

AJR v AJS
[2010] SGHC 199

Case Number : Divorce Transferred No 4402 of 2006
Decision Date : 15 July 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co) for the plaintiff; Dr Anamah Tan (Ann Tan & Associates) for the defendant.
Parties : AJR — AJS

Family law

15 July 2010

Judgment reserved.

Chan Seng Onn J:

1 The parties were married on 26th August 1995 in Guam. They have three children, aged 7, 10 and 11 years. The wife filed for divorce on 4 October 2006 and the husband moved out of the matrimonial home in January 2007. Interim judgment was granted on 16 March 2007 with a consent order as to the joint custody of the children with care and control to the wife and liberal access to the husband ("the Interim Judgment"). The issues before me concern: (a) the manner in which the matrimonial assets are to be distributed; and (b) the amount to be paid as maintenance for the three children of the marriage.

Distribution of matrimonial assets

The matrimonial assets

2 A preliminary issue is the question of the date at which the matrimonial assets and the parties' contributions thereto are to be considered for distribution, *ie*, whether the matrimonial assets in the present case encompass assets existing (a) as at the date of the Interim Judgment (16 March 2007); or (b) as at the date of the ancillary orders for division of the matrimonial assets.

3 Between the date of the Interim Judgment and the present date, there has been a change both in the value and in the nature of the assets through the acquisition of new assets after the date of the Interim Judgment. The value of the assets has increased due to the accumulation of both parties' salaries earned after the date of the Interim Judgment. More importantly, after the date of the Interim Judgment, the wife purchased three properties in Malaysia for investment purposes ("the Malaysian properties") and bought a piece of land in Singapore on which to build a house ("the Singapore property"). In 2008 and 2009, she also exercised some stock options which she had acquired before the date of the Interim Judgment. In addition, some of the proceeds from the sale of a property in South Africa ("the South African Property") which property had been acquired in the wife's name before the date of the Interim Judgment, appear to have only been transferred to the wife's bank account in Singapore in 2008.

4 In my opinion, apart from assets acquired before the marriage which satisfy the definition of

"matrimonial assets" in s 112(10)(a) of the Women's Charter (Cap 353, 2009 Rev Ed), the matrimonial assets available for distribution should be restricted to the assets acquired in the course of the marriage by both parties up to the date of the Interim Judgment. Hence, all the matrimonial assets (including any valuable accrued rights such as stock options and future bonuses arising from employment prior to the date of interim judgment) which existed as at the date of the Interim Judgment are the relevant assets for distribution. Any asset acquired after the date of the Interim Judgment should not be considered a matrimonial asset to be distributed between the parties. The party choosing to invest in new assets after the date of the Interim Judgment takes the benefit of an appreciation and also the market risk of a fall in the value of those investments. The rationale behind this is that the Interim Judgment puts an end to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets nor in any further joint investment in any matrimonial assets with the associated market risk of a fall in the value of those joint investments, unless there is evidence to substantiate a mutual intention to the contrary. As the Court of Appeal observed in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") (at [25]):

The grant of a decree *nisi* is a recognition by the "court that the marriage is at an end". When such a decree is pronounced, there is, as Lord Wright said [in *Fender v St John-Mildmay* [1938] AC 1 at 45-6], no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights.

In *Sivakolunthu*, the Court of Appeal held that the jurisdiction to make ancillary orders is founded on the reality of the break-up of a marriage rather than the legal formality of such a break-up and that this is also evidenced by the power of the court to order a division of matrimonial assets upon the granting of a decree of judicial separation. Consequently, the Court of Appeal construed the expression "decree of divorce" in the then s 106(1) of the Women's Charter (Cap 353, 1985 Ed) to include a decree *nisi*. Section 106(1) of the Women's Charter was subsequently replaced by s 112(1) of the Women's Charter (Cap 353, 1997 Rev Ed). Nevertheless, as observed by Kan Ting Chiu J in *Yap Hwee May Kathryn v Geh Thien Ee Martin and another* [2007] 3 SLR(R) 663 ("*Yap Hwee May Kathryn*"), there are strong similarities in s106 of the Women's Charter (Cap 353, 1985 Ed) and s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) in that they both set out the power of the court to order the division of matrimonial assets. Section 106(1) of the Women's Charter (Cap 353, 1985 Rev Ed) stated that the court shall have the power "when granting a decree of divorce" while s 112(1) of the Women's Charter (Cap 353, 1997 Rev Ed) stated that the court shall have the power "when granting *or subsequent to* the grant of a decree of divorce" [emphasis added]. Kan J held that the Court of Appeal's ruling in *Sivakolunthu* that "decree of divorce" includes a decree *nisi* should apply to s 112(1) of the Women's Charter (Cap 353, 1997 Rev Ed) as well. Section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) now states that the court shall have the power to order the division of matrimonial assets "when granting *or subsequent to* the grant of a *judgment* of divorce" [emphasis added]. Reasoning by analogy, s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) should also be interpreted such that the court shall have the power to order the division of matrimonial assets when granting or subsequent to the grant of an interim judgment.

5 The reasoning in *Sivakolunthu* was applied by the High Court in *Yap Hwee May Kathryn* where Kan J stated his preference for the date when the decree *nisi* was made as the operative date for an order for the division of matrimonial assets. Kan J cited two persuasive reasons for his preference. Firstly, if all the relevant facts are before the court, there is no reason why the actual division of matrimonial assets should not be done when the decree *nisi* is granted. Secondly, it is impossible to employ the date of the decree *absolute* as the operative date for division as the date cannot be ascertained when the division is made since a decree *absolute* is only made when the hearing of all ancillary matters, such as the division of matrimonial assets and custody, are concluded. I agree. I

would also add that it would be inconsistent with the intention of the parties to include in the pool of matrimonial assets any assets that they separately acquire *after* the grant of the interim judgment since, as at the date of the interim judgment, the parties have already “put an end to the whole content of the marriage contract, leaving only the shell, that is, the technical bond” (*Fender v St John-Mildmay* [1936] 1 KB 111, per Greer LJ at 115-7). As such, on the facts of the present case, given the clear intention of the parties not to contribute to the pool of matrimonial assets as from the date of Interim Judgment, I would consider the matrimonial assets available for distribution to be the assets existing at the date of Interim Judgment. However, I would stress that the date of the Interim Judgment only determines the assets which are available for distribution and *not* the *value* of such assets which would be taken into account when dividing the matrimonial assets. I will elaborate at [\[8\]](#) and [\[9\]](#) below on how the net asset values for the purpose of division are to be determined. Any other outstanding liabilities incurred for the welfare of the family (eg, outstanding loans taken to finance the children’s education, family holidays or family expenses during the marriage) would also have to be deducted in order to derive the total net value of matrimonial assets available for distribution, which shall hereinafter be referred to as “S\$m”.

6 In some rare cases, a party may have indulged in certain vices involving a large amount of expenditure (eg, excessive gambling or drinking) to the extent that matrimonial assets have been unfairly or unjustly depleted by the unacceptable actions of that party. Should the innocent party to the marriage be made to suffer on account of that or should the guilty party be made to bear the entire amount of that expenditure or at least a part thereof, as if that guilty party had spent his own share of the matrimonial assets when calculating the distribution of matrimonial assets? In my view, the court has a discretion to decide whether or not such a wasteful dissipation of matrimonial assets should be accounted for at all, and if so, the extent to which that wasteful dissipation should be accounted for in order to make the eventual distribution of matrimonial assets just and equitable for the innocent party. Should the court decide that it is just and equitable for the *entire* amount dissipated to be accounted for as part of the matrimonial assets as if the *entire* amount had not been dissipated, then the *entire* amount proved to have been unfairly or unjustly dissipated by that party during the course of the marriage until the date of interim judgment will be notionally added to the total net amount of the matrimonial assets. If the court decides that it is only just and equitable to account for a *fraction* of the entire amount dissipated by the guilty party, especially where there was no vehement objection from the innocent party at the time the expenditure on the vices were incurred by the guilty party, then only that *fraction* will be added to the total net amount of the matrimonial assets. The amount notionally added to the total net amount of matrimonial assets to represent the amount that a party to the marriage has dissipated unjustly or unfairly will hereinafter be referred to as “S\$n”. The amount dissipated unjustly or unfairly by either the husband or the wife will subsequently be deducted from the share of matrimonial assets to be awarded to him or her. This is set out in greater detail at [\[37\]](#)-[\[38\]](#) below. (See steps 7 and 8 of the methodology presented in this judgment as a guide to achieving a fair distribution of matrimonial assets.)

