Chaytor v Zaleha bte A Rahman
[2001] SGHC 56

Case Number : DA 710003 /2000

Decision Date : 23 March 2001

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Mirza Namazie (as counsel) with Chua Boon Beng and Alice Yeo (Tan Peng Chin & Partners) for the appellant; Mary Edmonds (Chiang Wee & Partners) for the respondent

Parties : Chaytor — Zaleha bte A Rahman

Family Law – Maintenance – Appeal against liability for maintenance – Status of Muslim wife after pronouncement of talak – Whether considered married for purposes of maintenance – Jurisdiction – Whether civil courts should treat Muslim wife as still married until divorce confirmed by Syariah Court – s 69(1) Women's Charter (Cap 353, 1997 Ed)

: This was an appeal against the decision of district judge Regina Ow-Chang Yee Lin wherein she ordered the appellant Alan James Chaytor (`Chaytor`), to pay the respondent Zaleha bte A Rahman (`Zaleha`), $1,500 per month as her maintenance until the conclusion of Syariah Court Summons No 18599 of 2000 and, $1,000 per month as maintenance for their daughter, Deanna Shah Azlan Chaytor (`Deanna`).

The facts

Chaytor and Zaleha were lawfully married at the Registry of Muslim Marriages Singapore, on 10 December 1995; Deanna was born on 5 December 1996. On 11 April 2000, Chaytor pronounced a single ***talak*** in the presence of two witnesses, Mr Noorman bin Mohtar and Mr Mohd Rosli Sawi. On 24 May 2000, Chaytor filed Syariah Court Summons No 18599 of 2000 (`the Syariah Court Summons`). Amongst other things, the Syariah Court Summons dealt with the ancillary matters relating to the divorce, such as the amount of ***nafkah iddah*** (maintenance during the three-month period of ***iddah***) and ***mutaah*** (consolatory gift) to be paid to Zaleha, custody of Deanna and division of the matrimonial assets.

Prior to the pronouncement of the ***talak*** , Chaytor had been paying Zaleha a monthly sum as maintenance for her and Deanna; this stopped in May 2000. On 16 June 2000, Zaleha filed Maintenance Summons No 3175 of 2000 (`the Maintenance Summons`) in the Family Court, for maintenance for herself and Deanna, pursuant to s 69(1) and (2) of the Women`s Charter (Cap 353, 1997 Ed) (`the Charter`).

The Maintenance Summons was heard on 24 August 2000. At the hearing, Chaytor objected to Zaleha`s application for maintenance for herself, on the ground that they were divorced as from the date of the pronouncement of the talak, and that consequently, Zaleha was no longer eligible for maintenance under s 69(1) of the Charter since she was no longer a ` ***married woman*** ` as required by the section.

The decision of the district judge

The court below held that until the divorce was registered by the Syariah Court and a divorce

certificate issued, the civil courts would still view the parties as married. As of the date of the hearing in the District Court, the Syariah Court had yet to adjudicate on the validity of the ***talak*** divorce. The judge therefore treated Zaleha as a ` ***married woman*** ` for the purposes of s 69(1) of the Charter.

Chaytor was ordered to pay Zaleha $1,500 per month as maintenance until the conclusion of the Syariah Court Summons and $1,000 per month as maintenance for Deanna. If the Syariah Court held that the divorce was valid as of the date of the ***talak*** , the judge held it was open to Chaytor to apply to the Family Court for rescission of the maintenance order.

The appeal

Chaytor appealed only as regards liability; he did not challenge the amount of maintenance awarded to Zaleha. The issue is: was Zaleha, on 16 June 2000, still a ` ***married woman*** ` for the purposes of s 69(1) of the Charter? Section 69(1) provides:

> *Any **married woman** whose husband neglects or refuses to provide her reasonable maintenance may apply to a District Court or a Magistrate`s Court and that Court may, on due proof thereof, order the husband to pay a monthly allowance or a lump sum for her maintenance. [Emphasis is added.]*

Section 69(1) of the Charter is applicable to a woman who is married under Muslim law. Section 3(2) of the Charter provides that Pts II to VI and Pt X of the Charter shall not apply to any person who is married under the provisions of the Muslim law. Thus, s 113 of the Charter, which falls under Pt X of the Charter and which empowers the court to order a man to pay his wife or former wife maintenance during the course of any matrimonial proceedings or subsequent to the divorce, is not applicable to a woman ***married under Muslim law*** . Section 69 of the Charter, however, falls under Pt VIII of the Charter, and is not circumscribed by s 3(2).

