

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN
(FAMILY DIVISION)
JUDICIAL SEPARATION NO BA-33-776-11/2017**

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In the matter of Section 64 of Law Reform
(Marriage and Divorce) Act 1976; and

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In the matter of Section 54(1) (a), (b) & (d)
Law Reform (Marriage and Divorce) Act
1976.

BETWEEN

15 **YAP SOO KEAN****... PETITIONER WIFE**

AND

20 **PHANG CHEE WAI****... RESPONDENT HUSBAND**

AND

SIEW OOI SEONG**... CO-RESPONDENT**

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**JUDGMENT
(enclosure 1)**

INTRODUCTION

[1] The Petitioner Wife (PW) filed a petition for Judicial Separation (enclosure 1) against the Respondent Husband (RH), seeking a Judicial Separation, maintenance of herself, division of matrimonial home and assets and costs. PW claims that the cause of the breakdown of her marriage was because of RH adultery with the Co-Respondent, and PW finds it intolerable to live with RH and they have lived apart for a continuous period of at least two years immediately preceding to the presentation of the petition. PW also seeks damages against the Co-Respondent.



35 **[2]** PW claims against RH as follows:

"(1) An Order for Judicial Separation;

(2) That the Respondent be ordered to pay a reasonable sum in monthly maintenance to the Petitioner for herself from the date of the filing of this Petition;

40 *(3) That the Respondent be ordered to bear all the expenses of their 2nd child and the 3rd child of the marriage (including all fees and other expenses) until the said children complete their tertiary education;*

(4) That the assets acquired by the parties during the marriage be divided equally between the parties, or in such proportion as to this Honourable Court seems
45 *just;*

(5) That the Co-Respondent be condemned in Damage for adultery;

(6) Such further or other relief as to this Honourable Court seems just;

(7) The Respondent be ordered to bear the Costs of these proceedings..."

50 **[3]** In his reply, RH admitted to certain paragraphs of the petition and denies all other allegations. RH further said that the marriage has been irretrievably broken-down years ago and the cause for the breakdown of their marriage happened due to the unreasonable behaviour of PW and unfounded allegation of adultery. The main cause of the breakdown was
55 when PW accused RH that he had infected her with a sexually transmitted disease (STD) and refused to sleep in the same bed with him. RH requested her to do a medical check-up which she refused, while he did his and the results showed that he is healthy. PW knew that RH bears all financial responsibility of the family as she does not contribute financially but still
60 demands a high maintenance for herself with other exorbitant demands.

[4] The Co-Respondent, in her reply, denies the allegation by PW and prays that the prayers against her be dismissed with cost.

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[5] This Petition was heard on several dates, with witnesses as follows:

(a) PW (PW2) had called three witnesses:

- (i) Mr Ian Parthiban Paranthaman (PW1);
- (ii) Dr Jeffery Lim Chung Yeow (PW3); and
- (iii) Mr Chai Kien Tung (PW4)

(b) RH (RW1) called two witnesses:

- (i) Mr Khoo Poh Yong (RW3); and
- (ii) Ms Lim Lee Ping (RW4);

(c) Co-Respondent (RW2).

[6] Considering all evidence, cause papers and the respective written and oral submissions by the respective counsels, on 04.08.2022, on the balance of probabilities, I found that PW had partly succeeded in proving her case and on further clarification on 30.08.2022, I made the following orders:

"1. An Order for a Decree of Judicial Separation is hereby granted.

2. The Respondent is to pay to the Petitioner RM 10,000.00 monthly as her maintenance. The said maintenance is to be deposited into the Petitioner's bank account on or before the 7th day of each month;

3. The Respondent is ordered to pay the outstanding sum of RM 4,000.00 per month (arrears of maintenance) to be calculated from September 2019 and the Respondent is given 6 months to pay the said outstanding sum;

4. The Petitioner is not proceeding with this prayer; hence there is no order.

5. In respect of assets acquired during the marriage:-

(a) 3 STOREY SEMI-DETACHED HOUSE

(i) The 3 storey semi-detached residence known as No. 11, Jln BK 5D/1B Kinrara Hill is granted to the Petitioner;

(ii) The Respondent is to transfer his half undivided share in this property to the Petitioner free from any encumbrances;

(iii) The Respondent is given 24 months to fully settle the outstanding loan. In the meantime, the Respondent shall continue paying for the said loan, the Quit Rent, the Assessment, Sewerage charges and other outgoings, until it is fully settled; and

(iv) The transfer costs are to be borne by both parties equally;

(b) PUTRA INDAH CONDO

(i) The condominium unit known as DG-1 Block D, Putra Indah Condo is hereby granted to the Respondent. It is further ordered that the Petitioner is to transfer her half undivided share in the property to the Respondent for no consideration; and the transfer costs are to be borne by both parties equally;

(c) SERVICE APARTMENT



- 105 (i) The Service Apartment unit known unit A-36-03, Lot Type B1-13, the Skyluxe On The Park is granted to the Respondent and is to remain under his name;
- (d) COMPANIES' SHARES
- 110 (i) The Apple Auto Services & Tyres Sdn. Bhd.
The Respondent holds 88.67% and the Petitioner holds 6.67% or any percentage. It is ordered that the Respondent is to buy over the Petitioner's shares at an agreed price or its present audited value and to add to that price or value so that the total sum represents 10% of the shares, as consideration for the Petitioner, and that the Respondent shall bear the cost of the transfer;
- 115 (ii) Ambang Auto Sdn. Bhd.
The Respondent holds 90% and the Petitioner holds 5% or any percentage. It is ordered that the Respondent is to buy over the Petitioner's shares at an agreed price or its present audited value and to multiply that price or value by 2 so that the total sum represents 10% of the shares, as consideration for the Petitioner, and that the Respondent shall bear the cost of the transfer;
- 120 (iii) Ambang Auto (B&P) Sdn. Bhd.
The Respondent is to maintain his 1 share and there will be no order for this division of this asset;
- (iv) E&M Tenaga Sdn. Bhd.
- 125 The Respondent holds 90% and the Petitioner holds 5% shares or any percentage. It is ordered that the Respondent is to buy over the Petitioner's shares at an agreed price or its present audited value and to multiply that price or value by 2 so that the total sum represents 10% of the shares, as consideration for the Petitioner, and that the Respondent shall bear the cost of the transfer;
- 130 (v) Chee Wai Global Sdn. Bhd.
The Respondent holds 450 shares and the Petitioner holds 50 shares. It is ordered that the Respondent is to buy over the Petitioner's 50 shares at an agreed price or at its present audited value, and that the Respondent shall bear the cost of the transfer;
- 135 (vi) Puncak Merak Sdn. Bhd.
The Respondent holds 898,000 shares. It is ordered that the Respondent is to pay the Petitioner 10% of the agreed value of these shares or its present audited value, and that the Respondent shall bear the cost of the transfer;
- (vii) Amazon Wine & Liquor Sdn. Bhd.
- 140 The Respondent holds 80 shares. There will be no order for division of this asset;
- (viii) YFS Holding Sdn Bhd
The Respondent holds 10 shares. There will be no order for division of this asset.
- (e) There will be no order for division of assets and the status quo is to be maintained;
- 145 6. Prayer 24(5) of the Petition is dismissed with costs of RM 15,000.00 to the Co-Respondent be paid within 30 days".