7 There are also some cases—the present case being one of them—where one party, prior to the date of interim judgment, uses money from the pool of matrimonial assets to acquire assets in his or her own name in circumstances in which both parties are aware that the party acquiring such assets is making the investment for his or her own purposes and has no intention that the other party partake in such investment, and where the other party could not reasonably have expected to share in the investment in the event of a divorce. In these circumstances, the court also has a discretion to decide how to account for such expenditure. It may well be just and equitable to order that the party which removed the money from the pool of matrimonial assets be treated as having used that money for his or her own purposes (similar to the scenario where one party unfairly or unjustly depletes the matrimonial assets by engaging in vices as considered at [\[6\]](#) above). The amount expended by the party making the investment will notionally be added to the total net amount of

matrimonial assets to represent the amount that a party to the marriage has invested for his own benefit and will hereinafter be referred to as “S\$p”. The amount invested by either the husband or the wife for his or her own benefit will subsequently be deducted from the share of matrimonial assets to be awarded to him or her. As in the situation described in [\[6\]](#) above, this is set out in greater detail at [\[37\]](#)-[\[38\]](#) below. (See steps 7 and 8 of the methodology presented in this judgment as a guide to achieving a fair distribution of matrimonial assets.)

8 As a general principle, in the distribution of matrimonial assets according to the ratio which I shall determine in this judgment, all assets existing as at the date of the Interim Judgment, *ie*, 16 March 2007, will be considered as part of the pool of matrimonial assets to be distributed. For instance, the amount of monies in the respective bank accounts and CPF accounts of the parties constituting part of the matrimonial assets shall be the amount in those accounts as at the date of the Interim Judgment. If an asset has been sold either before or after the date of Interim Judgment and the net proceeds of sale have not been received and banked into the parties’ bank accounts as at the date of the Interim Judgment, then it will be assigned a notional net asset value equal to the price at which it was sold less any outstanding loan taken to purchase that asset and any incidental expenses incurred in the sale. In other words, its net asset value is its expected net proceeds of sale. If an asset has not been sold, its net asset value will have to be ascertained as at the date of this judgment (and not as at the date of the interim judgment) by independent valuers if the parties cannot agree on its net asset value. Both parties ought to have the benefit of any appreciation and similarly, suffer any depreciation in the value of the asset up to the date of this judgement since the parties themselves have implicitly agreed to keep the matrimonial asset to the present date pending the conclusion of the ancillary hearing. Depending on the circumstances, the court may either objectively determine as a fact what the present net asset value should be having regard to the valuations obtained by the parties from professional valuers or the court may order the asset to be sold within a given timeframe and thereafter, the sale proceeds less repayment of any outstanding loan and incidental expenses incurred in the sale of the property will be entered into the pool of matrimonial assets for division. On the facts of this case, the parties have agreed that the assets which existed on the date of the Interim Judgment are as follows:

- (a) A property in Australia (“the Australian Property”);
- (b) Perth Mint (Gold);
- (c) Perth Mint (Silver);
- (d) Proceeds from the sale of the South African Property which was purchased in the wife’s name before the date of the Interim Judgment and subsequently sold in 2006, subject to the following considerations:
 - (i) If the net sale proceeds have been paid into the wife’s bank accounts *prior* to the date of the Interim Judgment, then there is no need to consider this property at all as it would already be accounted for within item (f) below.
 - (ii) However, if any of the sale proceeds are paid into the wife’s bank account *after* the date of the Interim Judgment, then such proceeds would not be captured by item (f) which is the amount in the wife’s bank account as at the date of the Interim Judgment, in which case such proceeds from the sale of the South African Property will have to be notionally added to the pool of matrimonial assets available for distribution.
- (e) The wife’s stock options which were earned in the course of her employment before the

date of the Interim Judgment and exercised in 2008 and 2009 after the date of the Interim Judgment. These stock options were in fact benefits earned by the wife in the course of her employment *before* the date of the Interim Judgment. In other words, these stock options were benefits granted to the wife on account of her job performance for the period before the date of the Interim Judgment and as such, should comprise part of the matrimonial assets. As they have been exercised *after* the date of the Interim Judgment, the sale proceeds, less any incidental expenses for the sale and taxes payable on account of the exercise of the stock options, will constitute matrimonial assets. The wife exercised the stock options in 2008 and 2009. She earned US\$5,221,511.24 from her exercise of the stock options in 2008 and US\$585,059.22 from her exercise of the stock options in 2009. This translates to approximately S\$8,129,198.64 in total. Assuming a combined US and Singapore tax rate of 35%, the tax paid on these stock options was approximately S\$2,845,219.52. The net amount earned from the wife's exercise of the stock options is therefore approximately S\$5,283,979.12. Since this amount did not form part of the monies in the wife's bank account as at the date of the Interim Judgment (item (f) below), they would have to be added to the pool of matrimonial assets available for distribution;

- (f) Monies in the wife's bank accounts as at the date of the Interim Judgment;
- (g) Monies in the wife's CPF Ordinary, Special and Medisave accounts as at the date of the Interim Judgment;
- (h) Monies in the husband's bank accounts as at the date of the Interim Judgment; and
- (i) Monies in the husband's CPF Ordinary, Special and Medisave accounts as at the date of the Interim Judgment.

The parties also had outstanding tax liabilities as on the date of the Interim Judgment which were incurred before the date of the Interim Judgment and must be deducted from the total value of matrimonial assets.

9 Accordingly, the total net value of matrimonial assets available for distribution will be the sum of the values of the assets listed in [\[8\]](#) above less any other outstanding income tax liabilities arising from income earned in the course of the marriage up to the date of the Interim Judgment and, as stated above at [\[5\]](#), will be represented as "S\$m".

10 If there are any matrimonial assets (including cash) proved to have been unfairly or unjustly dissipated by either party during the course of the marriage until the date of interim judgment which the court finds unacceptable and must be accounted for as part of the matrimonial assets as if they had never been dissipated, then the amount that the court deems to have been unfairly or unjustly dissipated (S\$n – see [\[6\]](#) above), would be notionally added to the total net value of matrimonial assets available for distribution. If there are any matrimonial assets (including cash) proved to have been expended by either party for his or her own investment purposes *before* the date of the Interim Judgment and both parties did not intend for the other party to partake in the investment, then the total amount expended (S\$p – see [\[7\]](#) above) would also be notionally added to the total net value of matrimonial assets available for distribution.

11 The *notional* total net value of matrimonial assets available for distribution is accordingly the sum total of S\$m + S\$n + S\$p and will be represented as S\$A. On the facts of this case, S\$n is zero as no allegation of unjust depletion has been raised by either party. S\$p is S\$242,390 since the Wife made three deposits amounting to RM545,358.28 (or S\$242,390) between 30 January 2007 and

3 February 2007 towards her purchase of the Malaysian Properties just a few months prior to the grant of interim judgment. S\$A is therefore the sum of S\$m and S\$242,390.

Apportioning the assets

The parties' submissions

12 The husband seeks an equal distribution of the matrimonial assets. The wife submits that the Australian Property, gold and silver should be divided between the parties in the proportion of their respective financial contributions whilst the rest of the assets should be kept by the parties in whose names the assets were registered.

