

**GU**  
**v**  
**GV**

**[2024] SGSYC 1**

Syariah Court — Originating Summons No 59025  
Guy bte Ghazali  
6 March 2024

*Divorce — Division of matrimonial assets*

*Divorce — Matrimonial proceedings — Jurisdiction — Concurrent jurisdiction*

*Divorce — Mutaah — Payment*

*Divorce — Nafkah iddah — Payment*

**Case(s) referred to**

*BOR v BOS* [2018] SGCA 78

*GG v GH* (2023) 9 SSAR 189

*GS v GT* (2023) 9 SSAR 247

*TNL v TNK* [2017] 1 SLR 609

*UBM v UBN* [2017] 4 SLR 921

**Legislation referred to**

Administration of Muslim Law Act 1966 (2020 Rev Ed) ss 35A(2), 52(3)(c),  
52(7)

Supreme Court of Judicature Act 1969 (2020 Rev Ed) s 17A

Family Justice Act 2014 (2020 Rev Ed) s 26(3)

At the Syariah Court:

*Noor Mohamed Marican (Marican and Associates) for the plaintiff*

*A Sharma (Winchester LLC) assigned by the Legal Aid Bureau for the defendant*

Parties:

*Plaintiff – Husband*

*Defendant – Wife*

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[Editorial note: This is the voluntary *ex tempore* judgment of the Syariah Court dated 6 March 2024.]

6 March 2024

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

### **Introduction**

1 The parties' marriage was solemnised on 4 October 2001 and registered on 21 August 2020 in India. The plaintiff is the husband (hereinafter referred to as "the Husband"). The defendant is the wife (hereinafter referred to as "the Wife").

2 The Husband pronounced one *talak* on 14 May 2021. At the hearing on 5 December 2023, the Wife, through her counsel, confirmed her agreement to the Husband's position that this was the only *talak* that had been pronounced by the Husband. As the *talak* was not in dispute, this Court confirmed the Husband's pronouncement of divorce on 14 May 2021 by one *talak raji'i* (at the time of pronouncement) and as the first *talak*.

3 As at the date of the *talak*, the parties had been married for almost 20 years. Against the backdrop of case authorities, this is considered a long marriage.

### **Issues relating to the children**

4 The parties have two children (both sons), born in 2007 and 2015.

5 It is relevant to note that the Wife had obtained an order from the Syariah Court on 3 March 2021 for civil proceedings to continue under s 35A(2) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) ("AMLA"). "Civil proceedings" here refer to FC/OSG 164/2020 filed by the Wife in the Family Justice Courts (FJC) on 4 November 2020.

6 It is trite that in respect of "custody" (to be read to also include care and control, and access), the Syariah Court does not exercise *exclusive* jurisdiction. Instead, it exercises *concurrent* jurisdiction with the General Division of the High Court ("the General Division"). This is provided by s 17A of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA").

7 Section 17A(2) of the SCJA reads:

Even though such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act 1966, the General Division has jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on divorce.

8 Section 17A(3)(b) of the SCJA provides that:

Where civil proceedings involving any matter referred to in subsection 2(b) or (c) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the General Division, the General Division is to stay the civil proceedings —

...

- (b) involving any matter referred to in subsection 2(b), if proceedings for divorce are commenced in the Syariah Court ... between the same parties after the commencement of the civil proceedings, unless a Syariah Court continuation certificate in respect of the civil proceedings has been filed with the General Division.

9 Section 26(3) of the Family Justice Act 2014 (2020 Rev Ed) makes it clear that:

... the jurisdiction of a Family Court to hear and try any civil proceedings which come within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act 1966 is the same as that of the General Division of the High Court, as if section 17A of the Supreme Court of Judicature Act 1969 applies to a Family Court with the modification that any reference in the section to the General Division of the High Court is a reference to the Family Court.

10 With regard to the “continuation certificate” referred to in s 17A(3)(b) of the SCJA, s 35A(2) of the AMLA provides that:

Where proceedings for divorce are commenced in the Court ... after civil proceedings between the same parties are commenced in any court involving any matter relating to the custody of any child, any party who intends to continue the civil proceedings must apply to the Court for permission to continue the civil proceedings.

11 Pursuant to s 35A(4) of the AMLA, the Syariah Court would issue a continuation certificate if the application for permission referred to above was granted.

