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v
GP

[2023] SGSYC 10

Syariah Court — Originating Summons No 60536
Guy bte Ghazali
6 October 2023

Divorce — Division of matrimonial assets

Divorce — Mutaah — Payment

Case(s) referred to

ANJ v ANK [2015] 4 SLR 1043

AYQ v AYR [2013] 1 SLR 476

Legislation referred to

Administration of Muslim Law Act 1966 (2020 Rev Ed) ss 51(2), 51(3), 52(7),
52(8)

At the Syariah Court:

Sumaiyah Abdul Kader (IRB Law LLP) for the plaintiff

Rafidah A Wahid (RW Law Practice) for the defendant

Parties:

Defendant – Husband

Plaintiff – Wife

[Editorial note: No grounds of decision were issued by the Appeal Board for this case. The Order of the Appeal Board is set out below after the grounds of decision of the Syariah Court.]

[Editorial note: This is the grounds of decision of the Syariah Court dated 6 October 2023.]

6 October 2023

Guy bte Ghazali (Senior President, Syariah Court):

Introduction

1 The parties married on 22 May 1998. The plaintiff is the wife (hereinafter referred to as “the Wife”) and the defendant is the husband (hereinafter referred to as “the Husband”).

2 The parties have one child (son), born in 1998, who has attained majority age. The Wife has a son from a previous relationship, born two years earlier, in 1996. It appears from the Wife’s Case Statement and the Husband’s Memorandum of Defence that the name of the elder child (*ie*, Wife’s son from her previous relationship) carries the Husband’s name (*ie*, “Bin [Husband’s name redacted]”). The Husband has clarified in his Affidavit of Evidence-in-Chief at [42] that the said child has not been legally adopted by him.

3 Three *talak* was pronounced by the Husband at the hearing on 16 August 2022. The marriage was accordingly dissolved by three *talak bain kubra*.

4 As at the date of the *talak*, the parties had been married for 24 years and three months. Against the backdrop of case authorities, this is a considered a long marriage.

5 On 26 August 2022, I made the following orders on the ancillary matters:

(1) There is no order for nafkah iddah.

(2) There is no further mutaah payable by the Husband to the Wife.

(3) Within five (5) months from the date of this Order, the matrimonial flat at and known as [address redacted] (‘the Matrimonial Flat’) shall be transferred (other than by way of sale) to the Wife, upon the Wife making Central Provident Fund (CPF) refunds of \$48,800.00 to the Husband’s CPF account, being only part of the required CPF refunds.

(4) The parties shall execute, sign or indorse all necessary documents to effect the transfer of the Matrimonial Flat.

(5) The President or registrar of the Syariah Court under section 53A of the Administration of Muslim Law Act 1966 (2020 Rev Ed) is empowered to execute, sign or indorse all necessary documents relating to the transfer of the Matrimonial Flat on behalf of either party should either party fail to do so within 14 days of written request being made to the party.

(6) In the event that the transfer of the Matrimonial Flat is not effected within the stipulated period of five (5) months for whatsoever reason, the Matrimonial Flat shall be sold in the open market within six (6) months thereafter. The proceeds of sale shall be apportioned as follows:

- (i) To pay the outstanding loan to OCBC Bank.
 - (ii) To pay the requisite Central Provident Fund (CPF) refunds in accordance with applicable CPF laws to both parties’ CPF accounts.
 - (iii) To pay all expenses arising from the sale, including the payment of agent’s commission, and other cost of and expenses of the sale.
 - (iv) The remaining sale proceeds shall be retained by the Wife solely.
- (7) In the event of sale of the Matrimonial Flat, 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 (‘the Board’) shall transfer, from the monies standing to the credit of the Husband in the following CPF account of the Husband, the amount calculated as follows (‘the Ordered Amount’) to the Wife’s CPF account:

Husband’s CPF account to transfer from	Amount to transfer
Ordinary Account	The entire amount refunded to the Husband’s CPF account pursuant to the sale of the Matrimonial Flat, less a sum of \$48,800.00

- (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 Husband’s CPF account.
- (9) This order is made subject to the Central Provident Fund Act (Cap. 36) (‘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.