13 The basis for the husband's claim to an equal distribution of assets is that the marriage was a partnership of equals. Both parties had started life in the financial industry and were earning about the same amount initially until the husband subsequently stayed home and became a househusband from 2001 to 2006. According to the husband, the decision that he stayed home to look after the young children of the marriage was a joint one to cater to the needs of the family. The husband claims that it would be fair, just and equitable to grant him 50% net of the wealth which he submits was jointly created and improved upon by the parties. On the other hand, the wife argues against an equal division on the basis that the wife has exceeded the husband in both financial and non-financial contributions such that it would be unjust to order an equal division.

14 Section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) provides that:

The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks *just and equitable*.
[emphasis added]

15 The High Court in *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688, having considered the legislative history behind the enactment of s 112, concluded that the principle of equal division is not preserved in the just and equitable formulation in s 112. Rather, what is just and equitable must be decided on the facts of each case. The principle of equal division has also been rejected in subsequent cases. In *Lock Yeng Fun v Chua Hong Chye* [2007] 3 SLR(R) 520, the Court of Appeal observed that equality of division of matrimonial assets was not the norm and that in the large majority of cases decided by the courts, equality of division was not achievable on the facts. The Court of Appeal noted that it would be contrary to legislative intent to seek to achieve equality as the norm as an end point regardless of the actual facts and merits concerned.

16 In view of s 112(1) of the Women's Charter and the existing case authorities, the husband's contention for an equal division of the matrimonial assets will not be sustained unless it is decided, after an evaluation of all the direct and indirect contributions of both parties, that it would be just and equitable to grant the husband a 50% share in the matrimonial assets. The husband argues that it would be just and equitable to grant him a 50% share in the matrimonial assets as both parties had jointly created and improved upon the matrimonial assets. In particular, from 2001-2006, the husband had stayed home to look after the children with the help of two domestic helpers. During this period, the wife excelled in her work whilst the husband looked after the home and children and supervised the construction of the parties' houses in Australia and South Africa as well as the Perth Mint investments. On the other hand, the wife argues that during the period when the husband did not work, the wife still exceeded the husband in non-financial contributions and that she had a crucial

role to play in the selection of the parties' joint investments and their design of their house in Australia. It is not disputed that the husband was diagnosed with Attention Deficit Disorder ("ADD") in 2006. The wife claims that the husband was unable to look after the children and that after her work, the wife had to look after the children and the household as well as the husband. I agree with the wife that this is not a case where one marriage partner took care of all the responsibilities of looking after the children and household while the other focused on her career. Rather, this is a case where the partner who was focusing on her career also looked after the household and children. Moreover, the partner who focused on her career amassed a large sum of money which has fallen into the pool of matrimonial assets. I have set out at [\[44\]](#), [\[45\]](#), [\[46\]](#), [\[48\]](#) and [\[49\]](#) below additional evidence of the parties' respective direct and indirect contributions towards the marriage and the welfare of the family. I find that in all the circumstances of this case, it would not be just and equitable to grant the husband a 50% share of the matrimonial assets. Applying a broad-brush approach, the proportion of the total net value of matrimonial assets available for distribution which it would be just and equitable to award to the husband, is in my view broadly 20%. The wife deserves to get a much larger share of 80% in view of her much greater direct and indirect contributions.

17 I also disagree with the wife's submission that a classification approach should be adopted in the division of the matrimonial assets and that the Australian Property, gold and silver should be divided according to the parties' respective financial contributions to these investments whilst the other assets should be retained by the parties in whose names they are registered. Although both parties have kept separate bank accounts, I find that this does not alter the nature of the monies in the bank accounts as matrimonial assets as there is no clear evidence that the separation of the parties' respective incomes was made with the view that their assets would be divided along those lines in the event of divorce proceedings (see *Foo Tee Sey v Loy Hui Eng* [2001] 3 SLR(R) 178). Moreover, both parties contributed to the purchase price of the Australian Property, gold and silver, albeit in differing amounts. Although the wife paid the purchase price of the South African Property, the husband claims that he supervised and saw to the completion of this property. In my opinion, during the marriage, the parties treated themselves as a married couple would and treated their properties as matrimonial assets jointly acquired and dealt with. With the exception of the wife's purchase of the Malaysian Properties a few months prior to the date of the Interim Judgment, it was not intended that each party would keep the assets in his or her own name and divide their joint investments according to their actual financial contribution towards the acquisition of each investment. Thus, it would not be just and equitable for each party to retain the monies in his or her own bank and CPF accounts and for the wife, in addition, to retain the proceeds of the South African Property and the sale of her stock options whilst dividing the Australian Property, gold and silver in the proportion of the parties' respective contributions to the purchase price of such properties.

18 Accordingly, I reject the approach put forth by both parties for the distribution of matrimonial assets. I now explain in greater detail at [\[19\]](#) to [\[23\]](#) below the broad-brush approach I have adopted to arrive at a just and equitable division of the net value of the matrimonial assets giving 20% of it to the husband and 80% to the wife.

The approach to determining a "just and equitable" division

19 In *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"), the Court of Appeal stated that it is the duty of the court to recognise the reality of family dynamics and to give due weight to all indirect contributions which are by their nature not reducible to monetary terms. The Court of Appeal held (at [28]) that in the absence of documentary evidence, the court must make a "rough and ready approximation" and avoid falling back on the view that favours financial contribution to the acquisition of property. Apart from reiterating that a broad-brush approach or a holistic assessment must be adopted in the just and equitable apportionment of matrimonial assets with due regard being had to all

the circumstances of the case including those factors (not exhaustive) enumerated by s 112(2) of the Act which must also be duly assessed and considered as a whole, the Court of Appeal provided further useful guidance as to *how* a just and equitable division of the assets shall be arrived at and stressed that the entire process must involve a mutual respect for spousal contributions, whether in the economic or homemaking spheres, as both roles are equally fundamental to the well-being of the marital partnership.

20 The Court of Appeal in *NK v NL* held that there are two distinct methodologies in the attribution of indirect contributions to the division of matrimonial assets. The first method requires a calculation of the net value of all matrimonial assets followed by a just and equitable division in light of all the circumstances of the case ("the global assessment methodology"). The court's duty would be to (a) identify and pool all the matrimonial assets pursuant to s 112(10) of the Women's Charter; (b) assess the net value of the pool of assets; (c) determine a just and equitable division in the light of all the circumstances of the case; and (d) decide on the most convenient way to achieve these proportions of division. Pursuant to this approach, the percentage for *indirect* contributions is applied without distinction to *all* matrimonial assets. The second method requires a separation of the matrimonial assets into classes with individual apportionment for each class such as the matrimonial home, cash in bank accounts, shares, and businesses, etc ("the classification methodology"). Any *direct* financial contributions and *indirect* contributions are considered in relation to *each* class of assets, rather than by way of a global assessment. The Court of Appeal in *NK v NL* held that the methodology that led to a just and equitable division should be applied, although in the vast majority of cases, either methodology would likely achieve the same result. In *NK v NL*, the second methodology was adopted as the Court of Appeal felt that, on the facts of that case, it was more principled and conducive to a fair and equitable division to consider the assets involved in classes, taking into account the differing financial contributions of each party to the acquisition of different assets, rather than as a vast conglomerate of assets. In its application of the classification methodology, the Court of Appeal in *NK v NL* held that only the *direct* contributions may *vary*. The element of *indirect* contributions in the context of homemaking and child caring must necessarily remain *constant* in relation to each class of asset.

21 In my opinion, the classification methodology, in varying the *direct* contributions depending on the asset being considered, must also take into account the fact that parties to a marriage may make *direct* contributions to the family expenditure in different ways. Some *direct* financial contributions to the family welfare (eg, food, education and other school fees, medical expenses, public utilities, travel and holiday expenses) are totally unrelated to the acquisition or maintenance of any identifiable matrimonial asset (hereinafter referred to as the "unattributable *direct* financial contributions") which are unlike those direct payments made by a party which can readily be traced to the payment of the purchase price of a matrimonial asset or to the repayment of a loan taken to finance the purchase of that matrimonial asset. How then should those unattributable *direct* financial contributions to the family welfare be accounted for in the just and equitable division of matrimonial assets? Should they be treated in the same manner as the *indirect* contributions in that the element of such unattributable *direct* financial contributions made by a party towards the family welfare must remain *constant* in relation to each class of asset? Logically, it should remain *constant* as they are unattributable to any particular matrimonial asset just as with the *indirect* contributions. In my view, such unattributable *direct* financial contributions are just as important as those attributable and traceable *direct* financial contributions made towards the acquisition or maintenance of matrimonial assets. However, the computation of the total unattributable *direct* financial contributions during the whole course of the marriage is no easy task as no accounts or financial records will likely be kept of such financial contributions towards the family welfare. Over the duration of a long marriage, these unattributable *direct* financial contributions can be very significant if not more significant than the actual direct financial contributions made towards the acquisition and maintenance of matrimonial

assets (especially for lower income families where the only matrimonial asset may well be a three-room HDB flat).