12 In the present case, the Wife took proactive steps in obtaining an order from the Syariah Court so that the FJC could hear and determine the issues of custody, care and control of and access to the children. Following the Wife’s election of forum, the FJC made orders in these respects on 19 November 2021 (“the FJC Order”). Under the FJC Order, the parties were granted joint custody of their children, with care and control to the Husband. As for access, the Wife was granted supervised visitation to the children at the Divorce Support Specialist Agency.

13 Having elected the forum (*ie*, the FJC) to determine the custody, care and control of, and access to the children, and having obtained the FJC Order, the Wife cannot now relitigate the same issues in the Syariah Court.

14 It is the Wife's counsel's submission that the FJC Order is interim in nature, and it is for the Syariah Court to make final orders on the children as part of ancillary matters determination. I am unable to accept this submission given the intention of s 17(A)(2) of the SCJA. The said provision expressly refers to, *inter alia*, s 52(3)(c) of the AMLA. Section 52(3)(c) of the AMLA refers to orders with respect to "the custody, maintenance and education of the minor children of the parties" made "at any stage of the proceedings for divorce ... or after making a decree or order for divorce ...".

15 In the circumstances, I have made no order on the custody, care and control of, and access to the children of the parties, in light of the Syariah Court's Order of Court dated 3 March 2021 granting permission to the parties under s 35A(2) of the AMLA to continue civil proceedings, and the FJC Order.

### ***Nafkah iddah***

16 The Wife has claimed *nafkah iddah* in the sum of \$5,000.00 per month for three months amounting to \$15,000.00. The Husband takes the position that the Wife is only entitled to *nafkah iddah* in the sum of \$300.00 per month for three months amounting to \$900.00. However, it is the Husband's submission that no further sum is payable as he has paid the Wife in excess of \$900.00 after the pronouncement of *talak*, pursuant to a subsisting maintenance order made by the FJC.

17 In this regard, I note the following events:

(a) *Talak* was pronounced by the Husband on 14 May 2021.

(b) On 17 May 2021, the FJC ordered the Husband to pay the Wife maintenance in the sum of \$1,625.00 per month on or before the first day of each month with effect from 1 June 2021 ("FJC Maintenance Order").

(c) On 5 December 2022, the maintenance amount was varied by consent to \$1,200.00 per month with effect from 1 January 2023 ("FJC Variation Order").

(d) Under the FJC Maintenance and Variation Orders, the Wife is entitled to maintenance in the sum of \$48,875.00 from 1 June 2021 (*ie*, after the pronouncement of *talak* on 14 May 2021) to-date, which includes and extends beyond the period of *iddah*. This sum of \$48,875.00 far exceeds the Wife's claim of \$15,000.00 for

maintenance during the period of *iddah* (or otherwise known as *nafkah iddah*).

18 Considering the above, I have accepted the Husband's submission that no further *nafkah iddah* is payable by him.

### ***Mutaah***

19 As for *mutaah*, the Wife has claimed \$20.00 a day for the duration of marriage. The Husband has proposed \$2.00 a day.

20 In determining the appropriate award for *mutaah*, the Husband's means is the predominant consideration. Based on the Husband's Notice of Assessment for the Year of Assessment 2022, his annual gross income from employment was \$46,750.00. His annual net income (*ie*, less contribution to the Central Provident Fund ("CPF")) was \$38,200.00 or about \$3,183.00 per month. The Husband also received rental income in the sum of \$9,690.00 that year.

21 Based on the Husband's financial position, I have awarded the Wife *mutaah* in the sum of \$36,000.00 or about \$5.00 a day for the duration of marriage.

### **Division of matrimonial assets**

#### ***The law***

22 Section 52(7) of the AMLA provides that in making an order for the disposition or division of property upon divorce, the Court shall have the 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.

23 To arrive at a "just and equitable" division of matrimonial assets, the Court will have to ascertain, and thereafter apply, the appropriate division methodology that will enable it to achieve this objective based on the facts of the case.

24 As the present case involves a long single-income marriage (the Wife started working after *talak* was pronounced), I have adopted the approach laid out in the Court of Appeal case of *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL*") where the courts tend towards an equal division of the matrimonial assets. Although *TNL* referred to precedents involving marriages of between 26 and 30 years, it can be inferred from the observation on lengths of marriage in *BOR v BOS and another appeal* [2018] SGCA 78 that a marriage of longer than 18 years can be considered a long marriage.

*The matrimonial pool*

25 The agreed matrimonial pool is set out below. For Malaysian ringgit, I have adopted the Husband’s exchange rate of 1 MYR = 0.288 SGD instead of the Wife’s exchange rate of 1 MYR = 0.300 SGD, as it is more reflective of current market. As for Indian rupee, both parties have adopted similar exchange rate of 1 INR = 0.016 SGD. These rates are found in the “Joint Summary of Relevant Information” filed by both counsel.

