

AQV v AQW
[2011] SGHC 142

Case Number : Originating Summons No 1281 of 2010
Decision Date : 01 June 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : M Ravi (L.F. Violet Netto) for the plaintiff; Kang Kim Yang (Joseph Tan Jude Benny LLP) for the defendant.
Parties : AQV — AQW

Courts and Jurisdiction – jurisdiction – appellate

Constitutional law – natural justice – bias

1 June 2011

Judgment reserved.

Choo Han Teck J:

1 The plaintiff wife, a graduate in economics, was 37 years old and the defendant husband was 53 years old when the wife appealed to the Court of Appeal in August last year (Civil Appeal No 43 of 2010) against the ancillary orders made by Justice Lai Siu Chiu ("Justice Lai") on 10 March 2010. They have a son who was 12 years old at the time. The parties married in 1997 and the marriage ended when the decree nisi, granted on 7 January 2005 was made absolute on 15 September 2010. The wife was dissatisfied, among other things, with the reduction of maintenance for the son from \$12,000 to \$600, and the orders made in respect of the matrimonial assets. The wife was then represented by Khattar Wong & Partners, filed ten affidavits. The husband was at all times represented by Mr Kang Kim Yang. The wife's appeal was dismissed by the Court of Appeal on 5 August 2010.

2 The wife, now represented by Mr Ravi, filed this Originating Summons for a declaration that Justice Lai was biased when she made the orders on 10 March 2010, and that consequently, those orders be set aside on the ground that they were made in breach of natural justice. It was obviously unusual to make this application now after the Court of Appeal had already heard the appeal against Justice Lai's orders. The facts supporting the allegation of bias were facts that arose during the hearing before Justice Lai.

3 In her affidavit in support of this Originating Summons the wife alleged that Justice Lai was biased because she made irrelevant remarks in the course of the proceedings. The examples given by her were that Justice Lai asked counsel if the wife was attractive; that she (the judge) knew the husband from his previous divorce (the wife here was the wife from the husband's second marriage). It was also alleged that Justice Lai mentioned that she knew one Graham Bell who was a business partner of the husband.

4 On the above bare facts, Mr Ravi made a spirited submission. I need not repeat counsel's arguments here as I am of the view that the facts alleged do not in themselves give rise to any inference of bias. They were matters that should have been raised at the appeal but were not. An allegation of bias against a judge is a serious allegation and requires stringent proof. All that the wife has given in support here was a letter written by her former counsel confirming that Justice Lai did

ask if the wife was attractive. This was not an irrelevant question because the court can take into account the chances of re-marriage when exercising its discretion in ancillary issues such as whether an order for alimony should be for a lump-sum instead of periodic payments. I am unable to read any bias or prejudice into a remark by a judge that merely says that she had known a particular person or party from previous proceedings. Often the court may inform the parties especially when there was no material connection just so that the parties might not think that the judge did not make the disclosure should they find out subsequently. Such comments are often made so that the parties can be advised whether to object to the judge hearing the case. In this case, no objection was raised before Justice Lai or the Court of Appeal. In respect of the alleged remark about Graham Bell, it was not clear what Justice Lai was meant to have said. The wife alleged that Justice Lai "knew [the wife's] former business partner Mr Graham Bell." The husband disputed that assertion and deposed that the judge merely referred to Mr Bell's name as it was cited in one of the many affidavits filed.

5 I also note that the wife had made two magistrates complaints against the husband which were subsequently proved to be false. She had also lodged a complaint against Mr Kang to the Law Society for improper conduct even though Mr Kang had never dealt with her personally.

6 I am therefore of the view that the allegations have not been proved and this Originating Summons must therefore be dismissed with costs. I shall hear the question of costs at a later date.

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