

ET v ES
[2007] SGHC 152

Case Number : OS 1200/2006
Decision Date : 20 September 2007
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Wendell Wong and Tan Siu Lin (Drew & Napier LLC) for the plaintiff; Chua Swee Keng (Chua Swee Keng & Co) for the defendant
Parties : ET — ES

*Civil Procedure – Interim orders – Wife applying for execution of court order pending appeal
– Husband failing to hand over possession of matrimonial home and rental proceeds from
matrimonial home – Whether Wife entitled to interim relief*

*Family Law – Custody – Care and control – Whether appropriate to vest one party with decision-
making responsibility should both parties fail to agree*

Family Law – Maintenance – Wife – Whether lump sum order appropriate

*Family Law – Matrimonial assets – Division – Husband earning income during marriage from assets
not constituting matrimonial assets – Whether income a matrimonial asset – Appropriate division of
matrimonial assets – Sections 112(1), 112(2), 112(10) Women's Charter (Cap 353, 1997 Rev Ed)*

**[EDITORIAL NOTE: The details of this judgment have been changed to comply with the
Children and Young Persons Act and/or the Women's Charter]**

20 September 2007

Lee Seiu Kin J

1 The plaintiff (“wife”) and defendant (“husband”) were married in 1996. The present marriage is the husband’s second; he divorced his first wife in 1995. The husband comes from a well to do family and is nine years older than the wife. After obtaining a Bachelor of Arts degree from the University of Washington, he became involved in the development of family-owned properties. He derives his income from managing those properties. The wife is a housewife. After obtaining her A-levels she worked as a foreign exchange trader, a karaoke disc jockey and an administration manager in a construction company. They had lived together from July 1995 and were married in February 1996. They have two daughters who were born in March 1996 and January 1998. In 2003 the wife discovered that the husband was having an affair with the party cited who was her best friend and confidante. This led to the breakdown of the marriage and on 9 May 2003, the husband filed Divorce Petition No 601568 of 2003 on the ground of the wife’s unreasonable behaviour. This was followed by the wife’s own application in Divorce Petition No 601758 of 2003 on the grounds of the husband’s unreasonable behaviour in respect of the party cited. On 13 August 2003, the wife filed a supplemental petition on the grounds of the husband’s adultery with the party cited. On 12 April 2004 a decree nisi was granted on the wife’s supplemental petition and the ancillary matters were adjourned to chambers.

2 In this originating summons the plaintiff prayed that:

(a) The whole of the proceedings commenced in the Subordinate Courts in Divorce Petition

No 601758 of 2003 between ET as the petitioner, ES as the respondent and B as the party cited be transferred to the High Court and heard as a High Court matter.

(b) The whole of the proceedings commenced in the Subordinate Courts in the following matters be transferred to the High Court:

(i) Divorce Petition No 601568 of 2003 between ET as the petitioner and ET as the respondent.

(ii) Originating Summons No 650070 of 2003 between ET as the plaintiff and ES as the defendant.

(iii) Originating Summons No 15 of 2004 between ES as the plaintiff and ET as the defendant.

(iv) Summons SS 1212 of 2003 between ET as the complainant and ES as the respondent.

(v) Summons SS 1050 of 2003 between ES as the complainant and ET as the respondent.

(c) The costs of this originating summons be in the cause of the matters duly transferred to the High Court.

3 On 25 July 2006, I granted an order in terms of these three prayers and gave directions for filing of affidavits for the hearing of the ancillaries. Thereafter submissions were made over six days on the issues of custody and access, maintenance and division of matrimonial assets.

4 On 24 April 2007, I made the following orders:

Custody, care and control, access

1 The wife and the husband shall have joint custody of the two children of the marriage, C and D (each referred to as "child", both referred to together as "children").

2 The wife shall have sole care and control of the children in that the wife shall have sole decision-making power in respect of the day-to-day care of the children and all matters affecting the welfare and interests of the children, save for the following matters:

(i) choice of religion;

(ii) choice of school and tertiary institution;

(iii) treatments in respect of major and critical illnesses (other than emergencies); and

(iv) elective surgery including dental braces.

3 Where the wife is required to consult the husband in any of the matters enumerated in paragraph 2 above, she shall do so by way of registered mail to YY Draycott Park, or such other address as the husband shall notify the wife by registered mail. The husband shall likewise reply by registered mail. Unless it is not possible for her to do so, the wife shall give in respect of such matters. If the parties are unable to reach a joint decision, the wife's decision shall prevail until such time as the husband can obtain an order of court.