6 The Husband has filed an appeal against the whole of my decision, except the orders on *nafkah iddah* and that the parties shall retain assets in their respective names.

7 I set out below the reasons for my decision.

Nafkah iddah

8 Notwithstanding the three *talak*, the Wife has sought “*nafkah iddah*” in the sum of \$500.00 per month for three months. An order for *nafkah*

iddah is made pursuant to s 51(2) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) (“AMLA”). The said subsection reads:

A woman who has been divorced may, by application to the Court, obtain an order against her former husband for the payment from time to time of her maintenance and the provision of necessary clothing and suitable lodging for the period of her *iddah*.

9 As the marriage has been dissolved by three *talak bain kubra*, the Wife is not entitled to an order for *nafkah iddah* under s 51(2) of the AMLA.

10 That is not to say that a wife who has been divorced and who is not or has ceased to be entitled to an order for *nafkah iddah* under s 51(2) of the AMLA cannot seek an order for maintenance from the Court. The wife can do so but under s 51(3) of the AMLA. The said subsection reads:

A woman who has been divorced and who is not or has ceased to be entitled to an order for maintenance under subsection (2) may apply to the Court and the Court may, if satisfied that it is just and proper to do so in view of all the circumstances of the case, make an order against the former husband for the payment by him of such sums for such period as the Court considers fit.

11 Unlike s 51(2) of the AMLA, which does not stipulate a legal threshold save for limiting the husband’s maintenance obligation to “the period of [the wife’s] *iddah*”, the Court will only order maintenance under s 51(3) if the Court is satisfied that “it is just and proper to do so”. The onus is on the wife to establish this. In this case, it is the Wife’s counsel’s submission that “it is just and proper” for the Court to order maintenance under s 51(3) as the three *talak* pronouncement was a unilateral decision by the Husband and as such, the Wife should not be deprived of “*nafkah iddah*”. I am unable to accept this argument as this will mean that maintenance under s 51(3) should be granted as a matter of course to wives who have been divorced by three *talak*. If indeed so, it would not have been necessary for the provisions in the AMLA to distinguish wives who are entitled to receive maintenance during the period of *iddah* (under s 51(2)) as is the case for marriages dissolved by *talak raji’i* (revocable *talak*), and wives who are not or have ceased to be entitled to *nafkah iddah* as is the situation where a revocable *talak* has become irrevocable or where an irrevocable *talak* (*talak bain*) has been pronounced.

12 As the marriage was dissolved by three *talak bain kubra*, I have made no order for *nafkah iddah*. I have also made no order for maintenance (*nafkah*) under s 51(3) of the AMLA. I note that the Husband has not appealed against this part of my decision.

Mutaah

13 With regard to *mutaah*, the Wife has made a claim for \$15.00 a day for the duration of the marriage while the Husband has offered \$2.00 a day for the same period. It is not the Husband's position that the Wife is not entitled to *mutaah* but the dispute is in respect of quantum. In determining the appropriate award for *mutaah*, I have taken into account the Husband's means. It is the Husband's position that he has been unemployed since April 2020 due to the COVID-19 pandemic. Prior to that, he was working as a managing director overseas drawing a salary equivalent to \$12,000.00 per month. According to the Husband's counsel, the Husband had worked overseas "for over 20 years". Taking into account the Husband's earning capacity but providing a "discount" given the Husband's circumstances at the time of hearing, I find that it is appropriate to award the Wife *mutaah* in the sum of \$70,000.00 (or about \$8.00 a day for the duration of the marriage).

14 In terms of implementing the *mutaah* order, I have deducted this sum of \$70,000.00 from the Husband's share in the matrimonial flat ("Matrimonial Flat") (see [28] below). In the circumstances, there is no further *mutaah* payable by the Husband to the Wife.

