IC
v
IB

[2024] SGSAB 1

Syariah Appeal Board — Appeal No 7 of 2022; Motion No MO1/07/2022
Hamidul Haq, Mohamed bin Ali, Azmin bin Jailani
6 June 2024

Divorce — Custody — Access — Care and control

Divorce — Division of matrimonial assets

Case(s) referred to

Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co) [2019] 2 SLR 341

ANJ v ANK [2015] 4 SLR 1043

DZ v EA (2021) 8 SSAR 241

GI v GJ (2023) 9 SSAR 209

HM v HL (2021) 9 SSAR 316

IB v IC (ID, intervener) (2023) 9 SSAR 590

UYK v UYJ [2020] 5 SLR 772

WKM v WKN [2024] 1 SLR 158

Yeo Chong Lin v Tay Ang Choo Nancy [2011] 2 SLR 1157

At the Appeal Board:
Rafidah Wahid (R W Law Practice) for the appellant
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Parties:
Appellant (Defendant – Husband)
Respondent (Plaintiff – Wife)

[Editorial note: The grounds of decision of the Syariah Court is reported at (2023) 9 SSAR 590.]

[Editorial note: This is the grounds of decision of the Appeal Board dated 6 June 2024.]

6 June 2024

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

Introduction

1 This judgment deals with the defendant-husband's appeal against part of the decision of the learned Senior President of the Syariah Court (the "Senior President") dated 28 January 2022. The husband's appeal relates specifically to the Senior President's orders on the division of one of the matrimonial properties, and her orders dealing with the children of the marriage. [For completeness, at the time the husband filed his Notice of Appeal, he had indicated that he was appealing against the entirety of the Senior President's decision. However, in his Petition of Appeal (which was filed after the Senior President's grounds of decision (the "GD"), the husband clarified that he was only appealing the two matters highlighted above.]

2 After considering the parties' documents, written submissions, and their respective oral arguments at the hearing before us, while we were minded to make some adjustments to the Senior President's findings, we largely upheld her orders.

3 We now provide the grounds of our decision.

Background

The parties

4 The parties were married in June 2004. There are three children to the marriage (the "Children"). The first and second child ("C1" and "C2"), both boys, were born in 2005 and 2007 respectively. The third child ("C3"), a girl, was born in 2011.

The divorce proceedings in the Syariah Court

5 The plaintiff-wife commenced divorce proceedings in October 2019. The marriage was dissolved on 16 November 2019 by the pronouncement of *talak wajib* by the husband's *hakam*. Accordingly, the Syariah Court decreed a divorce by one *talak bain sughra* (irrevocable divorce). At the time the marriage was dissolved, the parties were married for 17 years and seven months.

6 As noted earlier, the husband's appeal relates to the Senior President's decision on the division of one of the matrimonial assets, and her orders relating to care and control and access of the Children. We briefly set out the parties' general positions on these two issues.

Division

7 In the proceedings before the Syariah Court, the parties' dispute principally centred around three assets – one HDB flat (the "Flat"), one condominium (the "Condominium"), and the parties' respective Central Provident Fund ("CPF") moneys.

8 As regards the Flat, there was no dispute that the Flat had been fully paid, and the parties agreed that the value of the Flat was $450,000. In terms of division, the wife's initial position was that it be transferred to her with no CPF refunds to the husband. She subsequently changed her position in respect of the CPF refunds to the husband.

9 The husband's position was the complete opposite to that of the wife, asserting that the Flat be transferred to him with no CPF refunds made to the wife. In the alternative, the husband contended that the Flat be sold in the open market, with the nett sale proceeds divided 90:10 in his favour. As part of his submissions, the husband also asserted that his father had an interest in the Flat because of a $160,000 loan the father had extended to the husband towards the acquisition of the Flat. This loan was purportedly extended by the father through a corporate entity ("IMPL"). It is on that basis that should the Flat be sold, the nett sale proceeds would be the sum *after* repayment of the $160,000 loan.

10 As regards the Condominium, the parties were similarly *ad idem* as to its nett value after factoring in the outstanding mortgage. As noted in the Senior President's GD, the nett value of the Condominium was assessed as $450,300.

11 The parties' cases in respect of how the Condominium was to be divided was essentially the same as the Flat – both essentially wanted the entirety (or the lion's share) of the asset. The wife's position was that the Condominium be sold in the open market, with the nett sale proceeds divided 80:20 in her favour. On the other hand, the husband's main case was that the Condominium be transferred to him "absolutely". In the alternative, the husband asserted that in the event the Condominium were to be sold, the wife should receive no share of the proceeds. Put another way, the husband sought 100% of the net sale proceeds.

12 Additionally, just like the Flat, the husband asserted that his father had an interest in the property as a result of a loan amounting to $340,450.15 extended by him through IMPL. In the event the Condominium was sold, the husband sought for orders that this loan amount be repaid using the sale proceeds.

13 As regards the CPF moneys, the wife claimed a 40% share of the husband's CPF moneys. Not surprisingly, the husband objected to the wife's claim, contending that no order be made in respect of the parties' CPF moneys. That said, at the hearing before the Senior President, the

husband's counsel left it to the court to make the determination on the division of the parties' CPF moneys.

Care and control of the Children

14 With regard to the Children, the parties unsurprisingly took diametrically opposed positions regarding care and control. As regards access, the wife submitted that the husband be given reasonable access to the Children in the event that she be granted care and control. On the other hand, the husband argued that should he be granted care and control, the wife should only be entitled to supervised access with no overnight access. That was the position he took in the proceedings before the Syariah Court. However, for the purposes of the appeal, the husband's change his position, and submitted that the wife be granted reasonable access.

15 We pause here and note that whilst the husband adopted, correctly in our view, a more facilitative and conciliatory position on appeal, we found it apposite to highlight that it was not lost on the Board in its review of the Record of Appeal (in excess of 1,500 pages) the entrenched acrimony and parental conflict between the parties. This is evident from the nature of the allegations and contentions levelled against each other (including, amongst other things, the husband's "verbal and psychological ill-treatment", the wife being a "habitual liar", how the husband is not an "exemplary father" by introducing C1 to "*haram* vices", the wife's infidelity, her emotionally blackmailing of the Children, and her explicit sexual habits). That was the state of the parties' acrimony leading up to the hearing before the Senior President.

