IA
v
HZ

[2023] SGSAB 8

Syariah Appeal Board — Appeal No 13 of 2022; Motion No M01/13 of 2022
Hamidah Ibrahim, Muhammad Saiful Alam Shah Sudiman, Azmin bin Jailani
29 December 2023

Divorce *— Division of matrimonial assets — Matrimonial property*

Divorce *— Division of matrimonial assets — Central Provident Fund moneys*

Divorce *— Division of matrimonial assets — Division of sale proceeds before or after Central Provident Fund refunds*

Divorce — Mutaah

Divorce *— Procedure — Appeal Board — Adducing further evidence during appeal*

Case(s) referred to

ANJ v ANK [2015] 4 SLR 1043
AXW v AXX [2012] 3 SLR 900
EX v EY (2021) 9 SSAR 27
DZ v EA (2021) 8 SSAR 241
GI v GJ (2023) 9 SSAR 209
HM v HL (2021) 9 SSAR 316
TNL v TNK [2017] 1 SLR 609
TOT v TOU [2021] SGHC(A) 9

Legislation referred to

Administration of Muslim Law Act 1966 (2020 Rev Ed) s 52(8), 52(8)(*d*)
Women's Charter 1961 (2020 Rev Ed) s 112(2)

At the Appeal Board:
Syed Ahmad Jamal Chishty (A C Syed & Partners) for the appellant
Mohd Firoze Hashim (Firoze & May LLC) for the respondent

Parties:
Appellant (Defendant – Husband)
Respondent (Plaintiff – Wife)

[Editorial note: The grounds of decision of the Syariah Court is reported at (2023) 9 SSAR 567.]

[Editorial note: This is the grounds of decision of the Appeal Board dated 29 December 2023.]

29 December 2023

Delivered by Azmin bin Jailani (Member, Appeal Board):

Introduction

1 This judgment deals with the defendant-husband's appeal against the decision of the learned President of the Syariah Court (the "President") dated 20 April 2022.

2 The appeal is against the order awarding *mutaah* of $30,700 to the plaintiff-wife which is to be paid in one lump sum from the husband's share of the sale proceeds of the matrimonial flat. He also appeals against the order for the sale proceeds to be divided in the proportion of 40% to the wife and 60% to him. Further, in respect of Central Provident Fund ("CPF") moneys, he is appealing too against the award of $40% of the amount refunded to parties' CPF accounts (less the amount refunded to the wife's account) to be transferred from his ordinary account to her account and an additional sum of $9,000.

3 After considering parties' documents, written submissions (including post hearing supplemental submissions) and their respective oral arguments at the hearing before us, we dismissed the defendant's appeal in whole. As this case had raised specific issues relating to (a) the application of the "structured approach" in calculating the ratio of division (see *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*"), as affirmed by this Board in, *inter alia*, *DZ v EA* (2021) 8 SSAR 241), and (b) how the matrimonial assets are to be divided (in particular, the division of the matrimonial home where CPF moneys have been utilised), we take this opportunity to provide our observations on the same.

Background

The parties

4 Parties were married in February 2001. They have one child to the marriage, a girl, born in February 2002.

The divorce proceedings in the Syariah Court

5 The wife commenced divorce proceedings on 2 March 2021. At the second hearing before the President, as the husband did not wish to pronounce the *talak*, parties were referred to *hakam*. After the *hakam* on 9 March 2022, the husband delegated his right to pronounce the *talak* to

the wife. She accepted the delegation, and pronounced the *talak* by way of *tafwidh* (*ie*, pronouncement of divorce by delegation). The President then dealt with the ancillary matters, leading to his orders on 20 April 2022.

Parties' arguments before the President on the ancillary matters

6 As noted earlier, the husband's appeal is against the President's award on *mutaah* and the division of the matrimonial assets. We summarise parties' submissions and the President's decision on these matters.

Mutaah

7 In her case statement, the wife sought *mutaah* at a daily rate of $5. This figure was revised to $7 by the time parties filed their respective affidavits of evidence-in-chief. In his defence, the husband's position was that *mutaah* be calculated at a daily rate of $2.

8 The wife also alleged that the husband had been carrying on a relationship with another woman since 2018. She added that he had taken their daughter's bursary to spend on this woman. In his evidence, it bears noting that his denial to these allegations were bare, and he made no specific averments in relation to the same. His evidence was instead focused on how he was financially unable to afford the amounts claimed, and his ability to survive should such an order be made, given his age and earning capacity. The husband also listed his monthly income as a food delivery driver as $2,500, with his monthly expenses at approximately $1,150.

9 In fairness to the husband, he was self-represented in the proceedings in the Syariah Court. It is not lost on us that this could have had an impact in the manner in which his evidence was presented before the President. That being said, and while some indulgence or leeway may be afforded to a self-represented person ("SRP"), such latitudes are not to be treated as an entitlement, and all parties (be it an SRP or one represented by counsel) take full ownership of what they choose to (or not to) submit to the Court for its determination.

10 After hearing the parties, the President made the following decision in terms of the quantum of *mutaah*:

> 23 Following a broad-brush approach, I considered based on the length of marriage and the Husband's financial capabilities. As such, I concluded that the amount of *mutaah* to be the sum $30,700 which is about $4 per day. This is after taking into consideration the Husband's statement in the [memorandum of defence] that he earns an income of $2,500 as a GrabFood rider.

11 As regards the payment of *mutaah*, the President decided that this be deducted from the husband's share of the nett sale proceeds of the matrimonial home. The President held that such a mode of payment "would be beneficial for both parties as it provides a clean break", and was premised on the basis that there would be a positive sale of the matrimonial home.