4 Save and except that the parties have agreed to change the husband's weekday access from Thursdays 5.30pm to 7.30pm to Wednesdays 6.00pm to 8.30pm, the current interim orders on access shall stand, namely:

Weekly Access

- (a) The husband shall have weekend access every Saturday from 1.00pm to 8.00pm.
- (b) In the two weeks immediately preceding the children's continual assessment and semester assessment as well as during these assessments themselves, the husband's Saturday access shall be from 6.00pm to 8.00pm.
- (c) The husband shall have weekday access every Wednesday from 6.00pm to 8.30pm.

Public holiday/ birthday/ Father's Day access

- (d) The husband shall have access on public holidays as follows:
 - (i) New Year Eve from 6.00pm to 9.00pm;
 - (ii) Christmas Day from 11.00am to 8.00pm;
 - (iii) Chinese New Year 1st day from 9.00am to 3.00pm;
 - (iv) Chinese New Year 2nd day from 4.00pm to 8.30pm;
 - (v) Hari Raya Haji from 11.00am to 8.00pm;
 - (vi) Labour Day from 11.00am to 8.00pm; and
 - (vii) Deepavali from 11.00am to 8.00pm.
- (e) In alternate years with effect from 2006, the husband shall have access on the children's birthdays from 6.00pm to 8.30pm. In the other years, the husband shall have access on the eve of the children's birthdays, from 5.30pm to 8.00pm.
- (f) The husband shall have access on his birthday from 6.00pm to 8.30pm and on Father's Day, from 12.00pm to 9.00pm.

- (g) On the following days:
 - (i) New Year Day;
 - (ii) Christmas Eve;
 - (iii) Chinese New Year Eve;
 - (iv) Good Friday;
 - (v) Vesak Day;
 - (vi) National Day;

(vii) Hari Raya Puasa;

(viii) the wife's birthday;

(ix) on the eve of the children's birthdays (in years where the husband has access on the children's birthdays); and

(x) on the children's birthdays (in years where the husband has access on the eve of the children's birthdays),

notwithstanding the current access orders for Wednesday or Saturday, the children shall remain with the wife and notwithstanding the current access orders for school holiday access, the children shall remain with the wife from 11.00am to 8.00pm.

(h) Where the husband has missed access pursuant to order (g), the husband shall be entitled to make-up access at the next available Saturday access, from 9.00am to 1.00pm and from 8.00pm to 10.00pm, such that the Saturday access will be from 9.00am to 10.00pm.

(i) The husband shall not be entitled to make-up access should the husband's Wednesday, Saturday or school holiday access coincide with his access on the following days:

(i) New Year Eve;

(ii) Christmas Day;

(iii) Chinese New Year 1st day;

(iv) Chinese New Year 2nd day;

(v) Hari Raya Haji;

(vi) Labour Day;

(vii) Deepavali;

(viii) the husband's birthday;

(ix) Father's Day;

(x) the children's birthdays (in years where the husband has access on the children's birthdays); and

(xi) the eve of the children's birthdays (in years where the husband has access on the eve of the children's birthdays).

(j) Where the time periods for access on the days listed in Order (h) above differ from that for his Wednesday, Saturday or school holiday access, the husband shall be at liberty to choose which of the two time periods he prefers.

(k) For the purpose of access on the husband's birthday, Father's Day, the children's birthdays and the eve of the children's birthdays, any of the children's activities, save for compulsory school activities, shall be rescheduled where possible, or cancelled.

School holiday access

(l) The husband shall have overnight access for one night during the March school holidays and during the September school holidays, such access to be from Friday 7.00pm to Saturday 8.00pm.

(m) The husband shall have access for half the school holidays in June and year end, with liberty to bring the children out of Singapore for holidays.

Others

(n) The husband shall not smoke in the presence of the children.

(o) The wife shall furnish the husband with copies of the children's school report cards/books within seven days of receipt of the said documents.

(p) The wife shall keep the husband informed of any parent-teacher meetings within two working days of receiving such notice. Where the parent-teacher meeting is a mass briefing session, the husband shall be at liberty to attend the meeting. Should the parent-teacher meeting be a private session with the teacher, the husband shall be at liberty to attend, provided the teacher is willing to accommodate the request for a slot for the husband, in addition to the one allocated to the wife. The husband shall be at liberty to contact the school or teacher to make the arrangements.