The Senior President's decision

16 We now turn to the Senior President's decision on the aforementioned issues.

Division

17 On the issue of division, the Senior President first determined that the "structured approach" (as endorsed by this Board in *DZ v EA* (2021) 8 SSAR 241) be adopted in calculating the proportion of division of the matrimonial assets. Next, as regards the categorisation of the matrimonial assets, the Senior President applied the "global assessment methodology" as opposed to the "classification methodology". In other words, the Senior President determined that all the matrimonial assets be placed in a collective pool for the purposes of valuation and division, as opposed to each matrimonial asset being valued and divided individually (or within certain classes of assets).

18 On that basis, the Senior President proceeded to assess the parties' contributions. In this regard:

Direct contribution – the Flat

(a) Starting with the Flat, the Senior President considered the parties' respective CPF moneys used to pay for the Flat. The Senior President also considered the moneys spent by the husband towards renovation expenses.

(b) As regards the $160,000 "loan" by IMPL, the Senior President was prepared to accept that that amount was a loan extended to the husband. However, she found that the loan *did not* amount to the husband's father and/or IMPL acquiring an interest in the Flat. As such, the Senior President was minded to award the sum of $150,992.80 (being the actual amounts paid to HDB) as being the husband's direct financial contribution towards the acquisition of the Flat. For completeness, the Senior President noted that any recourse the husband's father and/or IMPL wished to pursue against the husband for the repayment of the loan would have to be done by way of civil proceedings, and not matrimonial proceedings before the Syariah Court.

(c) On that basis, in terms of the actual figures, the Senior President had determined that the wife had contributed $48,647.10 towards the acquisition of the Flat, whilst the husband contributed $261,470.80. This amounted to a direct financial contribution ratio of 16:84 in the husband's favour.

Direct contribution – the Condominium

(d) As regards the Condominium, it was not in dispute that neither party utilised their CPF moneys towards the payment of the property. The mortgage was paid in cash. In this connection, it was also not in dispute that the mortgage payments for the Condominium were made out of the husband's DBS account (the "DBS Account"). Whilst payment was made from the DBS Account, the parties asserted that they were solely contributing towards the amounts paid in the DBS Account, which in turn meant that they were solely paying for the Condominium.

(e) In this regard, the husband's case was that between December 2012 to August 2020 [*ie*, 93 months], he had paid the sum of $338,148. The husband arrived at this figure by extrapolating a monthly mortgage sum of $3,636 during the aforementioned period [As highlighted in his affidavit (*ie*, $3,636 x 93 = $338,148). This is based on the statement summary from the DBS Account he tendered only from 2017 to 2020. However, this amount of $3,636 differs from the monthly payments of $3,283 (or a yearly sum of

$39,396) shown in the wife's bank statement summaries tendered by her]. On the other hand, the wife had, in the proceedings in the Syariah Court, provided some documentary evidence of what she said were her contributions towards the DBS Account from 2013 to 2017, and how much was being paid for the mortgage. These contributions amounted to $188,481.24. Given that the wife's claim was only for this sum amount, and the parties did not appear to dispute the total amount of mortgage payments made, the Senior President first attributed the difference solely to the husband (*ie*, $338,148 – $188,481.24 = $149,656.76).

(f) As regards the $188,481.24 claimed by the wife, the Senior President observed that the deposits into the DBS Account came from three sources – the wife, the husband, and the rental proceeds from the Flat. This co-mingling was acknowledged by the husband himself. Upon making those observations, the Senior President conducted a review of the wife's documents to apportion the sum to be attributed to the wife and the husband from the period of 2013 to 2017. For moneys which were attributed to the parties, she allocated the full amount to the respective the parties. Insofar as the moneys came from rental proceeds, the Senior President allocated those amounts equally between the parties.

(g) After conducting this exercise, the Senior President assessed that out of the $188,481.24, $165,787.53 could be attributed to the wife, and the balance $22,703,71 was attributable to the husband.

(h) Lastly, as regards the loan from the father/IMPL, the Senior President employed the same approach as she did with the loan moneys for the Flat, and attributed the sum of $305,450.16 to the husband.

(i) After conducting this exercise, the Senior President assessed that the aggregate contribution by the wife was $165,787.53, whereas the husband was $477,810.63 (*ie*, $149,656.76 + $22,703.71 + $305,450.16). This resulted in a direct financial contribution ratio of 74:26 in the husband's favour.

Direct contribution – CPF moneys

(j) As regards the parties' CPF moneys, the Senior President attributed to each party the full value of the moneys in their respective CPF accounts.

Direct contribution – total

(k) Further to the foregoing, the Senior President eventually arrived at an overall direct financial contribution ratio of 22:78 in the husband's favour. For the purposes of our decision, we found it

appropriate to reproduce the Senior President's tabular calculations here:

S/N	Asset	[Value of] Wife's Direct Financial Contributions	[Value of] Husband's Direct Financial Contributions
1	[Flat] Value $450,000 (fully paid up)	$72,000 (16% of value)	$378,000 (84% of value)
2	[Condominium] Net Value $450,300	$117,078 (26% of net value)	$333,222 (74% of net value)
3	Moneys in parties' CPF Ordinary, Special and Medisave Accounts	$36,395.75	$91,898.07
Total direct financial contributions ($1,028,593.82)		$225,473.75 (22%)	$803,120.07 (78%)

(l) We pause here and note in arriving at the parties' aggregate direct financial contributions, the Senior President did not use her figures of the actual amounts paid for each of the two properties. Instead, she used the percentage ratio and applied it to the net value of each of the properties to determine the amount to be attributed to each party. Had she used the actual contribution figures, it would have resulted in an eventual ratio of 23.2:76.8 in the husband's favour (*ie*, a 1.2% difference). We found the difference to be *de minis*, and that nothing turned on this.

Indirect contribution

(m) In terms of indirect contribution, the Senior President assessed the indirect contributions ratio to be 70:30 in the wife's favour. In arriving at this ratio, the Senior President observed, among other things, that:

(i) The marriage was "moderately long".

(ii) While the parties both contributed to the household and family expenses, the wife's financial contributions were "significantly more". We pause here and note that the Senior President did not elaborate the nature and extent of this asymmetry.

(iii) The wife was the primary caregiver when the Children were younger, and continued to manage the Children after she started her business.

(iv) The Children were spending more time with the wife even after she moved out. That said, the Senior President also observed during her judicial interviews with the Children that they have been spending more time with the father in recent times.

