UBM *v* UBN
[2017] SGHCF 13

Case Number	: Divorce (Transferred) No 3601 of 2015
Decision Date	: 09 May 2017
Tribunal/Court	: High Court
Coram	: Debbie Ong JC
Counsel Name(s)	: Chia Soo Michael and Hany Soh Hui Bin (MSC Law Corporation) for the plaintiff; Cheong Zhihui Ivan and Chew Wei En (Harry Elias Partnership LLP) for the defendant.
Parties	: UBM — UBN

Family Law – Matrimonial Assets – Division – Application of structured approach in ANJ v ANK

Family law – Maintenance of Wife – Former wife

9 May 2017

Debbie Ong JC:

Introduction

1 This case concerns the division of matrimonial assets in a long marriage of 37 years. The 63-year-old plaintiff ("Husband") and the 58-year-old defendant ("Wife") were married in October 1978. They had four children, all of whom were above the age of majority by the time of the divorce. The Husband was the breadwinner during the marriage, and even though he retired in 1999, he continued to provide comfortably for the family through various investments he had made. The Wife took on the role of the homemaker in this marriage. The interim judgment of divorce was granted in December 2015.

2 After hearing the parties on the financial ancillary matters, I ordered a division of the matrimonial assets between the Husband and the Wife in the ratio 60:40, applying the "structured approach" in *ANJ v ANK* [2015] 4 SLR 1043.

3 Shortly after my decision, the Court of Appeal issued its judgment in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*"). It held that the "structured approach" would not be applicable to long "Single-Income Marriages", in order to ensure that homemaker spouses were not unduly disadvantaged in the division of matrimonial assets. I take this opportunity to explain how I applied the structured approach to the present case, which also concerns a long Single-Income Marriage, to reach an outcome that I consider to be consistent with *TNL v TNK*.

Division of assets

Fundamental legal principles in the power to divide matrimonial assets and the ANJ v ANK approach

4 Section 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC") confers upon the court the power to order the division of the parties' matrimonial assets. This power is to be exercised in

broad strokes, with the court determining what is just and equitable in the circumstances of each case: *ANJ v ANK* at [17]. The division of assets is founded on the ideology of marriage as an "equal co-operative partnership of efforts", an ideology which accords equal recognition to spousal contributions whether in the economic or homemaking spheres: *NK v NL* [2007] 3 SLR(R) 743 at [20].

5 To accord due and sufficient recognition to each party's contributions towards the marriage, and especially with a view to avoid overvaluing or undervaluing indirect contributions, the Court of Appeal laid down a "structured approach" in *ANJ v ANK* to the division of matrimonial assets. Under this approach, the court will, in step 1, ascribe a ratio that represents each party's direct financial contributions towards the acquisition of the matrimonial assets, relative to that of the other party. In step 2, the court will ascribe a second ratio to represent each party's indirect contribution to the well-being of the family, relative to that of the other party. The court then derives each party's average percentage contribution to the marriage. Further adjustments to this average ratio that take into account the other factors enumerated in s 112(2) of the WC and all relevant circumstances may be made to arrive at a just and equitable division of the matrimonial assets (see *ANJ v ANK* at [22]). The recent decision of the Court of Appeal in *TNL v TNK* further develops the jurisprudence in s 112 and the use of the structured approach. I will elaborate further on this development of the law from [36] onwards.

Pool of matrimonial assets in the present case

6 I commend counsel for both parties for presenting clear submissions on what were disputed matters on the one hand, and what were the agreed facts and legal positions on the other. It was evident to me that much thought had been put into ensuring that the court was assisted in these issues. The hearing thus proceeded efficiently.

7 The parties had agreed that matrimonial assets valued at $9,044,747 were liable to division under s 112 of the WC and that the Husband should return to the pool a sum of $79,000 which he had transferred to one of their daughters in January 2015 to finance her property purchase. These agreed sums make up the main pool of matrimonial assets. The areas of dispute in respect of what other assets were part of the pool of matrimonial assets were, first, whether a property known as "35 JM" is a matrimonial asset and second, whether certain gifts and payments made by the Husband ought to be added back into the pool of matrimonial assets.

Was 35 JM a matrimonial asset?

8 Whether 35 JM ought to be in the pool of assets was disputed by the parties. 35 JM was a *gift* from the Husband's father to him in 1974; it was thus acquired *before* the marriage. The Husband submitted that it is not a matrimonial asset but agreed that, even if it is not a matrimonial asset, the sum of $660,000 which he had expended to renovate 35 JM in 2012 should be included in the pool of matrimonial assets. The Wife submitted that 35 JM was a matrimonial asset by virtue of s 112(10) of the WC, either because it had been used as a matrimonial home for about 6 years or was substantially improved through her involvement in its renovation during the marriage. Section 112(10) of the WC provides that an asset acquired by either party before marriage is a matrimonial asset if it is ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter, transportation, or household, education, recreational, social or aesthetic purposes (s 112(10)(*a*)(i)), or if the asset was substantially improved during the marriage by the other party or both parties (s 112(10)(*a*)(ii)).

