

**GK**  
**v**  
**GL**

**[2023] SGSYC 8**

Syariah Court — Originating Summons No 59508  
Raihanah bte Halid  
13 September 2023

*Divorce — Custody — Access — Care and control*

*Divorce — Division of matrimonial assets*

**Case(s) referred to**

*Abdul Aziz bin Ahmad v Khatijah bte Abdul Rahman* (1994) 3 SSAR 14

*ANJ v ANK* [2015] 4 SLR 1043

*DT v DU* (2021) 8 SSAR 203

*Masramli bin Masjur v Sasmira bte Abdul Rahim* (1985) 3 SSAR 1

**Legislation referred to**

Administration of Muslim Law Act 1966 (2020 Rev Ed) s 52(14)

**Quranic verse(s) referred to**

*Surah 2, Al Baqarah*, verses 233, 237

*Surah 52, Al Tur*, verse 21

At the Syariah Court:

*Syafiqah Ahmad Fu'ad (IRB Law LLP) for the plaintiff*

*Suhara Said (Salehah & Co) for the defendant*

Parties:

*Plaintiff – Wife*

*Defendant – Husband*

[Editorial note: The appeal in Syariah Appeal No 15 of 2022 was deemed withdrawn.]

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[Editorial note: This is the grounds of decision of the Syariah Court dated 13 September 2023.]

13 September 2023

**Raihanah bte Halid (President, Syariah Court):**

### **Introduction**

1 This matter concerns the plaintiff wife's (hereon after referred to as the "Wife") application for a divorce from the defendant husband (hereon after referred to as the "Husband"). The Court held a hearing on the 13 April 2022 and made its orders on the same day. The Husband has appealed to the Appeal Board against parts of the decision related to the care and control and access of their child and the division of Central Provident Fund ("CPF") moneys.

### **Marriage of parties**

2 The parties were married on 12 May 2016. They are blessed with one child from the marriage, a daughter ("N") who was turning six at the time of the hearing.

3 Parties confirmed that there was no *talak* pronounced before the hearing, and that the Husband agreed to pronounce the *talak*. The Husband pronounced the *talak* and Court recorded the pronouncement as the first *talak* between the parties.

### **Determination of custody, care and control of the child of the marriage**

4 The Wife sought sole custody, care and control of N. Her proposal for access is for the Husband to have supervised access on alternate Saturdays from 12.00pm to 6.00pm. She argued that she had been N's primary caregiver since birth and taken care of her needs. The Husband, according to her, has not bothered to bond with N or taken interest in N's well-being. She also claimed that the Husband was irresponsible and was not appreciative or understanding of her stresses in becoming a stay-at-home mother.

5 The Husband prayed for there to be joint custody of N, and for him to be granted care and control. Both confirm that at the time of the hearing, N was staying with both parties at the Husband's mother's house. The Husband averred that they started to live there in February 2020 after they were chased out of the wife's aunt's house where they had lived from the time of their marriage. The Husband argued that his mother had taken over being the main caregiver of N, including feeding and showering her since the Wife lost interest in the marriage. According to him, this happened after they moved to his mother's place. He changed to a part-time job which offered flexible hours so that he could send N to kindergarten after he observed N missing school on some days due to the Wife oversleeping. He was also the primary contact person for

the kindergarten. He thus argued that the Wife was an unfit mother and incapable of caring for N. The Husband further argued that N was close to him and his mother, and will be emotionally affected if separated from them.

6 The Wife argued that their daughter is still very young and require the love and care of a mother as such a young age. She denied that the Husband had worked to keep the marriage as he has involved himself with another woman. She maintained that the Husband did not have the child's interest in mind. She further argued that the paternal grandmother's house where they were living at was an unsuitable place for the child to live in as it was cluttered and dusty.