Final ratio of division

(n) In determining the final ratio of division, the Senior President first decided to apply equal weightage to both direct and indirect contributions. On that basis, the Senior President arrived at the final ratio as follows:

	Wife	**Husband**
Direct financial Contribution	22%	78%
Indirect contribution	70%	30%
Average ratio	46%	54%
Share of matrimonial pool ($1,028,593.82)	$473,153.16	$555,440.66

19 After determining the proportion and value of the parties' respective shares, the Senior President then decided on how the ratio of division was to be implemented. In this regard, after factoring in his CPF moneys, the Senior President determined that the balance equity to be allocated to the husband was $463,542.59 [*ie*, $555,440.66 – $91,898.07]. In order to give effect to this balance equity, the Senior President granted the husband's prayer that he retain the Flat (valued at $450,000) without any refunds to the wife. The remaining balance ($13,542.59) was deducted from the husband's overall liability to the wife for *mutaah*.

20 The upshot of this, which forms the heart of the husband's appeal against the Senior President's decision, is that the Wife was then "given" the Condominium. Given the apparent significance of this decision, we reproduce the relevant extracts of the Senior President's findings in full:

> 45 The Husband's 54% share of the matrimonial pool is $555,440.66. Less the moneys in the Husband's CPF Ordinary, Special and Medisave Accounts (totalling $91,898.07), the Husband's remaining share in the matrimonial pool is $463,542.59. At the hearing of this matter, the Husband has, through his counsel, informed the Court that he would like to retain the HDB flat. The HDB Flat is fully paid up. Its agreed value is $450,000. As his remaining share in the matrimonial pool (after retention of his CPF moneys) exceeds the value of the HDB flat, I have allowed the Husband to retain the HDB Flat (with no CPF refund required to be made to the Wife's CPF account). This leaves the Husband with a balance share

> of $13,542.59 in the matrimonial pool. As stated at [7] above, I have awarded the Wife *mutaah* of $45,000.00. If we apply the Husband's balance share of $13,542.59 towards payment of *mutaah*, there remains a shortfall of $31,457.41, which I have rounded off to $31,500. I have ordered for the Husband to pay this balance *mutaah* amount of $31,500.00 in instalments of $1,500.00 per month.
>
> 46 Following the above, **the remaining assets in the matrimonial pool namely, the moneys in the Wife's CPF Ordinary, Special and Medisave Accounts and the Condominium, are to be retained by the Wife. As the Wife has sought for the Condominium to be sold, I have ordered for the Condominium to be sold and the net sale proceeds (after payment of the outstanding housing loan and costs and expenses related to the sale) to be solely retained by the Wife.**
>
> 47 Given that I have ordered for the HDB flat to be transferred (other than by way of sale) to the Husband with no CPF refund to be made to the Wife's CPF account, and for the Wife to retain the entire net sale proceeds from the sale of the Condominium, I have granted each of them proxy powers and for the Wife to have sole conduct of the sale of the Condominium and the sole authority to determine its sale price. There will be no prejudice to each of them. Instead, the proxy powers will facilitate the implementation of the transfer of the HDB Flat to the Husband and the sale of the Condominium by the Wife, given the state of their relationship at present. As for assets in their own names (specifically moneys in their CPF Account), they shall continue to retain these assets in their respective names.
>
> 48 I am of the view that the division proportion arrived at (*ie*, awarding the Wife 46% of the matrimonial pool) is just and equitable for a dual-income, 17-year marriage (close to 18 years) with three children where the Wife's direct financial contribution is 22%. To provide context, if this was a single income marriage (and the Wife had not made any direct financial contribution to the matrimonial pool), the Wife would have received 35% to 40% (likely 40% given that the length of the marriage is closer to 18 years) of the matrimonial assets if we consider the trends set out in the Court of Appeal case of *BOR v BOS and another appeal* [2018] SGCA 78 ("BOR") for marriages of this length (described as "moderately lengthy marriages" in BOR).
>
> [emphasis added in bold]

Care and control and access

21 We turn next to the Senior President's decision relating to the Children. On the materials before her, the Senior President ordered that both parties be granted shared care and control of the Children. In this regard, the Senior President left it to the parties to work out the Children's care and control arrangements between themselves.

22 In the event that the parties were unable to come to an agreement, she provided for the following care and control arrangements:

(a) For the Children to be with the husband from Wednesdays after school (or 2.00pm on non-schooling days) till Saturday 9.00pm. As for the wife, the Children will be with wife from Saturday 9.00pm until Wednesday when the Children have to go to school (or 2.00pm on non-schooling days).

(b) Annual public holidays and school holidays be shared equally between the parties.

(c) For Hari Raya Puasa and Hari Raya Haji, the parent who does not have care and control of the Children on the day of that public holiday be allowed to spend time with the Children from 3.00pm to 9.00pm, or any other time as may be mutually agreed by the parties.

23 We also note that in arriving at her decision, the Senior President had conducted judicial interviews with the Children. We found it apposite to reproduce the portions of the GD (at [50] and [51]) setting out the Senior President's observations from the interview:

> 50 Care and control is in dispute. I have interviewed all three children. Based on the interviews, I conclude that:
>
> (a) The children have been overly exposed to prolonged parental conflict. They have been triangulated in their parents' dispute, exposed to inappropriate or excessive disclosure of information, and often placed in situations where they are compelled to take sides.
>
> (b) This situation has affected the relationship between the children and their parents. When the children manifest these difficulties through their behaviours, both parents would blame the other party's deficiencies, instead of seeking to gain insight into their individual actions or understanding the impact that their dispute has had on their children.
>
> (c) It would benefit the children if the parties are more attuned to the children's physical, psychological and emotional needs and well-being, especially during this difficult period. Whilst the parents are able to seek solace in their own way, the children look to the parents for comfort, attention, love, and stability.
>
> (d) The siblings have a close relationship and should be kept together without a split living arrangement.
>
> 51 In light of the above, I am of the view that it is in the welfare of the children for the parties to have shared care and control of the children. Both parents have their shortcomings, having emerged from a very difficult episode. The children require both parents to fill each other's gaps at the present time so that their needs can be satisfactorily met. Needless to say, it will be to the children's disadvantage if care and control is granted to only one parent.

The appeal

24 Against the backdrop of the foregoing, we now turn to the husband's appeal.

Division (Condominium)

25 We begin with the issue of division. As can be seen in the husband's petition of appeal, the husband *was not* appealing against the orders made in respect of the Flat. Put another way, the husband was content (or at least not dissatisfied) to receive the Flat in his own name without any CPF refunds to the wife. We pause here and found it apposite to note that while the value of the Flat at the time of the hearing before the Senior President was agreed at $450,000, there is nothing before us to suggest that the Flat, being a property asset, did not have any potential of appreciation.

