's objection is untenable – even where the court does exercise its broad discretion, appellate intervention will be warranted where the decision is "clearly inequitable or *wrong in principle*" [emphasis added] (see *TNL v TNK* at [53]). In our view, the Judge, with respect, plainly erred in principle in so far as he failed to properly apply the *ANJ* approach.

28 In the light of the Judge's decision, the parties' relative direct contributions have clearly changed and the division ratio should hence be recalibrated. We begin with the table below, which reflects the parties' direct contributions as ascertained by the District Judge:

	The wife's contribution	**The husband's contribution**
Sole assets	$291,453.91	$820,577.03
HDB flat	0.365 x $535,000 = $195,275	0.635 x $535,000 = $339,725
Condominium	0.42 x $658,188.81 = $276,439.30	0.58 x $658,188.81 = $381,749.51
Total	$291,453.91 + $195,275 + $276,439.30 = $763,168.21	$820,577.03 + $339,725 + 381,749.51 = $1,542,051.54
Percentage share of matrimonial pool	$763,168.21 / ($763,168.21 + $1,542,051.54) x 100% = 33% (rounded off)	$1,542,051.54 / ($763,168.21 + $1,542,051.54) x 100% = 67% (rounded off)

29 The husband's sole assets were valued at $820,577.03. This figure includes the value of the Primefield shares ($140,000) and the husband's contribution towards the Condominium, the net value of which was found to be $658,188.81. Following the Judge's decision, however, the Primefield shares should be excluded from the husband's assets. The undisbursed loan amount of $176,250 for the Condominium should also be deducted such that the net value of the Condominium is now $481,938.81. The wife and the husband do not challenge the District Judge's finding that they had contributed 42% and 58% to the acquisition of the Condominium respectively.

30 The exclusion of the Primefield shares and the undisbursed loan amount for the Condominium from the matrimonial pool means that the reduced matrimonial pool should be valued at $1,988,969.75 (*ie*, $2,305,219.75 -

$140,000 - $176,250). The table below reflects the changes in the parties' relative direct contributions, following the Judge's decision:

	The wife's contribution	**The husband's contribution**
Sole assets	$291,453.91 (unchanged)	$820,577.03 - $140,000 (*ie*, the Primefield shares) = $680,577.03
HDB flat	$195,275 (unchanged)	$339,725 (unchanged)
Condominium	0.42 x $481,938.81 = $202,414.30	0.58 x $481,938.81 = $279,524.51
Total	$291,453.91 + $195,275 + $202,414.30 = **$689,143.21**	$680,577.03 + $339,725 + $279,524.51 = **$1,299,826.54**
Percentage share of matrimonial pool	$689,143.21 / $1,988,969.75 x 100% = **34.6%**	$1,299,826.54 / $1,988,969.75 x 100% = **65.4%**

31 The District Judge's finding that the ratio of the parties' indirect contributions was 45:55 in the wife's favour should be left undisturbed. The overall division ratio is therefore as follows:

Contribution	**The wife's percentage share**	**The husband's percentage share**
Direct	34.6%	65.4%
Indirect	55%	45%
Average	(34.6% + 55%) / 2 = **44.8%**	(65.4% + 45%) / 2 = **55.2%**

The revised percentage share of 44.8% is in line with the wife's submissions.

32 The husband's 55.2% share of the reduced matrimonial pool is valued at 0.552 x $1,988,969.75 = $1,097,911.30. As his sole assets are now valued at $680,577.03 (see [30] above), he should receive $1,097,911.30 - $680,577.03 = $417,334.27 from the parties' joint assets. As the husband wishes to take over the HDB flat, which is worth $535,000, he should pay the wife a further sum of $535,000 - $417,334.27 = $117,665.73.

33 We pause to deal briefly with the wife's submission that a 5% uplift should be applied to her 44.8% share of the matrimonial assets such that she would be entitled to 47% of the matrimonial assets. She argues that such an uplift is warranted as "compensation" for the exclusion of the Primefield shares from the matrimonial pool. In our view, her argument is plainly unmeritorious for two reasons.

34 First, the wife was granted leave to appeal *only* on the limited ground of whether, following an appellate court's deduction of certain assets from the matrimonial pool, the appellate court ought to recompute the distribution of the reduced matrimonial pool by using the same percentages adopted by the lower court (see [16] above). It is not open to her to re-litigate matters that clearly do not fall within that narrow scope, as she now seeks to do.

