

Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) v Tan Lip Chin (alias Izak Tan)
[2006] SGHC 121

Case Number : OS 817/2005
Decision Date : 12 July 2006
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Tan Cheow Hin (CH Partners) for the plaintiff; Kanagavijayan Nadarajan (Kana & Co) for the defendant; Pang Khang Chau (Deputy Senior State Counsel) for the Attorney-General
Parties : Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) — Tan Lip Chin (alias Izak Tan)

Muslim Law – Syariah court – Husband and Muslim wife marrying under Women's Charter – Husband converting to Islam and second marriage ceremony under Muslim law taking place – Decree of divorce made by Syariah Court following breakdown of marriage – Whether decree dissolving entire marriage relationship between parties whether under Muslim law or Women's Charter – Section 35(2) Administration of Muslim Law Act (Cap 3, 1999 Rev Ed), s 7(b) Women's Charter (Cap 353, 1997 Rev Ed)

12 July 2006

Judgment reserved.

Tan Lee Meng J:

1 This case raises a very important issue regarding the effect of a decree of divorce of the Syariah Court in the case of parties who first married under the provisions of the Women's Charter (Cap 353, 1997 Rev Ed) and subsequently under Muslim law.

2 The plaintiff, Mdm Noor Azizan bte Colony (alias Noor Azizan bte Mohamed Noor) ("Mdm Noor Azizan"), was a Muslim when she married Mr Tan Lip Chin ("Mr Tan"), then a non-Muslim, under the Women's Charter on 22 September 1997 ("the Women's Charter marriage"). Subsequently, Mr Tan became a Muslim and the couple went through a Muslim marriage ceremony at the Registry of Muslim Marriages on 24 November 1999. Unfortunately, the marriage broke down and the Syariah Court issued a decree on 30 November 2004 dissolving their marriage.

3 Unsure of the effect of the Syariah Court's decree on the Women's Charter marriage, Mdm Noor Azizan instituted the present originating summons and prayed, with the consent of Mr Tan, for the following order:

That the marriage between the Plaintiff and the Defendant registered in the Singapore Marriage Registry as No. 2490 on the 22/9/1997 be declared dissolved and/or otherwise the record/entry of the said marriage be expunged from the records of the Singapore Marriage Registry.

4 At the outset, it ought to be made clear that the question of expunging the Women's Charter marriage from the records of the Marriage Registry does not arise as it was a valid marriage. As such, the only part of Mdm Noor Azizan's application that may be considered is whether or not the Women's Charter marriage had been dissolved by the decree of the Syariah Court on 30 November 2004.

5 Although Mdm Noor Azizan and Mr Tan married under the Women's Charter and again under

Muslim law, they had only one marriage relationship. That there is only one marriage relationship even though a husband and wife may undergo two or more marriage ceremonies has often been stressed. For instance, in *Amadasun v Amadasun* [1992] 1 FLR 585 at 586, Sir John Arnold P, when referring to a couple's customary marriage in Nigeria in 1962 and their second marriage in the Lambeth Registry office in London in 1970, said:

[T]he Nigerian customary [marriage] ceremony of 1962 was a valid marriage ceremony and caused these two persons to be married. The result of that is that the ceremony at the registry office in Lambeth in 1970 was of no legal consequence in relation to joining husband and wife together as spouses, whatever other effect it may have had.

6 In a similar vein, in a Hong Kong case, *Yeung Yeu-kong v Yeung Fung Lai-mui* [1971] HKLR 13, Blair-Kerr J said at 21:

[T]his does not mean that if the first marriage was polygamous, or rather potentially polygamous, and the second ceremony was one designed to create monogamous marital status, the parties, somehow, have two statuses existing side by side. How can it be said that two marriages involving the same parties may exist side by side at any given time? ... At any given moment, there is only one subsisting marriage between the parties to it.

7 In the present case, there is no doubt that the Syariah Court acted within its jurisdiction when it dissolved the parties' marriage on 30 November 2004. Section 35(2) of the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed) ("AMLA") provides as follows:

The [Syariah] Court shall have jurisdiction to hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to —

- (a) marriage;
- (b) divorces in the Muslim law as fasakh, cerai taklik, khulul and talak;
- ...