26 As noted above, the husband's main complaint against the Senior President's decision relates to the Condominium. As gleaned from the materials before us, the husband's contentions can be broadly summarised as follows:

(a) First, that it was incorrect of the Senior President to attribute the *entire* amount of $165,787.53 in the wife's favour. The husband contended that from a proper review of the full bank statements from 2013 to 2017 (which is the subject matter of the husband's motion which we deal with below) will show that on certain months, the outgoings of the DBS Account exceeded the inflows. The upshot of this is that it could not be said that *all* of a party's deposits be attributed towards the payment of the mortgage of the Condominium. Put another way, it was overly simplistic for the Senior President to have made the correlation between inflows and contributions towards the mortgage.

(b) We pause here and note that whilst making this complaint, it similarly could not be gainsaid that the wife's deposits *did not* (if not in whole but at least in part) go towards the mortgage. We also note that the husband provided no alternative proportion which should be attributed towards the wife's deposits. Instead, because of the co-mingling of the moneys in the DBS Account, the husband simply stated that a just and equitable approach would be to divide the amounts equally between the parties. This is on the husband's contended basis that he had assisted and given support to the wife while she carried on her business. In short, he sought to keep the value of what was attributed to him, but for the amounts attributed to her, it should be cut in half because of co-mingling.

(c) Second, the Senior President fell into error by adopting the global assessment methodology instead of a classification

methodology. The husband's principal contention is that the classification methodology ought to have been applied because he had contributed "significantly more" towards the acquisition of the Condominium. This includes obtaining the loan from father/IMPL, obtaining the mortgage loan in his sole name, and further to his earlier contentions, the wife's deposits into the DBS Account from her business were supported by the husband's efforts.

(d) In short, the husband contended that the acquisition of the Condominium was "not wholly the gains off the co-operative partnership of efforts". Further, the husband contended that by adopting the global assessment methodology, the Senior President had in effect vested to the wife the Condominium, causing her to have a windfall due to the "possibility of increase in the value" of the Condominium.

(e) Third, in terms of indirect contributions, the Senior President had erred in assessing the ratio to be 70:30 in the wife's favour. In this regard, the husband contended, *inter alia*, how the Senior President had glossed over the husband's evidence of paying for the "bulk" of the Children's expenses, how the husband had been supporting the wife when she first started her business in 2012 (both financially and non-financially), how he would assist the Children in their schoolwork and sending and fetching them to school and their activities, obtaining the loan from IMPL, and how he had contributed towards the household expenses and Children's maintenance. For those reasons, the husband contended that indirect contributions should have been assessed as 50:50.

(f) Fourth, in terms of the calculation of the final ratio, the husband contended that there should not be an equal weightage between direct financial contributions and indirect contributions, but that direct financial contributions be allocated 70% weightage, with indirect contributions allocated 30% weightage. Put another way, the husband's (already greater) direct contributions should be given even more weightage than indirect contributions. We pause here and note that one consequence of this is that the 50:50 ratio for indirect contribution which the husband was contending (assuming the Board was inclined to accept it), would be reduced even further.

27 In response, the wife makes the following submissions:

(a) First, there is no evidence, save for a sweeping statement that the entire cash contribution of $338,148 originated from the husband. In this regard, the only document adduced by the husband was the mortgage statement of the amounts paid towards

the mortgage for 2017 to 2020. The husband provided no evidence that all the moneys in the account originated from him, especially when there was no dispute that the inflows into the DBS Account came from the wife as well as rental proceeds.

(b) Second, the wife disputed the husband's contention that the moneys into the DBS Accounts were repayments to the husband for his contributions in fronting her operational expenses. Alternatively, even if some payments could be said to have been repayments, such amounts (approximately $25,000) pales in comparison to the wife's deposits in excess of $770,000 into the DBS account.

(c) Third, the wife defended the Senior President's decision to adopt the global assessment methodology. The wife cited various authorities for the proposition that a mere disparity in direct contributions between assets is insufficient to justify adopting the classification methodology. The wife also submitted that if the classification methodology were to be adopted, this would result in the reassessment of the division of the Flat. The upshot of the wife's submission is that the husband was simply playing fast and loose and wanting to have his cake and eat it, taking the benefit of the global assessment methodology when it suited him (*ie*, be awarded the Flat with no CPF refunds), but criticising it because he did not get what *he wanted* (*ie*, the Condominium).

(d) Fourth, as regards indirect contributions, the wife defended the Senior President's assessment of 70:30 in her favour. The wife submitted that there was no evidence that the husband was the main financial provider, and that the documentary evidence showed that the wife was shouldering the bulk of the family's expenses and household bills from the moneys from her business.

(e) Fifth, insofar as the husband took issue with the Senior President not recognising his efforts in obtaining financing to pay for the Condominium for the purposes of indirect contributions, the wife objected to the husband's attempt to essentially "double count" this effort. The effort had already been taken into consideration in the Senior President's assessment of direct financial contributions.

Care and control

28 We turn next to care and control of the Children. The husband makes, among others, the following contentions:

(a) First, the Senior President glossed over the fact that the father continues to be the person who ferries the Children around for

their school and extra-curricular activities. He also coordinates the Children's routines.

(b) Second, the husband pays the bulk of the Children's expenses.

(c) Third, he was actively juggling the Children's affairs and household matters. On the other hand, the wife was rarely present for the Children's school events, and would only attend after repeated reminders and arguments with the Appellant.

(d) Fourth, the husband "tries his best" to guide the Children in their religious development.

(e) Fifth, the wife allows herself to be caught in compromising situations with her partners in front of the Children. She also allows the Children to "engage in vices" while they were residing with her. In other words, the wife has adopted a lackadaisical attitude towards the Children's welfare.

(f) Sixth, in recent times the Children have been spending more time with the husband. This was also observed by the Senior President during her judicial interviews with the Children.

(g) Seventh, insofar as the Senior President alluded to both parents "filling each other's gaps" to collectively meet the needs of the Children, the husband submitted that it has been he who has been filling all of the wife's gaps. Put simply, the wife was never in a position to work in partnership with the husband to attend to the Children, and that it was the husband who, in effect, was singlehandedly managing the affairs of the Children.

29 In response, the wife premised her submissions on the Senior President's judicial interview with the Children. The wife sought to emphasise that the Children were in their teens, and would have the opportunity (and to a certain extent the maturity) to express their own opinions and views to the Senior President. These views would have had an impact to the Senior President's decision, and should be given considerable weight. Separately, a shared care and control order was justified as it gave legitimacy to the wife's involvement in the Children's affairs. On the other hand, a sole care and control order in favour of the father would give rise to a risk that the wife will not be able to spend time with the Children.