That, however, only resolves that s 69(1) is potentially applicable to Zaleha as a Muslim. Whether s 69(1) is in fact applicable depends on whether she is still a ` ***married woman*** ` after the pronouncement of the ***talak*** or, if she remains a ` ***married woman*** ` despite the pronouncement of ***talak*** , until the Syariah Court determines that the divorce is valid. Counsel for Chaytor argued that under Muslim law, a married woman is effectively divorced as of the date that the husband pronounces the ***talak*** . An explanation of the ***talak*** is to be found at p 150 of AAA Fyzee`s ***Outlines of Muhammadan Law*** (4th Ed, 1974), a treatise on Muslim law which was referred to the court by counsel:

> *The word talaq (talak) is usually rendered as `repudiation`; it comes from a root (tallaqa) which means `to release (an animal) from a tether`; whence, to repudiate the wife, or free her from the bondage of marriage. In law, it signifies the absolute power which the husband possesses of divorcing his wife at all times ...*
>
> *A Muslim husband of sound mind may divorce his wife whenever he so desires without assigning any cause. Such a proceeding, although abominable, is nevertheless lawful. **The divorce operates from the time of the pronouncement of talaq**. The presence of the wife is not necessary, nor need notice be given to her. [Emphasis is added.]*

The learned author went on to explain that there are four forms of ***talaq*** : the ***ahsan*** form, ***hasan*** form, the triple declaration form, and the one irrevocable declaration form. The ***ahsan*** form is described in the following manner at pp 152-153:

> *The **ahsan** (or most approved) form consists of one single pronouncement in a period of **tuhr** (purity, i.e. when the woman is free from her menstrual courses), followed by abstinence from sexual intercourse during that period of sexual purity (**tuhr**) as well during the whole period of **`idda** ...*
>
> *A pronouncement made in the **ahsan** form is revocable during **`idda**. This period is three months from the date of the declaration or, if the woman is pregnant, until delivery. The husband may revoke the divorce at any time during the **`idda**. Such revocation may be by express words or by conduct ...*
>
> *After the expiration of the **`idda** the divorce becomes irrevocable.*
>
> *A Muslim wife, after divorce, is entitled to maintenance during the **`idda**, and so also her child, in certain circumstances.*

The ***hasan*** form consists of three successive pronouncements of ***talaq*** during three consecutive periods of ***tuhr*** . The triple declaration form consists of three pronouncements of ***talaq*** made in a single ***tuhr*** , either in a single sentence or in three sentences. It is called ***at-talaqu`l-ba`in*** , irrevocable divorce. The one irrevocable declaration form, is also called ***at-talaqu`l-ba`in*** . It consists of a single, irrevocable pronouncement and may be given in writing.

The learned author went further to say (at p 155):

> ***In the**ahsan **form, the divorce is effective on the expiration of the**`idda. In the **hasan** form, the divorce is effective on the third pronouncement. In the **talaq al-bid`a** [the irrevocable forms], the divorce is effective from the moment of pronouncement or the execution of the writing of divorce. [Emphasis is added.]*

There appears to be some inconsistency in the learned author`s treatment of when divorce is effective. At p 150, he stated that divorce operates from the time of pronouncement of ***talaq*** . For Zaleha, that would be on 11 April 2000. However, the author had also stated (at p 156) that divorce in the ***ahsan*** form is effective on the expiration of the ***iddah*** period, which for Zaleha, occurred around 11 July 2000.

This disparity does not dramatically affect counsel`s argument, since by the date of the hearing in the court below (24 August 2000), the ***iddah*** (period) had in any event expired. On counsel`s line of argument, by either definition, Zaleha would no longer be a ` ***married woman*** `, as at 24 August 2000.