22 Having regard to the fact that in most marriage partnerships it is largely fortuitous as to which party contributes directly towards the acquisition of matrimonial assets (*eg*, houses, shares, bonds, insurance policies with cash surrender values *etc*) and which party pays for other family expenditure (*eg*, food, education and medical expenses *etc*) which have no asset value, I would prefer to adopt a global assessment approach and work on the basis that, unless disputed, the parties to a marriage have contributed and applied all their respective incomes from employment or business received in the course of the marriage to the overall welfare of the family (be it as unattributable *direct* financial contributions towards food, education and medical expenses *etc* or as attributable *direct* financial contributions traceable to the maintenance or acquisition of matrimonial assets including cash deposits which are the unused monies saved by the parties). The ratio of their total respective incomes during the life of the marriage would *prima facie* represent or reflect as a whole their respective *direct* financial contributions (both attributable and unattributable) towards the overall welfare of the family and, accordingly, would *prima facie* also help to determine their respective *direct* contributions for the purpose of a just and equitable division of matrimonial assets, which I must stress is only one side of the equation. The other side of the equation is the ratio of *indirect* contributions made by the parties towards the overall welfare of the family. Both ratios of *direct* and *indirect* contributions by the respective parties will then be factored together to determine, as best as the court can using a holistic and broad-brush approach, the most appropriate final ratio to apply in order to achieve a just and equitable division of the matrimonial assets (as defined in s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed)).

23 I do not propose to determine with "mathematical precision" the amount of the parties' respective contributions to the marriage and the ratio according to which the matrimonial assets should be distributed. As the Court of Appeal acknowledged in *NK v NL* (at [28]), "[i]n the absence of documentary evidence, courts must indeed make a 'rough and ready approximation'", "it would not profit either party to embark on an exercise with a view to determine with mathematical precision the amount of their respective contributions" and "division is 'not a pure exercise in arithmetic that would yield some degree of exactitude and certainty'". In line with the existing judicial approach to the division of matrimonial assets, I have exercised my discretion in broad strokes to determine the division of the matrimonial assets in the ratio of 20%:80% in favour of the wife which in my view best achieves a just and equitable division of the matrimonial assets. For comparison purposes and as a rough check whether I could have made a serious error in the exercise of my discretion, I also used the methodology set out below (at [24] – [38]), which takes into account the parties' *direct* attributable *and* unattributable financial contributions to the marriage as well as their *indirect* contributions to the marriage. I must emphasise that the methodology is no more than a useful guide and is not a substitute for the judicial approach to the division of matrimonial assets as set out in *NK v NL*.

24 In summary, the methodology is as follows. The total contribution (of both parties) to the matrimonial assets consists of a combination of both *direct and indirect* contributions. I would determine the percentage of the *total* contribution that is attributable to (a) the *direct* contribution of the parties; and (b) the *indirect* contribution of the parties. This depends largely on the court's view of the relative weight or significance of the *total direct* contribution *versus* the *total indirect* contribution made by the parties towards the overall welfare of the family after considering all the relevant facts and circumstances. Having determined the ratio of *total direct* contribution to the ratio of *total indirect* contribution of *both* parties to the marriage, I would then consider the *direct* contribution component separately from the *indirect* contribution component. With regard to the *direct* contribution component, I would assume that, unless the contrary is proven, each party

intended to apply and has indeed applied all his or her earnings towards the accumulation of the pool of matrimonial assets such that the sum of his or her net earnings during the marriage (less taxes payable thereon) combined with the matrimonial assets that he or she had brought to the marriage constitute his or her total *direct* contribution to the marriage and the proportion of each party's *direct* contribution is broadly represented by the fraction of his or her total earnings (plus matrimonial assets brought to the marriage by him or her, if any) over the total combined earnings (plus matrimonial assets brought to the marriage by both parties, if any). As for the *indirect* contribution, I would take into account broadly the parties' non-financial contributions to the marriage (*eg*, the time, effort and commitment looking after the welfare of the family and bringing up the children, the support and assistance that one party may have given to the other to aid that party in the carrying on of his or her occupation or business, and their business acumen or investment abilities which may have contributed to an increase in value of the pool of matrimonial assets). Next, I would sum up each party's *direct and indirect* contributions to the marriage and determine the ratio of the husband's total (*direct and indirect*) contribution to the wife's total (*direct and indirect*) contribution. Finally, I would take into account any assets expended by the husband and/or the wife for his or her own benefit which I find must be subtracted from his or her share of the matrimonial assets (see [\[6\]](#) and [\[7\]](#) above).

(1) The methodology

25 The precise steps in this methodology are as follows.

Step 1: The total net value of matrimonial assets to be distributed

26 The *notional* total net value of matrimonial assets to be distributed will be referred to as S\$A (see [\[10\]](#) – [\[11\]](#) above). I will first determine that full disclosure has been made of all matrimonial assets that the parties have accumulated in the course of the marriage (as defined in s 112(10) of the Women's Charter) and all such matrimonial assets including any liabilities have been fully accounted for. Basically, the list of matrimonial assets and the outstanding liabilities existing as at the date of the interim judgment must be complete and as clearly identified as possible. This would ensure that the calculation of the total net value of matrimonial assets available for distribution (S\$m – see [\[9\]](#) above) is as accurate as possible.

27 As discussed above, for present purposes, the course of marriage runs from the date of marriage to the date the interim judgment is granted. The value to be taken of any matrimonial asset existing at the date of interim judgment and still in existence now is the net value of that asset as at the date of this judgment, which should preferably be determined by a qualified independent valuer if the asset is not in the nature of cash or fixed deposits. However, if any matrimonial asset (acquired before the date of the interim judgment) has been sold or liquidated either before or after the date of interim judgment and the net proceeds of sale are only received and banked into the parties' bank accounts subsequent to the grant of interim judgment, then the price at which the asset was sold or the amount obtained after liquidation (less loan repayment and other incidental expenses incurred in the sale or liquidation) will be used as the net value of that asset. The total value of any matrimonial asset (including cash) proved to have been unfairly or unjustly dissipated by a party during the course of the marriage until the date of the interim judgment (S\$n – see [\[6\]](#) and [\[10\]](#) above), or expended by either party for a personal investment in which the other party cannot reasonably have expected to participate in (S\$p – see [\[7\]](#) and [\[10\]](#) above), and which must be accounted for as part of the just and equitable distribution of the matrimonial assets as if the assets have not been dissipated, will have to be notionally added to the total net value of matrimonial assets available for distribution, giving S\$A as the *notional* total net value of matrimonial assets available for distribution. This will be accounted for at steps 7 and 8 (see [\[37\]](#) and [\[38\]](#) below).

Step 2: The percentage of *direct* contributions of both parties ("*B%*") and *indirect* contributions of both parties ("*C%*")

28 I reiterate that the *total* contribution (of *both* parties) to the matrimonial assets consists of two components, *ie*, the *direct* and *indirect* contribution components. Based on an assessment of the relative importance or weightage of the *direct* contribution to the *indirect* contribution towards the overall welfare of the family, I will determine the percentage of the *total* contribution (of *both* parties) to the family that represents the *total direct* contribution (of *both* parties) ("*B%*"). I would also determine the percentage of the *total* contribution (of *both* parties) to the family that represents the *total indirect* contribution (of *both* parties) ("*C%*"). *B%* and *C%* together will add up to 100%, being the *total direct* and *indirect* contributions of *both* parties towards the marriage partnership.

