

**GW**  
**v**  
**GX**

**[2024] SGSYC 2**

Syariah Court — Originating Summons No 60126 (Summons No 60126/S003)  
Guy bte Ghazali  
21 March 2024

*Divorce — Matrimonial proceedings — Powers — Variation of decree — Resolving unworkability*

**Case(s) referred to**

*DD v DF* (2020) 8 SSAR 95

*TYA v TYB* [2018] 3 SLR 1170

**Legislation referred to**

Administration of Muslim Law Act 1966 (2020 Rev Ed) s 52(7)

At the Syariah Court:

*Abdul Rohim bin Sarip (A Rohim Noor Lila LLP) for the plaintiff*

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

Parties:

*Plaintiff – Wife*

*Defendant – Husband*

[Editorial note: The appeal in Syariah Appeal No 8 of 2024 was withdrawn.]

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[Editorial note: This is the grounds of decision of the Syariah Court dated 21 March 2024.]

21 March 2024

**Guy bte Ghazali (Senior President, Syariah Court):**

**The Plaintiff's Summons**

1 The summons herein, namely, Summons No 60126/S003, is the plaintiff's application (hereinafter referred to as "the Plaintiff's

Summons”) to vary para 5 of the Decree dated 24 December 2021 (“the Decree”).

2 The ancillary matters orders in the Decree were made pursuant to the consent of the parties.

3 One of the orders, specifically, para 5 of the Decree is the subject of the Plaintiff’s Summons. The said para 5 reads:

5. The matrimonial flat at and known as [address redacted] shall be transferred (other than by way of sale) to the Defendant upon the Defendant making the full required CPF refunds to the Plaintiff’s CPF account.

4 The matrimonial flat was purchased in October 2019. As at the date of the Decree, the matrimonial flat was still within the minimum occupation period. The minimum occupation period will only complete in October this year.

5 In the Plaintiff’s Summons, the plaintiff (“Plaintiff”) sought an order for the matrimonial flat to “be sold in the open market and the balance sale proceeds to be divided in the proportion to parties’ CPF contributions”. The Plaintiff’s counsel submitted a time frame of nine months for the matrimonial flat to be sold.

### **The Defendant’s Summons**

6 In the interest of completeness, I would add that the defendant (“Defendant”) too filed an application to vary para 5 of the Decree. The Defendant’s application, namely Summons No 60126/S002 (“the Defendant’s Summons”), was for the matrimonial flat to “be transferred (other than by way of sale) to the Defendant and Third Party upon the Defendant making the full required CPF refunds to the Plaintiff’s CPF account” (variation sought by the Defendant underlined).

7 The Defendant’s Summons was heard together with the Plaintiff’s Summons. The Defendant’s Summons was dismissed by this Court. The Defendant was also ordered to pay costs of \$1,000.00 to the Plaintiff. In determining the Defendant’s Summons, this Court was guided by the Appeal Board’s position in *DD and another v DF* (2020) 8 SSAR 95 that the phrase “between the parties” in s 52(7) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) (“AMLA”) “must be read as being limited to the parties to the proceedings who are the husband and the wife whose marriage or divorce is the subject matter of the proceedings”. For reference, s 52(7) of the AMLA reads:

In making any order under subsection (3)(d), the Court has power to order the disposition or division between the parties of any property or the sale of any such property and the division between the parties of the

proceeds of such sale in such proportions as the Court thinks just and equitable.

### **My orders in the Plaintiff's Summons and reasons for the same**

8 As for the Plaintiff's Summons, I have allowed the Plaintiff's application to vary para 5 of the Decree such that the matrimonial flat is to be sold in the open market.

9 In this regard, the Defendant has conceded that para 5 of the Decree is unworkable (hence, his application for the matrimonial flat to be transferred to him and a third party, which has been disallowed by this Court).

10 As para 5 of the Decree is unworkable, variation is required to give effect to the intent of the division order in a manner that can be implemented.