Dissatisfied, PW is now appealing against the entire decision, and my analysis are as follows:



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150 **SALIENT FACTS**

[7] Parties filed agreed facts as per Enclosure 64 and in writing the brief facts, I will also refer to the documents available before me, briefly:

- 155 (a) Parties who are domiciled in Malaysia were lawfully married on 27.11.1990 at the Selangor and Wilayah Persekutuan Registration Department (Marriage Certificate: 172071: exhibit YSK 1). They lived at No.11, Jalan BK 5D/1B, Kinrara Hill, Bandar Kinrara, 47180, Puchong, Selangor Darul Ehsan (the matrimonial home).
- 160 (b) They have three (3) children from this marriage, Phang Ann Yee (now 28 years old), Phang Ann Fong (now 26 years old) and Phang Ann Sung (now 24 years old)
- (c) RH is presently paying PW a sum of RM10,000.00 per month as maintenance, which was later reduced to RM6,000.00 per month;
- (d) The parties jointly own the following properties: -
- 165 (i) A 3-storey semi-detached house at No.11, Jalan BK 5D/1B, Kinrara Hill, Bandar Kinrara, 47180, Puchong, Selangor (the last Matrimonial home);
- (ii) A condominium known as DG-1, Block D, Putra Indah Condo, Jalan SR 8/6, Sek.18, I Taman Serdang Jaya, 43300, Seri Kembangan, Selangor (the earlier Matrimonial home);
- 170 (e) RH in his sole name, purchased a service apartment known as A-36-03 Type BI-14 (M) Storey No. 36, Building No. Block A Residensi SkyLuxe, Mukim Petaling, Kuala Lumpur (Skyluxe on The Park).
- (f) The parties are Shareholders of the following Companies: -
- 175 (i) The Apple Auto Services & Tyres Sdn. Bhd.
(RH holds 266,000 shares (88.67%), PW holds 20,000 shares (6.67%), and their daughter, Phang Ann Yee holds 14,000 shares (4.66%);
- (ii) Ambang Auto Sdn Bhd;
(RH holds 90,000 shares (90%), PW holds 5,000 shares (5%).
- 180 Their Shareholding is therefore in the ratio of 90:5. Their son, Phang Ann Fong holds the remaining 5,000 shares (5%);
- (iii) Ambang Auto (B&P) Sdn Bhd;



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- (RH holds 1 share in the Company and one Lim Yoon Sang hold one share in the Company);
- 185 (iv) E & M Tenaga Sdn Bhd;
(RH holds 90,000 shares (90%), PW holds 5,000 shares (5%). Their Shareholding is therefore in the ratio of 90:5. Their son, Phang Ann Fong holds the remaining 5,000 shares (5%); and
- (v) Chee Wai Global Sdn Bhd
- 190 (RH holds 450 shares (90%), PW holds 50 shares (10%). Their Shareholding is therefore in the ratio of 90:10.
- (g) RH is also a Shareholder of the following Companies: -
- (i) Puncak Merak Sdn Bhd (898,000 shares); and
- (ii) Amazon Wine & Liquor Sdn Bhd (80 shares).
- 195 (h) The marriage between the parties has irretrievably broken down.

[8] The Breakdown of The Marriage

PW asserts that the marriage herein has broken down irretrievably, grounded on the allegation of RH's supposed adulterous affair (s.54(1)(a) LRA) with the Co-Respondent, and unreasonable behaviour (s.54(1)(b) LRA). PW finds it intolerable to live with RH: **Joseph Jeganathan v Rosaline Joseph [1989] 3 MLJ 106**, HC. PW asserts that:

- (a) RH, in possession of an access card, and has been visiting the Co-Respondent at 13-11, Tower 2, Skypod Residence, at Bandar Puchong Jaya, Puchong, Selangor Darul Ehsan, where she resides; and
- 205 (b) He has been spending a great deal of time with the Co Respondent at the said residence, often spending nights there and returning to the marital home in the early morning. They usually have been having meals together at various restaurants and engaging in various other activities, such as hiking and going on holidays.
- 210 (c) In addition this alleged adultery, PW also claimed that his alleged unreasonable behaviour (s.54(1)(b) LRA) contributes to the fact that she cannot reasonably be expected to live with him:
- (i) He is a heavy drinker.
- 215 (ii) Secrecy on his whereabouts and late nights out.
- (iii) Infected her with a sexually transmitted disease.
- (iv) Assault.



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- 220 (d) Their physical intimacy ceased in February 2014, and they lived in separate rooms under the same roof. They have not had any meaningful communication since save for occasional chat on the family Whatsapp group chat; and
- (e) They have been living apart continuously for at least two years before filing this JS Petition (s.54(1)(d) LRA.
- 225 (f) The parties had acquired various assets throughout the marriage, as stated in paragraph 7 above.

SUBMISSIONS BY THE PETITIONER WIFE

[9] PW, in support of her Judicial Separation Petition, argued that:

- 230 (a) Right from the start of their marriage (27.11.1990), he was a heavy drinker and secretive about his whereabouts, but she remained loyal and stayed with him in the marriage. Apart from taking several jobs (including working from home) throughout the years to supplement the family income, she took care of the matrimonial home and the family. They only hired domestic help from 1999-2003 and thereafter after 2013. Over the
- 235 years, RH's heavy drinking behaviour and late-night outing never change.
- (b) Sometimes, on 27.07.2013, when she complained to RH about irritation on her private parts suspected to be STD from him, provoked, he physically assaulted her (she was treated for the irritation by Dr Lee Say Fatt, SJMC).
- 240
- (c) From thereon, they communicated through the children though they continued living as a family unit. At that time, they still shared the same bedroom until six months later, when he moved completely out to the guest room in the house, though there were times they still got together
- 245 and slept together.



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(d) She claimed to have tried to save the marriage but was not reciprocated though the divorce question never cropped up. At this time, she thought RH just wanted some time all to himself and was not involved in any extra-marital affair with other women. She wanted to spend the rest of their lives together.

(e) During the trial, their daughter (Phang Ann Yee: eldest child) was on the list of witnesses by RH to give evidence. The daughter would have been able to verify all of the claims by PW as she grew up with them throughout that period. However, she was eventually withdrawn as a witness, together with her witness statement, at the very last minute for personal reasons. It would seem that she had been given shares and made a director in the company owned and controlled by RH. Her withdrawal should be sufficient to attract an adverse inference under s.114(g) EA 1950 against RH. That said, I take note that PW never exercise her option to instead call the daughter as a witness if her evidence is crucial to PW's case.