Division

12 We turn to the issue of division. As noted above, the President ordered for the sale of the matrimonial home. In the parties' respective documents, the wife sought for the sale of the matrimonial home, whilst the husband's position was that the property be transferred to him after making the necessary CPF refunds. In disagreeing with the husband's case, the President made the following determination:

> 32 Accordingly, if the matrimonial flat is to be transferred to the Husband and refunding only the Wife's CPF moneys used for the purchase of the matrimonial flat it would only be prejudicial towards the Wife. This is because there is value to the asset which both have interest in as joint tenants. And by transferring the asset to only one party the other party would be deprived of his or her beneficial interest to the asset. In this case, if the matrimonial flat is to be transferred to the Husband the Wife would only receive her shares in terms of the refunded amount. However if the matrimonial flat is to be sold apart from the refunded amounts that parties will be receiving, they will also be receiving profit out of the sale …
>
> 33 Further following the structured approach the Court takes into consideration factors provided for under s 52(8) of AMLA. In doing so, the Court balances the facts between the needs of the child and parties' contribution.
>
> 34 In this regard, the Child is 19 years of age at the time of hearing. According to the Wife in her Affidavit-in-Reply, the Child disagrees to live with the father and to be cared by him and his mother. Besides that, being a long marriage of 21 years, definitely both parties would have made their fair share of contribution may it be direct or indirect.
>
> 35 Based on these considerations, the Court finds that it is only just and equitable that the matrimonial flat is to be sold in the open market and to apportion an equitable division based on the parties' contribution following the structured approach.

13 On the ratio of division, the wife treated the matrimonial property and CPF moneys separately. As regards the matrimonial property, her position was that the sale proceeds after CPF refunds be divided equally between parties. As regards the CPF moneys, the wife's position was that she be entitled to half of the husband's CPF moneys. This includes the CPF moneys which were refunded to the husband after the sale of the matrimonial flat. In short, the wife claimed for a half share of the sale proceeds, and half of the husband's CPF moneys.

14 As regards the husband, he provided no alternative position regarding the specific ratio of division, other than his primary position that the matrimonial property be transferred to him after making the necessary CPF refunds to the wife. That said, parties did provide their respective positions on the direct and indirect contributions they have made towards the marriage.

15 Given our earlier comments on the relative importance of this decision on the application of the structured approach, we found it useful to reproduce the relevant portion of President's decision on this issue in full for the purposes of observations later:

> 36 As such for the apportionment I only take into consideration parties' CPF contribution as their direct contribution. As for indirect contribution I attributed the non-financial contribution towards the Wife for being a Wife of 21 years, being the main caregiver to the Child and taking care of the household chores while working. As for the Husband being the main breadwinner of the family, I attributed the financial indirect contribution more to him [*sic*] compared to the Wife. The following table illustrates parties' contributions in the marriage:
>
> | **Matrimonial Flat** | **PW** | **DH** | **Remarks** |
> |---|---|---|---|
> | Direct Contribution (DC) | $38,872.93
22% | $135,136.36
78% | |
> | Indirect Contribution (IDC)
Non-financial | 70% | 30% | Wife – caregiver and maintain the household chores while working |
> | IDC financial | 40% | 60% | Husband main breadwinner |
> | Average of IDC | 55% | 45% | |
> | Ratio of DC and IC | 38.5% | 61.5% | |
> | Adjustment | 40% | 60% | |
>
> 37 Accordingly after an adjustment made due to the fact the Child would be under her care, it was ordered that the Wife is entitled to 40% of the net sales proceeds including 40% of the total amount refunded to both parties' CPF accounts pursuant to the sale of the matrimonial flat, less the amount refunded to the Wife's CPF account.
>
> 38 Similarly with parties' CPF, being the fact that it is wealth accumulated during the subsistence of marriage and considering that this is a long marriage of 21 years, the CPF moneys is to be considered as matrimonial assets pursuant to s 52(14) of AMLA as follows,
>
> > (14) For the purposes of this section, 'property' means —
> >
> > > (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.

39 As such the following table illustrates parties' contribution to the accumulated assets in the form of CPF moneys. The indirect contribution I follow the same consideration when apportioning parties' indirect contribution to the matrimonial flat.

CPF	PW	DH	Total
DC (OA, SA and Medisave only)	$27,816.26 34%	$54,655.34 66%	$82,471.60 100%
IDC	55%	45%	
Average	44.5% = 45%	55.5% = 55%	

40 Accordingly, following the above approach, the Court finds that it is fair and equitable for the Wife to receive 45% of parties' total CPF moneys (OA, SA and Medisave only) less Wife's own CPF moneys under her respective CPF accounts that is in the sum of about $9000.

41 It was then ordered that the 40% of the total amount refunded to both parties' CPF accounts pursuant to the sale of the matrimonial property, less the amount refunded to the Wife's CPF account plus a further sum of $9,000.00 is to be transferred from the Husband's Ordinary Account to the Wife's Ordinary Account. This is in view that with the sum of moneys that the Wife would receive she would be able to utilise it for her needs in accordance to what is intended for that respective CPF account.

16 We pause here and highlight certain aspects of the President's decision on division of the matrimonial property:

(a) First, in determining parties' indirect contributions, the President further split his assessment into two sub-steps, assessing financial indirect contribution and non-financial indirect contribution, before taking the average to find the overall indirect contribution.

(b) Second, after arriving at a final ratio of 38.5:61.5 in the husband's favour, the President made a further "adjustment" on the basis that the child would be under the mother's care, resulting in an eventual division ratio of 40:60 in the husband's favour.

(c) Third, as regards the matrimonial property, separate from the division of the sale proceeds, the President also ordered that 40% of the amounts refunded to both parties CPF's account be transferred to the wife, less what the wife received in CPF refunds. In other words, the President treated the CPF moneys utilised (and

subsequently refunded) as a "separate" component, and made orders on how that amount would be divided.