9 After considering the available evidence on whether 35 JM was a matrimonial home or a property in which the parties had resided, I reached what I determined to be the more probable

position. I was of the view that the parties did *not* reside in 35 JM, which was the residence of the Husband's parents at the material time. The Wife submitted that the parties and their children lived at 35 JM from 1978 to 1984 and then at 15 JM, a property located in close proximity to 35 JM, from 1984 to 1991. I rejected her submission and found instead that from 1978 to 1991, the parties resided in 15 JM. The family went to 35 JM often as it was the residence of the Husband's parents. The children were likely to have spent substantial time with their grandparents at 35 JM when they were younger. 15 JM was sold in 1991. I accepted that 15 JM was available for the parties' use as their residence. It had earlier been used by the Husband's older siblings after they were married but before moving to their own properties; this appeared to be the pattern of living arrangements in the Husband's family. Thus, as there was no convincing evidence that the parties and their children resided at 35 JM for any appreciable length of time, this pre-marriage gift did not become a matrimonial asset by virtue of its use as a place where the parties and their children ordinarily resided, within the meaning of s 112(10)(*a*)(i) of the WC.

10 I also considered whether 35 JM was substantially improved either by the Wife or the efforts of both the Husband and the Wife. As mentioned, a pre-marriage asset or a gift that has been "substantially improved during the marriage by the other party or both parties" becomes a matrimonial asset by virtue of s 112(10)(*a*)(ii) of the WC. In this case, quite apart from whether the Wife had contributed any effort towards any improvement, I find insufficient evidence to prove that there was even a substantial improvement of 35 JM to begin with. The Wife produced a letter, dated 16 May 2016, which she had received from the renovations contractor and which stated that as a result of the renovations done in 2012, the property had "grown in value" by $3 million. No reasons were given by the contractor for using this value. This evidence was not persuasive; not only was the figure chosen by the contractor devoid of any objective justification, it was neither logical nor believable that the property could increase in value by $3 million after the renovations, when its agreed value as at 4 August 2016 was $2.8 million. Further, the Wife did not contribute financially to the cost of renovations and her alleged contributions to substantially improving 35 JM comprised overseeing the renovations and choosing the designs for the property. Such contributions have been regarded by the Court of Appeal as *de minimis* in the context of whether they constitute substantial improvement to the property: *Shi Fang v Koh Pee Huat* [1996] 1 SLR(R) 906 at [40]. Although each case must be determined on its own facts, in the light of these difficulties, I did not agree with the Wife that 35 JM was a matrimonial asset by virtue of its substantial improvement by her efforts or both parties' efforts.

11 The Wife submitted, and the Husband conceded, that the sum of $660,000 used for renovations to 35 JM ought to be put into the pool of matrimonial assets. At the hearing on 17 January 2017, I asked both counsel to further explain the basis on which this sum could be held to be a matrimonial asset. Counsel submitted that as the monies were earned during the marriage, they are the gains of the marriage and should be put into the pool notwithstanding that they have been used up to pay for the renovations. Having considered this point, I found no reason to include the sum into the pool. This sum has been used up. It is fairly common that monies earned during marriage are spent to acquire more matrimonial assets or used to improve other matrimonial assets. In these more common situations, the assets acquired or improved would be matrimonial assets and the sums used to acquire or improve the assets would thus have been included into the pool of assets. In the present case, however, the asset (35 JM) in relation to which the monies have been used for its renovations is not a matrimonial asset, as explained above. The monies have been utilised and are not in a form available as a matrimonial asset.

Husband's gifts and payments

12 I did not include into the pool of assets any of the sums that the Wife submitted had been

allegedly dissipated or paid out to specified persons (except the $79,000 paid to one of their daughters, as mentioned above).

13 I did not find, on the facts, that any of the alleged acts raised by the Wife amount to a dissipation of matrimonial assets. I found that the Husband had used monies from his own bank accounts in genuine transactions. The Wife alleged that the sums that the Husband had given to his two daughters ought to be in the pool, presumably because they amount to him dissipating the assets. I found that the Husband's gifts of these sums of money to his own daughters for various alleged specified purposes do not constitute a dissipation of assets. On the present facts, I was prepared to accept that the motivation for the Husband's gifts was the love and generosity of a parent towards his children. The overall circumstances show that these acts were not inconsistent with the rather generous character of the Husband and the parent-child relationships in question. At the end of the day, the monies benefitted the children of the parties rather than non-family members, and I hope that the Wife, as a parent, will appreciate the Husband's actions from this perspective as well.

14 The Wife also alleged that there were monies which were not accounted for and urged the court to draw an adverse inference against the Husband. These were the sum of $118,000, made up of multiple $1,000 cash withdrawals from the Husband's personal OCBC account and the sum of about $1.47 million, made up of various amounts of withdrawals from his UOB account. In her interrogatory and discovery applications against the husband, the Wife had asked for explanations for the multiple cash withdrawals from the OCBC bank account. She had also asked for explanations for the cheque withdrawals from the UOB account. The Husband explained that the withdrawals were for his personal use such as for food, petrol, car repairs and other miscellaneous expenses. He also explained that a portion would go towards his gambling and lottery activities, which he had indulged in to a reasonable degree since the early days of the parties' relationship. He had produced relevant bank statements and cheque book records.

15 An adverse inference ought not to be easily drawn against a party. The Husband has largely disclosed the relevant assets although he could not specifically account for all the monies withdrawn from the bank accounts. Parties in a functioning marriage may not always keep records fastidiously in anticipation of requiring them in future divorce proceedings. As he had disclosed his assets, producing his bank statements and other documents, I did not draw an adverse inference against the Husband. Inability to recount past transactions or even some lack of diligence in themselves do not necessarily justify an adverse inference being drawn against the party. However, I noted that there was a large sum of $350,000 withdrawn from the UOB account in June 2015. I sought clarification from the parties at the hearing of 17 January 2017 on whether such a large withdrawal sum had been explained by the Husband. It appears that he could not remember the purposes for which the sum was used. I did not think that the Husband was wilfully concealing his assets, but he could not recall and explain this large withdrawal. I found it just and equitable to take this into account as a factor when adjusting the average ratio under the structured approach in *ANJ v ANK* and did not add the sum back to the pool of matrimonial assets.