29 The ratio of *B%* to *C%* must necessarily depend on the facts of the case. Examples of some factors which may affect the relative weightage or importance of the total indirect contribution as against the total direct contribution in the division of matrimonial assets and hence the overall ratio to be applied are:

- (a) the length of the marriage;
- (b) the number of children in the family;
- (c) the existence of a third party carer (*eg*, maids);
- (d) the extent of the giving of assistance or support to the other party including the extent of the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (e) the total amount of time and effort that *both* parties had spent looking after the welfare of the family, including looking after and improving the home and other matrimonial assets, caring for the family, bringing up each of their children and taking care of any other aged or infirm relative or dependant of either party.

The total amount of time and effort that *both* parties have spent at work or at the business during the course of the marriage in order to earn the incomes that provide the *direct* financial contributions of *both* parties towards the welfare of the family must also be factored into the assessment of the relative weightage of *direct* and *indirect* contributions by *both* parties in order to determine the most appropriate ratio of *B%* to *C%* to achieve a just and equitable division of the matrimonial assets.

30 The further subdivision of both *B%* and *C%* into the respective proportions made by *each* party must still be done and this will be considered separately in steps 3 and 4 respectively. If the respective proportions that *each* party in fact contributed to *each* of the *B%* and *C%* components are not ascertained by carefully considering all the relevant factual evidence provided, then it will not be possible to make any order on the proportion or manner in which to divide the matrimonial assets between the parties. Unfortunately, this can be a tedious exercise and is no easy task. Nevertheless, the court still has to carry it out.

Step 3: The *direct* contribution of *each* party

31 The *direct* contribution of *each* party to the pool of matrimonial assets as at the date of interim judgment will be considered. *Direct* contributions are generally monetary contributions towards the marriage partnership by both parties arising from their employment and/or business. I will determine

the husband's share of the total *direct* contribution of both parties to be " $D\%$ ". I will also determine the wife's share of the total *direct* contribution of both parties to be " $E\%$ ". $D\%$ and $E\%$ together should add up to 100%, representing the total *direct* contribution of both parties towards the marriage partnership. The ratio of the husband's share to the wife's share of the total direct contribution is therefore $D\%:E\%$. In determining a party's *direct* contribution to the family, unless disputed, I will assume that that party has applied all matrimonial assets (as defined in s 112(10) of the Women's Charter) that he or she has received in the course of the marriage to the welfare of the family. This includes that party's earned salary, other monetary emoluments and other income from business (including stock options earned) and the amount he or she has accumulated in his or her CPF account. I will then multiply both $D\%$ and $E\%$ by $B\%$ separately to obtain $DB\%$ as the percentage of matrimonial assets for distribution which is to be awarded to the husband arising from his *direct* contribution to the family and $EB\%$ as the percentage of matrimonial assets for distribution which is to be awarded to the wife arising from her *direct* contribution to the family.

32 It is pertinent to point out at this juncture that if a party chooses not to make full disclosure of all of his or her *direct* contribution (for reasons best known to that party which could perhaps be to avoid having to pay a higher maintenance to the other party by understating any part of his or her own earnings or income during the entirety of the period between the date of the marriage until the date of the interim judgment), then that party will be disadvantaged as its percentage *direct* contribution will become less than it should otherwise be and accordingly, that party will eventually receive a smaller share of the matrimonial assets that are available for distribution. Hence, parties may well disadvantage themselves if they understate their *direct* contributions or their earned income and other emoluments.

33 I would also point out that the state of the evidence before the court (perhaps due to the long history of the marriage and the fact that the parties may not have kept every tax assessment or bank statements etc. to prove their precise *direct* financial contribution to the marriage) will often make it difficult for the court to arrive at a more precise determination of the *direct* contribution of each party to the marriage. In these circumstances, a rough and ready approximation will be made of the *direct* contribution of each party to the marriage in light of the available evidence.

Step 4: The *indirect* contribution of *each* party

34 I will determine the husband's share of the *total indirect* contribution of both parties to be " $F\%$ ". I will also determine the wife's share of the *total indirect* contributions of both parties to be " $G\%$ ". Again, $F\%$ and $G\%$ together should be 100%, representing the *total indirect* contribution of *both* parties towards the marriage partnership. The ratio of the husband's share to the wife's share of the *total indirect* contribution is therefore $F\%:G\%$. I will then multiply both $F\%$ and $G\%$ by $C\%$ separately to obtain $FC\%$ as the percentage of matrimonial assets which is to be awarded to the husband arising from his *indirect* contribution to the family, and $GC\%$ as the percentage of matrimonial assets which is to be awarded to the wife arising from her *indirect* contribution to the family.

Step 5: The value of matrimonial assets to be distributed to the husband

35 To obtain the *notional* value of the matrimonial assets to be distributed to the husband, I will accordingly sum up the total percentage of matrimonial assets for distribution which is to be awarded to the husband arising from *both* his *direct* and *indirect* contributions to the family ($DB\% + FC\%$) and multiply this by the *notional* total value of all the matrimonial assets available for distribution ($S\$A$). The *notional* value of the matrimonial assets to be distributed to the husband will thus be $S\$A(DB\% + FC\%)$.

Step 6: The value of matrimonial assets to be distributed to the wife

Step 6: The value of matrimonial assets to be distributed to the wife

36 To obtain the *notional* value of the matrimonial assets to be distributed to the wife, I will similarly sum up the percentage of matrimonial assets for distribution which is to be awarded to the wife arising from *both* her *direct* and *indirect* contributions to the family ($EB\% + GC\%$) and multiply this by the total *notional* value of all the matrimonial assets available for distribution ($S\$A$). The *notional* value of the matrimonial assets to be distributed to the wife will thus be $S\$A(EB\% + GC\%)$.

Step 7: The deduction of the value of assets dissipated or expended exclusively for one party's purposes from the amount of matrimonial assets to be distributed to that party responsible for that dissipation or exclusive expenditure

37 If any money or asset has been proved to be unjustly dissipated from the pool of matrimonial assets due to certain vices by either the husband or the wife or expended by one party for the acquisition of any personal investment in circumstances in which both parties do not intend the other party to participate in such investment, the total value of such assets (or fraction thereof that is just and equitable) as has been dissipated or expended by the husband or the wife will have to be deducted from the *notional* total amount that the party receives in Step 5 or Step 6 respectively. Assuming the husband has removed $S\$H$ worth of assets from the pool of matrimonial assets ($S\$A$ as assessed in Step 1), the *actual* value of the matrimonial assets which will be distributed to him will thus be $[S\$A(DB\% + FC\%) - S\$H]$. If the wife has removed $S\$J$ worth of assets from the pool of matrimonial assets ($S\$A$ as assessed in Step 1), the *actual* value of the matrimonial assets which would be distributed to her will thus be $[S\$A(EB\% + GC\%) - S\$J]$. In the absence of any complaint of dissipation from any party, it will be assumed that no such unjust dissipation has occurred during the marriage necessitating a penalisation of the guilty party concerned by the corresponding deduction to be made to that party's share of the matrimonial assets. For clarity, $S\$(H+J)$ is equal to $S\$(n+p)$ in [\[10\]](#) above.