(f) It was only after a private investigator appointed by her reported the alleged adultery with the Co-Respondent that she considers the marriage had broken down irretrievably, leading to these proceedings and cited the Federal Court ruling in **Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd [2015] 5 MLJ 1, FC**, referred to and followed in **GCC v CCC [2016] 1 LNS 885, HC**, she argued that the civil burden of proof on adultery must be on a balance of probability and not beyond a reasonable doubt, as had been observed before. What is required is for the Court to appraise into the whole of the evidence adduced and draw a reasonable inference therefrom on the issue of adultery. Claim for



damages is also allowed in a Petition for a Judicial Separation on charges of adultery: **AJS v JMH [2022] 1 CLJ 331, FC.**

(g) RH and the Co-Respondent had been spending a lot of time together, as narrated in the JS Petition (paragraph 9), the Facebook postings, immigration records on overseas trips, and the report of the private investigator (Ian Parthiban: PW1) confirm her suspicions of an extra-marital affair between them. Therefore, the burden of proof on a balance of probability had been met on adultery. The Co-Respondent bare denials are not sustainable:

- (i) She had given one access card to RH for her Skypod Apartment in the vicinity of the Amazon Wine Bar owned by RH, where they meet and have dinner.
- (ii) The manner and timing of her employment (letter of employment) with RH raises suspicions.
- (iii) Her claim that the apartment serves as a place for her beauty business is inconsistent with her tax returns that cited her parent's residence as her place of business.
- (iv) She did not adduce tangible evidence of the so-called beauty business she was carrying at the Skypod Apartment. No tenancy agreement of the Skypod Apartment was shown, evidencing a rental agreement. It was, in fact, a love nest for them, as shown in the private investigator's report; and
- (v) The private investigator's report shows that their meeting at the Skypod Apartment was more than occasional. She knew that RH was a married man at the time. The relationship between the Co-Respondent and RH was more than just an employer and an employee or a normal acquaintanceship.

Division of assets

(h) Throughout their marriage, they had acquired several assets:

Properties

- (i) A three-storey semi-detached house known as No.11 Jalan BK 5D/1B Kinrara Hill, co-owned by PW and RH.
- (ii) Putra Indah Condo, DG-1 Block D, Putra Indah Condo, 43300 Seri Kembangan, Selangor, co-owned by them; and
- (iii) The Service Apartment unit, A-36-03 Type B1-13, the Skyluxe on The Park, registered under RH.



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Companies

- (iv) Apple Auto Services & Tyres Sdn Bhd: RH holds 88.67%, and PW has 6.67%.
- (v) Ambang Auto Sdn Bhd, RH holds 90%, and PW holds 5%.
- (vi) E & M Tenaga Sdn Bhd, RH holds 90%, and PW holds 5% shares.
- (vii) Chee Wai Global Sdn Bhd, RH holds 450 shares, and PW holds 50 shares.
- (viii) Puncak Merak Sdn Bhd, RH holds 898,000 shares.
- (ix) Amazon Wine & Liquor Sdn Bhd, RH, holds 80 shares: and
- (x) YHS Holding Sdn Bhd, RH, holds 10 shares.

She cited **s.76 LRA** in support of the claim for division of marital assets and the Court of Appeal's determination in **Yap Yen Piow v Hee Wee Eng [2017] 1 MLJ 17, CA**. The learned counsel for PW argued that the judgment in Yap Yen Piow respectfully was in error on the issue of EPF funds, which prior to this decision, had always been regarded as being available for division and distribution in a divorce or judicial separation proceedings.

(i) PW, in her continued submissions, also argued:

(i) Alleged manipulation or impropriety in acquiring and renting two new lots of new office premises involving Apple Auto Services & Tyres Sdn Bhd and YFS Holdings Sdn Bhd. She claimed it to be a devious scheme to siphon off assets of the marriage. At the outset, I wish to say this argument is misplaced and unsustainable in this family proceedings. If there are any wrongdoings at the company level, which I am not saying there are, it is for her to take it up at the company level or institute a derivative action to address it. However, it is not at this forum that this concern is to be addressed.

(ii) She also alleged that the share increase exercise of Apple Auto Services & Tyres Sdn Bhd sometime in 2017 (from 300,000 to



1,000,000) had effectively reduced her stake holding from 6.67% to 2% and the resignation of her directorship. I wish to say, equity increase exercises are common in the corporate sector when the need arises. Any grievances in the exercise of that power, the Companies Act 2016 has sufficient provision for action to address it. Members feeling oppressed may take it up under a derivative effort to challenge it. Similarly, as in the above, I find arguments on this issue misplaced in this forum. This is a company internal matter for it to be raised at the company level and not in this JS proceeding.

(iii) She also mentioned shareholding issues amongst the family members and/or movement of money in E & M Tenaga Sdn Bhd, Chee Wai Global Sdn Bhd, Puncak Merak Sdn Bhd, Amazon Wine Liquor Sdn Bhd, Yong Motor B & P Sdn Bhd, and YFS Holdings Sdn Bhd which I similarly find misplaced. This is not the appropriate forum.

(iv) Briefly, it is trite law that a company's assets (movable or immovable) are assets belonging to the company and not the members, shareholders, or directors. These companies listed in PW's arguments are not parties to this JS proceeding. These companies named are separate legal entities with their own artificial legal persona. The legal reality is that the only thing the parties own are the shares of these companies and nothing more. Whether those shares control the well-being and benefits of these companies are separate legal issue outside the parameters of the present forum. Attempting to deliberate it here in the current



proceedings connote an overstretching exercise and undoubtedly will be unsustainable. At this juncture, allegations of impropriety in the bleeding of company assets are merely speculative, bare averments, and misplaced.

- (j) She also argued on the RH's EPF account and its withdrawal to deprive her claim of half of the said funds withdrawn (RM701, 607.68). The funds in the joint bank accounts, sole accounts, insurance policies in paragraph 23 of the JS Petition, and his purported income from the various named companies.

Maintenance for PW

- (k) She agreed that before filing this JS Petition, RH would give her monthly maintenance of RM10,000.00 apart from paying all the household bills and utilities. He also gives her money for Chinese New Year ranging from RM10,000.00-RM50,000.00. Her monthly maintenance was, however, reduced in September 2019 to RM6,000.00 paid from the Flexi CIMB account No. 80-036-4318-7 (that he secured by a mortgage on the marital home in Kinara Hill, Puchong), which he claimed was due to financial difficulties he and the companies faced, though he was able to make substantial investments in the purchase of the new two lots of land for the new office space. He had made several significant withdrawals from the said account, even though he had other resources to draw from. In support of maintenance, she cited s.77(1) (power to order maintenance of an ex-spouse) and s.78 (assessment of maintenance on the means and needs of parties) LRA. She also cited **Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863, CA**: It depends on the facts and circumstances of each case to put a party in the same



standard of living enjoyed during the marriage. See also **Murli a/l Naraindas v. Sajni Bai a/p Bulchand (2012) 9 MLJ 10, HC** that cited
 390 and followed **Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy [2004] 6 MLJ 240; [2004] 7 CLJ 175, HC**, that had ruled on similar legal principles.