(q) The husband shall be at liberty to contact the school to obtain update on the children's progress.

5 Liberty to apply.

Division of matrimonial assets

6 The wife shall be entitled to a global division of 35% of the value of the matrimonial assets as set out in the Schedule A annexed hereto as her share of the matrimonial assets ("wife's share").

7 The value of the jewellery shall be that assessed by an appraiser to be agreed between the parties.

8 The following assets shall be retained by or transferred to the wife as part of the wife's share:

	Value (S\$)
XX Draycott Park (matrimonial home)	2,600,000

Wife's UOB account	29,160.25
Wife's CDP shares	18,500
NTUC policy	9,042.14
AIA policy	3,750
Prulink Asian Reach Managed Fund	24,700
Wife's "overspending" to be accounted for	189,000
Jewellery	To be assessed

9 The husband shall pay the wife the remainder of the wife's share in cash.

10 The husband shall pay all rental proceeds in respect of XX Draycott Park to the wife with effect from 1 May 2007.

Maintenance

11 The husband shall pay the wife a lump sum maintenance of S\$1,000,000.00.

12 The husband shall pay the sum of \$2,500.00 per month for the monthly maintenance of each child, with effect from 1 May 2007. The husband shall pay the total monthly maintenance of \$5,000.00 for both children directly into the wife's UOB account by the 7th of each calendar month.

Costs

13 The husband shall pay the wife costs to be taxed if not agreed.

5 On 22 May 2007 the wife filed Civil Appeal No 55 of 2007, to appeal against the following orders:

(a) The wife shall be entitled to a global division of 35% of the value of the matrimonial assets as set out in the schedule of matrimonial assets annexed hereto as her share of the matrimonial assets.

(b) The wife's Prulink Asian Reach Managed Fund is a matrimonial asset.

(c) The husband shall pay the wife a lump sum maintenance of \$1,000,000.

(d) The husband shall pay the sum of \$2,500 per month for the maintenance of each child of the marriage with effect from 1 May 2007.

6 On 23 May 2007 the husband filed Civil Appeal No 58 of 2007 appealing against the following orders:

(a) Order 3, in particular the part of the Order stating, "If the parties are unable to reach a

joint decision, the wife's decision shall prevail until such time as the husband can obtain an order of court."

- (b) Orders 6 and 10 on the division of matrimonial assets.
- (c) Order 11 on the lump sum maintenance awarded to the wife.
- (d) Order 13 on the issue of costs.

7 I now give the grounds for my decision in respect of the orders appealed against. The issues in the two appeals may be consolidated into the following issues:

- (a) order on custody, care and control, access;
- (b) determination of matrimonial assets;
- (c) division of matrimonial assets;
- (d) maintenance; and
- (e) costs order.

Order on custody, care and control, access

8 I had granted joint custody of the two children to the wife and husband with the wife having sole care and control. I had ordered that the wife was to have sole decision-making power in the day-to-day care of the children except in respect of major decisions, namely: (i) choice of religion; (ii) choice of school and tertiary institutions; (iii) treatments for major and critical illnesses (other than emergencies); and (iv) elective surgery (including dental braces). In relation to these four matters, the wife was required to consult the husband and the period of notice and mode of communication were set out in the order. The reason for so doing was in order to minimise the sources of potential conflict so that the parties can then devote their energies more productively to the welfare – mental as well as physical – of their children. The circumstances of this case – where the husband is living with the wife's former best friend – is particularly ripe for continuing conflict and this can only be to the detriment of the children.

9 However I considered that it was necessary, in the event that the parties cannot agree on a particular matter, to vest one party with the responsibility of making the decision, with the other party's recourse being an application to court. Otherwise there will be no end of applications to court and, crucially, important decisions, which may be urgent, cannot be made in time. Since the children are living with the wife, it is only logical that she be the person vested with this responsibility. Hence Order 3 was made, which the husband is now appealing against.