16 The total pool of matrimonial assets is set out in the following table:

Matrimonial assets ("MA")	**Net value**
Agreed pool	$9,044,747
Loan to daughter (agreed)	$79,000
Total pool of MA	**$9,123,747**

Both parties' counsel unequivocally confirmed to the court that the respective parties had agreed to the values of the matrimonial assets and the date at which these assets are valued.

Direct contributions

17 I then applied the structured approach in *ANJ v ANK* to arrive at a just and equitable division of the matrimonial assets. The first step was to ascertain the ratio of the parties' direct contributions to the acquisition of matrimonial assets. The Husband was the breadwinner in the family and the Wife took on the role of the homemaker. Therefore, it was not surprising that the ratio of the Husband's direct contributions to the acquisition of the matrimonial assets to that of the Wife was 100:0. Both parties were content to use this ratio for the parties' direct contributions.

Indirect contributions

18 Having taken on the role of the homemaker in this long marriage where four children were raised, the Wife's indirect contributions were substantial. On the other hand, the Husband was also involved in the children's lives, and the Wife admitted that he had cared for the children with efforts such as fetching the children to school. He had also provided financially for the family in giving the family members a comfortable lifestyle. He had been retired for a good number of years (since 1999) and was thus able to play an active part in the family's lives, for example by driving the children to activities, while also earning an income from various investment opportunities. He was close to the children.

19 I was of the view that it was fair to attribute 65% to the Wife and 35% to the Husband as their respective shares of indirect contributions to the marriage.

Division proportions

20 Applying the structured approach in *ANJ v ANK*, the average ratio is as follows:

	Wife	**Husband**
Direct contributions	0	100
Indirect contributions	65	35
Average ratio	32.5	67.5

Adjusting the average ratio

21 The Wife argued that first, her indirect contribution ought to be 70% and second, in such a long marriage, a 70% *weightage* ought to be accorded to the *indirect* contributions. The Wife's submission is reflected in this table showing her proposed division of the matrimonial assets:

	Wife	**Husband**
Direct contributions (30% weightage)	0	100

Indirect contributions (70% weightage)	70	30
Average ratio based on above weightage to direct and indirect contributions	49	51

22 In response, the Husband argued that giving a high weightage to indirect contributions would result in the Wife's already-higher indirect contributions being given a higher weightage, such that the division exercise in this case would be dominated by the factor of indirect contributions. The court would be overvaluing the Wife's indirect contributions.

23 I remarked to both counsel at the hearing that the application of the structured approach to long marriages where one party is the main breadwinner and the other is a main homemaker favours the breadwinner. The reason is that, as the family would rely on the financial provisions of the breadwinner spouse for its needs, the breadwinner would inevitably be accorded a ratio for indirect contribution that would never be 'zero', even if that spouse had not made any non-financial contribution towards the family's well-being. The exclusivity of the breadwinning role taken on by one spouse results in financial contributions being given credit at two stages of the structured approach.

24 Since the decision in *ANJ v ANK*, courts applying the structured approach have in appropriate situations adjusted the average ratio by according *unequal weightage* to direct and indirect contributions, depending on the facts and circumstances of the case (see *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 at [21]; *ATE v ATD and another appeal* [2016] SGCA 2 at [21] and [23]). This approach was one that the Wife argued for in the present case which could arguably alleviate the disadvantage suffered by the homemaker in Single-Income Marriages.

25 I observed that the consequence of according a 70% weightage to indirect contributions and a 30% weightage to direct contributions is that the Wife's indirect contributions would be given pre-eminence as a factor in the division exercise. The direct and indirect contributions of the parties are already taken into account in steps 1 and 2 of the structured approach in reaching the average ratio. Having been accorded 65% as her indirect contributions, the Wife's 65% ratio would be given an *amplified* consideration by a weightage of 70%. I declined to use the approach suggested by the wife for it must be borne in mind that the Court of Appeal has also said in *ANJ v ANK* (at [26] and [28]) that:

> 26 … We would underscore that s 112 of the WC does not give pre-eminence to any of the factors enumerated in s 112(2). … Put simply, the "average ratio" is a non-binding figure; it is meant to serve as an indicative guide to assist courts in deciding what would be a just and equitable apportionment having regard to the factual nuances of each case.
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> …
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> 28 … We are mindful that there remains a number of other factors under s 112, including the needs of the children; the presence of an agreement between the parties with respect to the ownership and division of matrimonial assets; period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party; and the matters referred to in s 114(1) relating to a maintenance order for the wife. Insofar as the remaining factors become relevant for consideration in the appropriate case, the court is well-advised to make adjustments as it deems necessary to the principles stated in this judgment for the purposes of reaching a just and equitable result on the facts before it.

26 Further, giving unequal weightage to direct and indirect contributions involves a measure of artificiality and may send the message that the court is constrained to adjust the ratio mathematically, when it is not so restricted; its discretion is, on the contrary, to be exercised in broad strokes.

27 Although I declined to accord unequal weightage to the direct and indirect contributions, I still adjusted the average ratio. I adjusted the average ratio for the Wife from 32.5% to 40% as the Wife's final share. My reasons for this adjustment are explained here.