In the circumstances, she prays for an order in terms of enclosure 1 with costs. RH has no objection to granting an order for Judicial Separation as
 395 prayed and has not made any crossclaim in his reply to the petition. He asks that an order for a reasonable monthly maintenance sum to PW be made. There is no interest of minor children to be determined in this proceeding.

SUBMISSIONS BY THE RESPONDENT'S HUSBAND

400 **[10]** RH argued that:

(a) He does not deny that the marriage had irretrievably broken down, but contrary to PW's claim, it was caused by her unreasonable conduct. He submits that:

- 405 (i) The impugned marriage had broken down years ago and not of late.
- (ii) It was caused about few years ago (27.07.2013) when PW accused him of passing her STD, leading to parties living in separate rooms and beds in the same house.
- 410 (iii) He requested her to undergo a medical diagnosis, but she refused. He did his and was cleared of the alleged STD infection (exhibit D-19).
- (iv) Her obstinacy to continue sleeping in separate beds led him to move into a different room. She had packed up all of his clothes and personal items and placed them in the room that he occupied.
- 415 (i) Their communication breakdown occurred years ago and is not a recent issue. She had also used foul language and cursed at him. At that juncture, the marriage had already broken down irretrievably.



That notwithstanding, he continued to care and provide for the family and PW throughout the years. She was constantly suspicious of RH committing adultery, and it was due to this jealousy that he stopped telling her his whereabouts to mitigate her stalking him.

(b) Her other unreasonable behaviour includes:

- (i) In 1991, she aborted their first child without consultation or informing him.
- (ii) In 1992, she left RH for nine months because of poor financial status.
- (iii) She is a spendthrift and uses money irresponsibly. E.g., though she had already been given a Toyota Vios at the time, she still used her savings to buy a Toyota Wish. When he bought a BMW for himself, at her request for a car, he bought her a Mercedes, which she eventually sold it, claiming she needed the money as the maintenance given was insufficient. The Mercedes was gifted when parties were no longer talking to each other; still, she made no effort to save the marriage. In her own words, she is bad at finances and cannot save money, though RH supports the children and meets all household bills and utilities.
- (iv) She has anger management issues and causes family conflicts by using foul language against RH.
- (v) She had even cursed and threatened RH with death.
- (vi) She wanted to divorce RH and get money. She spoke to RW3 that she wanted a divorce and RM5,000,000 from RH.
- (ii) She stopped RH from attending her mother's funeral and refused to include RH's name in the obituary; and
- (iii) She does not have a healthy relationship with the children.

(c) RH is the founder of the hiking club called "*Pendaki Gunung G7*" and the managing director of Chee Wai Global Sdn Bhd, an authorized Proton Car Dealer:

- (i) Sometimes, at the end of 2016, the Co-Respondent joined the hiking club (G7), where she later advocated setting up an online sales team for the Proton car business. Consequently, she was offered to join the company based on that experience, where she was placed at the branch office in Puncak Merak Sdn Bhd, Semenyih, Selangor, in June 2017 on a six-month probation.
- (ii) When accepting the position to join the company, the Co-Respondent had requested flexible working hours as she was also running a beauty aesthetic



service at the gated Skypod residence, to which he admits meeting her occasionally on business matters concerning the company. For marketing personnel, it is common to be out of the office. This evidence on the appointment of the Co-Respondent has not been crossed, nor has PW refuted it.

(iii) As a gated and guarded residence, she would lend him one of the access cards to help easy access when he meets her, which will be returned to her.

(iv) The Skypod residence was used for her aesthetic business service, and he denied spending overnight with there with the Co-Respondent. He always returns to the marital home no matter how late, save when overseas.

(v) It is common for him to have meals together or engage in social activities with the Co-Respondent and other G7 hiking members, which is nothing out of the ordinary. It is occasionally joined by his daughter Phang Ann Yee. He has never spent a holiday with the Co-Respondent other than for G7 group activities. This evidence remained unrefuted.

(vi) The Co-Respondent had been awarded by Proton Edaran as one of the top three sales advisors of 2018. She also took part with her team in Puncak Merak Sdn Bhd in the finals of China's First National Vocational School Commercial Cars Online Marketing Competition, winning third prize and bagging the award as an excellent instructor.

On the issue of unrefuted evidence, RH cited **Aik Ming (M) Sdn Bhd v Chang Ching Chuen & Ors & Anor [1995] 3 CLJ 639, CA** that where the opponent has declined to avail on the opportunity to put an essential and material case in cross-examination, it must follow that he believed in the testimony given. PW's allegation of adultery is unfounded. He is not in love or engaging in sexual activity with the Co-Respondent. The allegation of adultery being the marriage breakdown cause is untenable since the marriage irretrievably broke down (2013) long before Co-Respondent came into the picture in 2017.

(d) In denying the allegation of adultery in paragraph 9 of the JS Petition, he argued:

(i) PW claimed that she discovered the alleged adulterous relationship on 27.06.2017 after seeing a photograph of RH and the Co-Respondent on RH's



Facebook page. It was subsequently found that the photograph she showed on her mobile phone was a cropped-up photograph from a video clip uploaded onto the Facebook page (D-28). The video showed a group of people cooking by a river with no inappropriate behavior.

(ii) On the evidence of the private investigator (PW1), RH argued that:

(a) He was part of the surveillance team assigned to trail RH on 28.10.2017, 08.11.2017-13.11.2017. The surveillance report was neither marked as IDP nor as an exhibit, and no agreement is in place by the parties to mark it as Part B evidence, and as such, it must remain in Part C evidence.

(b) There is no evidence that PW1 is a licensed private investigator under the Private Agencies Act 1971, and as such, he is not a private legal investigator for these proceedings.

(c) Whatever evidence by PW remains uncorroborated without the admission of evidential materials from him. Making his evidence merely speculative and devoid of tangible evidential value.

(d) RH explained with evidence that two occasions were for business, another for hiking activities and race competition results. There is no evidence from PW that they went overseas for a holiday despite PW's claims. As for the immigration records showing the departures and returns of RH and the Co-Respondent, it is merely that, departures, and returns. No inappropriate conduct can be imputed in the absence of compelling evidence. It is trite in law that the Court will not speculate, nor will it act on speculation.