The appeal

17 At the appeal, the husband was represented by Mr A C Syed. We summarise parties' positions in respect of the areas which formed the subject matter of the appeal before us.

Mutaah

18 We start with the issue of *mutaah*. The husband challenges the President's decision on *mutaah* on the following bases:

(a) First, the husband challenged the wife's entitlement to *mutaah*. In this regard, the husband contended that there was no basis for the wife to dissolve the marriage by breach of *taklik* or *fasakh* because she had not discharged her burden in proving the allegations raised in her case statement. The husband additionally contended that it was the wife who was *nusyuz*, as she had been in an illicit relationship "as early as May 2021". In this connection, the husband filed a separate motion to adduce material evidencing such relationship. We deal with the husband's motion in more detail below, but at this juncture it suffices to highlight that the nett effect of the husband's case is that had such information been made available during the *hakam*, it would have "undermined her claims for mutaah and the basis of her grounds for divorce". The husband went further to contend that had this information been made available at the relevant time, the outcome of the *hakam* (and by extension the *talak* by *tafwidh*) would have been different.

(b) Second, in the event that we did not agree with the husband that the wife be disentitled to *mutaah*, the husband submitted that the daily rate should be $2. This is on the basis of substantially the same reasons relied on by the husband to set aside the *mutaah* order, and his reliance on the fresh evidence of the wife's alleged illicit relationship.

(c) Third, the husband took issue with the President's order that the *mutaah* be paid in one lump sum from his share of the nett sale proceeds of the matrimonial property. The husband relied on an apparent admission by the wife that her claim for *mutaah* was motivated by her desire to purchase another property, "and not her entitlement if any upon this divorce". On that basis, the husband submitted that *mutaah* be paid in instalments of $200–$300 per month.

19 Needless to say, the wife opposed the husband's allegations. She was represented by Mr Mohd Firoze. In her submissions, the wife denied she was *nusyuz*. We pause here and note the interesting submission made by the wife that even if it were true that she had an extramarital affair, it was done "*without* his knowledge — he only discovered about it after the divorce was finalised. As the acts occurred without the husband's knowledge, the wife could not be said to have disobeyed the husband" [emphasis added].

20 Put another way, the wife's contention was that *nusyuz* is predicated on direct disobedience of the husband's wishes/instructions. Since the husband did not know about the affair, he was not in a position to place the wife on notice to cease the affair, and therefore her continuing the affair could not constitute an act of disobedience towards the husband. Further and/or in the alternative, even if the wife was *nusyuz*, this did not disentitle her to *mutaah*.

21 As regards the daily rate, the wife defended the President's assessment as being justifiable on account of the husband's "monthly income of $2,500 and his share in the proceeds of sale of the matrimonial flat". As regards payment of *mutaah*, the wife submitted that payment of *mutaah* by instalments should be avoided given a "likelihood" that the husband would default on monthly payments.

Division (matrimonial property)

22 To recap, the President's calculation on division of the matrimonial property was as follows:

Matrimonial Flat	PW	DH	Remarks
Direct Contribution (DC)	$38,872.93 22%	$135,136.36 78%	
Indirect Contribution (IDC) Non-financial	70%	30%	Wife – caregiver and maintain the household chores while working
IDC financial	40%	60%	Husband main breadwinner
Average of IDC	55%	45%	
Ration of DC and IC	38.5%	61.5%	
Adjustment	40%	60%	

23 The husband challenges the President's assessment on the following bases:

(a) First, the husband challenges the President's order for the sale of the matrimonial property. In his submissions, he highlighted

how he was "confident" of obtaining HDB's loan eligibility letter (also known as a "HLE") to take over the property.

(b) Second, the husband challenged the President's assessment of the division ratio. We note that this required an involved exercise of properly appreciating the husband's submissions. In one part of his submissions, the husband contended that the ratio of division ought to have been 80:20 in his favour. While making this submission, the husband provided no further submissions on how he arrived at this ratio.

(c) In a later part of his submissions, the husband provided the following alternative calculation of the ratio of division:

Matrimonial Flat	**Wife**	**Husband**	**Husband's remarks in his submissions**
Direct Contribution (DC)	(22%) *23%*	(78%) *77%*	
Indirect Contribution (IDC) Non-financial	(70%) *50%*	(30%) *50%*	Equal weightage since both parties are working and maintain the household throughout
IDC financial	(40%) *30%*	(60%) *70%*	Husband was the main breadwinner and provided for the family and the wife.
Average of IDC	(55%) *40%*	(45%) *60%*	
Ratio of DC and IC	(38.5%) *31.5%*	(61.5%) *68.5%*	
Adjustment	(40%) *35%*	(60%) *65%*	

[Note: The figures in parenthesis were the President's figures, while italicised figures were the husband's submissions.]

(d) We now make the following observations on the husband's submissions:

(i) First, the husband split the assessment of indirect contribution between indirect financial contribution and indirect non-financial contribution. This was also what the President did. In this regard, the husband attributed an equal ratio for non-financial indirect contribution, and a 70:30 ratio in his favour for financial indirect contribution. This resulted in an average ratio of 40:60 for indirect contributions in the husband's favour.

(ii) Second, the husband applied a 3.5% adjustment to the final ratio. No submissions were provided for the basis for such an adjustment.

(iii) Third, the nett effect of the husband's calculations was a 5% variance off the President's figures (*ie*, 40:60 by the President, and 35:65 by the husband).

24 In challenging the husband's submission, the wife took specific issue with the 40:60 indirect contribution ratio submitted in the husband's favour. In challenging the husband's submission, the wife relied on the observations made in *ANJ* where the Court of Appeal noted (at [24]) that:

> What values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court. In most homes, even in a home where both the spouses are working full time, in the absence of concrete evidence it is more likely than not that ordinarily the wife will be the part who renders greater indirect contributions.