7 The guiding principle on matters determining the custody and care and control is the welfare of the child. There are numerous cases where this principle has been applied. In the case of *Abdul Aziz bin Ahmad v Khatijah bte Abdul Rahman* (1994) 3 SSAR 14 the Appeal Board agreed with the following decision of the learned President of the Syariah Court:

*Di dalam menentukan hak penjagaan anak ini, perkara yang terutama sekali perlu diambil kira oleh Mahkamah dan pihak-pihak yang terlibat ialah kepentingan dan kesejahteraan anak itu sendiri. Prinsip ini amat jelas sekali. Umpamanya, di dalam kes Nooraniat bte Kamaruddin v Faeiz bin Yeop Ahmad [1989] 2MLJ cxxiv, Jawatankuasa Rayuan Syariah (Selangor)(Syariah Appeal Committee) telah memutuskan bahawa pertimbangan utama di dalam kes penjagaan anak (atau custody) pada hukum Syariah ialah bahawa hak anak itu harus diutamakan melebihi hak mereka yang menuntut hak penjagaan itu. Ini ialah kerana matlamat hak penjagaan atau custody itu ialah kepentingan dan kesejahteraan anak itu sendiri dan bukan kepentingan dan kesejahteraan pihak-pihak yang bertikai mengenai hak penjagaan tersebut.*

[Translation:

In deciding on the matter of custody, the primary consideration of the Court and the parties involved is the interest and well-being of the child itself. This principle is very clear. For instance, in the case of *Nooraniat bte Kamaruddin v Faeiz bin Yeop Ahmad* [1989] 2MLJ cxxiv, the Syariah Appeal Committee (Selangor) had decided that the primary consideration in cases of child custody according to Syariah law is that the rights of the child is given priority over the rights of those who are claiming custody. This is because the objective of the right to custody is the interest and well-being of the child itself and not the interest and well-being of the disputing parties over the said right.]

8 There remains a priority for a child's mother to be granted care and control for a young child below the age of discernment. Reliance is made to Quranic verse 233 of *Surah 2, Al Baqarah* which provided that the child's mother is the person best suited to have *hadhanah* of a child, and the Prophetic tradition narrated by Abdullah bin 'Amr ibn al-'As. It was narrated that a woman who approached Prophet Muhammad (*saw*) and asked about her right in caring for the child she gave birth to after

her husband divorced her. The Prophet (*saw*) replied: “You have a greater right to take care of the child as long as you do not re-marry.” [This *hadith* is reported by Imam Ahmad in his *Musnad* 2:182. It is also reported in Imam Abu Daud in his *Sunan* (Book of Talak, *Hadith* no 2276).] However, this priority is not a blanket application but is subject to the general welfare and interests of the child. In this case, the Court held that the Husband did not provide evidence to support his claim that the Wife was disinterested in the care of the child, neglectful in her duties towards the child and an unfit mother to be granted care and control of the child.

9 The Court was also not persuaded with the Husband’s argument that the child’s attachment to the paternal grandmother is a valid ground to grant him care and control. In *Masramli bin Masjur v Sasmira bte Abdul Rahim* (1985) 3 SSAR 1, the Appeal Board said the following [at [8]]:

The Board is of the view that there being no circumstances which would have disentitled the wife to the custody of the child, who was then below the age of discernment, the learned President ought to have given to the wife the custody of the child. The fact that the child is close to the paternal grandmother is not a sufficient cause to disentitle the wife of the custody of the child.

Similarly in this case, where the Husband has not shown that the Wife was disentitled to custody, the child’s relationship with the grandmother alone is not a criterion. The Wife herself acknowledged that the Husband’s mother is involved in the care of the child together with her. Additionally, looking at the history of N’s care arrangement, the grandmother only started to be involved in her care from February 2020. Based on the Husband’s evidence that he was working full-time during that period, the Wife would have been the constant figure in N’s early life.

10 The Court took note of the Husband’s claim that the Wife has a strained relationship with her grandparents and aunt whom they once lived with, hence does not have a support system to care for N. The Wife did not deny this in her reply, but chided the Husband for calling her immature and not prepared to have a child. Having taken up part-time work, and being clear in her parenting plan that she intends to rent a place for divorce, this shows her resourcefulness and ability to plan.

### ***Court’s decision***

11 Notwithstanding that the Wife’s affidavits are lacking in evidence in support of her involvement in N’s care arrangement, the Court was persuaded that she was a consistent figure in N’s life, that she was a primary caregiver of N together with the Husband and his mother, and that there is nothing in evidence that would disentitle her to have care

and control of the child. The Court thus granted care and control of N to the Wife.