In his submissions contesting the allegation of adultery, he cited **Teoh Cy Kuan (L) v Lee Sai San (P) [2020] 4 CLJ 432** and **Dr Gurmail Kaur Sadhu Singh v Dr Toh Saeng Peng & Anor [2015] 2 CLJ 42**; **Tan Su Lin v Andrew Lim [2018] 1 LNS 857**, that in adultery, the standard of proof is beyond a reasonable doubt. The evidence must go beyond establishing suspicion and opportunity to commit adultery and must be such as to satisfy the Court that, from the nature of things, adultery must have been committed. Where the evidence is entirely circumstantial, the Court will not draw the inference of guilt unless the facts, in totality, are not reasonably capable of any other explanation. The mere opportunity to commit adultery is insufficient. What was determined by the Federal Court in **Sinnayah & Sons Sdn Bhd v Damai Setia Sdn Bhd [2015] 5**



MLJ 1, FC is the civil burden of proof for fraud in civil cases as opposed
 525 to a criminal case, which does not concern adultery.

(e) In opposing allegations of unreasonable behavior (s.54(1)(b), RH argued that:

- 530 (i) Though PW claims he is a heavy drinker, not a single piece of evidence is adduced to support such an allegation. In exhibit D9, his blood test shows everything in the normal value/range, which would not be so, especially the liver for a heavy drinker.
- 535 (ii) Late-night outings and returns can easily be debunked by the home surveillance CCTV cameras, but she had it closed with masking tape after the service of the JS Petition in 2018. Recordings of the CCTV, if produced, would not support her arguments. It is her fault for masking the CCTV with masking tape.
- 540 (iii) She had admitted during cross-examination that the maintenance that RH gave her as maintenance was sufficient, but now she says she needs an unproven claim of RM30,000.00 per month.
- 545 (iv) Apart from the incident of 27.07.2013 when she incensed him with unfounded allegations of transmitting STD to her, there is no compelling or tangible evidence of physical abuse as alleged by PW. Even then, for the 27.07.2013 incident, there is no medical report to confirm her allegation when she had refused to do a medical check-up as suggested.
- (v) Her alleged skin condition and its treatment were never properly or appropriately informed to him for him to pay for the medical treatment. He cannot be faulted for something that he is not made aware of.
- 550 (vi) Her other allegations are merely bare allegations with no cogent evidence in support.

RH asserts vehemently that he had exercised great restraint in dealing with PW's conduct and her outburst. It is he, not her, that cannot be expected to continue living with her unreasonable behavior (s.54(1)(b)
 555 LRA).

(f) In arguing her claim for maintenance, he cited **Sreedevi Naidu T Sree Ramalu Naidu v Eelasegaran T Nadarajah & Anor [2016] 6 CLJ;**



Shilashree Shirley Gomez v Raymond Shilendran Simon [2019] 1

560 **LNS 1977**, that hold similar principles of law that in the issue of maintenance it is to determine a just, reasonable and a fair amount that is needed in the circumstances the parties are in considering the affordability of the party providing it. Her claim for maintenance for RM30,000.00 per month is entirely excessive, unreasonable, and

565 untenable, as can be seen in questions 4 and 5 of her PWS2(A), prepared without much thought to its veracity when she could not substantiate the amount during cross-examination and significantly contradicted herself. The actual maintenance is reflected during 2014-2017 (RM8,000.00-RM10,000.00).

570 (g) RH claimed that the unproven allegation of adultery did not cause the breakdown of this marriage (s.54(1)(a) LRA) in 2017, but it had irretrievably broken down long before that in 2013 when PW made the baseless allegation that RH had passed on STD to her which till to date remained unproven. This factor that her unreasonable behavior

575 contributed to the marriage breakdown must be reflected in her claim for maintenance.

(h) Her alleged skin problem is without any appropriate medical report to attest to the condition claimed, as confirmed by PW3, a medical aesthetic doctor who treated PW. PW3 admitted that her alleged

580 condition is not a life-threatening condition. There are cheaper alternatives to the treatment which she can elect to pursue. PW provided no evidence that she took the treatments suggested by the clinic. Apparently, she earns a 10% commission on successfully referring patients to the clinic, which she does (2-3) every month. Evidence was

585 that she had spent RM24,000.00, possibly stockpiling skin care



products. This is an abnormal spending pattern for monthly individual use unless she is also selling the said products. She is both a user and an agent for the said product. Receipts showed all purchases were for 2019, indicating it is a recent pattern. From 2014-2017, there were no claims by PW for skin care products.

- (i) Regarding the division of matrimonial assets, RH cited **s. 76 LRA** and **Yap Yan Piow, CA**. The assets are as listed in paragraph 7 above. On Skyluxe's apartment, he claimed it is not a matrimonial asset as it was purchased on 05.05.2017 after they had separated with vacant possession recently obtained. There is no immediate family enjoyment of this property. He solely bears the financing of this property. As for the company shares, Chee Wai Global, Amazon Wine and YFS Holdings do not generate any continuing resources for the family. Chee Wai Global is merely a company set up to do the accounting for the other companies of RH, Amazon Wine is not earning any money and running at a loss. YFS Holdings is merely a shell company with no actual income. Although they have been married for thirty-two years, they have been effectively separated for the last nine years. There is no longer interest in minor children to be considered, though he agreed to support his youngest son till he completes his studies. RH is solely responsible for all financial contributions for all assets throughout the marriage. PW had never made any monetary contribution towards any of the assets described in paragraph 7 above, and what is in her name is gifted to her by RH. It is not denied that she cared for the family and the matrimonial home with the aid of a domestic helper. She admits she does not know about the running of RH's group of companies. There is no tangible and compelling evidence to show that PW has provided mental and physical



support to RH as he built his business and group companies, save for her complaint on alleged adultery, late-night outings, and returns.

615 RH proposed:

- (i) Give PW the entire SK Condo.
- (ii) RH is to keep the matrimonial house and continue living with the children while servicing the loan.
- (iii) RH is to keep his full share in the Skyluxe condominium and continue financing the loan.
- (iv) For the shares of the companies that are considered matrimonial assets, RH will transfer his shares to the PW to achieve a 9:1 scale for the shares owned by RH and PW (i.e., RH to have 90% and PW to have 10% of all the shares held by the parties).