This apparent inconsistency in the author`s treatment of when divorce is effective, does, however, suggest that any attempt by the civil courts to apply Muslim law should be made with much care, if at all, even where the principle of law seems cut and dried. Indeed, the possibility of the civil courts

misapplying Muslim marriage laws was foreseen by Parliament, when it enacted s 17A(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) (`the SCJA`) and s 19(5) of the Subordinate Courts Act (Cap 321, 1999 Ed) (`the SCA`), which provide that the power to determine what constitutes a valid Muslim marriage or divorce lies solely within the jurisdiction of the Syariah Court. The relevant provisions are:

Section 35(2) of the Administration of Muslim Law Act (Cap 3, 1999 Ed) which states:

> *The [Syariah] Court shall have jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to -*
>
> *(a) marriage;*
>
> *(b) divorces known in the Muslim law as fasakh, cerai taklik, khuluk and talak;*

Section 17A(1) of the SCJA states:

> *Notwithstanding sections 16 and 17, the High Court shall have no jurisdiction to hear and try any civil proceedings involving matters which come within the jurisdiction of the Syariah Court under section 35 (2) (a), (b) or (c) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.*

Section 19(5) of the SCA states:

> *A District Court`s jurisdiction to hear and try any civil proceeding which comes within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act (Cap. 3) shall be the same as the High Court as if section 17A of the Supreme Court of Judicature Act (Cap. 322) applies to the District Court with the modification that any reference therein to the High Court shall be read as a reference to a District Court.*

The above provisions form the foundation of what I shall call the `proper jurisdiction` argument, an argument which militates against the view that the civil courts can determine whether a woman is still married under Muslim law for the purposes of s 69(1) of the Charter. The argument in short is this: s 69(1) of the Charter allows the civil courts to order payment of maintenance for a ` ***married woman*** `. For a Muslim woman, whether she is still a ` ***married woman*** ` depends solely on Muslim law. In M Tayyibji`s ***Muslim Law: The Personal of Muslims in India and Pakistan*** (4th Ed, 1968), which was also referred to by both counsel, it was noted (at p 3) that the followers of Islam are divided into two main divisions, ***Sunnite*** and ***Shiite*** . Within the ***Sunnite*** are four (4) schools of law, each taking their rise from four (4) great doctors: ***Hanifa*** , ***Malik*** , ***Shafi`i*** , and ***Hanbal*** . Within the ***Shiites*** group is also a number of different schools. According to Dr A Ibrahim in **Islamic Law in Malaya** [1965] at p 76, the vast majority of Muslims in Turkey, India and Pakistan are from the ***Hanifa*** school, while the Malays from Malaysia and Indonesia belong to the ***Shafi`i*** school.

In AAA Fyzee`s ***Outlines of Muhammadan Law*** (supra), which was heavily relied on by counsel for

Chaytor (in the portion of the treatise explaining the ***talak*** , extracts of which were referred to above), the author stated (at p 150) regarding the words to be used when pronouncing the ***talak*** that, in ` ***Hanafi*** law, no special form is necessary; whereas ***Ithna Ashari*** law insists on a strict formula being used`. The ***Hanafi*** school is one of the ***Sunnite*** schools of law, while the ***Ithna Ashari*** is one of the ***Shiite*** schools. There is, however, no mention of the requirements of the ***Shafi`i*** school which, according to Dr A Ibrahim, the majority of Muslims in Malaysia and Indonesia belong to.

The above brief excursion into the divisions of Muslim law and the varying requirements of different schools in respect of the ***talak*** , is by no means intended to be an exegesis on Muslim divorce law. Indeed, if it is wrong in any way, it merely goes to reinforce the point of this exercise, which is to highlight the difficulties that the civil courts can face when ruling on issues such as whether a married woman has been divorced under Muslim law. If for nothing else, s 17A(1) of the SCJA and s 19(5) of the SCA, which state that jurisdiction over Muslim divorces lies solely in the Syariah Court, exist for precisely this reason.

Counsel for Chaytor had argued that this is not a situation under s 17A(1) of the SCJA but, one under s 17A(2). Section 17A(2) of the SCJA read with s 19(5) of the SCA provides that the civil courts shall have concurrent jurisdiction with the Syariah Court over matters of maintenance for any wife or child. However, while the present case involves primarily the question of maintenance for a Muslim wife, it requires a preliminary assessment by the civil court as to whether she is still married under Muslim law. For this preliminary question, it is clear that the proper resolution lies not with the civil courts, but with the Syariah Court. Until the Syariah Court indicates that a divorce has been validly effected, the proper thing for the civil courts to do is to respect the fact that the marriage has been and still is registered, in the registry of Muslim marriages.