12 The Wife prayed for the Husband to be granted supervised access on alternate weekends for six hours. The Husband did not make alternative prayers for access if he was not granted care and control of N. The Court did not find any reason to require the Husband's access to the child to be supervised. Neither did the Court find any reason to deny the Husband overnight access to the child as she was already six years old and parties were still living together at the time of the divorce. Court held that access to the Husband on the weekends and equal timing during the public holidays and the school holidays is equitable in this case. However, the weekends need to be split between the parties as the wife will be working and she would also require some time with the child on the weekend.

13 Considering N's age, a weekly access is a better option than an alternate weekend as she can get used to a new routine as a primary school student. The Court thus ordered that the Husband's access to the child shall be as follows:

- (a) every weekend from Saturday 6.00pm to Sunday 6.00pm;
- (b) alternate public holidays from 10.00am to 6.00pm;
- (c) half of all school holidays;
- (d) second half of Hari Raya Puasa and Hari Raya Haji.

### **Division of matrimonial assets**

#### ***Parties' CPF moneys***

14 The Wife claimed 30% of the Husband's other matrimonial assets including CPF moneys, bank account balances and insurance policies. The Husband prayed for both parties to retain all assets in their respective names. The parties' CPF balances in all their CPF accounts based on their respective evidence is \$5,334.03 for the Wife and \$84,121.18 for the Husband.

15 Court noted that there is a considerable difference between parties' CPF moneys. This by itself is not a reason to make orders as per Wife's claims. Section 52(14) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) defined "property" for the purposes of s 52 as the following:

- (a) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

16 Court was of the view that, this being a short marriage, the structured approach introduced in *ANJ v ANK* [2015] 4 SLR 1043 is not the methodology to be adopted. The Court also considered the difference approach, by apportioning the difference between the total in their respective accounts. This mode of apportionment has been relied upon in many reported and unreported cases, and in *DT v DU* (2021) 8 SSAR 203, the Appeal Board upheld the decision of the Syariah Court which relied on this methodology.

17 The Court would draw a distinction that in the current case parties were married for only a relatively short period of time. In addition to that, the Husband was 30 years old when he married the Wife, hence he would have already amassed a considerable sum of CPF moneys before marriage. The Court held that only CPF moneys that are acquired during the course of the marriage would fall under the definition of “property” which may be divisible between parties upon divorce. The Husband averred that he worked full time from the start of the marriage and agreed that he was terminated sometime in October 2020. He later opted to do part-time work for reasons related to child-caring duties. He averred that he earned on average \$1,200 per month, and \$1,550 when he was working full time in the past. [He did not exhibit any salary slips as he was hourly-rated, nor any income tax statements. Nonetheless, his CPF statements which he exhibited in his Memorandum of Defence showed that for the work in May 2021, he received CPF contribution of \$602, which will make his salary for that month \$1,627. This was inconsistent with what he averred that he started to work on a full-time basis after he was terminated sometime around October 2020. This indicated that he was able to earn similar salary range even after his termination.] The Wife started work only about 16 months before parties were divorced at the hearing, and based on her CPF statements her employment was sporadic and not continuous. Over six years of marriage, the Husband was able to amass about \$40,000 of CPF moneys, while the Wife’s CPF contributions were only minimal as her employment was inconsistent.

18 The remaining question before the Court was the appropriate quantum. Considering the Wife’s reliance on the Husband during the period of their marriage, the Wife’s standing in employment history and opportunities are less stable, and that parties share a child, despite the marriage being short, the Court was persuaded to grant her a share of the Husband’s CPF moneys which was amassed during the course of marriage, and considered 25% of this to be an equitable division of

parties' CPF moneys. The Court thus ordered for \$10,000 to be transferred from Husband's Ordinary Account.

### Conclusion

19 Where a marriage cannot be saved, Islam has put in place guidelines so that a divorce will not lead to financial destruction or emotional turmoil to any party. Verse 237 of *Surah 2, Al Baqarah* states: "... and forget not kindness among yourselves. Allah is Seer of what you do." At the same time, even with separation, parents should maintain the joint aspiration for their children to be their source of pride and happiness, and jointly carry out their duties towards the children who are deemed as an *Amanah* bestowed to them. Allah (*swt*) has said in *Surah 52, Al Tur*, verse 21, which means: "And those who believe and whose offspring follow them in Faith: to them shall We join their offspring, and We shall not decrease the reward of their deeds in anything ...". And He knows best.

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