625 (j) Substantial inconsistencies of PW's evidence:

- (i) RH being a heavy drinker was debunked with no compelling evidence adduced (exhibit D-19).
- (ii) Her denial of using foul language also debunked by evidence (exhibit D-17).
- (iii) Her discrepancies and untruthfulness regarding the amount of maintenance from 2014-2016 were uncovered (exhibit D-23).
- (iv) Her untruthfulness on the amount spent on skin care products exposed during cross.
- (v) She could not verify alleged physical abuses during cross-examination except for the 27.07.2013 incident after provocation.
- (vi) She was untruthful regarding her allegations and cannot back them up with compelling evidence. Several facts were raised that were never pleaded by RW in her pleadings before and after marriage intended to mislead the Court (paragraphs 9-23, enclosure 139)

640 The conflicting statements and lack of evidence by PW show that she is not a credible witness. Weight on her evidence should be denied. He cited **UEM Group Bhd v Genisys Integrated Engineers Pts Ltd & Anor [2010] 9 CLJ 785, FC** that ruled the credibility of a witness is crucial when the case is based mainly on oral evidence (as is evident in the present suit). In the

645 circumstances, RH prays for the order as proposed.



SUBMISSIONS BY THE CO-RESPONDENT

650 **[11]** In challenging the allegations of adultery, the Co-Respondent argued that:

(a) PW claims that the Co-Respondent had committed adultery with RH founded on her assertion in paragraph 9 of the JS Petition, and she finds it intolerable to live with RH. However, no cogent evidence to substantiate PW's claims has been adduced to all these assertions.

655 (b) Even the photograph she produces from her mobile phone had successfully been debunked by RH in paragraph 10 (d) above and will not be repeated.

(c) On the position of the private investigator and his surveillance reports, it has also been refuted in paragraph 10 (d) above and will not be repeated.

660 (d) On the immigration records, it has also been satisfactorily answered by RH in paragraph 10(d) above and will not be repeated. She argued that:

(i) PW admitted that she had never personally seen RH with the Co-Respondent.
665 (ii) The so-called surveillance report by the unverified private investigator with all the photographs taken remains an unmarked and unadmitted piece of evidence where no reliance can be made on it.

(iii) PW cannot adduce any evidence to substantiate her allegations that RH and the Co-Respondent go on overseas vacations once to twice a month.

670 (iv) Her position as an employee of RH's company remained unrefuted at the trial.

(v) Her position and involvement in RH's G7 group remained unrefuted at the trial.

(vi) The top 3 sales advisor award, 2018 she received from Proton Edaran, her team 3rd prize at China's First National Vocational School Commercial Cars Online Marketing Competition, and her recognition as an excellent instructor all remained unrefuted at the trial.

675 (e) In support of her arguments, she also cited **Teoh Cy Kuan (L) v Lee Sai San (P) [2020] 4 CLJ 432** and **Dr Gurmail Kaur Sadhu Singh v Dr Toh Saeng Peng & Anor [2015] 2 CLJ 42**, on the burden of proof in



680 adultery cases.

(f) Reasonable doubt should be cast upon PW's allegations, especially since there is zero evidence of intimacy between RH and the Co-Respondent and the fact that the Co-Respondent is an employee of RH's company.

685 (g) From the evidence during the trial, it is evident that the marriage had already effectively broken down back in the year 2013/2014, when the PW and RH had already lived in separate rooms with no or very minimal communication. They had effectively ceased to connect to one another even though RH continued to maintain PW out of duty. The Co-
 690 Respondent only came into the picture in the year 2017. Even if the RH committed adultery with the Co-Respondent (which is denied), it would not have been the reason for the breakdown of a marriage which had already broken-down years ago. As such, PW cannot claim for JS under section 54(1)(a) by saying that RH's alleged adultery (unproven) made
 695 it intolerable for PW to live with him, not when they were already not living together for years before this JS Petition was filed.

Since the cause of the marriage breakdown was not occasioned by the alleged and unproven adultery of the Co-Respondent, the claim against her should be dismissed with costs.

700

THE LAW

[12] Section 58 and 59 of Law Reform (Marriage And Divorce) Act 1976 ("LRA") provide the power of the Court on a claim in damages for adultery against a Co-Respondent as follows:

705 **"58. Powers of Court on claims to damages for adultery**



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- (1) On a petition for divorce in which adultery is alleged, or in the answer of a party to the marriage praying for divorce and alleging adultery, the party shall make the alleged adulterer or adulteress a Co-Respondent unless excused by the Court on special grounds from doing so.
- 710 (2) A petition under subsection (1) may include a prayer that the Co-Respondent be condemned in damages in respect of the alleged adultery.
- (3) Where damages have been claimed against a Co-Respondent: -
 - 715 (a) if, after the close of the evidence for the Petitioner, the Court is of the opinion that there is not sufficient evidence against the Co-Respondent to justify requiring him or her to reply, the Co-Respondent shall be discharged from the proceedings; or
 - (b) if at the conclusion of the hearing, the Court is satisfied that adultery between the respondent and Co-Respondent has been proved, the Court may award the Petitioner such damages as it may think fit, but so that the

720 award shall not include any exemplary or punitive element."

"59. Powers of Court on a claim on damages for adultery

- (1) The Court may award damages against a Co-Respondent notwithstanding that the Petition against the respondent is dismissed or adjourned.
- 725 (2) The Court shall have power, when awarding damages, to direct that such damages or any part thereof be vested in trustees upon trust to pay the income or capital thereof for the benefit of the minor children if any, of the marriage or, where the Petitioner is required to pay maintenance to the respondent, in or towards the payment of such maintenance, and subject thereto in trust for the

730 Petitioner.
- (3) Whenever in any petition presented by a husband, the alleged adultery has been established against the Co-Respondent, the Court may order the Co-Respondent to pay the whole or any part of the costs of the proceedings; provided that no such order for costs shall be made if the respondent was at

735 the time of the adultery living apart from the husband and living the life of a prostitute or if the Co-Respondent had not at the time of the adultery reason to believe the respondent to be a married woman."

[13] Section 64 provides the power of the Court to grant Judicial Separation

64. Judicial separation

- (1) A petition for judicial separation may be presented to the Court by either party to a marriage on the ground and circumstances set out in section 54. That section shall, with the necessary modifications, apply in relation to such a

745 petition as they apply in relation to a petition for divorce.
- (2) Where a court grants a decree of judicial separation, it shall no longer be obligatory for the Petitioner to cohabit with the respondent.
- (3) The Court may, on an application by Petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the



750 allegations in the Petition are true, rescind the decree at any time on the ground
that it was obtained in the absence of the applicant or, if desertion was the
ground of the decree, that there was reasonable cause for the alleged
desertion.

755 **[14]** Section 76 provides the power of the Court for the division of marital
assets acquired during the marriage by the joint effort of parties upon
granting a decree of divorce or judicial separation

76. Power for Court to order division of matrimonial assets

760 (1) The Court shall have power, when granting a decree of divorce or judicial
separation, to order the division between the parties of any assets acquired
by them during the marriage by their joint efforts or the sale of any such assets
and the division between the parties of the proceeds of the sale.