S/N	Asset	Court’s finding on value	Court’s remarks
<b>Joint names</b>			
1	Housing and Development Board (HDB) matrimonial flat (“Matrimonial Flat”)	\$425,700.00 (net value)	The estimated value of the Matrimonial Flat is agreed at \$535,000.00. There is an outstanding loan of \$109,321.49. The agreed net value is \$425,678.51. For ease of calculation, this figure has been rounded off to \$425,700.00.
Sub-total		\$425,700.00	
<b>Assets in Husband’s name</b>			
2	Condominium at KL Sentral, Kuala Lumpur	RM459,455.59 (\$132,323.21)	The market value and the outstanding loan are not in dispute between the parties.  The net value is derived by the Court by taking the market value and deducting from it the outstanding loan.
3	Condominium at Wisma Infinitem, Kuala Lumpur	RM740,000.00 (\$213,120.00)	The property is fully paid up.  The Court has adopted the valuation provided by the Husband’s valuation report dated 15 June 2023 and not the purchase price as submitted by the Wife.
4	DBS Account ending with 2396	\$550.06	Adopts the value in the Husband’s Affidavit of Evidence-in-Chief (“AEIC”).
5	OCBC Account ending with 8030	\$18,124.25	As above.

6	HSBC Account ending with 492	Unknown	The Husband declared a value of “0” on the basis that this account had been closed. In this regard, the Husband relied on a letter dated 21 April 2021 from HSBC notifying the Husband that the bank would be arranging for closure of this account. The bank also requested for payment instruction in respect of the credit balance in this account. In the Husband’s submission to this Court, there was no mention of the credit balance as at the date of closure.
7	HSBC USA Account ending with 5888	Unknown	This account has likely been closed based on the letter dated 13 May 2021 from HSBC. However, in the Husband’s submission to this Court, there was no mention of the credit balance in this account as at the date of closure.
8	HSBC Malaysia Account ending with 4108 and HSBC Malaysia Account ending with 4710	RM175.96 (\$50.68)	Adopts the value at p 121 of the Husband’s AEIC.
9	RHB Savings and Current Accounts	RM6,270.54 (\$1,805.92)	Adopts the value at p 123 of the Husband’s AEIC. This document also shows both the savings and current accounts (compared to the documents at pp 182 and 183 of the Husband’s Affidavit-in-Reply (“AIR”), which only shows the current account but not the savings account).
10	HSBC UK Account ending with 3011	0	Adopts the value in the Husband’s AEIC.  This account is no longer in existence.
11	HSBC India Accounts ending with 2007 and 2006	INR293,815.89 (\$4,701.05)	Adopts the net value at p 133 of the Husband’s AEIC.
12	HDFC Bank Account ending with 3473	INR1,169.46 (\$18.71)	Adopts the value in the Husband’s AEIC.

13	Moneys withdrawn by the Husband from his Employees' Provident Fund in India on 16 September 2021	INR5,212,700 (\$83,403.20)	<p>Page 44 of the Husband's compliance affidavit dated 28 February 2023.</p> <p>The Husband avers that he made two deposits of INR40,000 and INR4,691,430 into his HDFC Bank Account on 20 and 21 September 2021 respectively. The value adopted by the Court at item 12 in respect of the Husband's HDFC Bank Account is as at 1 September 2021, <i>ie</i>, before the deposits were made. There is therefore no double counting.</p> <p>The Court has clawed back this sum into the matrimonial pool as the Court is not satisfied as to the purpose of the withdrawal.</p>
14	Car	\$14,273.00	Value is agreed.
15	CPF account balances in Ordinary, Medisave and Special Accounts	\$58,242.94	Value is agreed.
Sub-total		\$526,613.02	
<b>Assets in Wife's name</b>			
16	POSB Account ending with 4823	\$633.35	Adopts the value in the Wife's AEIC.
17	HDFC Bank Account ending with 2608	INR160,859.44 (\$2,573.75)	Adopts the value in the Wife's AEIC.
18	AXIS Bank Account ending with 4082	INR51,612.56 (\$825.80)	Adopts the value in the Wife's AEIC.
19	AXIS Bank Account ending with 4256	INR3,144.62 (\$50.31)	Adopts the value in the Wife's AEIC.
20	Bank of Baroda Account ending with 4851	INR37,716.24 (\$603.46)	Adopts the value in the Wife's AEIC.
21	Funds in Employees' Provident Fund in India	INR50,093.00 (\$801.49)	Adopts the value in the Wife's AEIC at pp 75 and 76. This is the total of "Employee Share" and "Employer Share", without including "Pension / Contribution".