28 First, it must not be forgotten that the court ought always to be mindful that a marriage is an equal partnership of different efforts. The Court of Appeal clearly stated a decade ago, in *NK v NL* at [20], that:

> … The division of matrimonial assets under the [WC] is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts. The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking role, as both roles must be performed equally well if the marriage is to flourish.

29 This marriage is a very long one, stretching over 37 years. The Court of Appeal opined in *ANJ v ANK* (at [27]) that:

> The circumstances that could shift the "average ratio" in favour of one party are diverse …. Indirect contributions in general tend to feature more prominently in long marriages … The courts also tend to give weighty consideration to homemakers who have painstakingly raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part.

30 If the law is to accord equal recognition to homemaking and breadwinning, then in a very long marriage where extensive marital cooperation, mutual emotional support and joint parenting have been carried out, an adjustment to the final ratio ought to be made to reflect this circumstance. After all, the assistance and support one party gives the other in the carrying on of the latter's occupation or business is a factor relevant to determining the just and equitable division of matrimonial assets (see s 112(2)(*g*) of the WC). In the case of long marriages, such assistance and support is very substantial and is, immeasurable.

31 The Court of Appeal had, earlier in *NK v NL*, emphasized that (at [29]):

> … it is paramount that courts do not focus merely on a direct and indirect contributions dichotomy in arriving at a just and equitable division of matrimonial assets. The various factors enumerated by s 112(2) of the [WC], which are no less important, must be duly assessed and considered as a whole. At the end of the day, no one factor should be determinative as the court's mandate is to come to a *just and equitable division* of the matrimonial assets having regard to *all the circumstances of the case*. [emphasis in original]

32 Thus, the court may adjust the average ratio in a manner that is just and equitable, taking into account all the circumstances, including the factors in s 112(2) of the WC. It is not constrained to use the average ratio as the final ratio, as it could otherwise lead to the direct and indirect contributions of the parties gaining dominant importance amongst the factors in s 112(2). Neither is the court compelled in every case to accord different weightage to direct and indirect contributions when it adjusts the average ratio.

33 Second, trends in previous cases that share broadly similar facts are very useful in guiding the

court in its exercise of discretion. The Court of Appeal's decision in *BCB v BCC* [2013] 2 SLR 324 is instructive on how the use of trends guides the court's exercise of its power in reaching a just and equitable division of matrimonial assets. The most recent decision of *TNK v TNL* also shows the way in reaching a just division by the use of trends and precedents (see *TNL v TNK* at [47] to [51]).

34 In the present case, I found it just and equitable that the matrimonial assets be divided in the proportion of 60:40 in favour of the Husband. This outcome is in line with the trends of division in cases with broadly similar facts (I elaborate on this at [41] onwards).

35 The table that reflects this division under the structured approach is as follows:

	Wife	**Husband**
Direct contributions	0	100
Indirect contributions	65	35
Average ratio	32.5	67.5
Final ratio	40%	60%

Recent Court of Appeal decision in *TNL v TNK*

36 The decision of the Court of Appeal in *TNL v TNK* has given further guidance on the approach a court should take in its exercise of discretion in dividing matrimonial assets. Although I am of the view that I had reached a just and equitable division by applying the structured approach to the present case (which involved a Single-Income Marriage), the principles in *TNL v TNK* would have greatly assisted me in dealing with some difficult aspects I had stated in [22] to [27].

Philosophy of marriage

37 First, the Court of Appeal has affirmed "the philosophy of marriage being an equal partnership" (*TNL v TNK* at [44]). This requires that contributions to the marriage, be they direct financial contributions in the form of acquiring matrimonial assets or providing for the family, or indirect contributions in the form of homemaking, are to be accorded equal recognition. The purpose of the structured approach laid down in *ANJ v ANK* – requiring a court to identify the ratio of each spouse's direct and indirect contributions – was to ensure that indirect contributions were placed on an equal footing as direct contributions. A common practice till then had been to start by ascribing a ratio to the parties' direct contributions and then applying a percentage "uplift" to account for a party's indirect contributions. This, in the Court of Appeal's view, was unsatisfactory because using direct contributions as a starting point might undervalue the homemaker's indirect contributions, which would in turn be inconsistent with Parliament's objective of equalizing direct and indirect contributions (see *ANJ v ANK* at [19]).

38 It would be ironic if the application of the *ANJ v ANK* approach, which was meant to guide a court's exercise of discretion, led to a result that was not intended by the Court of Appeal or by Parliament in enacting s 112 of the WC. The Court of Appeal in *TNL v TNK* was, hence, understandably concerned that applying the *ANJ v ANK* approach to Single-Income Marriages would unduly favour the working spouse over the non-working spouse (at [44]):

> Our reconsideration of the *ANJ* approach in the context of Single-Income Marriages stems from the fact that [the] *ANJ* approach tends to unduly favour the working spouse over the non-

working spouse. This is because financial contributions are given recognition under *both* Steps 1 and 2 of the *ANJ* approach. Under Step 1, the working spouse in a Single-Income Marriage would be accorded 100% (or close to 100%) of direct contributions. He or she would also be accorded a substantial percentage under Step 2 solely on the basis of his or her indirect financial contributions, and this could well be the case even if he or she made little or no non-financial contributions. On the other side of the equation, this means that the non-working spouse is, in this sense, doubly (and severely) disadvantaged. [emphasis in original]