(2) In exercising power conferred by subsection (1), the Court shall have regard
to:

765 (a) The extent of the contributions made by each party in money, property, or
work towards the acquiring of the assets;

(aa) The extent of the contributions made by the other party who did not
acquire the assets to the welfare of the family by looking after the home
or caring for the family;

770 (b) Any debts owing by either party which were contracted for their joint
benefit;

(c) The needs of the minor children, if any, of the marriage;

(d) The duration of the marriage,

775 and subject to those considerations, the Court shall incline towards equality of
division.

(3) (Deleted)

(4) (Deleted)

780 (5) For the purposes of this section, references to assets acquired during a
marriage include assets owned before the marriage by one party which have
been substantially improved during the marriage by the other party or by their
joint efforts.

[15] Section 77 provides the power of the Court to order maintenance of a
spouse as follows:

785 **"77. Power for the Court to order maintenance of a spouse**

(1) The Court may order a man to pay maintenance to his wife or former wife: -

(a) during the course of any matrimonial proceedings;

(b) when granting or subsequent to the grant of a decree of divorce or judicial
separation;



- 790 (c) if, after a decree declaring her presumed to be dead, she is found to be
alive.
- (2) The Court shall have the corresponding power to order a woman to pay
795 maintenance to her husband or former husband where he is incapacitated,
wholly or partially, from earning a livelihood by reason of mental or physical injury
or ill-health, and the Court is satisfied that having regard to her means it is
reasonable so to order."

FINDINGS

[16] PW seeks to judicially separate from her husband of thirty-two years
800 based on s.54(1)(a): adultery, she finds it intolerable to live with him; (b): his
unreasonable behaviour makes it unreasonable for her to live with him; (c):
they have lived apart continuously for two years before filing this JS petition.

(a) **Adultery:**

- (i) PW's evidence is not only lacking but also unpersuasive and
805 unconvincing. Grounded on the totality of the evidence and the facts
before me, I am unconvinced that PW had successfully made out
the allegation of adultery either on a balance of probability as
suggested by PW relying on **Sinnaiyah & Sons Sdn Bhd v Damai
Setia Sdn Bhd [2015] 5 MLJ 1, FC** and **GCC v CCC [2016] 1 LNS
810 885, HC**, or even on the higher standard of beyond a reasonable
doubt as argued by RH and the Co-Respondent which had been the
position all the while before **GCC, HC [2016]** suggested otherwise.
I find that PW's evidence is implausible and not probable.
- (ii) In his submissions contesting the allegation of adultery, RH and the
815 Co-Respondent cited **Teoh Cy Kuan (L) v Lee Sai San (P) [2020]
4 CLJ 432; Dr Gurmail Kaur Sadhu Singh v Dr Toh Saeng Peng
& Anor [2015] 2 CLJ 42; and Tan Su Lin v Andrew Lim [2018] 1
LNS 857** that had referred to and followed a plethora of authorities



in that in adultery cases, the standard of proof is beyond a reasonable doubt.

(iii) Apart from this debate on the standard of proof, the principles distilled in adultery cases briefly are that:

(a) The evidence must go beyond establishing suspicion and opportunity to commit adultery.

(b) From the totality of circumstances, adultery must have been committed.

(c) The Court will not draw the inference of guilt unless the facts, in totality, are not capable of any other explanation; and

(d) The mere opportunity to commit adultery is insufficient.

(iv) I find that PW failed to meet these thresholds in her bare allegations and unsupported arguments as follows:

(a) Her evidence is entirely speculative and circumstantial but, of a degree that does not go beyond establishing suspicion and opportunity to commit adultery as alleged. From the totality of it, it is challenging to determine that adultery had been committed.

(b) Her entire case on adultery rests on her allegation in paragraph 9 of her JS Petition, which I find that RH had successfully negated in his submissions in paragraphs [10](c) & (d), and that of the Co-Respondent in paragraph [11]. Every allegation had been answered sufficiently to raise doubt in those allegations. Those bare allegations made are not supported by compelling evidence before me.

(c) Besides her speculative version of the facts, she relied fundamentally on the private investigator's evidence (PW1) and the surveillance reports to attribute to the act of adultery. The



said report, though tendered, had not been marked, nor has it been admitted into evidence since the actual maker had not been called to verify the reports and to be cross-examined on its truthfulness. Reference to and arguments on the contents of the said surveillance report will have no probative value in the circumstances. That said, the said report cannot be taken as evidence before me. With that, it would naturally follow that the evidence of PW1 would be highly speculative and hearsay in nature as it is not supported by any evidencee.

(d) Consequently, PW has no probative materials to anchor her allegations of adultery and renders them as merely bare arguments. As the law stands, the Court cannot act upon speculation and suspicions where a mere opportunity to commit adultery is insufficient. The Court will not draw adulterous inferences in such circumstances. Any doubts must be resolved for the benefit of the party accused of committing adultery.

(e) There is, therefore, no compelling evidence to hold that the breakdown of her marriage is occasioned by adultery, as claimed. I take cognizance that the parties had already lived separate lives (2013/2014) even before the emergence of the Co-Respondent in 2017.

(f) With this finding, not only has she failed to meet the lower burden of a balance of probability to tilt the scale in her favour, but she has equally failed to meet the higher burden of beyond reasonable doubt to establish a breakdown of the marriage on the grounds of adultery under s.54(1)(a) LRA.



875 (v) In the premise, the claim of adultery against the Co-Respondent in this proceeding is dismissed with costs, and PW's allegation on RH similarly must fail. A cost of RM15,000 is awarded to the Co-Respondent against PW.

880 (b) **Unreasonable behaviour**

(i) PW also relied on s.54(1)(b), claiming that the unreasonable behaviour of RH makes it unreasonable to expect her to live with him. In paragraph 10 of her JS Petition, she accused RH of being a heavy drinker, late night outings and returns, insufficient
885 maintenance, infecting her with STDs, skin conditions and other allegations found in her JS Petition.

(ii) In all these alleged unreasonable behaviours, no compelling evidence was adduced to substantiate the various allegations save mostly for her oral assertions and her bare versions of the story.

890 (iii) In paragraph [10](e), RH's arguments substantially refuted those bare assertions. I find probable truth in RH's assertion of her unreasonable behaviour as set out in paragraphs [10](b), which is unrefuted save for bare denials on the allegations of abortion, abandonment for nine months, poor financial behaviour, anger
895 management issue (as observed during the trial), and foul language.

(iv) However, that said, it is my finding that both parties, in one way or another, contributed equally to the impasse leading to the parties living separately from 2013/to 2014 till today. From the evidence of
900 parties, it is evident that their affection for each other left in 2013/2014 as they started living apart. Save for several



reconnections, no constructive remedial efforts can be seen taken to reconcile the parties. Obviously, the marriage had irretrievably broken down, and they fell apart or else they would not have lived separately for more than eight years of their beleaguered marriage. There is no compelling evidence to assign fault to a single party in the circumstances but to grant the Judicial Separation as prayed by parties for them to move on, with parties to bear their own respective costs to these proceedings.