Step 8: The final value of matrimonial assets to be distributed to *each* party

38 From the values of the matrimonial assets finally received by the parties as calculated in the steps shown above, the *final ratio* between the value of the matrimonial assets to be received by the husband and the value of the matrimonial assets to be received by the wife can then be calculated as $[S\$A(DB\% + FC\%) - S\$H] : [S\$A(EB\% + GC\%) - S\$J]$. The sum of these two amounts (and this can be proved mathematically) will always be equal to $S\$m$, being the actual total net value of matrimonial assets available for distribution, and not the *notional* total net value of matrimonial assets available for distribution. In other words, $[S\$A(DB\% + FC\%) - S\$H]$ added to $[S\$A(EB\% + GC\%) - S\$J]$ always equals $S\$m$. This *final ratio* in *percentage terms* will be $\{[S\$A(DB\% + FC\%) - S\$H] \times 100 \div S\$m\} : \{[S\$A(EB\% + GC\%) - S\$J] \times 100 \div S\$m\}$. This constant ratio may be applied to the total pool of matrimonial assets actually valued at the total net amount of $S\$m$ or to the net value of each and every matrimonial asset that will be distributed between the parties if such assets are to be distributed individually. In my view, so long as the allocation of assets as a whole results in an allocation of the net value of assets to the parties that approximates the *final ratio*, it does not matter much as to who gets exactly which of the many houses, cars, pieces of jewellery and so on. After the *final ratio* is ordered by the court, it may be better to leave to the parties to sort out the detailed allocation of assets by themselves to approximate the *final ratio* set by the court, with liberty to apply to the court if parties cannot agree on the detailed allocation.

(2) Distribution of the matrimonial assets in the present case

39 Having considered the submissions of both parties and the affidavits filed in support of their submissions, I am of the view that, on a broad-brush approach, the matrimonial assets available for

distribution (see [8] and [9] above) should be divided between the husband and the wife such that the *actual* total net value of the matrimonial assets that the husband and the wife eventually obtains is in the ratio 20%:80% respectively. As shown below, the application of the above methodology to the facts of the present case broadly confirms the appropriateness of the ratio of 20%:80% that I have decided upon by using the broad-brush approach.

Step 1: The total value of the matrimonial assets to be distributed

40 The precise total value of all the matrimonial assets (less all outstanding liabilities) existing as at the date of the Interim Judgment that the parties have accumulated in the course of the marriage until the date of the Interim Judgment will be calculated by the parties after the valuation of the assets listed at [8] above is obtained. For present purposes, this will be represented as S\$m. As pointed out at [11] above, the *notional* total net value of matrimonial assets available for distribution, S\$A, includes the sum of S\$242,390 which the wife paid between 30 January 2007 and 3 February 2007 as deposits towards her purchase of the Malaysian Properties and is therefore equal to S\$m + S\$242,390. From indicative figures provided by both parties, this would be in the region of S\$20 million.

Step 2: The percentage of direct and indirect contributions

41 I accept that determining the relative percentage weightage to be apportioned between the *total direct* contribution of *both* parties versus the *total indirect* contribution of *both* parties (*ie*, the B%:C% ratio) is a difficult exercise as one has to evaluate the *relative* importance of the total monetary contribution by *both* parties vis-à-vis the total non-monetary contribution by *both* parties to get a sense of the appropriate ratio between the *total direct* contribution of *both* parties versus the *total indirect* contribution of *both* parties. Some may say that the non-monetary contributions by *both* parties, *eg*, in providing the tender loving care given to the children in their growing years is priceless and cannot be converted into monetary terms. Be that as it may, the court has to eventually ascertain in actual percentage figures or in monetary terms how exactly to distribute the matrimonial assets between the two parties to the marriage. Assessing their *relative* importance unfortunately is an exercise that has to be done no matter how difficult and subjective it may be so as to enable the computation of the percentage distribution to each party to be properly carried out to achieve a just and equitable distribution.

42 In the present case, the parties were married in 1995 and 12 years had passed before interim judgment for divorce was granted in 2007. They have three children and had engaged the services of two domestic helpers (the second domestic helper was engaged in 2002) to care for the children and the home. The impact of having a domestic helper in the evaluation is to lessen to some extent the *total indirect* contribution in terms of sparing the parties the time and effort expended in cooking, washing and cleaning the home which would otherwise comprise part of the indirect contribution to be taken into account of the party attending to such household chores for the welfare of the family. Between them, the parties have amassed matrimonial assets worth more than S\$20 million. They have worked hard at their jobs to earn the monies which enabled them to accumulate those assets. Both parties have also spent much time and effort looking after the children and taking care of their meals and schoolwork. Additionally, the parties have invested in matrimonial assets such as the gold, silver, Australian Property and South African Property. Time and effort have also been spent looking after and improving the properties. In these circumstances, I find that a fair and equitable allocation of the *total direct* contribution to the marriage (of both parties) is in the region of about 65% of the total contribution to the marriage whilst the *total indirect* contribution to the marriage (of both parties) is in the region of about 35% of the total contribution to the marriage. The ratio of B% to C% of *total direct* to *total indirect* contributions of *both* parties is therefore 65%:35%.

Step 3: The percentage *direct* contribution of each party

43 In the present case, the *direct* contribution of each party to the marriage will be treated as all income (less tax liabilities) received by that party during the course of the marriage, together with any amount brought by that party to the marriage and ordinarily used or enjoyed by both parties during the marriage within s112(10) of the Women's Charter. In the calculation of the parties' direct contribution to the marriage, some degree of approximation and estimation is necessary (such as estimation of the currency exchange rates and the amount of foreign taxes paid etc.). However, this is unlikely to affect the calculation of the ratio of the parties' earnings in any significant way due to the fact that the *total direct* contribution is a very large sum.

44 The husband was working in Hong Kong from 1994 to March 1996. The marriage only took place in August 1995. However, apart from producing his contract of employment and letters regarding bonuses paid to him by his employer in Hong Kong to show that his total earnings between 1994 and March 1996 amounted to HK\$2,061,119, the Husband was unable to show the precise amount that he had brought to the marriage in August 1995, eg, the amount standing in his bank account as at the date of marriage. Moreover, the husband was unable to produce copies of his Hong Kong tax assessment. In these circumstances, I would allow the husband to treat 50% of the sum of HK\$2,061,119 as part of his *direct* contribution to the marriage. This amounts to HK\$1,030,559.50 or approximately S\$187,561.83.

45 The husband started work in Singapore in April 1996. The husband has produced IRAS statements for the Years of Assessment 1997 to 2007 to evidence his income earned from employment during the course of the marriage. From these IRAS statements, it appears that the Husband earned a total of S\$2,417,350.50 between 1 January 1996 and 31 December 2006. His tax liabilities incurred for this period was S\$425,512.51. The income earned and tax liability incurred by the husband in the year 2007 but before the date of the Interim Judgment (ie, from 1 January 2007 to 16 March 2007 but excluding 16 March 2007) will be estimated from the figures stated in the husband's IRAS statement for the Year of Assessment 2008 where his earnings was stated as S\$502,659.00 and the tax liability incurred was stated as S\$73,971.80. This amounts to estimated earnings of S\$101,908.95 and a tax liability of S\$14,997.02 pro-rated for the period from 1 January 2007 to 15 March 2007 (the day before the date of the Interim Judgment). Summing up his earnings from employment less the tax liabilities he paid on such income from 1996 to the date of interim judgment, and adding the sum of S\$187,561.83, the husband's total *direct* financial contribution to the marriage is estimated at S\$2,266,311.75.

46 The wife was employed throughout the course of marriage. She produced IRAS statements for the Years of Assessment 1997 to 2007 to evidence her income from employment during the course of marriage. From the wife's IRAS statements, it appears that she had earned a total of S\$18,807,777.64 and incurred a tax liability of S\$3,935,182.99 between 1 January 1996 and 31 December 2006. Since the Interim Judgment was granted on 16 March 2007, the income earned and tax liability incurred by the wife in the year 2007 but before the date of interim judgment (ie, from 1 January 2007 to 16 March 2007 but excluding 16 March 2007) will be estimated from the figures stated in the wife's IRAS statement for the Year of Assessment 2008 where her earnings was stated as S\$3,359,558.00 and the tax liability incurred was stated as S\$643,707.60. This amounts to estimated earnings of S\$681,115.87 and a tax liability of S\$130,505.10 pro-rated for the period from 1 January 2007 to 15 March 2007 (the day before the date of the Interim Judgment). The wife also incurred US tax liabilities of approximately US\$564,000 (or S\$789,600). [\[note: 1\]](#) In 2008 and 2009, the wife also exercised stock options which were awarded to her during her course of employment and before the date of Interim Judgment. As calculated at [8(e)] above, the amount earned from the wife's exercise of the stock options, less tax liabilities, is approximately S\$5,283,979.12. Summing up

her earnings from employment less the tax liabilities she paid on such income from 1996 to the date of the Interim Judgment, the wife's total *direct* financial contribution to the marriage is estimated at S\$19,917,584.54.