25 We find that whilst the wife did not mount her own appeal against the President's assessment, she made the tangential submission that the President had applied the "wrong methodology" when calculating the parties' indirect contributions. Without more, she complained that the indirect contributions ought to have been assessed in the ratio of 75:25 in her favour.

Division (CPF moneys)

26 As regards the parties' CPF moneys, the President's calculation were as follows:

CPF	PW	DH	Total
DC (OA, SA and Medisave only)	$27,816.26 34%	$54,655.34 66%	$82,471.60 100%
IDC	55%	45%	
Average	44.5% = 45%	55.5% = 55%	

27 Following from the husband's submissions above (in particular, the ratio for indirect contributions), the husband submitted that the ratio of division be revised to 34.75:65.25 in his favour.

Husband's motion to adduce further evidence

28 As highlighted above, in support of his appeal against *mutaah*, the husband filed a motion to adduce further evidence, specifically "evidence of the marital infidelity" of the wife. Such evidence essentially comprised approximately 15 screenshots from social media platforms

between herself and another gentleman which purportedly shows the wife's "illicit affair … as early as May 2021".

29 In opposing the application, the wife acknowledged meeting this gentleman sometime in March 2021. There is also no dispute that she married this gentleman in February 2023. That said, she denied that she was having an affair before commencing divorce proceedings in March 2021. She reiterated that the marriage had broken down before that time, as parties "had not been speaking to each other and had no sexual relations for about a year". She contended that the gentleman was not the cause of the breakdown of the marriage. She also highlighted that the earliest screenshot which the husband exhibited was in June 2021, with the majority of the screenshots in 2022.

Post-nearing submissions

30 At the hearing, we queried Mr Firoze as to the rationale for the President making the separate transfer order of parties' CPF refunds in connection with the sale of the matrimonial property (see [16(c)] above). This was partly because the President himself did not provide reasons for treating these refunds separately, especially in light of his findings that there would be a positive sale of the property. More commonly, in a positive sale scenario, the portion of the sale proceeds in which the ratio of division would be applied would only be to the nett amounts after the requisite CPF refunds have been made. Put another way, there would not be a further redistribution of parties' CPF refunds.

31 After the hearing, and whilst without any specific direction made by the Board, the wife (through Mr Firoze) brought to our attention a separate case dealt with by the Board dealing with the same issue. In Syariah Appeal No 36 of 2021, the Board did not reverse or overrule the Syariah Court's decision (in *EX v EY* (2021) 9 SSAR 27) to apportion both the CPF refunds and nett proceeds separately. In doing so, the Syariah Court relied on the Singapore High Court decision of *AXW v AXX* [2012] 3 SLR 900.

32 Upon receipt of the wife's additional submissions, we invited the husband to submit his response. In his response, the crux of his submission was that the President's approach (*ie*, applying the division on both the nett proceeds and CPF refunds separately) amounted to "double counting". The upshot of the husband's submission is that the President's orders on the division of the CPF refunds be set aside, and that only the net sale proceeds be divided at the ratio of 35:65 in his favour. We pause here and note that by this submission, the husband had effectively abandoned one of the positions taken in his submissions that the ratio of division be 20:80 in his favour.

Our analysis and findings

33 Against the backdrop of the foregoing, we now turn to our analysis and findings.

The husband's motion

34 We first deal with the motion. The legal principles relating to how the Board exercises its powers to allow further evidence to be adduced have been expounded in *HM v HL* (2021) 9 SSAR 316 (see [92] to [101]). In that decision, we highlighted a party's principal obligation to lay out his/her "best cards" on the table at first instance (and to accept the consequence of not doing so), and that any new evidence must have a real as opposed to a fanciful chance of making a difference to this Board's deliberations.

35 In the present case, the crux of the husband's case is that the additional evidence of the social media screenshots would have the effect of:

(a) establishing the fact and/or extent of the extra marital affair before the wife commenced divorce proceedings; and/or

(b) establishing the wife as *nusyuz*; and/or

(c) debunking the grounds in which the wife sought for a divorce in her case statement; and/or

(d) disentitling the wife to any *mutaah*, or in the alternative, reduce the amount of *mutaah* awarded.

36 As a starting point, we had difficulty fully appreciating the actual date or time stamps of these social media posts, and how it linked to the husband's allegation that it "clearly show[s] that the [wife] was having an on-going illicit affair behind [his] back as early as May 2021 and perhaps earlier than that". Some of these posts contained full dates (which appear to corroborate the wife's narrative of the posts being taken after she commenced divorce proceedings), and some with what seem like partial date or time stamps (see, for instance, pp 6, 9, 10, and 11 of the husband's supporting affidavit). For these other photos, it would appear that these were before the wife commenced divorce proceedings.

37 Next, the husband provided no explanation on how he came to have these social media posts, and why he was unable to obtain them during the course of the divorce proceedings. It must be borne in mind that the wife's allegations against the husband about his own alleged extra marital affair was in her case statement. Surely by that time, when faced with such an allegation, the husband would do what is necessary to vindicate himself, including finding any and all evidence against the wife.

38 In any case, even if the social media posts were to prove the husband's allegation (which, for clarity, we do not make any particular finding on), these posts in and of itself would not, in our view, have had a material effect in determining whether (1) the divorce ought to have been granted, and/or (2) whether the wife was *nusyuz*. As regards (1), it was not the husband's case before us that he was challenging the divorce order itself. We note that the husband makes the point that had this information been made available during the *hakam*, it could have resulted in a different outcome. However, such a proposition, without more, was speculative at best.