Division of matrimonial assets

Applicable law

15 To arrive at a just and equitable division of the matrimonial assets in accordance with the objective set out in s 52(7) of the AMLA, I have applied the structured approach laid out in the Court of Appeal case of *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*"). The structured approach is suitable to be applied in this case as it involves a dual-income marriage.

16 The structured approach is applied as follows:

(a) First, the Court ascribes a ratio that represents each party's direct financial contributions relative to that of the other party ("the direct ratio").

(b) Secondly, the Court ascribes a ratio that represents each party's indirect contributions to the well-being of the family (*ie*, the party's indirect financial contributions and non-financial contributions) relative to that of the other party ("the indirect ratio"). In ascribing the indirect ratio, a "broad-brush approach" is applied based on "broad factual indicators" such as length of marriage, the number of children, and which party was the children's primary caregiver (see *USB v USA and another appeal* [2020] 2 SLR 588 at [43]).

(c) Thirdly, the Court derives each party's average percentage contribution based on the direct and the indirect ratios (referred to as "the average ratio"; although in most cases, equal weight will be given to the direct and indirect ratios, there will be cases where either the direct or indirect ratio will assume greater importance due to the facts of the case and accordingly, is given more weight than the other).

(d) Finally, the average ratio may be adjusted taking into account various factors. As stated in *ANJ* at [26], the average ratio is a "non-binding figure" and serves as "an indicative guide to assist courts in deciding what would be a just and equitable apportionment". In the context of the Syariah Court, the factors that this Court can consider in deciding whether the average ratio ought to be adjusted are set out in s 52(8) of the AMLA. The factors set out in s 52(8) of the AMLA are non-exhaustive.

Matrimonial Flat

17 With regard to the Matrimonial Flat, the following facts are undisputed between the parties:

(a) The value of the Matrimonial Flat is \$850,000.00. There is an outstanding loan on the Matrimonial Flat with OCBC Bank in the sum of \$393,651.45. As the parties agree on both the value and the outstanding loan amount, the net value of the Matrimonial Flat is also not in dispute. The net value of the Matrimonial Flat is \$456,348.55.

(b) The parties agree that the ratio of their direct financial contribution to the Matrimonial Flat is 64:36 in the Wife's favour. In this regard, the Wife has utilised \$233,060.01 of her principal Central Provident Fund ("CPF") moneys towards the purchase of the Matrimonial Flat while the Husband has utilised \$126,775.88 of his principal CPF moneys.

18 As for indirect ratio, the Wife submitted an indirect ratio of 80:20 in her favour while the Husband submitted an indirect ratio of 50:50.

19 Adopting a broad-brush approach, and taking into account the facts of this case, I have accepted the Wife's submission on indirect ratio. In doing so, I considered the following broad indicators:

(a) This is a long marriage of 24 years and three months.

(b) The parties have one child. As between the parties, the Wife was the primary caregiver of the child as the Husband was working overseas for a significant period until 2020 when the COVID-19 pandemic occurred. By then, the child had already attained

majority age. Although it is the Husband’s position that his mother and sister assisted with the caregiving of the child, the apportionment of indirect ratio has to be considered as between the parties only. The support extended by other family members cannot be attributed to either party as their indirect financial contribution.

(c) The Wife worked during the marriage and made significant financial contributions to the household and family expenses. As an indication of the Wife’s financial ability, between 2019 and 2022 (both years inclusive), the Wife’s average gross annual income was \$93,518.50 or almost \$8,000.00 per month. Although the Husband too contributed financially to the household and family expenses (it is his position that he channelled 75% of his salary to the Wife), the management of the family’s finances was attended to by the Wife during the period when the Husband was working overseas. It is noted that it is the Husband’s position that he ceased employment in April 2020.

20 Applying equal weightage to both direct and indirect ratios, the average ratio is 72:28 in the Wife’s favour. I have made no adjustment to the average ratio.