8 The relevant phrase in s 35(2) of AMLA is "in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law". In the present case, both Mdm Noor Azizan and Mr Tan were Muslims when their divorce proceedings were initiated in the Syariah Court and their marriage had been registered at the Registry of Muslim Marriages. As such, the Syariah Court was entitled to issue the decree of divorce on 30 November 2004.

9 When determining the effect of the Syariah Court's decree of divorce on the Women's Charter marriage, it is necessary to consider s 7 of the Women's Charter, which provides as follows:

Every marriage solemnized in Singapore after 15th September 1961, other than a marriage which is void under the provisions of this Act, shall continue until dissolved —

- (a) by the death of one of the parties;
- (b) by order of a court of competent jurisdiction; or
- (c) by a declaration made by a court of competent jurisdiction that the marriage is null and void.

10 Section 7 of the Women's Charter thus envisages that a marriage under the Charter may be dissolved by our own civil courts as well as by other courts of competent jurisdiction. In *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 254, Prof Leong Wai Kum pointed out:

[I]t may appear rather irrational to read section 7 of the Women's Charter to permit a decree of a foreign court to have effect but not one from a court of our own judicial system. From this view, it may be suggested that an order of the Syariah Court concerning a marriage solemnized under the Women's Charter, after proper consultation, ought to have effect. A Syariah Court's order should have the same effect as a foreign court's.

11 I agree with Prof Leong. There is no reason why the Syariah Court, which was described by Judith Prakash J as a "court of competent jurisdiction" in *Salijah bte Ab Lateh v Mohd Irwan Abdullah* [1996] 1 SLR 63 at 69, [18], should not be allowed to do what a competent foreign court may in relation to the dissolution of a marriage under the Women's Charter.

12 Admittedly, an argument against allowing the Syariah Court to dissolve a marriage under the Women's Charter is that Muslim law and the Syariah Court should be kept separate from the civil courts. While much may be said in favour of this view, the position presently being discussed is different because s 7 of the Women's Charter expressly provides that a marriage under its provisions may be dissolved by, *inter alia*, an order of a court of competent jurisdiction.

13 In my view, recognising that the marriage relationship between Mdm Noor Azizan and Mr Tan had been dissolved by the Syariah Court's decree on 30 November 2004 would be the practical approach to take in the present case. This practical approach was adopted by the Family Court in an unreported decision, *Rosenah bte Ahmad v Mitsuru Sakano* Divorce Petition No 602424 of 2001 (court order dated 17 October 2001). In that case, the wife was a Muslim but the husband was not when they married at the Singapore Registry of Marriages on 9 November 1984. Subsequently, the husband embraced Islam and the marriage was registered at the Registry of Muslim Marriages on 18 August 1988. After the Muslim marriage had been dissolved, the wife sought a divorce in the Family Court. District Judge Koh Juat Jong (as she then was) dismissed the divorce petition on the ground that there was "no subsisting marriage under the Women's Charter between the parties at the date of the petition".

14 The Family Court's approach in *Rosenah bte Ahmad v Mitsuru Sakano* was endorsed by Deputy Senior State Counsel Mr Pang Khang Chau, who furnished invaluable assistance to the court on the legal issues in this case after the Attorney-General's Chambers agreed, at the invitation of the plaintiff's counsel, Mr Tan Cheow Hin, on 5 September 2005 to give its views on the matter presently being discussed. Mr Pang submitted that it would be appropriate for the court to either "declare that the Syariah Court's decree of 30 November 2004 effectively dissolved the entire marriage relationship between the parties (including the marriage relationship created on 22 September 1997 pursuant to the provisions of the Women's Charter)" or "declare that, as of the date of this Originating Summons, there is no subsisting marriage under the Women's Charter between the parties".

15 For reasons already stated, I declare that the Syariah Court's decree on 30 November 2004 dissolved the entire marriage relationship between Mdm Noor Azizan and Mr Tan and that when this originating summons was filed, the parties were no longer husband and wife, whether under Muslim law or under the Women's Charter.