39 Separately, as regards (2), as we had highlighted to Mr Syed and as noted in the authorities cited by the wife, the mere fact that a wife is *nusyuz* does not disentitle her to *mutaah*. As noted in *HM v HL*, a finding of *nusyuz* is a very fact-centric exercise to determine its fact and extent. On the materials before us, it could not be said that those screenshots, by themselves, would have taken the husband's case meaningfully far on either aspect of his case on *nusyuz*. In short, the materials which he sought to adduce (putting aside our reservations on how he obtained them and why it was only made available now) were insufficient in meaningfully establishing the wife's disentitlement to *mutaah*. For those reasons, we dismissed the husband's motion.

40 Before closing off this issue, we also take this opportunity to reject Mr Firoze's submission we highlighted earlier (see [19] above). The argument that a wife is not *nusyuz* if her husband had no knowledge of the infidelity at the material time, but only after the divorce, is a non-starter. To accept this argument would, in our view, be a perverse way of endorsing an extramarital affair during the course of the marriage, so long as it is kept under wraps before the divorce decree.

Mutaah

41 We now turn to the substantive appeal, and start with the husband's appeal against the President's order on *mutaah*. For ease of reference, we address the husband's objections (see [18] above) in turn.

42 First, where the husband objected to the wife's general entitlement to *mutaah*, we were not inclined to accept his arguments. There was nothing before us to suggest that the President had erred in awarding her *mutaah*. As alluded to earlier, this is so even if we had allowed the husband's motion.

43 Second, we similarly saw no basis to intervene with the daily rate of $4 assessed by the President. In so far as the husband relied on the same grounds of *nusyuz* to challenge both the wife's entitlement and quantum of *mutaah*, we have already rejected those arguments earlier. Separately, in his grounds of decision (see [10] above), the President relied

primarily on the husband's own admission that he was earning $2,500 a month as a food delivery driver. A review of historical data compiled by the authors of *Muslim Family Law in Singapore* (Academy Publishing, 2022) (at para 5.50) indicate that such daily rates coincided with a monthly income similar (and in some cases identical to) the husband's income. While we are not bound to these precedents, the husband provided no supporting arguments or authorities to persuade us why we should depart from the apparent trend established by previous precedents.

44 Finally, in so far as the husband's challenged the President's orders that *mutaah* be paid in one lump sum and from his share of the sale proceeds, we do not find that the President had erred either in fact or law. Whilst it would have been more convenient for the husband to satisfy his *mutaah* obligations in instalments, his convenience was not a relevant consideration. We agree with the President that if circumstances permit, parties should have a "clean break" and clear off their respective obligations as expediently and efficiently as possible. Allowing these obligations to linger will result in possible complications in the future, causing parties to come back to court again to resolve these issues. We take this opportunity to clarify that in making these observations, we were mindful of the husband's age and do not make light of the possible challenges in him obtaining subsequent accommodation. However, that argument cuts both ways, and gives little comfort that he will have the runway to clear the *mutaah* instalments. The Court, in being given the unenviable task of making imperfect decisions, will necessarily have to place importance on ensuring that parties can appropriately move forward to a new stage of their lives post-divorce. The alternative would be to drag both parties through the aftermath of the divorce, which does not accord with the forward-looking objectives of therapeutic justice.

Division (matrimonial property)

45 We now deal with the husband's appeal against the President's decision on the division of the matrimonial property.

President's order for the sale of the matrimonial property

46 In so far as the husband challenged the President's order for the sale of the property (as opposed to be being transferred to him), we were not inclined to accept his arguments. We broadly agreed with the President and saw no justifiable reason why the matrimonial property should be vested in the husband in the present circumstance. Where we differ slightly from the President was that the mere fact that the husband would be holding on to a profitable asset if a transfer order was made, in itself, should not prevent a transfer order from being made. We also clarify at this juncture that we make no specific pronouncement that a transfer order cannot be made when effecting a division order as a

matter of course. It would have to depend on, among other things, the identification and assessment of the matrimonial assets, the ratio of division, and how that ratio of division may ultimately be achieved.

The President's calculation of the ratio of division

(1) Clarification of the *ANJ* approach

47 We turn next to the President's calculation of the ratio of division. It is now well accepted that the structured approach to division as espoused in *ANJ* firmly forms part of our Muslim matrimonial jurisprudence. In *DZ v EA* (2021) 8 SSAR 241 (at [63]), we explained our endorsement of this approach, and how it should be "in the forefront of every practitioner's mind when dealing with the issue of division".

48 That said, we also highlighted that while our Muslim matrimonial jurisprudence is linked with our civil matrimonial jurisprudence, we stop short of simply accepting, at face value, all civil matrimonial law decisions wholesale. This includes parts of previous precedents which, depending on the facts of each case before us, necessitate an examination (or re-examination) of whether certain civil principles or rationales are in line with Syariah principles, and ought to form part of our Muslim family law jurisprudence.

49 It is at this point where we provide certain clarifications in the manner in which the structured approach be applied, particularly in the context of assessing parties' indirect contributions:

> (a) First, as noted earlier, when assessing parties' indirect contributions, the President had broken this down into two sub-steps between indirect financial contribution and indirect non-financial contributions. In rejecting this approach, the Singapore Court of Appeal in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNK v TNK*") made the following observations (at [47]):
>
> > Additionally, we take this opportunity to clarify that even when the *ANJ* approach ***does*** apply (*ie*, in Dual-Income Marriage cases), Step 2 **should *not* be further broken down into two sub-steps such that separate ratios are assigned to indirect financial contributions, on the one hand, and non-financial contributions, on the other**. Such an approach has no legal basis and is, furthermore, inconsistent with our observation in *ANJ* (at [24]) that:
> >
> > > In relation to indirect contributions, the problem with ascertaining the extent of the parties' contributions with precision is further compounded. *In the nature of things, for the court to ascribe a ratio in respect of the non-financial or indirect financial contributions of the parties, the court is clearly not indulging in any mathematical calculation because often there is very little*