The husband's motion to adduce further evidence

30 In support of his appeal, the husband also filed a motion to adduce additional evidence (the "Motion"). The husband's Motion relates to three categories of evidence:

(a) First, the full bank statements of the DBS account from 2013 to 2017, the period of time assessed by the President (the "Bank Statements"). The Bank Statements were in excess of 200 pages. In his submissions, the husband contended that the Bank Statements were relevant and material to show, among other things, the co-mingling of the funds in the DBS Account, and the months where outflows exceeded inflows. This in turn would show that the Senior President fell in error in attributing the wife's inflows entirely towards the mortgage payment of the Condominium. As to why the Bank Statements (which were clearly in this possession and/or custody and/or control during the course of the proceedings in the Syariah Court), the husband highlighted the following:

> I only came to be aware of the [wife's] AIR at the hearing of 16 November 2021. It was suggested, at the part-heard hearing on 21 January 2022, that I could have obtained the bank statements to prove my point, however, at that juncture, I also note that the Senior President was not minded to adjourn further a part-heard ancillary matters hearing, and given that I would require more time to obtain bank statements which spread across five years, I verily believe that I was at a disadvantage at this juncture.

(b) Second, a chronology setting out the details of the Childrens' care arrangements after he conclusion of the divorce proceedings (the "Post-Divorce Chronology"). The Post-Divorce Chronology also spanned in excess of 200 pages, and comprise of messages between the husband and the Children, the Childrens' tutors, teachers and counsellors. Some pages contain multiple screenshots of text messages (some of which are compressed, making reading unnecessarily challenging). In support of his application to include the Post-Divorce Chronology, the husband contended that these documents reflect the reality of the arrangement that the husband has always been the primary caregiver.

(c) Third, evidence of C3's self-harming behaviour, and her reaction towards the wife's remarriage (the "C3 Evidence"). Since the conclusion of the divorce proceedings, the husband noticed C3 engaging in self-harming behaviour. He contends that this is because of how the divorce has taken a toll on her. Additionally, the husband contends that C3's behaviour is related to the wife's remarriage (including the father being told that C3 was being asked to call the wife's new partner "Dad"), and how she has been emotionally and psychologically affected by this.

(d) With regard to the Post-Divorce Chronology and C3 Evidence, the husband acknowledged that these two categories of documents arose after the conclusion of the divorce proceedings. That said, the father contended that:

> … it may technically be one that is more appropriate for a variation application rather than an appeal. However, to file for a variation application to pray for a reverse of shared care and control to a sole one in my favour so near in time from the issuance of the Decree would likely fail and more importantly, I would not have known for sure and with a great degree of certitude that the reasons why the Senior President awarded shared care and control, among others were 'to benefit the children's physical, psychological and emotional needs and well-being' (see para 50(iii) of the GD) during the difficult period. This was only made clear in the GD and **these reasons are no longer tenable, given the new evidence that has come to light above** and are highly relevant to be considered in the Appeal 0-7/2022 as it relates to the children's best interest. [emphasis added in bold]

Our analysis and findings

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

The Motion

32 We first deal with the Motion. The legal principles relating to how the Board exercises its powers to allow further evidence to be adduced on appeal have been expounded in *HM v HL* (2021) 9 SSAR 316 (see [92] to [101]). In *HM v HL*, we also referred to the Court of Appeal decision of *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 on the categories of cases in which *may* justify a relaxation of the *Ladd v Marshall* principles in the interests of justice. To this end, we agree with the husband's submissions that cases involving the welfare and custody of children *might* warrant allowing further material to be adduced.

33 That being said, and as rightly pointed out by the husband in his submissions, the mere fact that the evidence in question falls within the abovementioned category of cases *does not* automatically guarantee its inclusion. We reiterate our earlier observations that 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.

Bank Statements

34 With that in mind, we turn first to the Bank Statements. As noted above, these documents were within the possession and/or control and/or power of the husband at the material time during the proceedings before the Senior President. There was really nothing preventing the husband, in furtherance of his submission that he should

be awarded *full* credit of the mortgage payments, to show that the moneys which went into the DBS Account ought to be attributed to him, both literally and figuratively. In short, it was incumbent on him, in wanting to show he contributed in excess of $338,148, and that amount was solely attributable by him, to have furnished the Bank Statement, *at the outset*.

35 He did not do so.

36 Instead, in his own evidence, he simply made the point that the entirety of the $338,148 be attributed to him, and his only documentary proof is the table of mortgage payments coming out of the DBS Account. On his own evidence, he made this submission *with the knowledge* that the DBS Account were co-mingled with moneys from the wife's business, the rental proceeds, and also moneys from him. Put another way, he himself knew that conceptually, it could not be said that the entirety of the moneys in the DBS Account were from him. Notwithstanding his submission, the simple fact is that the husband could not prove that all the moneys in the DBS were in fact his. On that basis, instead of disclosing the Bank Statements at the relevant time and attempting to undertake a tracing exercise, the husband simply took the position that *all* of the $338,148 be attributed to him.

37 However, when the wife showed the provenance of some of the moneys in the DBS Account from 2013 to 2017, he found himself, in a sense, at the wrong end of his tactical decision. To that end, we were not inclined to accept that the husband was deprived of an opportunity to rely on the Bank Statements. This is also not borne out by the evidence of the Notes of the Proceedings. We found this following portion of the Notes of Proceedings at the hearing on 21 January 2022 (after he received the wife's AIR containing the bank summaries) notable:

> D/C: I will address the Defendant's direct financial contributions. I refer to page 28 of the Defendant's AEIC. His cash contribution is $338,148. He made monthly payment of $3,636 from December 2012 until August 2020. He accepts payments were made from his DBS Account. From 2013 until 2017, he accepts that mortgage payments amounting to $188,491.24 were made from this account. He is attributing the entire payment to him **as all the monies had originated from him**. I refer to page 13 of the Plaintiff's AIR at paragraph 33. She has said, 'The Defendant only gave me money to pay off the mortgage for the Matrimonial Home.' **We do not have documents to show this amount. $338,148 is an estimation.**
>
> [emphasis added in bold]

38 From the above extract, it was clear to our minds that the husband knew that he simply had *no* evidence to prove how the $338,148 originated from moneys solely attributable to him. This is despite the husband's own acknowledgement of co-mingling at the relevant period

of time. On that basis, we were not inclined to agree with the husband's submission that the Bank Statements would cure the alleged prejudice he suffered from the procedural unfairness arising from the wife's disclosure of her account summaries.