The above `proper jurisdiction` argument, is supported by a related argument, which I shall refer to as the `AMLA` argument. Section 35(3) of the Administration of Muslim Law Act (Cap 3, 1999 Ed) (`AMLA`) provides that:

> ***In all questions*** *regarding betrothal, marriage,* ***dissolution of marriage, including talak****, cerai taklik, khuluk and fasakh, nullity of marriage or judicial separation, the appointment of hakam, the disposition or division of property on divorce or nullification of marriage, the payment of emas kahwin and consolatory gifts or mutaah and the payment of maintenance on divorce,* ***the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law****, as varied where applicable by Malay custom. [Emphasis is added.]*

There is therefore clear statutory language that while Muslim law applies to divorce matters for Muslim parties, the application of Muslim law is subject to the provisions of AMLA. Counsel (Mr Namazie) argued that s 35(2) of AMLA should be given restricted breadth, referring the court to the speech made by the then Minister for Culture and Social Affairs, Othman bin Wok on 17 August 1966, at the third reading of the Administration of Muslim Law Bill:

> *The Bill, it must be emphasised, does not seek to deal with the Muslim law itself but only with its administration. No attempt has been made to alter the fundamental concepts or rules of Muslim law and where the Bill suggests improvements in the administration of the Muslim law, every effort has been made to follow the precedents which have been adopted in other Muslim countries.*

What is clear from the above passage is that it is not the intention of Parliament for AMLA to alter the fundamental concepts of Muslim law. However, for the civil courts to treat a registered Muslim marriage as valid until confirmed otherwise by the Syariah Court does not in any way alter the fundamental concept of Muslim law. The Syariah Court is a specialist court created by Parliament to administer Muslim law. In the course of such administration, the Syariah Court will have to apply Muslim law. Far from altering Muslim law, the presence of the Syariah Court strengthens the application of Muslim law. This point was made by the said Minister further down in the very same speech cited by counsel:

> *The Bill seeks also to strengthen the powers of the **Shariah** Court in Singapore and to provide for the better administration of Muslim law in Singapore. A **Mufti** will be appointed and he will be the Chairman of a Committee of the Council which will be empowered to give rulings on Muslim law. The administration of the law relating to marriage and divorce has been further strengthened following the precedents in the Arab countries and Pakistan ...*

Muslim divorce proceedings are governed by a number of provisions of AMLA. The provisions relating to the registration of a divorce are:

> *Section 102 - Registration of marriage, divorce or revocation of divorce compulsory*
>
> *(1) Nothing in this section shall be construed as preventing a Kadi or Naib Kadi at his option from solemnizing and registering a marriage at his house or office or at the house of the parties or one of the parties thereto.*
>
> *(2) In the case of every marriage, divorce or revocation of divorce effected in Singapore and which has not been registered in accordance with subsection (1), the husband and wife shall -*
>
> *(a) attend personally within 7 days of the marriage, divorce or revocation of divorce at the office of a Kadi;*
>
> *(b) furnish such particulars as are required by the Kadi for the due registration of such marriage, divorce or revocation of divorce; and*
>
> *(c) apply in the prescribed form for the registration of such marriage, divorce or revocation of divorce.*
>
> *(3) A Kadi shall not register any divorce or revocation of divorce unless he is satisfied after inquiry -*
>
> *(a) that the parties have consented to the registration thereof; and*
>
> *(b) in the case of registration of a divorce -*
>
> *(i) that all payments of emas kahwin, any consolatory gift or mutaah and any maintenance for the wife for the period of her iddah have been paid in full; and*

(ii) that the parties have no minor children and no matrimonial home.

(4) A Kadi shall not register any divorce by 3 talak.

(5) Where an application is made to a Kadi for the registration of a divorce by 3 talak or where on an application for the registration of a divorce or revocation of divorce the Kadi is not satisfied that both the parties have consented to the registration thereof, the Kadi shall refer the application to the Syariah Court and the Syariah Court may make such decree or order as is lawful under the Muslim law.

...

Section 109 - Legal effect of registration of marriage, divorce or revocation of divorce

Nothing in this Act shall be construed to render valid or invalid merely by reason of its having been or not having been registered any Muslim marriage, divorce or revocation of divorce which otherwise is invalid or valid.