35 Second, the wife has no basis to assert that she deserves "compensation" for the deduction of the Primefield shares from the matrimonial pool. The Judge excluded the Primefield shares from the matrimonial pool as they were probably worthless (see the Judge's decision at [3]). There is no reason why the wife should be entitled to "compensation" when those shares were equally of no value to the husband.

36 There is a final point that remains to be addressed. After we had heard the appeal and reserved judgment, counsel for the husband, Ms Mimi Oh ("Ms Oh"), wrote to the court that very same day to make a "further argument". Ms Oh argued that even though the Judge had declined to adjust the further sum of $65,000 that the husband was to pay the wife, that sum amounted to "an additional 3.2%" of the reduced matrimonial pool. Accordingly, the wife's claim for "an additional 1% out of the reduced pool … would not be just and equitable".

37 We place no weight on Ms Oh's letter as it was submitted without leave of court. In any event, Ms Oh's argument is, with respect, quite beside the point. The wife is entitled to a further 0.8% of the matrimonial assets (as we have found at [31] above) on a proper application of the *ANJ* approach; Ms Oh is incorrect in suggesting that this is more than what the wife rightfully deserves. The fact that the sum of $65,000 amounts to 3.2% of the reduced matrimonial pool is also wholly immaterial – that sum was payable by the husband to the wife in order to give effect to the latter's 44% share of the matrimonial assets, as held by the District Judge. For the same reason, it was irrelevant that the amount held by the District Judge to be the wife's share of the matrimonial assets was a larger percentage of the reduced matrimonial pool compared to the original matrimonial pool (see the husband's argument at [19] above). We therefore reject Ms Oh's further argument, which should never have been made without leave of court in the first place.

Conclusion

38 For the foregoing reasons, we allow the appeal and find that the wife is entitled to 44.8% of the reduced matrimonial pool. Accordingly, we vary the

Judge's order below in so far as the further sum due from the husband to the wife is $117,665.73 rather than $65,000.

39 It follows that the husband should bear the costs of this appeal as well as the costs of OS 41, which were reserved to this appeal. Having considered the parties' costs schedules, we order the husband to pay the wife $20,000, inclusive of disbursements, as her costs of both the appeal and OS 41.

40 Even though we award the costs of the appeal to the wife, we emphasise that "appeals will not be sympathetically received where the result [of an appeal] is a potential adjustment of the sums awarded below that works out to less than 10% thereof. Even where such appeals are allowed because the court has established that there was an error of principle, *costs may be awarded against the successful party if the court is satisfied that the appeal was a disproportionate imposition on the unsuccessful party*" [emphasis added] (see *TNL v TNK* at [68], reiterated in *TND v TNC* at [106]). In this case, the wife has obtained an additional sum of $52,665.73 (being $117,665.73 - $65,000). This translates to an additional 2.64% of the reduced matrimonial pool and a 6.02% increase from what she would have been entitled to following the Judge's decision. Although this difference is not all that significant, whether in absolute terms or when viewed in the context of the total asset pool and the division maintained by the Judge (see *TND v TNC* at [105]), we consider that the wife should nonetheless be entitled to costs as this is the first time that this court has expressly considered the legal question that arises in this appeal (see [16] above). Furthermore, *TNL v TNK* was an especially disproportionate appeal as the appellant challenged the trial judge's exercise of her discretion, whereas the present appeal concerns a clear arithmetical error. Going forward, however, litigants should bear in mind that appeals in respect of trivial adjustments to the sums awarded below will not be favourably received (see [25] above). Litigants

who insist on bringing such appeals should be prepared to bear the adverse costs consequences, even if their appeals succeed.

41 We also note that the wife was ordered to pay costs of $3,000 to the husband in respect of SUM 287. The wife submits that the Judge's costs order in SUM 287 should be revoked and that each party should bear their own costs in respect of that application. We disagree. Given the wife's arguments in SUM 287, which had nothing to do with the narrow issue on which we granted leave to appeal in OS 41, the Judge was entirely correct in declining to grant leave. We therefore decline to disturb the Judge's costs order in SUM 287.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Low Hong Quan and Tan Hoe Shuen (Silvester Legal LLC) for the appellant;
Oh Kim Heoh Mimi (Ethos Law Corporation) for the respondent.