			Similar approach is taken in respect of the Husband's withdrawal of moneys from his Employees' Provident Fund in India.
22	CPF account balances in Ordinary, Medisave and Special Accounts	\$584.78	Adopts the CPF account balances in the Wife's AEIC.
Sub-total		\$6,072.94	
Total matrimonial pool		\$958,385.96	

26 In so far as there is dispute on values in respect of moneys in bank or CPF accounts (based on the positions taken by the parties in the Joint Summary of Relevant Information), I have taken the values in the parties' respective AEICs as these are closer in time to the pronouncement of *talak* than the values in the parties' AIRs.

27 There are three disputed assets.

(i) *The Wife's OCBC Account ending with 3235*

28 The Husband claims that the Wife has not disclosed her OCBC Account ending with 3235. In support of the Husband's contention, the Husband exhibited a letter dated 22 December 2011 (*ie*, 12 years ago) from OCBC Bank requesting for the Wife to top up the account as it was "in zero or negative balance" and that the bank would proceed to close the account if it was not topped up. The Wife takes the position that no such account exists today. I have not included this account in the matrimonial pool as the Husband has not shown that this account continues to exist to-date.

(ii) *Rental income received by the Husband from condominium at KL Sentral, Kuala Lumpur*

29 The Wife has claimed a share of the rental income received by the Husband from the condominium at KL Sentral, Kuala Lumpur. This property is in the Husband's name and the Wife has not made financial contribution to the property. I have therefore not allowed the Wife's claim.

(iii) *Items purportedly taken by the Husband from the Wife's locker in India*

30 The Wife has sought to include items purportedly taken by the Husband from the Wife's locker in India in the matrimonial pool. I have not included these items as the Wife's allegation is subject of ongoing police investigations in India.

31 I have not made any deduction from the matrimonial pool. In this regard, the Husband has sought to deduct sums borrowed from his family members from the matrimonial pool. I have not allowed the same as the purpose and necessity of these transfers are unclear.

### ***Dividing the matrimonial pool***

32 In arriving at a just and equitable division of the matrimonial assets, I would highlight that the *TNL* approach does not necessarily result in a 50:50 division. Tending towards equal division is understood as ranging between 40% to 60%. As observed by the High Court in *UBM v UBN* [2017] 4 SLR 921 at [66], “[i]nclining towards equal division still allows the court to use its discretion to deviate from an exactly 50:50 split and does not constrain the court’s discretion, yet upholds the character of marriage and provides guidance to the court”.

33 Given that the Husband has care and control of the two minor children and considering their needs, I am of the view that it is just and equitable to divide the matrimonial pool in the proportion of 60% to the Husband and 40% to the Wife. As the total value of the matrimonial pool is \$958,385.96, the Husband’s share is \$575,031.58 while the Wife’s share is \$383,354.38. Less the value of assets in the Husband’s name, the Husband’s remaining share in the matrimonial pool is \$48,418.56. Less the *mutaah* payable to the Wife (*ie*, \$36,000.00), the Husband’s balance share in the matrimonial pool (specifically the joint asset, which is the matrimonial flat) is \$12,418.56, which I have rounded off to \$12,400.00. I have ordered for the matrimonial flat to be sold. As the Husband has requested for the first option to purchase, I have allowed and incorporated the same, including the mechanics for the exercise of such option. As the Wife’s *mutaah* and the parties’ assets have been taken into account in the implementation of my order, I have ordered for the parties to retain assets in their respective names and there is no further *mutaah* payable.

34 I would add that I have not drawn any adverse inference against the Husband. Although I have indicated that the values of the Husband’s HSBC Account ending with 492 and HSBC USA Account ending with 5888 are unknown, I would infer from the documents provided that these accounts have either closed or there were no significant balances in these accounts.

### **Orders made**

35 My orders are as follows:

- (1) There is no further *nafkah iddah* payable.
- (2) There is no further *mutaah* payable.

(3) The Matrimonial Flat 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 make the requisite 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 divided as follows:
  - (a) A sum of \$12,400.00 shall be retained by and/or paid to the Husband.
  - (b) The balance sum shall be retained by the Wife solely.

(4) The Husband shall have the first option to buy over the Wife's share of the Matrimonial Flat.