> *concrete evidence to be relied upon*. Contributions in the form of parenting, homemaking and husbandry, by their very nature, are incapable of being reduced into monetary terms. No mathematical formula or analytical tool is capable of capturing or accommodating the diverse and myriad set of factual scenarios that may present themselves to court as to how the parties may have chosen to divide among themselves duties and responsibilities in the domestic sphere. It is in making this determination that what is known as the broad brush approach would have to come into play. *What values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court*. In most homes, even in a home where both the spouses are working full time, in the absence of concrete evidence it is more likely than not that ordinarily the wife will be the party who renders greater indirect contributions. That said, even in a home where the wife is a full-time homemaker, it would be an exceptional home where the husband renders no indirect contribution at all. *What values to attribute to each spouse in relation to indirect contributions would be a matter of assessment for the court and in that regard broad strokes would have to be the order of the day*. In seeking to arrive at a ratio that represents both parties' comparative indirect contribution towards the family, the court must, in the final analysis, exercise sound discretion along with a keen emphasis on all the relevant facts of each case. …
>
> [emphasis added in bold; Court of Appeal's emphasis in *TNL v TNK* in italics]

(b) As can be seen from the above extract, the structured approach in *ANJ* does not envisage there being the creation of a two sub-step process when determining parties' indirect contribution. Whilst this point was not fully ventilated before us, we do not think, at least at the present time, our Muslim matrimonial jurisprudence should adopt such a sub-step when calculating parties' indirect contributions. Whilst it is not lost on us that a parties' indirect financial contributions does form part of the overall assessment as to parties' overall indirect contributions, creating such a further step unnecessarily creates another arena of skirmish between parties to further escalate their dispute and nitpick on each other. As alluded to by the Court of Appeal in TNL, the value to be ascribed when assessing indirect contributions, unlike direct contributions, is a matter of impression based on the relevant facts of each case. On that basis, and with the greatest respect to the President, we are of the view that the President fell into error in his methodology of calculating parties' indirect contributions.

(c) Second, after arriving at final ratio of 38.5:61.5 in the husband's favour, the President made a 1.5% adjustment "due to the fact the child would be under her care". It appears that the

President had made this adjustment on the basis of the wife's continued contribution towards the care of the child.

(d) However, the "adjustment" mechanism envisaged in *ANJ* deals specifically with "attributing the appropriate weight to the parties' collective direct contributions as against their indirect contributions" (*ANJ* at [27]). Any adjustment on any other basis (apart from plausibly a situation of computational convenience by way of a rounding exercise) is incorrect. Indeed, this issue was dealt with by the Appellate Division of the High Court in *TOT v TOU and another appeal and another matter* [2021] SGHC(A) 9. In that case, the lower court had initially arrived at a final ratio of 50.75:49.25 in favour of the wife. The lower court then made a 0.75% adjustment on the basis that, *inter alia*, it was a long marriage and an inclination towards equal division. In rejecting this adjustment, the Appellate Division made the following observations (at [16]–[17]):

> 16 In addition to the exception above, we also respectfully disagree with the Judge's approach of adjusting the parties' contributions ratio of 50.75 (Wife):49.25 (Husband) by 0.75% to reach a final contributions ratio of 50:50 between the parties (see Judgment at [159]). The Judge had opined that such an adjustment was warranted because this was a long marriage of 17 years with two children and, according to *UBM v UBN* [2017] 4 SLR 921 ("*UBM v UBN*") at [66], an inclination towards equal division would apply to long dual-income marriages where appropriate.
>
> 17 In our judgment, these reasons do not pass muster. We do not interpret *UBM v UBN* for the proposition that the court is entitled to further adjust the parties' average ratios after applying the *ANJ v ANK* framework, for the sole purpose of reaching an equal or a more equal division between the parties. Indeed, such an approach was explicitly rejected by the Court of Appeal in *UYQ v UYP* [2020] 1 SLR 551. In that case, the High Court Judge had arrived at a average ratio of 67.5 (Wife):32.5 (Husband) after applying the *ANJ v ANK* framework. The Judge had then proceeded to adjust this ratio downwards to 60 (Wife):40 (Husband) because of, *inter alia*, her view that the court should incline towards equal division in long dual-income marriages. On appeal, the Court of Appeal held that the initial ratio of 67.5:32.5 should not have been amended as the Judge, in applying the *ANJ v ANK* framework, had already considered all the relevant factors under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) (at [5]). Likewise, in the present case, the fact that this was a 17-year long marriage with two children had already been duly considered by the Judge in his application of the *ANJ v ANK* framework. We therefore do not think that there was any basis for the Judge to further adjust the parties' average ratios to 50:50.

(e) What can be discerned from the above comments made by the Appellate Division is that factors which ordinarily fell within the parameters of s 112(2) of the Women's Charter 1961 (2020 Rev Ed)

(as incorporated in s 52(8) of the Administration of Muslim Law Act 1966 (2020 Rev Ed), should form part of the matrix when assessing parties' direct and indirect contributions. It should not form a further and separate basis for any adjustment of the calculated ratio thereafter.

(f) In the present case, the wife's continued care of the child would be a factor which, in our view, falls squarely under s 52(8)(*d*) of the Administration of Muslim Law Act 1966 (2020 Rev Ed), as being part of the wife's contribution to the welfare of the family. On this basis, we were of the view that the President also fell into error by making that final adjustment.

(2) Should this Board intervene in the eventual ratio assessed by the President?

50 Whilst we took issue with some of the steps adopted by the President in calculating his ratio of division, does this affect the President's final assessed figure necessitating this Board's intervention? After considering parties' submissions, and not without difficulty, we were not inclined to intervene in this present case.