39 The Court of Appeal in *TNL v TNK* thus excluded the application of the structured approach to *long*, "Single-Income Marriages" on the basis that it would not be consistent with the philosophy of marriage or its intention in *ANJ* – which, as mentioned, was to avoid undervaluing indirect contributions in the first place (at [44]–[45]):

> … we reaffirmed the rationale behind the broad-brush approach in *ANJ* (at [17]) by highlighting that "mutual respect must be accorded for spousal contributions, *whether in the economic or homemaking spheres*, as both roles are *equally fundamental* to the well-being of a marital partnership"….However, giving effect to this principle in the context of a Single-Income Marriage and within the framework of the *ANJ* approach would almost inevitably result in some degree of artificiality: the court would either have to award the non-working spouse a very high percentage in Step 2 (which may appear to disregard the working spouse's indirect financial contributions), or accord a very high weightage to Step 2 at Step 3. In some, if not most, cases, the court would have to do both. … the principles enunciated in [*ANJ v ANK*] are not necessarily exhaustive and … we did not expect them to be hard and fast rules that must immutably be applied even to cases of exceptional facts. In this regard, we are of the view that the *ANJ* approach should not be applied to Single-Income Marriages. [emphasis in original]

40 This is an important point made in *TNL v TNK*. It reminds the court to bear in mind the underlying philosophy of marriage as an equal cooperative partnership of different efforts and to look at all relevant circumstances to reach a just, fair and equitable division of the matrimonial assets.

Use of trends and case precedents

Examining past precedents with broadly similar facts

41 Second, the Court of Appeal's decision also underscores the relevance of using trends in past cases to guide the court's division of assets. The Court of Appeal had, in a number of decisions even before *TNL v TNK*, relied on such trends to guide its assessment of a just and equitable division.

42 In *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 ("*Tan Hwee Lee*"), the Court of Appeal rejected the husband's suggestion that the wife be awarded only 14.3% of the total assets. It observed that in long marriages, the trend in previous cases was toward giving the homemaker a greater proportion of the matrimonial assets; it cited academic studies of decided cases to show that the figure would be somewhere between 35% to 50%, making the husband's proposed share of the assets to be awarded to the wife in that case unreasonably low (see [82], [83], and [87]).

43 In *BCB v BCC*, the Court of Appeal cited Lim Hui Min, "Matrimonial Asset Division: The Art of Achieving a Just and Equitable Result" in *SAL Conference 2011: Developments in Singapore Law Between 2006 and 2010* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu gen eds) (Academy Publishing, 2011) at pp 191–271 for the trends in division orders and noted a trend, in marriages more than ten years long, for working mothers with substantially less financial contributions to receive about 40% of

the assets, which would be more than her direct financial contributions (at [13]–[16]).

44 In *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195, the Court of Appeal observed that for marriages of between 17 to 35 years where there were children, the proportion of matrimonial assets would range from 35% to 50% (at [58]).

45 Once again, in *TNL v TNK*, the Court of Appeal has affirmed the value of precedents. It cited a few decisions with similar facts, observing at [48] that:

> [in] *long* Single-Income Marriages, the precedent cases show that our courts tend towards an equal division of the matrimonial assets. We are in general agreement with this approach. We pause to highlight that different considerations may attach in *short* Single-Income Marriages, although we propose to leave that issue to be dealt with in an appropriate case in the future.

46 What precedents should guide the division of assets in *short* Single-Income Marriages? As the quote in the previous paragraph shows, the Court of Appeal left the question of what considerations would attach in *short* as opposed to *long* Single-Income Marriages to be dealt with in the future.

47 A starting point for identifying the relevant trend of division in short Single-Income Marriages may be found in *Zhou Lijie v Wang Chengxiang* [2015] SGHC 316. This case involved a nine-year marriage where there were no children. The husband was the breadwinner and the wife was a homemaker. The High Court noted, having surveyed the precedents, that where (a) a wife made little or no direct contributions, (b) the marriage was a childless one, and (c) the marriage was a moderate length of about 10 ten years, the just and equitable division of assets would be to award her between 10% to 20% of the total pool of assets (at [60]).

What is a "Single-Income Marriage"?

48 In *TNL v TNK*, the Court of Appeal defined "Single-Income Marriages" as marriages where "one spouse is the sole-income earner and the other plays the role of homemaker"; it distinguished this from "Dual-Income Marriages", which it defined as "marriages where both spouses are working and are therefore able to make both direct and indirect financial contributions to the household" (see [42]–[43]).

49 The words "Single-Income Marriage" ought to be interpreted sensibly in the spirit in which *TNL v TNK* was decided. I do not think the Court of Appeal intended to draw a thick black line separating cases where the main homemaker worked intermittently for a few years in the course of a long marriage from cases where the homemaker had not worked a single day, applying the structured approach in *ANJ v ANK* only in the former situation while excluding it in the latter. To do so may place a full-time homemaker (who has not worked at all during marriage) in a better position than a homemaker who also worked but brought far less income into the marriage than the main breadwinner. This is because the former may obtain near equal division of the assets following *TNL v TNK*, while the latter may obtain substantially less than that share if *ANJ v ANK* is applied to her (or his) case and her direct contributions are very low.