39 Even if we were minded to accept that the husband's non-production of the Bank Statements at the relevant time was borne out of circumstance instead of his own tactical misstep, we also did not agree that the Bank Statements, if admitted, would take the husband's case further. Insofar as it was the husband's case that the $167,787.53 assessed by the Senior President ought not to be allocated fully to the wife, that submission could arguably be made even without the Bank Statements. However, the fact remains that there were moneys from the wife and rental, credit of which (either partially or wholly) should be attributed to the wife. In this regard, the Bank Statements *could* have been useful if the husband were able to generate a discernible proportion. However, he could not (or did not) do so. In the face of this somewhat impossible task, the husband simply asserted that the amount be attributed equally between the parties. Such a convenient submission, to our minds, could have been made *without* the Bank Statements.

40 For the above reasons, we were not inclined to accept that the circumstances and significance of the Bank Statements were of a nature which necessitated its inclusion in this appeal.

Post-Divorce Chronology and C3 Evidence

41 We turn next to the Post-Divorce Chronology and C3 Evidence. We deal with these categories of documents collectively because they both deal with post-hearing events ostensibly dealing with welfare issues of the Children.

42 We begin with the extract we reproduced earlier (see [30(d)] above) where the husband acknowledged that such post-hearing events more appropriately fell within the realm of a potential variation application (as opposed to an appeal). Whilst we make no pronouncement (provisional or otherwise) as to whether these two categories of evidence are sufficient for the purposes of a variation, it will be clear by the husband's own statement that these categories of evidence are *new* events occurring after the Senior President's decision which *now render* the Senior President's decision "untenable". Against that backdrop, we highlight our reservation on the wisdom and purpose of including such materials for the purposes of his appeal.

43 Even if we were minded to accept the husband's reasons for wanting to include this evidence in the appeal, we were of the view, adopting the language in *UYK v UYJ* [2020] 5 SLR 772, that these categories of evidence did not have a "perceptible impact" on our

decision. To our mind, these two categories of documents have less to do with the correctness of the Senior President's findings at the time they were made, but more with how *the parties and the Children* were managing the Senior's President's orders. For instance, the Post-Divorce Chronology does not necessarily explain a failure (or unworkability) in the shared care and control order, but instead, the husband's positioning in placing himself as part of the Children's care routine. Similarly, as regards the C3 Evidence, whilst we do not take the things C3 is going through lightly, and not without difficulty, we were not inclined to accept that that category of documents be included as part of this appeal. We also found it apposite to highlight, with some pause, the husband's attempt to attribute the provenance of the C3 Evidence as bring the impact of the divorce and the wife's remarriage. Amongst the many pages of evidence he sought to include, we note that *no* attempt was made by the husband to raise these issues to the wife. Regardless of whatever her response may be, the husband saw it more appropriate to spring such material for the purposes of litigation, as opposed to raising it to the wife.

44 That being said, what these documents indicate to us is that both parties and children have issues implementing the Senior President's orders, and require formalised support in managing this new chapter in their lives. We accordingly make provision for the parties to undergo such support programmes. For those reasons above, we were not inclined to grant the husband's motion.

The appeal

45 We now turn to the substantive appeal. Before dealing with the substantive issues before us, we found it appropriate to reiterate our earlier observations in *HM v HL* on the scope and extent of appellate intervention by the Board (see [124] to [129]). To our mind, a distinction must be drawn between on one hand, a real error of principle or law or fact-finding by the lower court, and on the other, a party's subjective discontentment with the lower court's findings. In this connection, and in particular decisions relating to the welfare of a child, the court is faced with the unenviable task of choosing between the best of two or more imperfect solutions.

Division of the Condominium

(1) Global assessment methodology vs classification methodology

46 With that in mind, we first deal with the issue of the division of the Condominium. On the issue of the Senior President's decision to apply the global assessment methodology instead of the classification methodology, we saw no basis to intervene in the Senior President's

decision. We were inclined to agree with the wife's submission, on the authorities cited, that the mere disparity in direct contributions between the Flat and the Condominium (as well as the CPF moneys) did not automatically warrant using the classification methodology. Save for the husband's contention of the extent of his contribution towards the acquisition of the Condominium, there were no exceptional circumstances or facts which indicate that the Condominium ought to be isolated from the other matrimonial assets, and be divided in isolation from the rest of the assets.

47 Moreover, if the methodology was truly a point of concern to the husband (on his own submission on the nature of his contributions), there was nothing preventing him from raising that issue before the Senior President at first instance, and make submissions on it. However, a review of the Notes of Proceedings did not indicate that such an issue was raised.

48 At the heart of the husband's complaint with the Senior President adopting the global assessment methodology is that this method has, *in his mind*, resulted in him "losing" the Condominium. We found this concern to be more apparent than real and unduly myopic for the simple reason that the same methodology has resulted in the husband retaining the Flat *without making any refunds to the wife*. Whilst the husband complains that the wife *may* obtain a windfall from the "possibility" of increase in the value of the Condominium, what is sauce for the goose is sauce for the gander. The real outcome of the Senior President's orders is that the husband has receiving one property "clean", with the added flexibility of being able to choose to keep it (as per the Senior President's orders), or to sell it. As noted earlier, the Flat is also a property that has the "possibility" of increasing in value from that agreed at the hearing, with both parties benefiting from asset appreciation.

49 Had the Senior President adopted the classification methodology, the final outcome could have been for the parties sell both properties, receive their sale proceeds, and move on with life. By making this submission so as to obtain a share in the Condominium, the husband is effectively cutting off his nose to spite his face.

50 If anything, the husband's complaint would be why, based on the net values of the Flat and the Condominium, the Senior President chose to "give" the husband the Flat instead of the Condominium. The reason for this can be found in the Notes of Proceedings during the hearing on 21 January 2022:

> P/C: My client wants both properties to be sold.
>
> D/C: The Defendant [i.e., the husband] wants to retain the HDB flat. He is prepared to sell the condominium.

51 We pause here and note that it was brought to the Board's attention at the hearing before us that the parties (in particular, the wife) has second thoughts about selling the Condominium (despite submitting the same before the Senior President), and the parties are in pending proceedings to vary the disposition order pending our decision on the appeal. As the matter is not before us, we say no more, but highlight our reservation of the parties' wanting to renege from their own positions before the Senior President, and still wish to hold on to the very asset that is the source of the parties' entrenched positions.