(c) **Separation**

- (i) PW also relied on s.54(1)(d) LRA that the parties had lived apart for a continuous period of two years before the filing of her JS Petition. The evidence before me is stating the obvious. There is unrefuted evidence that the parties had been living apart since 2013/2014 that would justify the Judicial Separation prayed for. Either party do not deny that they have lived apart for more than two years before the filing of this JS Petition.
- (ii) The facts on the separation can be seen in paragraph [10](a). It had also been a cause for the marriage breakdown leading to this JS Petition. It involves physical separation and a mental attitude averse to cohabitation on the part of one or both spouses: **Chong Lay Kwong v Lim lay Kuan [2001] MLJU 137**. Parties can no longer be expected to live with one another and the fact that RH has no objection to the prayer for Judicial Separation by PW. There is no interest in minor children to be considered in these proceedings.



930 **[17] Maintenance**

PW is claiming RM30,000.00 as her maintenance. I find that PW has not been able to satisfy her burden to substantiate her claim of a monthly maintenance of RM30,000.00 per month. There is no evidence except for her bare statement that she wants this amount. It is therefore my finding that she had not adequately and/or properly evidenced her needs and in the circumstances, the claim is unjustified and constitute an arbitrary claim. Further, in deciding the means and needs of the parties, the law is clear that the court ought to look at the earning abilities of the parties. It is also recognized by the court that the earning capacity of the wife must also be considered. In the present case PW admitted that she runs a small business selling beauty products and earns commission earning commissions. In **GCC v CCC & Anor [2016) MLJU 377, HC**, the court dismissed the wife's application for maintenance on the basis that the wife can earn for her own needs and that the husband is made to pay the child maintenance. In the case of **Choong Yee Fong v. Ooi Seng Keat [2006] 5 CLJ 144, HC**, the court held that the petitioner who was 41 years of age, able bodied and until her alleged unemployment in 2001 was earning a salary of RM1,800.00 per month certainly has earning potential with relevant past working experience which help enhance her earning power in the market work force. The court found that the petitioner has the means within the contemplation of section 78 of LRA, to be self-sufficient and self-reliant to which her claim for maintenance to support herself must necessarily fail. In **Tay Chong Yew & Anor v. Onn Kim Muah [2016] 2 CLJ 20**, the Court of Appeal had considered the respective incomes of both parties and held that: -

"We were of the view that the learned trial judge had failed to fully appreciate the fact that the first appellant is not in the position to be gainfully employed, is incurring



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high expenditure in medical bills and recuperative costs, as such, it is clear that the Petitioner is fully capable of supporting and maintaining herself without the financial support from the Respondent. Besides that, the Petitioner has failed to adduce any evidence to prove that she is of immediate need of such exaggerate amount of RM 6,000.00 as wife maintenance per month”.

Considering s.77, s.78 (assessment of maintenance) LRA, and the respective arguments by both parties, I assess and award RM10,000 as monthly maintenance for RW, which I find to be fair and just in the circumstances, sufficient to sustain her as she had been accustomed to during the marriage.

[18] Assets

Applying s.76 LRA on the division of marital assets and considering the Court of Appeal principles espoused in **Yap Yen Piow, CA**, I decide that:

(a) Landed Assets are to be distributed according to the terms set out in paragraph [6], Prayer 24.4.

Cognizance is taken that the parties had bought three immovable assets throughout the duration of their marriage. From the facts of the case, I find it impractical to order for sale of the marital properties, when both parties are already in their fifties and a relocation exercise would not be prudent. I also considered that though PW had not contributed monetarily to the acquisition of these assets, she nevertheless contributed kind by taking care of the matrimonial home and the children. She looked after the family. At the time of the purchase, RH had saw it fit to register and gifted her as a co-proprietor. It is this consideration that I took in making my determination in the distribution of the properties as set out in paragraph [6] Prayer 24.4, para 1, 2, and



3. In terms of value, I have endeavoured to divide the property equally to parties.

- (b) Company shares are to be distributed according to the terms set out in paragraph [6], section 4, para 21(a).

It is trite in law that companies are creatures of statute with their own artificial persona as a separate legal entity that can sue and be sued, able to own and sell assets, and liable to tax as corporate citizens. The companies' assets are assets of the companies and not that of its members, shareholder or directors, no matter how you look at it, save where there are legal instruments in place to say otherwise, that the company holds those assets on trust. In this case, there is none in place. Therefore, there will be no order for any division of companies' assets. It is for the directors to manage and deal with it in any manner it considers fit within the confines of the law. Any alleged mishandling of companies' assets rests with the board of directors to seek recourse or the members and shareholders to pursue derivative action against the purported breach by the directors or officers for and on behalf of the companies involved. These are strictly companies' internal affairs that do not concern this Court, whose duty here is only to determine this JS petition within the confines of the LRA. Shareholders are only entitled to dividends subject to the percentage of shares they hold once declared by the board of directors from the annual income of the companies. They cannot seek to have proprietary interests in the assets of the companies they own, no matter how substantial the shareholding may be. However, shares of a company held by married couples are marital assets subject to division under s.76 LRA. It is not disputed that RH gave PW nominal shares to secure the interest of his family if anything were to happen to



him in the companies. It is not disputed that the said companies were managed by RH alone, his children and with employees and it was not a joint effort with PW. PW had never contributed monetarily, nor done any improvement to the said businesses. This business is not matrimonial property and the claim by PW for this court to order that the said companies to be dismantled and divided equally is inequitable when it is the main source of income for RH to support his family and his financial undertakings. To do so would in my view be oppressive and is against the grain of section 76 LRA. The distribution of the companies' shares is set out in paragraph [6(d)], which I find to be fair and just in the circumstances.

(c) I find the distribution of assets above is fair, reasonable and sufficient, therefore there will be no order for the division of assets for EPF, accounts and the rest as described in paragraph 23 of the JS Petition.

CONCLUSIONS

[19] In light of the foregoing and after closely scrutinizing and examining all evidence adduced before me, in the upshot, it is clear that the marriage had broken down irretrievably. Therefore, an order for judicial separation of the parties is granted subject to the terms set out in paragraph 6 above.

Dated 02.11.2022

(HAYATUL AKMAL ABDUL AZIZ)
JUDGE

HIGH COURT OF MALAYA

WILAYAH PERSEKUTUAN KUALA LUMPUR



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Counsels:

- 1045 Mr Balwant Singh Sidhu, together with Mr Kelvinder Singh Sidhu &
Ms Jacqueline Lee
Messrs. Balwant Singh Sidhu & Co
Counsels for the Petitioner Wife
- 1050 Ms Lee Sook Wah, together with Ms Tan Xiang Yi
Messrs. Lee Sok Wah & Co
Counsels for the Respondent Husband and the Co-Respondent



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