47 The ratio of the husband's *direct* financial contribution ($D\%$) to the marriage to the wife's *direct* financial contribution ($E\%$) to the marriage is S\$2,266,311.75:S\$19,917,584.54 or 10.22%:89.78%. In the absence of evidence showing otherwise, it is safe to assume that the ratio 10.22%:89.78% also broadly approximates the ratio of the husband's overall *direct* contribution to the marriage to the wife's overall *direct* contribution to the marriage. As such, the husband's *direct* contribution to the marriage would entitle him to claim $DB\%$ or $10.22\% \times 65\% = 6.64\%$ of the total contributions to the marriage and the wife's *direct* contribution to the marriage would entitle her to claim $EB\%$ or $89.78\% \times 65\% = 58.36\%$ of the total contributions to the marriage. As can be seen, 6.64% added to 58.36% equals exactly to 65% (ie, $B\%$), which is the percentage originally estimated as the percentage weightage assigned to the *direct* contribution of *both* parties to the marriage (as opposed to the percentage weightage of 35% (ie, $C\%$) assigned to the *indirect* contribution of *both* parties to the marriage). The logic is that the *direct* contribution of *each* party when added together must exactly equal the *total direct* contribution of *both* parties, and this is confirmed by the figures obtained.

Step 4: The percentage *indirect* contribution of each party

48 It is undisputed that the wife played an important role in the household and the children's upbringing. In his affidavit, the husband acknowledged that the wife was a "good mother and wife" and described how the wife would, amongst other things, call home when she travelled, look after the husband's parents when they visited, feed the children during the week during the period 1998 to 2001 when both parties were working, put the children to bed and read them stories when she was not travelling, help with the children's schoolwork, oversee the family's meals and make the baby food from scratch, buy most of the children's clothes, shoes, toys and presents, research the cause of and treatment of the children's skin conditions and help plan the family's social schedule. It is also undisputed that the husband was unemployed from May 2001 to March 2006 and that the husband was diagnosed with ADD in 2006.

49 As alluded to earlier in [\[16\]](#) above, what the parties disagree on is the extent to which the husband had indirectly contributed to the family, particularly during the period when he was unemployed. The wife claims that the husband kept to himself, was easily angered and often vented his anger on the family. It is the wife's position that the husband voluntarily left his job in 2001 as he could not cope with the stress of his job. The wife submits that despite the fact that the husband was unemployed, he did not relieve the wife of the load of the household and the children's responsibilities but instead added to them as she had to look after his welfare as well. On the other hand, the husband argues that both parties have contributed equally to the wellbeing of the family. In his affidavit, the husband states that he, amongst other things, assisted the children with their homework and projects, helped with the grocery and fruit shopping, bought the heavy household cleaning products and dealt with the personal, health and employment problems of their domestic helpers. Whilst he acknowledged that he worked longer hours than the wife in the period 1998 to 2001 such that he was unable to help with the feeding of the children during the week, the husband claims that during the period when he was unemployed, he supervised the home and children, particularly during the day and when the wife was travelling, and oversaw the parties' investments. He had also supervised the construction of the parties' houses in Australia and South Africa which adds to his *indirect* contribution.

50 Counsel for the husband submitted that the *indirect* contribution of the husband and the wife should be in the ratio 40%:60% respectively for the period 1995 to 2001 and in the ratio 60%:40%

respectively for the period 2001 to 2006, averaging at an equal indirect contribution from both parties. Counsel for the wife submitted that the indirect contribution of the husband and the wife should be in the ratio 20%:80% respectively for the period 1995 to 2006 on the basis that even whilst he was unemployed, the husband did not contribute much to the welfare of the family, possibly due to his ADD.

51 Having heard counsel for both parties on this issue, I am of the view that the *indirect* contribution of the husband and the wife for the entire duration of the marriage is probably in the ratio 40:60 respectively (ie, $F\%:G\%$). At best for the husband, the highest this ratio can go, in my view, is 50:50. Earlier, I have established that the *total indirect* contribution of *both* parties is 35% (ie, $C\%$) of the *total* contributions (both *direct and indirect*) to the marriage. As such, on the basis of the 40:60 ratio, the husband's *indirect* contribution to the marriage is 14% (ie, $40\% \times 35\%$ or $FC\%$) of the *total* contributions to the marriage whereas the wife's *indirect* contribution to the marriage is 21% (ie, $60\% \times 35\%$ or $GC\%$) of the *total* contribution to the marriage.

Step 5: The *notional* value of matrimonial assets to be distributed to the husband

52 The *notional* value of matrimonial assets to be distributed to the husband is the sum of the percentage of his *direct* (6.64% ie, $DB\%$) and *indirect* (14% ie, $FC\%$) contributions to the marriage multiplied by the total *notional* value of the matrimonial assets for distribution ($S\$A$ – see [\[11\]](#) above). This amounts to $S\$x$ based on the simple calculation $S\$A(DB\% + FC\%)$. Assuming the total *notional* value of the matrimonial assets for distribution is approximately $S\$20$ million (see [\[40\]](#) above), $S\$x$ would amount to $S\$20,000,000(6.64\% + 14\%)$ or $S\$4,128,000$.

Step 6: The *notional* value of matrimonial assets to be distributed to the wife

53 The *notional* value of matrimonial assets to be distributed to the wife is the sum of the percentage of her *direct* (58.36% ie, $EB\%$) and *indirect* (21% ie, $GC\%$) contributions to the marriage multiplied by the total *notional* value of the matrimonial assets available for distribution ($S\$A$ – see [\[11\]](#) above). This amounts to $S\$y$ based on the simple calculation $S\$A(EB\% + GC\%)$. Assuming the total *notional* value of the matrimonial assets for distribution is approximately $S\$20$ million, $S\$y$ would amount to $S\$20,000,000(58.36\% + 21\%)$ or $S\$15,872,000$.

Step 7: The deduction of the value of assets dissipated or expended exclusively for one party's purposes from the amount of matrimonial assets to be distributed to that party responsible for that dissipation or exclusive expenditure

54 There is no evidence of any dissipation of matrimonial assets on the part of the husband. As such, $S\$H$ is $S\$0$ and the *actual* value of matrimonial assets to be distributed to the husband remains as $S\$x$ or $S\$4,128,000$. The wife paid $S\$242,390$ between 30 January 2007 and 3 February 2007 as deposits for the purchase of the Malaysian Properties. This amount ($S\$J$) will be deducted from the *notional* amount of matrimonial assets ($S\$y$) to be distributed to her. The *actual* value of the matrimonial assets to be distributed to the wife is thus $S\$(y-242,390)$. As the total value of the matrimonial assets available for distribution is estimated at $S\$20$ million less $S\$242,390$ (or $S\$19,757,610$), the actual value of the matrimonial assets that the husband is entitled to would be $S\$4,128,000$ (ie, $S\$x$) and the actual value of the matrimonial assets that the wife is entitled to would be $S\$15,629,610$ (ie, $S\$(y-242,390)$ or $S\$15,872,000 - S\$242,390 = S\$15,629,610$).

Step 8: The final value of matrimonial assets to be distributed to each party

55 Given that the assets are not held in joint names and instead of distributing each asset

individually according to a stipulated ratio, I will distribute the assets as a whole in accordance with the ratio for distribution S\$x:S\$(y -242,390), which has to be applied to the total actual net value of the matrimonial assets of S\$19,757,610 (which is represented by S\$m – see [9] above, or S\$A - S\$242,390, or S\$20 million less S\$242,390). I have calculated this ratio to be 20.89%:79.11% (which is based on the ratio S\$4,128,000:S\$15,629,610). This ratio of 20.89%:79.11% arrived at through this methodology supports the distribution ratio of 20%:80%, which I have determined by adopting the broad-brush approach.