50 It appears from the judgment in *TNL v TNK* that a "Single-Income Marriage" would include a marriage where one party is *primarily* the breadwinner and the other is *primarily* the homemaker. The Court of Appeal cited, as examples of Single-Income Marriages, two cases where the spouse who took on the role of the main homemaker had also made some financial contributions, for example, through employment or through investments. Thus, it appears that "Single-Income Marriages" are not limited to those where one spouse focuses exclusively on the homemaking role without contributing

financially at all, while the other is the sole breadwinner. It is convenient at this juncture to take a closer look at those two cases referred to by the Court of Appeal.

51 First, the Court of Appeal cited *Yow Mee Lan v Chan Kai Buan* [2000] 2 SLR(R) 659 ("*Yow Mee Lan*") as a decision with similar facts to the case before it. In *Yow Mee Lan*, which involved a 26-year marriage, the wife worked continuously during the marriage, first for third parties and later for the husband himself. According to the judgment in *Yow Mee Lan*, the wife was working when the parties married in 1973; she stopped work in 1975 to care for the parties' first child and resumed employment from 1976 until 1979 when she stopped work again to care for the couple's second child (at [3]). She then worked from 1982 to 1996, for a third-party company in the first three years and then for her husband's company for the rest of that time until 1996 (see [4] and [13]). Throughout these years, she remained the main caregiver for the children due to the husband's extensive travelling (at [9]). Eventually, the wife commenced divorce proceedings in 1998 and the interim judgment (or decree *nisi* as it was then known) was granted in 1999 (at [15]).

52 In citing *Yow Mee Lan* as a precedent for a Single-Income Marriage, the Court of Appeal in *TNL v TNK* (at [50]) noted the High Court's observation in that case (at [42]), that the wife "played a supporting role in the family business owned by the husband" and it appeared that she "did not have either the knowledge or the talent which the husband did and could not herself have produced the substantial income he was able to generate". Thus it appears that a marriage can still be classified as a Single-Income one even if the homemaker spouse has worked for some time in a long marriage. In determining whether a spouse is a "homemaker" and whether the marriage is a "single-income" one, what is called for is a qualitative assessment of the roles played by each spouse in the marriage relative to the other. In *Yow Mee Lan*'s case there was a clear demarcation of responsibility: the husband focused entirely on his business (and made a success of it) while the wife supported him by running the household. She played that role throughout the time she was working; the Judge in that case described her commitment to the family as "total and unstinting" (at [36]). A wife in such a position suffers economically in the area of career advancement and the opportunity to earn an income she might otherwise have been capable of receiving had she not taken on the heavy responsibility of homemaking as well.

53 The second case referred to was *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*"). In that case, the wife was a homemaker who, for the length of a 30-year marriage, had been employed only for four months, at a time when the husband was retrenched. Despite this, she amassed considerable wealth (some $500,000) by investing money that the husband had given her as her allowance. She achieved this despite having to shoulder the burden of the caring for the household, never employing domestic help and being the sole caregiver of the children during those periods of time when the husband was posted overseas – which was for a total of some 8 years (*Lock Yeng Fun* at [19]). This decision illustrates that a spouse who makes substantial financial contribution to the acquisition of matrimonial assets can still be regarded as a homemaker in a Single-Income Marriage.

54 That said, I would caution parties embroiled in matrimonial disputes against extending their battlefield in litigation by nit-picking on whether their case should be classified as a Dual-Income Marriage, to which the structured approach in *ANJ v ANK* applies, or a Single-Income Marriage, to which it does not. One should not split hairs in this way, for it would undermine the aspirations of the WC and the family justice system if the exercise of dividing the matrimonial assets gives incentive to the parties to argue over fine brush financial contributions. Neither should parties be inflexible by arguing where a bright blue line should separate a short marriage from one of moderate length and a long one. The power to divide must be exercised in broad strokes; the broad brush approach has been affirmed many times over by the Court of Appeal.

The structured approach in ANJ v ANK continues to apply to Dual-Income Marriages

55 The Court of Appeal held that the structured approach in *ANJ v ANK* does not apply to Single-Income Marriages but continues to apply to Dual-Income Marriages (*TNL v TNK* at [41] and [45]). It would appear that in Single-Income Marriages where *ANJ v ANK* is not applicable, the court must look at all the relevant factors in s 112(2) of the WC and be guided by precedents. That said, it is worth reiterating that the Court has cautioned that the division in a previous case is no more than an illustration which subsequent cases can take into account as guides, always bearing in mind the difference in circumstances and that no two cases are identical (see *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [79]).

56 One of the most significant aspects of *ANJ v ANK* is the rejection of the "uplift method" – that is, using the parties' direct financial contributions to the marriage as a starting point for ascertaining the proportions of division – which tended to undermine the indirect contributions of the breadwinner spouse. As the Court of Appeal noted in *ANJ v ANK* (at [19]):

> …the "uplift" methodology is not a good tool to assess and recognise the parties' indirect contributions to the marriage. The primary difficulty with this approach is the inherent risk of it undervaluing a spouse's non-financial contribution. Using direct financial contributions as the prima facie starting point would not achieve the objective of the 1996 amendments to the WC of equalising the non-financial contribution with financial contribution given the tendency for direct financial contributions to assume centre-stage, leaving inadequate room for indirect contributions to feature within the calculus…

57 In rejecting the uplift methodology, the structured approach explicitly recognises the main breadwinner's indirect contributions as well, and provides a more balanced way to explain how the court reached the ultimate division proportions. Its underlying basis is that financial and non-financial contributions ought to be appropriately recognised.