There is, therefore, a system of registration of Muslim divorces instituted by AMLA. Section 102(3) of AMLA states that the ***Kadi*** shall not register a divorce unless he is satisfied, amongst other things, that both parties have consented to the divorce. Section 102(5) goes on to provide that where the ***Kadi*** is not satisfied that both parties have consented to the registration thereof, the ***Kadi*** shall refer the application to the Syariah Court and the Syariah Court may make such decree or order as is lawful under the Muslim law. The effect of s 109 of AMLA is that the lack of registration of a divorce does not render it invalid if it was otherwise valid, nor does it render it valid if it was otherwise invalid. Thus, in situations where the validity of a divorce is contested, registration provides no panacea. Following s 35(2) of AMLA, the validity of the divorce would have to be determined by the Syariah Court.

The above provisions of AMLA are similar to those found in the Muslims Ordinance 1957 (No 25 of 1957), the predecessor of AMLA. At the second reading of the Administration of Muslim Law Bill on 30 December 1965, the same Minister for Culture and Social Affairs (Othman bin Wok) said:

Part III of the Bill [which deals with the Syariah Court] in the main re-enacts the provisions of the Muslims Ordinance, 1957.

...

Part VI deals with matters relating to marriages and divorces and re-enacts with amendments the provisions of the Muslims Ordinance, 1957.

The registration of divorce provisions and jurisdiction of the Syariah Court provisions found in the Muslims Ordinance are substantively similar to those of AMLA:

Section 12 - Registration Compulsory

(1) In the case of every marriage, divorce or revocation of divorce, effected in the Colony between Muslims, the husband and wife shall -

*(a) attend personally within seven days of the marriage, divorce or revocation of divorce at the office of a **Kathi** ;*

(b) effect the registration of such marriage, divorce or revocation of divorce; and

*(c) furnish such particulars as are required by the **Kathi** for the due registration of such marriage, divorce or revocation of divorce.*

...

*(3) A **Kathi** shall not register any divorce unless he is satisfied that both the husband and the wife have consented thereto.*

Section 14 - Refusal to register and appeal therefrom

*(1) Every **Kathi** who refuses to register a marriage, divorce, or revocation of divorce shall record his reasons for such refusal in a book to be kept for that purpose.*

...

*(3) An appeal from such refusal shall lie to the **Shariah** Court constituted under section 20 of this Ordinance.*

Section 21 - Jurisdiction

*(1) The [**Shariah**] Court shall have jurisdiction throughout the Colony and shall be presided over by the Registrar or such other male Muslim as the Governor may appoint.*

(2) The Court shall hear and determine all actions and proceedings in which all the parties are Muslims and which involve disputes relating to -

(a) marriage;

*(b) divorces known in the law of Islam as **fasah** , **taalik** , **khula** and **talak** other than those by mutual consent of the parties ...*

Dr A Ibrahim, who was then the State Advocate-General of Singapore, made the following comments (at p 207) in his work ***Islamic Law in Malaya*** (1965) in relation to the above provisions of the Muslims Ordinance:

> *In Singapore, a fundamental change in procedure has been made by the Muslims Ordinance, 1957. A* ***Kathi*** *is only allowed to register a divorce by* ***talak*** *where he is satisfied that both the husband and wife have consented to the divorce. Where such a divorce is registered by a* ***Kathi****, the entry in the register shall be signed by the* ***Kathi****, by the husband and wife, and by the witnesses.* ***A*** *talak* ***divorce, other than by the mutual consent of the parties, can only be effected by proceedings before the Shariah Court****. [Emphasis is added.]*

Dr A Ibrahim`s view still resonates 34 years later. In the Report of the Select Committee on the Administration of Muslim Law (Amendment) Bill on the definition of ` ***married woman*** `, it is stated (at para 23):

> *A representor suggested that the AMLA should state explicitly that a married woman upon whom talak has been pronounced can still have recourse to the AMLA.* ***The Committee notes that a married woman on whom talak is pronounced is still a married woman as the divorce has not been registered****. However, to remove any doubt, the Committee recommends that the term `married woman` in sections 47 to 49 be defined to state explicitly that it includes a woman against whom a talak has been pronounced by her husband. [Emphasis is added.]*

Consequently, AMLA was amended pursuant to the Administration of Muslim Law (Amendment) Act 1999 (No 20 of 1999) to include s 47(6), which states that for the purposes of ss 47 to 49, a ` ***married woman*** ` includes a woman against whom a ***talak*** has been pronounced by her husband. Counsel (Mr Namazie) contended that these sections deal with situations where a Muslim wife can apply to the court for a divorce and, not where a Muslim man is seeking a divorce. No doubt, what he points out is true, but I do not see how this advances his client`s case. Although s 47(6) is located in provisions dealing with divorce initiated by the wife, it nevertheless affects a divorce initiated by the husband using the ***talak*** , by stating in clear language that she is still considered to be a ` ***married woman*** ` who can initiate divorce proceedings of her own.