(5) If the Husband wishes to exercise the first option to buy, the Husband shall provide the Wife with written notice of such intention within one (1) month from the date of this Order. Within two (2) months from the date of the written notice, the Husband shall pay the Wife a sum equivalent to the net value of the Matrimonial Flat less a sum of \$12,400.00. The net value of the Matrimonial Flat shall be the difference between its market value (based on valuation conducted by a jointly appointed valuer) and the outstanding loan amount as at the date of the valuation. The Wife shall make the requisite refund to her CPF account from the payment received from the Husband. For the avoidance of doubt, the Husband shall be solely responsible for the outstanding loan on the Matrimonial Flat after the Matrimonial Flat has been transferred to his sole name.

(6) In the event that the first option is not exercised for any reason within the time specified, the parties shall proceed to sell the Matrimonial Flat in the open market in accordance with [3]. For the avoidance of doubt, the time period of nine (9) months includes the time frame for the exercise of the first option by the Husband.

(7) In the event that the Matrimonial Flat is sold in the open market, after the making of the refund into the Husband's CPF account of the required CPF monies from the sale of the Matrimonial Flat, the CPF Board ('Board') shall transfer, from the monies standing to the credit of the Husband in the following CPF account of the Husband, the amount specified as follows ('Ordered Amount') to the Wife's CPF account, pursuant to section 52(3)(d) of the Administration of Muslim Law Act 1966 (2020 Rev Ed):

Husband’s CPF account to transfer from	Amount to transfer
Ordinary Account	The entire sum refunded into the Husband’s CPF account from the sale of the Matrimonial Flat

- (8) The Board shall only transfer the Ordered Amount after the Board has been notified of the sale of the Matrimonial Flat and the refunds have been credited into the CPF account of the Husband.
- (9) This order is made subject to the Central Provident Fund Act 1953 (2020 Rev Ed) (‘CPF Act’) and the subsidiary legislation made thereunder. The Board shall give effect to the terms of this order in accordance with the provisions of the CPF Act and the subsidiary legislation made thereunder.
- (10) The Wife shall recover any shortfall between the Ordered Amount and the payment received by her from the Board or transferred to her CPF account as a debt due from the Husband to her.
- (11) The parties, including the Board, shall be at liberty to apply for further directions or orders generally.
- (12) Save as set out above, the parties shall retain assets in their respective names.
- (13) There is no order made on the custody, care and control of, and access to the children of the parties, in light of the Syariah Court’s Order of Court dated 3 March 2021 granting permission to the parties under section 35A(2) of the Administration of Muslim Law Act 1966 to continue civil proceedings, and the orders made by the Family Justice Courts in FC/OSG 164/2020.

Note:

- 1 In *GG v GH* (2023) 9 SSAR 189 and *GS v GT* (2023) 9 SSAR 247, the Syariah Court took the view that the operative date for determining the *valuation* of matrimonial assets should be the date of the ancillary matters hearing, by applying values nearest to the ancillary matters hearing date, and that this operative date is also applicable to the valuation of moneys in the parties’ Central Provident Fund accounts and bank accounts. In *GS v GT*, the Syariah Court observed that these are typically values contained in the parties’ affidavits of evidence-in-chief (“AEICs”) (as the parties’ assets and the values of these assets would be declared in this document).
- 2 In the present case, the Court was presented with two sets of values – in the parties’ AEICs and affidavits-in-reply (“AIRs”) – but adopted the values in the AEICs instead of AIRs (see [26]). Although *GG v GH* and *GS v GT* set out the default or starting position, this default or starting position can be departed from where the situation

requires it. One example is a situation where the Court seeks to achieve consistency in values. If the AIR provides updated values only for selected accounts, in the interest of consistency, the Court may adopt the values in the AEICs to avoid cherry-picking of values for different periods that would benefit one party and prejudice the other. Another situation is where the values in the AEICs and AIRs are *significantly* different and there is no satisfactory explanation for the difference. This is in line with the Court's observation in *GS v GT* where it held that the operative date for the identification of matrimonial assets ought to be at the time of the filing of AEICs instead of the ancillary matters hearing as this is the time when the parties provide a declaration of their assets. Ideally, the parties should not be disposing any of the assets that have been declared until the conclusion of the ancillary matters hearing, but if the circumstances require it, the parties will have to account for this at the ancillary matters hearing.

- 3 Be that as it may, the Court is at liberty to claw back assets or adopt a different valuation date for specific assets should the Court find that there has been dissipation.