Manner in which the assets will be distributed

56 It will facilitate matters for the parties that assets held in the name of a party are allocated to that party where it is possible to do so (and not to the other party). However the total values of the assets distributed to the respective parties must still conform to the ratio of 20% of S\$m to the husband and 80% of S\$m to the wife. As explained at [8] – [9] above, the parties are to work out the values of all matrimonial assets existing as at the date of the Interim Judgment. As stated earlier, S\$m represents the total sum of the net values of all such matrimonial assets. The parties will then have to allocate the assets between themselves in such a way that the husband receives 20% of S\$m and the wife receives 80% of S\$m. If parties are unable to agree on the manner in which the assets are to be distributed, they may apply to the court for guidance.

A sensitivity analysis

57 A sensitivity analysis will now be conducted to determine the difference between the amount of matrimonial assets that I have decided to award to the husband and the more generous amount which he sought to claim (which I am not prepared to allow). The husband submitted that the ratio of *total direct* contribution to *total indirect* contribution of *both* parties to the marriage (step 2) should be 50%:50% and that the ratio of *indirect* contribution of the husband to the *indirect* contribution of the wife should also be 50%:50%. I am of the view that, taking the husband's case at its highest (which I am not prepared to accept in the present case), at best, the ratio of *total direct* contribution to *total indirect* contribution may be 60%:40% whilst the ratio of *indirect* contribution of the husband to the *indirect* contribution of the wife may be 50%:50%.

58 Taking the best case scenario for the husband (which I am not prepared to accept in the present case), the husband's *indirect* contribution to the marriage will then be 20% (*ie*, 50% × 40% or *FC%*) of the *total* contribution to the marriage and the wife's *indirect* contribution to the marriage is also 20% (*ie*, 50% × 40% or *GC%*) of the *total* contribution to the marriage. However, the husband's *direct* contribution to the marriage will remain low at 6.132% (*ie*, 60% × 10.22% or *DB%*) whilst the wife's *direct* contribution to the marriage will still be much higher at 53.868% (*ie*, 60% × 89.78% or *EB%*). The sum of the percentage of the husband's *direct* (6.132%) and *indirect* (20%) contributions to the marriage multiplied by the *notional* total net value of the matrimonial assets available for distribution, assuming that S\$A is approximately S\$20 million would amount to S\$5,226,400. The sum of the percentage of the wife's *direct* (53.868%) and *indirect* (20%) contributions to the marriage multiplied by S\$A, assuming that is S\$20 million, would amount to S\$14,773,600. Deducting the sum of S\$242,390 from the *notional* value of matrimonial assets to be distributed to the wife, she will be awarded matrimonial assets totalling S\$14,531,210. The ratio between the *actual* total value of matrimonial assets to be distributed to the husband and that to be distributed to the wife would be S\$5,226,400:S\$14,531,210 or 26.45%:73.55%. This is approximately 25%:75%. When compared with the ratio of 20%:80%, this is merely a change of approximately 5%, even when taking the best possible case for the husband. On no account based on the facts of this case can I see a division ratio in the region of 50%:50% which is what the husband is asking for.

Maintenance of the children

Maintenance of the children

59 The wife has been unemployed since August 2009. Her last drawn salary was S\$57,000 per month plus bonus stock options and other benefits. She resigned in July 2009. The husband started work in May 2006 and is earning S\$27,000 per month plus bonus. When the Interim Judgment was granted on 16 March 2007, a consent order was made relating to the three children. It was agreed that there would be joint custody of the children, the wife would have care and control of the children, and the husband would have liberal access to the children.

60 The husband has been paying 50% of the children's school fees plus S\$2,000 per month as contribution for the children's expenses since January 2007. This amounts to a total of S\$5,700 per month for the three children. The husband is happy to continue to pay as he has been doing. However, the wife claims that the monthly expenditure for each child including school fees is S\$4,985. Together, the wife submits that the children cost S\$14,955 per month to maintain. The wife argues that since she is not working and is looking after the children full time, the husband should contribute more than half of the children's expenses.

61 In determining the amount of maintenance to be paid to the wife by the husband for the maintenance of the three children, s 127 of the Women's Charter (Cap 353, 2009 Rev Ed) provides that the court may order a parent to pay maintenance for the benefit of his child in such manner as the court thinks fit and that the provisions of Parts VIII and IX of the Women's Charter shall apply, with necessary modifications, to an application for maintenance and a maintenance order. Section 69(4) of the Women's Charter, which is found in Part VIII of the Women's Charter, provides that:

(4) The court, when ordering maintenance for a wife or child under this section, shall have regard to all the circumstances of the case including the following matters:

- (a) the financial needs of the wife or child;
- (b) the income, earning capacity (if any), property and other financial resources of the wife or child;
- (c) any physical or mental disability of the wife or child;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (f) the standard of living enjoyed by the wife or child before the husband or parent, as the case may be, neglected or refused to provide reasonable maintenance for the wife or child;
- (g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and
- (h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

62 Although the wife has resigned from her job, her earning capacity is high, as can be gleaned from her last-drawn salary. Moreover, in view of the fact that she owns several properties, one in Singapore and three in Malaysia which she acquired after the date of the Interim Judgment and has been awarded 80% of the matrimonial assets available for distribution, she has adequate financial

resources to provide for herself and the children. As such, I find that it would be just and equitable for the husband and wife to pay an equal amount for the maintenance of the children. I am of the view that a reasonable sum to be paid by the husband for the monthly maintenance of all three children is half of their school fees plus S\$2,375. The monthly maintenance of S\$2,375 is derived from the following calculation:

Type of expenditure	Amount per month for all 3 children
Dental and Medical (including annual dental check-ups and cleansing of teeth but excluding expenses incurred in visiting an orthodontist)	S\$250
Domestic Helpers and Transport	S\$1,800
Groceries	S\$2,100
Bedding, clothing, toiletries, telephone charges and other miscellaneous household expenses	S\$600
Total	<u>S\$4,750</u>
Husband's share (half of total expenditure)	S\$2,375

Additionally, 50% of any lump sum expenditure incurred for the well-being of the children on enrichment classes, hospitalisation charges beyond that covered by medical insurance and visits to an orthodontist (collectively referred to as "Ad-hoc Activities") may be claimed from the Husband on a reimbursement basis upon production of receipts. Any expenditure on a driver, children's toys, pets, enrichment books (excluding books required as part of the children's school curriculum) and holidays will not be shared but will be borne by the party who chooses to incur such expenditure.

63 Thus, I order that the husband is to pay the wife S\$2,375 a month for the maintenance of all three children and that he contributes 50% of the children's school fees and any lump sum expenditure incurred for Ad-hoc Activities on a reimbursement basis upon production of receipts. As there is only a small difference (*ie* \$375 a month) between what the husband has already been paying previously to the wife for the monthly maintenance of the children and the amount that he is now ordered to pay, I will not backdate the maintenance payments to the date of the Interim Judgment. Payment under this order of maintenance is to commence from the date of this judgment.

Conclusion

64 I order that the parties distribute the matrimonial assets at the date of interim judgment in such a manner that the husband receives 20% of the total net value of matrimonial assets available for distribution (*ie*, 20% of S\$m) and the wife receives 80% of the total net value of matrimonial assets available for distribution (*ie*, 80% of S\$m). The matrimonial assets are those listed at [\[8\]](#) above and the calculation of S\$m should be performed as detailed at [\[9\]](#) above. I grant the parties liberty to apply to the Court if they are unable to agree on the detailed allocation of the matrimonial assets. The parties should preferably try to work this out on their own first.

65 The husband shall pay the wife 50% of the children's school fees plus S\$2,375 a month for the children's living expenses. He will also pay the wife 50% of any other lump sum expenditure incurred for Ad-hoc Activities on a reimbursement basis upon production of receipts.

66 I make no order as to costs.

[\[note: 1\]](#) Plaintiff's declaration of the value of matrimonial assets filed on 15 December 2009.

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