	Wife	Husband
Direct financial contribution ratio	64	36
Indirect ratio	80	20
Average ratio	72	28

Parties’ combined CPF account balances

21 With regard to the parties’ combined CPF account balances (*ie*, the total amount in both parties’ CPF Ordinary, Special and Medisave Accounts), the Wife has claimed \$18,000.00 from the Husband’s CPF moneys. A transfer of the said sum will result in the Wife receiving 80% of the parties’ combined CPF account balances. It is the Husband’s position that there should be no division of the parties’ CPF account balances. In other words, the parties shall retain the CPF moneys in their respective names.

22 The Wife has a total of \$223,654.74 in her CPF Ordinary, Special and Medisave Accounts. The breakdown is as follows:

- CPF Ordinary Account:\$900.22
- CPF Special Account:\$156,754.52
- CPF Medisave Account:\$66,000.00

23 The Husband has a total of \$78,539.45 in his CPF Ordinary, Special and Medisave Accounts. The breakdown is as follows:

CPF Ordinary Account:\$18,458.27

CPF Special Account:\$35,824.21

CPF Medisave Account:\$24,256.97

24 The parties’ total CPF account balances amount to \$302,194.19. The parties agree that the ratio of their direct financial contribution is 74:26 in the Wife’s favour.

25 I have applied the same indirect ratio for both the Matrimonial Flat and the parties’ combined CPF account balances, following the guidance in *AYQ v AYR and another matter* [2013] 1 SLR 476 at [22]–[23], which is authority for the proposition that the Court must apply the same indirect ratio constantly across all classes of assets.

26 Applying the same indirect ratio of 80:20, the average ratio is 77:23 in favour of the Wife. I have made no adjustment to the average ratio.

	Wife	Husband
Direct financial contribution ratio	74	26
Indirect ratio	80	20
Average ratio	77	23

27 The Wife’s 77% share of the parties’ combined CPF account balances is \$232,689.53. Less the amount of CPF moneys in the Wife’s name, the shortfall that is to be satisfied from the Husband’s CPF moneys is \$9,034.79, which I have rounded off to \$9,000.00.

Implementation of the division order

28 The Husband’s 28% share in the Matrimonial Flat, based on its net value of \$456,348.55, is \$127,777.59. Less the Wife’s *mutaah* in the sum of \$70,000.00, and the Wife’s share in the Husband’s CPF account balances in the sum of \$9,000.00, the Husband’s remaining share in the Matrimonial Flat is \$48,777.59, which I have rounded off to \$48,800.00. This is the amount which the Husband will be receiving by way of CPF refunds from the transfer of the Matrimonial Flat to the Wife (as the Wife wishes to retain the Matrimonial Flat), or if the transfer cannot be effected for whatsoever reason, from the sale of the Matrimonial Flat. Any further sum, including any profit arising from the sale of the Matrimonial Flat, or CPF refunds made to the Husband’s CPF account pursuant to such sale (in excess of the sum of \$48,800.00 which the Husband is entitled to), constitutes the Wife’s share and shall be retained by the Wife. To effect this outcome, I have made the orders at [5(3)] to [5(11)] above. As the division order is capable of being implemented by

affecting only the Matrimonial Flat, the parties shall retain assets in their respective names.

29 Also, as the Wife's *mutaah* has been deducted from the Husband's share of the Matrimonial Flat, there is no further *mutaah* payable by the Husband to the Wife.

[Editorial note: This is the order of the Appeal Board (comprising Hamidah bte Ibrahim, Mustazah bin Bahari, Sunari bin Kateni) dated 28 February 2024.]

ORDER OF APPEAL BOARD

1. UPON THE APPEAL No 30/2022 AND UPON HEARING the Appellant appearing in person and Counsel for the Respondent, it is **ADJUDGED THAT** the appeal be and is hereby dismissed.

2. The Appellant shall pay \$2,000.00 to the Respondent as the costs of the appeal.

At the Appeal Board:

Appellant in person

Mohd Dzuleghmal bin Mohd Dzuleghram (IRB Law LLP) for the respondent

Parties:

Appellant (Defendant – Husband)

Respondent (Plaintiff – Wife)