51 As regards the President's calculation of indirect contribution, the President arrived at a final ratio of 55:45 for indirect contributions in favour of the wife. The husband's position is that indirect contributions be assessed at 40:60 in his favour. After assessing parties' submissions, we were not inclined to agree with him. Putting aside how the husband calculated this ratio (*ie*, by applying the sub-step method), we were not able to agree that the mere fact of the husband being the main breadwinner was sufficient for him to be allocated a higher ratio of indirect contributions. We also did not agree with the husband's submissions that they both contributed equally to maintaining the household. The upshot of the husband's submission is that it places greater value over his breadwinning contributions over the wife's homemaking contributions (especially during the early years when she was caring for the child). The husband provided no evidence to support this. On the contrary, we were of the view that the President, by applying the sub-step approach, did so to the husband's advantage and benefit. However, as the wife did not file a cross-appeal, we say no more on this matter.

52 For those reasons, we upheld the President's indirect contribution ratio of 55:45 in the wife's favour.

53 As regards the President's adjustment of 1.5%, whilst we took issue with this approach, we were not, for this case, inclined to intervene. We took the view that the nett effect of the President's two errors highlighted above balanced each other such that had the structured approach been

applied correctly, the final outcome would have been equal to (or manifestly similar) to the President's eventual figure. Put another way, the outcome of the President's error was not one which necessitated intervention on the facts of the present case. That having been said, and given that we are not aware of any other case dealing with a similar issue (and therefore its present novelty), we found it apposite to state that any subsequent erroneous application of the structured approach, even if the effects of such error were *de minimis*, may warrant this Board's intervention.

54 For those reasons, we upheld the President's eventual ratio of division.

(3) Application of the ratio of division

55 We turn next to the application of the ratio of division. As noted earlier, the President had applied this to both the CPF refunds as well as the nett sale proceeds. Based on the post-hearing submissions tendered by the wife, support for this approach stems from an earlier Syariah Court decision in *EX v EY* (2021) 9 SSAR 27 (which was not overruled in Syariah Appeal No 36 of 2021), which relied on the Singapore High Court decision of *AXW v AXX* [2012] 3 SLR 900 ("*AXW*"). Given that the approach adopted has practical effects on the application of the ratio of division, we found it apposite to unpackage this approach, and provide our views on the same:

(a) In *AXW*, the court was faced with a situation where the lower court had applied the ratio of division only on the nett sale proceeds. Whilst the High Court did not take issue with this approach *per se*, it highlighted the mathematical impact of this approach (at [7] to [10]):

> 7 But before proceeding to the arguments advanced by both sides, it is necessary to examine the exact nature of the division ordered by the District Judge. This is the clarification I referred to in 121 and which is the primary objective of these written grounds. The District Judge's order affected the cash proceeds in the completion account for the sale of the Matrimonial Home. This is the sale price less cost and less refunds to the parties' respective CPF accounts. The sale price (less cost) was $857,530.62, out of which $135,932.75 and $162,818.88 were refunded to the CPF accounts of the Husband and Wife respectively. This left the cash sum of $558,778.99. The District Judge's order was for $102,848 to be taken from this sum to repay the Husband's parents, with the remaining sum of $455,930.99 to be divided in the ratio of 40:60. This meant that the cash received by the Husband and the Wife was $182,372.40 and $273,558.59 respectively. What the parties actually got in terms of cash plus CPF refund was as follows: $318,305.15 to the Husband and $436,377.47 to the Wife. This totals $754,682.62 ('the Distributable Amount'), which is also

the sale price less cost and less the $102,848 repaid to the Husband's parents.

8 **If the total amounts received by each party in terms of cash plus CPF refunds were divided by the Distributable Amount, one would find that the Husband and the Wife obtained 42.2% and 57.8% of the Distributable Amount respectively. This is slightly different from the 40:60 split that one would have thought the District Judge had decided on. The Husband got 2.2% more and the Wife got correspondingly less.** The reason for this difference stems from the fact that the District Judge ordered the 40:60 division on the proceeds after deducting CPF refunds ('Partial Division'), instead of ordering it to be done on the entire proceeds before deducting CPF refunds ('Effective Division') and then ordering both parties to refund their own CPF accounts from their respective shares. I term the latter method the Effective Division because that is in fact how the Distributable Amount was split, as a refund to one's CPF account is one's property even though one may only use it on certain terms.

9 A court making an order for division should be aware that the resulting overall division of matrimonial assets produced by the Partial Division method may deviate drastically from that produced by the Effective Division method. This depends on the relative sizes of both parties' CPF refunds and the ratio of division ordered. A simple numerical example would illustrate this point clearly. Take the case where the matrimonial assets for division is $100, the ratio of division is 60:40 in favour of party A, and party A's and party B's CPF refunds are $30 and $10 respectively. Under the Partial Division method, the total CPF refund of $40 is deducted from the $100, leaving the balance of $60 to be divided in the ratio of 60:40. This gives a distribution of the cash sums of $36 and $24, and the total of cash plus CPF refunds for party A and party B would be $66 ($36+$30) and $34 ($24+$10) respectively. The parties effectively received 66% and 34% of the assets in a situation where the ostensible split is 60:40. In contrast, if the Effective Division method was used, the effective split would be 60:40. Under the Effective Division method, a split of 60:40 would first be ordered on the $100, and party A and party B would receive $60 and $40 respectively. Party A and party B would then refund $30 and $10 to their own CPF accounts from their shares of $60 and $40 respectively. Different combinations would lead to different effective splits and the two methods would lead to exactly the same split only under certain circumstances, *eg* where the ratio of division is 50:50 and the amounts of CPF refunds are the same.