(2) Ratio of division – direct financial contributions

52 We turn next to the Senior President's assessment of the ratio of division. As regards direct contributions, the husband's principal complaint relates to the $165,787.53 the Senior President had allocated to the wife as being her direct contribution. Whilst making this objection, we found it apposite to highlight at the outset that this amount forms part of the larger $338,148 paid out of the co-mingled DBS Account, of which the Senior President immediately awarded the husband $149,656.76 on the simple basis that the wife's claim was only limited to the $188,419.24. Moreover, for the same co-mingled account, the husband was more than content to accept the Senior President's simplistic allocation of $172,360.47 ($149,656.76 + $22,703.71) solely to him, but took issue with the $165,787.24 attributed to the wife.

53 After assessing the materials before us, we first point out that the root cause of this entire controversy lies with *the parties'* own decision to allow the co-mingling of the DBS Account. By taking that approach, both parties have effectively found themselves in a situation where it is virtually impossible for there to be any meaningful categorisation of the inflows and the outflows. Whilst the parties have attempted to make some calculations on the outflows and the inflows, the simple point is that the parties have, *by their own conduct and design*, treated the DBS Account as one central pool for the parties to use at their own convenience.

54 The upshot of this is that there is no discernible way for this Board to come to any specific finding on the proportions of contributions by the parties. In resolving this impasse, we were of the view that as between giving full effect to the amounts calculated by the Senior President, or applying a 50% reduction of such contribution (as submitted by the husband), we found the former the lesser of two evils, and saw no manifest error in the Senior President's approach. In our judgment, the latter would be *more* inequitable to the wife than the former would be arguably inequitable to the husband. This is especially so given that for the other parts of the $338,148 which have been attributed *solely, without question*, to the husband. For completeness, assuming we were minded to go with the husband's approach, the consistent approach would be for the *entire* $338,148 to be divided equally between the parties because it

originated from co-mingled DBS account. The upshot of this is that the parties would be allocated $169,074, which, in the bigger scheme of things, not be markedly different from the outcome arrived by the Senior President.

55 For these reasons, we were not inclined to disturb the Senior President's findings on direct financial contributions

(3) Ratio of division – indirect contributions

56 We turn next to the issue of indirect contributions. Whilst we were broadly in agreement with the Senior President insofar as the equities leaned towards the wife obtaining a higher percentage of the indirect contributions, where we differed slightly was the *extent* of the difference between the wife and the husband. From the extract of her decision above, whilst we note in the GD that the Senior President had given credit to the husband on certain aspects of the caregiving (including the Children spending more time with him in the later part of the proceedings), we were unable fully appreciate where (and how) the wife had contributed "significantly more" than the husband, such that he only be awarded 30% of the indirect contributions. On that basis and not without some difficulty, we were minded to moderately adjust this to a final ratio of 60:40 instead of 70:30 in the wife's favour. For completeness, we were not inclined to accept the husband's submission that the parties' indirect contributions be assessed at 50:50. We found that argument to be a non-starter.

(4) Ratio of division – weightage adjustment

57 Further, we were also not inclined to adjust the weightage between direct financial contributions and indirect contributions. Insofar as the husband was seeking to have a higher weightage allocated to his direct financial contributions, we were of the view that the circumstances of this case did not warrant such an adjustment.

58 In *ANJ v ANK* [2015] 4 SLR 1043, the Court of Appeal referred to its earlier decision in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*"), and observed that direct contributions may command greater weight if the "pool of assets available for division is *extraordinarily large* and all of that was accrued by one party's *exceptional* efforts …" [emphasis added]. In *Yeo Chong Lin*, the matrimonial assets were estimated to be in the region of approximately $116,560,000, and it was not disputed that this was accumulated largely by the efforts, business sense and acumen of the husband in that case. This was *not* the situation in the present case.

59 In view of the following, we arrived at the following ratio and value of division:

	Wife	Husband
Direct financial Contribution	22%	78%
Indirect contribution	60%	40%
Average ratio	41%	59%
Share of matrimonial pool ($1,028,593.82)	$421,723.47	$606,870.35

(5) Implementation of the ratio of division

60 We turn next in terms of the implementation of the order based on value of the matrimonial assets. After considering the materials before us and counsel's arguments, we make the following observations:

(a) We saw no reason to disturb the Senior President's determination that both parties keep their respective CPF moneys.

(b) On that basis, the balance equity to be allocated to the husband would be $514,972.28 ($606,870.35 – $91,898.07). As for the wife, the balance equity to be allocated to her would be $385,327.72 ($421,723.47 – $36,395.75).

(c) The value of the Flat and Condominium are $450,000 and $450,300 respectively. Notwithstanding the parties ongoing variation proceedings in relation to the properties, we saw no reason to depart from the approach adopted by the Senior President, namely that the Flat be given to the Husband, and that the Condominium be sold. In this connection, we were not inclined to find that the Senior President had erred in allocating the Flat to the husband and the Condominium to the wife. Insofar as the husband contended that the Condominium could increase in value, the same could be said about the Flat. Put another way, there was simply no basis for the Husband to assert any disadvantage in being allocated the Flat and not the Condominium.

(d) On the basis that the Flat is given to the Husband with no CPF refunds to the wife, the balance equity due to the husband would be $64,972.28 ($514,972.28 – $450,000). On her figures, the Senior President had assessed a balance equity of $13,542.59, which she used to offset from the husband's liability for *mutaah*. In view of our revised figures, we were not inclined to take the same approach because this would extinguish the *mutaah* amount, which we found would be inequitable. As such, we reversed the deduction made by the Senior President in respect of the *mutaah* sum, and reinstate it to the sum of $45,000, with the husband paying monthly instalments of $1,500.

(e) Where then would the husband's balance equity come from? In this regard, and on our revised figures we assessed for the wife,

the wife would have a balance equity of $385,327.72 after deducting her CPF moneys. Based on the equity value of the Condominium ($450,300), on the basis that the wife is allocated the Condominium, we note that there would be a balance excess equity of $64,972.28 ($450,300 – $385,327.72). As such, upon the sale of the Condominium, that excess equity would be allocated to the husband. We pause here and note that on the Senior President's figures, and following from her order that the wife would receive the entirety of the balance sale proceeds, the wife would have received more than the equity amount calculated by the Senior President:

Wife's share of the matrimonial pool (as assessed by the Senior President)	$473,153.16
Wife's CPF moneys	$36,395.75
Net value of the Condominium	$450,300
'Excess' amounts received by the wife (on the basis that the wife kept all the balance proceeds)	($450,300 + $36,395.75) – $473,153.16 = $13,242.59

In her decision, the Senior President dealt with the excess equity through a reduction of her *mutaah*. Given that we have changed this, we found it more appropriate to deal with this excess through a redistribution of the sale proceeds of the Condominium. Further, on the assumption that the Condominium is sold at a price higher than what the parties had submitted to the Senior President (hence resulting in a higher net equity complained of by the husband), the remaining sale proceeds would be divided in the ratio of 41:59 in the husband's favour.