58 Although the structured approach continues to apply to Dual-Income Marriages, the court must be mindful of the Court of Appeal's view that the steps in *ANJ* v *ANK* were not intended to be used as "hard and fast rules that must immutably be applied even to cases of exceptional facts" (*TNL v TNK* at [45], referring to *ANK v ANK* at [30]). Indeed, the limitations of *ANJ v ANK* fall away if it is embraced as a useful guide to be exercised within a broad brush approach.

59 I cannot stress enough the importance of the broad brush approach in applying *ANJ v ANK*. No useful purpose is served by parties litigating the matter in a mathematical fashion, filing affidavit after affidavit on every contribution they can come up with. Parties in a functioning marriage do not keep records of their transactions with a view to building a case should divorce occur, so gaps in the evidence, especially in long marriages, can be expected. In some cases, the court is able to reach fairly accurate figures in respect of the parties' direct contributions due to the availability of cogent evidence. In other cases, gaps in evidence can affect the court's ability to determine a precise ratio for direct contributions. The court will consider all available relevant evidence to reach a just determination at each stage of the exercise of discretion afforded by s 112 of the WC.

60 Divorcing couples were once in an intact, functioning relationship; they chose to marry each other, for better or for worse. The mutual emotional support each gave the other in the marriage cannot be measured in monetary terms. Who is to say that had one spouse not been present in the life of the other, the latter would have been as financially successful and thus able to contribute a greater share to the pool of matrimonial assets? Conversely, one cannot, on hindsight, tell with certainty whether the presence of the other spouse in one's life had any negative effect on one's

career. Countless decisions, small and large, are made in the course of a marriage. Many significant forks in life's road occur during the course of a marriage. The broad brush approach is thus a key feature in the resolution of disputes over the division of matrimonial assets. The final ratio also ought to reflect the philosophy of marriage as an equal partnership of different efforts. Matrimonial disputes are best managed, and families better supported, by a sensible, broad-brush process which does not incentivise calculative behaviour. Parties need to be bigger, kinder and wiser after a divorce; they need to look ahead and recast their future to focus on healing themselves and parenting their children.

Trends in short and long Dual-Income Marriages

61 The introduction of the structured approach in *ANJ v ANK* did not wipe out the value of precedents pre-dating it. It may useful here to make some brief observations on the trends in Dual-Income Marriages.

62 Generally, in *short* Dual-Income marriages, division proportions tend to reflect the parties' respective financial contributions. In *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR 729, the Court of Appeal noted (at [28]) that in "a short and childless marriage, the division of matrimonial assets will usually be in accordance with the parties' direct financial contributions as non-financial contributions will be minimal". This decision pre-dated *ANJ v ANK*.

6 3 *ANJ v ANK* is capable of producing a just and equitable result in line with past trends in short Dual-Income Marriages if adjustments within the structured approach are appropriately made. For example, in *ATE v ATD*, which involved a marriage of 5 years with one child, the Court of Appeal accorded a 75% weightage to direct contributions, resulting in an outcome consistent with other cases involving marriages of short lengths. The direct contributions were 59:41 in favour of the husband; the indirect contributions were 40:60, and the average percentage contribution was 54.25% to 45.75%, which was closer to the ratio of the parties' direct contributions.

64 Assigning a higher weightage to financial contributions in short Dual-Income marriages is not inconsistent with Parliament's intention. In the Parliamentary debates on removing the directive to incline towards equality in the former s 106 of the WC, the views of the then Minister for Community Development was recorded as follows (see *Singapore Parliamentary Debates, Official Report* (27 August 1996) vol 66 at col 527):

> … where a marriage is of short duration with no children, the law must not put judges under constraint to incline towards equality when what is equal may not be just.

65 Short marriages without children may thus present an exception to the general approach, in that financial contributions could be given greater weight than other factors. In contrast, financial contributions ought not to be given pre-eminence in longer Dual-Income Marriages.

66 If in long, Single-Income Marriages, the precedent cases show that our courts inclined towards an equal division of the matrimonial assets, there is little reason not to also incline towards equality in long Dual-Income Marriages, in the light of the philosophy of marriage as an equal partnership. My observation is that trends in cases of *long* marriages *with children*, whether Single-Income or Dual-Income ones, also incline towards equal division. Inclining towards equal division still allows the court to use its discretion to deviate from an exactly 50:50 split and does not constrain the court's discretion, yet upholds the character of marriage and provides guidance to the court.

67 These trends and observations are valuable guides for the court tasked with examining all the

circumstances of each unique case to reach a fair outcome. They do not shackle the court's discretion, for there is no norm or presumptive division proportion, but are aids to guide it towards a just and equitable division of assets. They remain relevant even when applying the structured step-by-step approach in *ANJ v ANK*. As I have explained earlier, the court ought to be mindful of the trends in precedent cases particularly when it considers adjusting the average ratio to reach the final one.

The spirit of TNL v TNK and ANJ v ANK which guides the court

68 At the end of the day, it must not be forgotten that the spirit of the decision in *TNL v TNK* is to recognise that the outcome of the division exercise ought not to undermine the fundamental nature of marriage as an equal partnership and that the structured approach ought not to be applied as a hard and fast rule. Instead, the structured approach in *ANJ v ANK*, when used in a manner that does not limit the scope of broad brush adjustments, gives helpful guidance to the court in upholding the philosophy of marriage and in giving equal and sufficient recognition to both breadwinning and homemaking. Such an application of *ANJ v ANK* may necessitate appropriate adjustments to the average ratio by taking into account these broad concepts as well all other factors in s 112(2) of the WC. A principled application of *ANJ v ANK* requires decisions which articulate clearly the reasons for such adjustments, thus enabling greater understanding of and certainty about how the court exercises its discretion in s 112 of the WC. Well-articulated decisions will constitute valuable precedents upon which family jurisprudence is built for future guidance.