The 1999 amendment to the Act also included changes to s 52 of AMLA. Prior to the amendment, s 52(3) provided:

> *In any application for divorce the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to -*
>
> *(a) the payment of emas kahwin to the wife;*
>
> *(b) the payment of a consolatory gift or mutaah to the wife;*
>
> *(c) the custody, maintenance and education of the minor children of the parties; and*
>
> *(d) the disposition or division of property on divorce.*

Following the 1999 amendment, s 52(3) now reads:

The Court may, at any stage of the proceedings for divorce ***or nullity of marriage or after making a decree or order for divorce or nullity of marriage****, or after any divorce has been registered whether before or after 1st August 1999 under section 102, on the application of any party, make such orders as it thinks fit with respect to -*

(a) the payment of emas kahwin to the wife;

(b) the payment of a consolatory gift or mutaah to the wife;

(c) the custody, maintenance and education of the minor children of the parties; and

(d) the disposition or division of property on divorce or nullification of marriage. [Emphasis is added.]

The new s 52(3) of AMLA therefore makes it explicit that the Syariah Court possesses the power to make a decree or order for divorce or nullity of marriage.

These new amendments are not in any way a harbinger of change. They merely clarify what had been the practice of the Syariah Court for years. This can be seen from the decision of the Appeal Board of the Syariah Court some 20 years ago in **Zainoon v Mohamed Zain** [1981] 2 MLJ 111 . This was an appeal relating to the ancillary matters of a divorce. What is pertinent is the way in which the divorce proceedings were carried out. The husband had divorced the wife by one ***talak*** and subsequently applied to the Syariah Court to register the divorce. The President of the Syariah Court found that the divorce was validly pronounced and ordered that the divorce be registered.

What is clear from all of the above is, that for the purposes of AMLA, a married woman against whom a ***talak*** has been pronounced is still treated as a married woman, until its validity has been confirmed by the Shariah Court. That being the case, the civil courts should similarly treat a married woman against whom a ***talak*** has been pronounced in the same way for the purposes of s 69(1) of the Charter.

There remains one final point to consider. Mr Namazie brought to the court`s attention the fact that Zaleha, in her Memorandum of Defence for the Syariah Court Summons, had confirmed the pronouncement of ***talak*** and claimed ***nafkah iddah*** at $15,000 and ***mutaah*** at $20 per day, custody of Deanna and sole ownership of the matrimonial home. If Zaleha was genuine in disputing the validity of the divorce, counsel asserted, she should have applied to strike out that Syrariah Court Summons and Case Statement instead of making the claims she did. However, such conduct is not inconsistent with the stand taken by Zaleha in the civil courts in respect of the Maintenance Summons because, she was merely following established court procedures of the Syariah Court. As I understand it, even if the ***talak*** is found to be invalid, the President of the Syariah Court can ask the husband to pronounce the ***talak*** again to make the divorce effective. Hence, the usual practice in the Syariah Court is that even if the validity of the ***talak*** is in doubt, the wife will still proceed to make claims for ***nafkah iddah*** and ***mutaah*** , for expediency. If the initial ***talak*** is found invalid, all that is then required is for the husband to make a second, valid pronouncement of ***talak*** , for the divorce proceedings in the Syariah Court to continue without delay. Finally, even if such conduct was inconsistent with Zaleha`s stand in the Maintenance Summons, that does not alter the fact that under AMLA, a married woman is treated as still married until the validity of the divorce by ***talak*** is

confirmed by the Syariah Court.

Conclusion

Mr Namazie had argued that for the purpose of s 69(1) of the Charter, the civil courts should treat a Muslim wife as divorced from the date of the pronouncement of the ***talak*** . That being the case, when Zaleha filed the Maintenance Summons on 16 June 2000, she was no longer a ***married woman*** . For the reasons given above, I am unable to agree.

Accordingly, I dismiss this appeal with costs to Zaleha. However, the security for costs paid by Chaytor should not be paid out to Zaleha until her cross-appeal in District Court Appeal No 710007 of 2000 (wherein she appealed against the amount of maintenance awarded to her and Deanna) has been dealt with.

Outcome:

Appeal dismissed.