10 **I emphasise that there is nothing in law to preclude the use of the Partial Division method. Pursuant to s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed), a court is only enjoined to order a division as it thinks just and equitable. However, in making its decision, a court would look to divisions that have been ordered in similar cases.** Such comparisons are only meaningful if the divisions considered relate to the Effective Division. For this reason alone, if a court is making a division based on a single division of the total

> matrimonial assets method and is relying for guidance on divisions done in comparable situations, then it is important to use the Effective Division method.
>
> [emphasis added in bold]

56 As can be seen from the above, the High Court did not make any specific pronouncement as to how the ratio of division ought to be applied (*ie*, whether before or after CPF refunds were made). To be clear, the Board similarly does not prescribe one particular method of division (although the Board is equally mindful as to the realities of how CPF refunds are implemented by the relevant authorities). The salient observation made by the High Court in *AXW* is that depending on whether the division is ordered after CPF refunds (which the court called "Partial Division") or before CPF refunds (which the court called "Effective Division"), the final disbursed amounts may differ significantly depending on the size of the asset(s) in question. Whether or not one approach ought to be adopted over the other would depend on the specific facts of each case.

57 Before closing this point, we would highlight that adopting the "Effective Division" approach would require specific consideration on how parties' initial contributions were calculated. In *EX v EY*, when calculating parties' direct contributions, the learned Senior President only considered parties' principal CPF amounts (see [18] of the decision). However, when applying the "Effective Division" method, the Senior President ordered that the wife receive 65% of the total refunds to parties' CPF accounts. When calculating the amount to be refunded, CPF automatically includes accrued interests on the utilised sum. No provision was made on if (and if so, how) the interest component would be affected by this division. However, in the present case, the President had incorporated both the principal and accrued interest when calculating parties' direct contributions. As such, the President's application of the "Effective Division" approach does not appear to face the same issues as that existed in *EX v EY*.

58 As to whether the President erred in using the "Effective Division" approach, after considering parties' post-hearing submissions, we were not inclined to accept the husband's submission that the President had erred in adopting this approach. There was no material before us to show the fact and/or extent of the husband's prejudice if the President adopted the "Partial Division" approach.

(4) Division (CPF moneys)

59 For the reasons above, we were not inclined to adjust the President's ratio of indirect contributions generally. On the direct contributions assessed by the President in respect of the CPF moneys, we found no issue with the President's finding that $9,000 be transferred

from the husband's CPF account to the wife's CPF account. In fact, on the ratios calculated by the President, the wife would have been entitled to a $9,295.96 transfer of the husband's CPF moneys. For reasons not expressly stated in his grounds of decision, the President had decided to round the figure to the husband's benefit.

Our orders

60 For the above reasons, we dismissed the husband's motion as well as his appeal against the President's decision.

Costs

61 On the issue of costs, we ordered that the husband pay the wife costs of both the motion and the appeal, with such costs fixed at $2,500.

Conclusion

62 We thank Mr Syed and Mr Firoze for their assistance and submissions on the matter, and for providing the Board the opportunity to provide its views on a matter which may provide some clarity to all practitioners.

Note:

1 With regard to the discussion on the "Effective Division" and "Partial Division" approaches, the utilisation of these methods was explained in the Syariah Court's grounds of decision in *DX v DY* (2021) 8 SSAR 228. In summary, the "Effective Division" method entails division of the sale proceeds after deduction of the outstanding housing loan and costs and expenses related to the sale but before the making of CPF refunds. The parties are to then make the requisite refund to their respective CPF accounts from their shares of the sale proceeds. This presupposes that the parties' respective shares of the sale proceeds are sufficient to make the CPF refunds to their respective CPF accounts. If insufficient, the courts would instead utilise the "Partial Division" method where the sale proceeds are divided after payment of the outstanding housing loan, CPF refunds to the parties' respective CPF accounts and costs and expenses related to the sale. However, if the refunds to the parties' CPF accounts are unequal or disproportionate, this will lead to an eventual distribution that departs from the intended division. Hence, referred to as "partial division". To achieve "effective division" (*ie*, to effect the intended distribution), the moneys constituting the CPF refunds must be adjusted accordingly.

2 To illustrate, in the case of *DR v DS* (2021) 8 SSAR 191, the Syariah Court adopted the "Effective Division" method as the Court was of the view that the "approach of requiring the parties to make the necessary CPF refunds from their share of the sale proceeds is practicable given that there will be enough moneys from the sale proceeds for them to do so" and that "the intent of [the Court's] division order … would be effected and realised by adopting this approach".

3 The "Effective Division" or "Partial Division" approaches are modes of *implementation* of a division order in respect of a matrimonial property (whether following the global assessment methodology or the classification methodology). The matrimonial property would typically comprise two components, namely, the net sale proceeds and the CPF refunds that are to be made to the parties' CPF accounts pursuant to the sale, which include the accrued interest. However, when the Court seeks to arrive at a division order (*ie*, before the implementation stage), the Court would first ascertain the parties' direct financial contributions (at the division stage). In doing so, and in respect of CPF moneys utilised towards the purchase of the matrimonial property, the Court may look at the principal sums only or consider the principal sums together with accrued interests. For example, in *EX v EY* (2021) 9 SSAR 27, the Syariah Court considered "only the principal CPF amounts utilised by the parties, without including the accrued interests, as the principal amounts represent the actual sums applied towards the payment of the purchase price of the matrimonial flat". Also, in *DL v DM* (2021) 8 SSAR 152, the Syariah Court explained that "[t]o take into account the accrued interest may not provide an accurate representation of a party's direct financial contribution, as the eventual figure (namely, the principal amount plus accrued interest) may be skewed by the interest amount, which is dependent on factors such as the amount utilised (the greater the amount utilised, the more interest would accrue) and the length of time from which the amount was utilised (if the amount was utilised earlier in time, there would be more interest accruing on the amount, given the passage of time)".

4 For discussion on the global assessment methodology and the classification methodology, to refer to *GI v GJ* (2023) 9 SSAR 209.