11 In terms of how the order should be varied, I find the observation in *TYA v TYB* [2018] 3 SLR 1170 at [46] instructive:

When an order for the division of matrimonial assets is eligible to be varied under s 112(4) of the Charter, the court ought to vary the order only to the extent necessary to give effect to the objective of the order. The starting point for discerning that objective is the text of the original order. Where the order is a consent order, the text will be of particular importance because it will be presumed to reflect the parties' intentions at the time they consented to the order. The variation will accordingly be an exercise in discerning those intentions, having regard to the circumstances in which they were formed, and subsequently giving effect to them in the best possible way. The court should also bear in mind the specific reason or reasons for which the order in question has been found to be unworkable. The variation which is effected by the court must have a rational connection to the unworkability that has been identified. This is an important principle for the mere fact of unworkability does not grant the court a *carte blanche* discretion to rewrite an order on the division of the parties' matrimonial assets. That would undermine the policy of finality behind s 112 of the Charter. Instead, the variation must address the unworkability which has arisen. It must represent a solution which goes no further than circumventing the unworkability identified and advancing the objective of the order.

12 In summary, the variation order must, as far as possible, reflect the intent of the original order or in the case of a consent order, the intent of the parties.

13 In this regard, I have taken into consideration the following:

(a) Under the original order, the Plaintiff's entitlement (or share) in the matrimonial flat is limited to her "full required CPF

refunds”. Save for this, the remaining interest in the matrimonial flat is intended to be the Defendant’s.

(b) It would appear from the affidavits that the impediment to the Defendant effecting the transfer is his age. He is under the age of 35 years and therefore not eligible to hold a Housing and Development Board flat in his sole name.

(c) There is no time frame provided in the original order for the transfer to be effected. Given that this is a consent order, it is unknown if the parties intended for the transfer to be effected within a reasonable time (and it is unknown what “reasonable” would mean to the parties in this context), or for the parties to mutually agree on the time frame. As such, the considerations on whether there has been a “delay” in the transfer or whether there has been prejudice caused to either party, are not clear-cut or straightforward.

14 Bearing the above in mind, I made the following orders in the Plaintiff’s Summons:

(1) Paragraph 5 of the Decree shall be varied as follows:

Subject to the approval of the Housing and Development Board (HDB), the matrimonial flat at and known as [address redacted] shall be sold in the open market within nine (9) months from the date of this Order. The sale proceeds shall be apportioned as follows:

- (i) To make full payment of the outstanding housing loan to the HDB.
- (ii) To pay the HDB resale levy (if any).
- (iii) To pay the requisite Central Provident Fund (CPF) refunds in accordance with applicable CPF laws to both parties’ respective CPF accounts.
- (iv) To pay all expenses arising from the sale, including the payment of agent’s commission, and other cost of and expenses of the sale.
- (v) The remaining sale proceeds shall be retained by the Defendant solely.

(2) Paragraphs 6(a) and 6(b) of the Decree are hereby deleted.

15 Although the Plaintiff has succeeded in obtaining a variation order for sale of the matrimonial flat, she is dissatisfied with part of the order on distribution of the net sale proceeds, and has filed an appeal.

16 I would emphasise that the objective of the variation is to effect the intent of the original order by resolving the unworkability. It is not intended to rewrite the division order or alter the parties’ original

entitlement or provide an opportunity for a party to relitigate and have a second bite at the cherry.

17 I also note from the housing loan information provided by the Plaintiff that the housing loan repayment is made by Central Provident Fund (“CPF”) and not cash. Even if the Plaintiff had continued to make repayments from her CPF account after the making of the Decree, she is not prejudiced by the variation order as her entitlement (or share) in the matrimonial flat, which is her “full required CPF refunds”, remains preserved. It would have been a different consideration if the Plaintiff had made these repayments in cash (instead of CPF) after the making of the Decree. This might lend credence to the argument that any variation must take into account the cash repayments in order to satisfy the intent of the original order (which did not envisage cash repayments). However, this is not the case and it is not the Plaintiff’s position that she made cash repayments after the Decree was made.

18 To allow the Plaintiff a share in the net sale proceeds would alter the parties’ entitlement under the original order. Under the original order, the Defendant was entitled to the entire matrimonial flat, save for such part of the matrimonial flat that comprised the Plaintiff’s full CPF refunds. This is also the outcome that has been achieved by the variation order.

19 If it is the Plaintiff’s position that her circumstances have now changed (in that she has remarried and has two children with her current husband), and her financial needs are therefore greater, the Plaintiff cannot rely on her change of circumstances post-order to vary a division order that cannot be implemented only by reason of its unworkability.

20 Given that the order has been varied from transfer to sale, I have removed the proxy power provisions at paras 6(a) and 6(b) of the Decree. In the context of sale, proxy power provisions would only be ordered if one party has sole conduct of the sale and the sole authority to determine the sale price, which is not the case here.

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