Present division order upholds the spirit of TNL v TNK

69 While *TNL v TNK* has now stated that the structured approach does not apply to Single-Income Marriages, I am of the view that the way the structured approach was applied to the present facts led to a result which is consistent with the approach advocated in *TNL v TNK*.

70 As noted by the Court of Appeal in its *TNL v TNK* (at [38] to [42]), the courts have been inclined towards equal division in a number of cases involving long Single-Income Marriages. I have observed that in precedents identified by the Court of Appeal in decisions before *TNL v TNK* (see [42]–[44]) above, the proportion of division in long marriages where there were children tend to be around 35–50%. Given that this was a long marriage where the Wife was a homemaker, as a rough guide, a just and equitable share of the matrimonial assets for her would be in the region of 35 to 50%.

71 In *Lock Yeng Fun*, although the marriage was a long one and the wife was a homemaker, the situation was exceptional in that the wife, by her investment skills, increased the value of the family's assets to the extent that she had more assets than the husband at the time of the hearing of ancillary matters (see [41]). In *Tan Hwee Lee*, the Court assessed that equal division was just and equitable and noted that there was no evidence that the husband there had made significant non-financial contributions at all – he was, in truth, an absent father (at [92]).

72 In the present case, on the other hand, the Husband was responsible for the generation of income in the marriage and the wife played a minimal role in this regard. He actively looked after the children despite being the main breadwinner, as I have mentioned at [18] above. Having retired in 1999 at the age of 46, he managed to devote time to the family while still making a substantial income from his investments. He was highly successful, having amassed $9 million despite a relatively early retirement. That said, the Wife's homemaking contributions should not be undervalued.

73 Having considered the relevant circumstances, and given the length of the marriage and the

wife's considerable contribution to raising the children, and applying a broad brush approach, I divided the matrimonial assets 60:40 in favour of the Husband. This would be consistent with past precedents.

Maintenance for the Wife

74 Having made the division order, I considered the Wife's prayer for maintenance. I was of the view that with $3.65 million in assets under the division order, the Wife had sufficient financial resources to meet her reasonable needs. The children are grown up and she could focus only on her own needs. The adult children could even give financial support to their parents. It must be borne in mind that the Husband is not young, and the assets on which he relies to generate income will be reduced after the division order is carried out. Thus, I ordered that there be no maintenance for the Wife.

Multiplier in lump sum maintenance for the Wife

75 Although I have not made any order of maintenance here, I will make an observation on the calculation of the multiplier in determining a wife's lump sum maintenance. The Court of Appeal in *TNL v TNK* made clear that the formula in *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 is a guide and not a rule (at [61]):

> Whilst not proposing to discard the *Ong Chen Leng* method altogether, we do not think that the *Ong Chen Leng* method was intended by this court to be the only method of quantifying the appropriate multiplier for a lump sum maintenance award. In this regard, we agree with the Husband's submission that the *Ong Chen Leng* method is simply a guide rather than a rule of law.

76 This is a welcome clarification, for disputing parties have often used the formula almost as a rule, without understanding the basis or origins of the formula. I had made the following observation about the *Ong Chen Leng* formula, in an academic setting, in the Annual Review of Singapore Cases (2012) 13 SAL Ann Rev 299 at [16.88]–[16.89]:

> 16.88 … In *Ong Chen Leng* itself, the formula was suggested by the wife (at [35]):
>
> > … [The wife] quantified the $400 on a straightline basis over a period of 17 years as a compromise between the average life expectancy of a woman (70 years) and the usual retirement age (65) of a Singapore male worker less the wife's present age which was 50. In the circumstances of this case this seems proper and we make no comment on it.
>
> 16.89 It may have been an acceptable formula in the circumstances in that case, but no elaboration was made on why that formula was appropriate, nor was there a logical basis for such a formula. There are many variables in considering the wife's needs in transiting to post-divorce life: the husband's health and working prospects would affect the retirement age of that husband; the wife's health would affect the life span of the wife. These matters directly affect the variables in the formula. The formula is at best a very rough guide to obtaining a ball-park multiplier.

77 The *Ong Chen Leng* formula is not as helpful in cases involving younger wives. An application of the formula to a 35-year-old wife would yield a multiplier of 40 years – this is calculated on the basis of 85 years being the updated average life span of a woman (see *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 at [89]) and 40 being the solution to the equation ([(85 + 65) ÷ 2] – 35). Ironically, a young wife is far more capable of earning income and for

more years than an older wife of say, 60 years of age. The older wife would have obtained a far lower multiplier of 15, being the solution to the equation ([(85 + 65) ÷ 2] – 60). This anomaly arises because the formula does not take into account the wife's earning capacity and her income but assumes that she has none. The formula may be more helpful as a guide in cases of older wives who have taken on the homemaking role in the marriage and who have little or no earning capacity at the time of the divorce.

7 8 *TNL v TNK* reiterates that the court's power to order maintenance is supplementary to the power to order a division of matrimonial assets (at [63], citing *ATE v ATD* at [33]). If, after considering the financial resources available to the wife after the division order, the court is of the view that maintenance is appropriate, the court should also be guided by the underlying basis for the maintenance of a former wife (see *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506) and by the factors in s 114 of the WC in reaching the final maintenance order.