Care and control and access

61 We turn to the final issue on care and control. As noted above, it was not lost on the Board the extent of the parties' acrimony towards each other. In *HM v HL* (at [207] to [209]), we highlighted how a shared care and control order necessitated a level of co-operation and civility between the parties which would ensure that the welfare of a child is adequately addressed by living in two separate households.

62 On the Senior President's own findings and on the materials before us, such a level of co-operation and civility could not be said to be apparent between the wife and the husband. On that basis and at first blush, it would seem that a shared care and control order would not be appropriate in these circumstances. However, after considering the materials before us in this case, we were not minded to disturb the Senior President's findings for the following reasons:

(a) First, and notwithstanding the husband's submissions, we were not inclined to accept his submission that the wife was not in a position to care for the Children. In this regard, we also acknowledge the father's caregiving efforts towards the Children. To that extent, we could see where the Senior President was coming from when she observed that granting care and control to one parent would have the effect of weaponising one parent over the other (in light of their conflict), but more importantly, place the Children at a disadvantaged position. On that basis, there was more to be said about placing *both parties* at a state of equilibrium between each other.

(b) Second, it was fairly evident to the Board that a factor which shaped the Senior President's decision was her judicial interview with the Children. We found this to be an opportune time to provide some initial comments and observations regarding the benefit and use of a judicial interview, especially in light of the very recent comments made by the Court of Appeal in *WKM v WKN* [2024] 1 SLR 158 ("*WKM*"). In this regard:

(i) Depending on the circumstances and facts of a case, judicial interviews are useful as a means of ascertaining the wishes of the child (*WKM* at [27] to [34]).

(ii) Judicial interviews are part of the therapeutic justice journey, allowing the court to listen to the child's views and concerns, and at the same time creating a safe space to assure the child that there is a neutral and authoritative person who is concerned about their welfare, and who prioritises their best interests (*WKM* at [42]).

(iii) Judicial interviews are not intended to replace the court's assessment of the contemporaneous evidence before it to make its decision, and it should not be disproportionately relied on to the extent that the child is placed in a position of bearing the responsibility of the ultimate decision on their custody and care arrangements (*WKM* at [44], [78]).

(iv) That said, judicial interviews can be a useful source of information, and there is no bar to referring to the contents of the interview. However, both the conduct of the judicial interview and any reference to its contents must be done with the utmost sensitivity (*WKM* at [44], [45]).

The upshot of the foregoing is that the court's reliance on a judicial interview as a *supplementary* (not primary) tool in arriving at its decision is consistent with the notion of therapeutic justice, and, to that end, has its place in our Muslim law jurisprudence. To the extent that a court wishes to

make use of that tool, it should manage it appropriately to bring to light the wishes of the child, but at the same time not break the trust and confidence of that safe space between the court and the child.

(c) Returning back to the judicial interview by the Senior President, in conjunction with the materials before us, we were prepared to accept that while the Children have been affected by the parties' conflict, what could be inferred from the Senior President's findings was the Children's hope and desire that both parents to continue to be meaningfully involved in their lives.

(d) Third, whilst we were of the view that a shared care and control situation would be in the Children's interest, we were mindful that the parties and the Children would need a fair amount of support in navigating this new space. To that end, we were minded to order that the parties and the Children be directed for counselling to address, among other things, the parties' parental conflict, their relationship with the Children, and how all five of them are to manage this two-household system.

63 We pause here and found it important to highlight that our observations and decision not to intervene in the Senior President's decision is premised on the *specific facts of this case*. We nevertheless maintain the observations made in *HM v HL* on the requisite threshold to be met for a shared care and control order to be made. While we were not minded to disturb the Senior President's findings on care and control, we do however make certain adjustments in terms of their care and control periods. At the hearing before us, we had made interim orders for the care and control arrangements to be such that the wife would have the Children on Monday 2.00pm to Thursday 5.00pm, with the husband having the Children from Thursday 5.00pm to Mondays 2.00pm. The reason for this change is because of the wife's business commitments which require her to attend to her business more during the weekends. We saw no reason to depart from this.

64 As regards the childcare arrangements during the public holidays, school holidays, Hari Raya Puasa and Hari Raya Haji, we were similarly not minded to disturb the Senior President's initial finding , and leave it to the parties to make their own arrangements, failing which, the parties were to follow the arrangements stated in the Senior President's orders.

Our orders

65 For the above reasons,

(a) We dismissed the Motion.

(b) We allow the husband's appeal in part and make the following orders:

(i) Order 5 of the Senior President's orders is varied to the extent that the *mutaah* sum is reinstated to $45,000.

(ii) Order 7(a) of the Senior President's orders is varied to the extent that the proceeds of the sale of the Condominium shall be apportioned as follows:

(A) first, to make full payment of the outstanding mortgage loan;

(B) second, to pay all expenses arising from the sale, including the payment of agent's commission, and other costs of and expenses of the sale;

(C) third, $385,327.72 to be paid to the wife;

(D) fourth, $64,972.28 to be paid to the husband; and

(E) last, any balance sale proceeds to be divided by the parties in the ratio of 41:59 in favour of the husband.

(iii) Orders 9(b)(i) and 9(b)(ii) of the Senior President's orders are varied insofar as the wife shall have the children from Mondays 2.00pm to Thursdays 5.00pm, and the husband shall have the children from Thursdays 5.00pm to Mondays 2.00pm.

(iv) A new Order 9(c) is inserted in that the parties and the Children are to attend a counselling programme at Strengthening Families Programme@Family Service Centre (FAM) or Divorce Support Specialist Agency (DSSA). The purpose of the programme is for the parties to address their issues with a view of ensuring better co-parenting and improving their relationship with the Children. As for the Children, the counselling programme is to provide support as they are transiting to a new family nucleus, as well as to address any issues they have with the parties (collectively and individually).

Costs

66 On the issue of costs, while we largely upheld the Senior President's orders, we were of the view that the adjustments that were made did not render the husband's appeal to be wholly unmeritorious. As such, we were not inclined to make any cost orders.

Conclusion

67 The Board wishes to thank Ms Wahid and Mr Low and their respective teams for their submissions and assistance to the Board, as well as their patience on the matter.