Determination of matrimonial assets

10 Matrimonial asset is defined in s 112(10) of the Women's Charter (Cap 353, 1997 Rev Ed) in the following manner:

In this section, "matrimonial asset" means –

- (a) any asset acquired before the marriage by one party or both parties to the marriage –

- (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
 - (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

11 The issue was raised as to whether income received during the marriage from assets that are not matrimonial assets constitute matrimonial assets. During the marriage, rent and dividends were received from real property and shares that were acquired by the husband before the marriage and which were not matrimonial assets by way of limb (a) of s 112(10)(a) of the Women's Charter. Counsel for the husband cited three cases in support of her contention that such income were not matrimonial assets: (i) *Yow Mee Lan v Chan Kai Buan* [2000] 4 SLR 466 ("Yow Mee Lan's case"), (ii) *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR 605 ("Chen Siew Hwee's case"); and (iii) *Chan Mei Lan Kristine v Ong Boon Huat Samuel* [2006] SGHC 108 ("Chan Mei Lan's case"). The first two cases are totally irrelevant. In *Yow Mee Lan's* case, the properties in question from which the income were derived were matrimonial property. *Chen Siew Hwee's* case did not concern income generated from a non-matrimonial asset but dealt with the situation where a gift was transformed into an asset of another nature. The third case is of some relevance. *Chan Mei Lan's* case concerned a divorce in which two apartments came up for consideration. The first apartment was the matrimonial home and there was no dispute that it was a matrimonial asset. The second apartment ("Malvern Springs") was an investment property acquired during the marriage by the husband and for which he had paid all expenses and mortgage instalments. Andrew Phang J (as he then was) held that, as this was acquired during the marriage, it fell within the definition of "matrimonial asset" under limb (b) of s 112(10) of the Women's Charter. Citing the Court of Appeal in *Chan Teck Hock v Leong Mei Chuan* [2002] 1 SLR 177, Phang J said that s 112(10)(b) was "*not only clear but also extensive in nature*" and that, the proviso being inapplicable, Malvern Springs was matrimonial property.

12 Although the Court of Appeal subsequently reversed Phang J on the finding that the second apartment should be included in the matrimonial pool of assets to be divided, this was not on the ground that it did not fall within the definition. Instead the appellate court considered that, in the circumstances of the case they would exercise their discretion not to distribute Malvern Springs, stating at [25, 26] of their judgment in *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR 729:

25 In the light of all the circumstances, we see no reason why Malvern Springs should be included in the matrimonial pool of assets to be divided between the parties. While it may be that Malvern Springs was acquired during the marriage, and therefore technically falls under the definition of a matrimonial asset contained in s 112(10) of the Act, we must emphasise that the court's power to divide any matrimonial asset is a discretionary power. This is obvious from ss 112(1) and 112(2) of the Act, which provide:

- (1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties

of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court *in deciding whether to exercise its powers under subsection (1)* and, if so, in what manner, to have regard to all the circumstances of the case ...[emphasis added]

26 Thus, it is not mandatory for the court to exercise its powers of division under s 112 and the court may generally decline to do so where a valid reason is given: *Wong Kam Fong Anne v Ang Ann Liang* [1993] 2 SLR 192 at 200, [31]. For the reasons given above, the present case is one in which there is good reason for the court not to divide Malvern Springs.

13 As counsel were unable to produce any authority directly on point, it fell upon me to determine this issue as a matter of statutory interpretation. Firstly, s 112(10)(b) brings within the scope of matrimonial asset “**any ... asset of any nature acquired during the marriage**” [emphasis added] by any of the parties. I respectfully agree with Phang J in *Chan Mei Lan’s* case that this provision is extensive in nature. These wide words are only circumscribed by the proviso which excludes “**any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage**”[emphasis added]. The plain interpretation of the proviso would mean that an asset (of any nature) acquired during the marriage is a matrimonial asset unless it is a gift or inheritance that had not been substantially improved on during the marriage by either party. Since the income from rent or dividend is an asset received during the marriage, it falls within the definition of matrimonial asset. With this determination on the point of law, counsel made their submissions on each asset based on the evidence disclosed in the affidavits and documents exhibited therewith.

14 After consideration of the submissions, I made a determination as to which of the assets fell within the definition of matrimonial assets in s 112(10) of the Women’s Charter. Those assets are as listed in Schedule A of the order of 24 April 2007, which is reproduced below:

	Asset	Value (S\$)	Value Date
1	XX Draycott Park (matrimonial home)	2,600,000.00	24 Aug 06
2	YY Draycott Park	1,300,000.00	24 Aug 06
3	Husband’s UOB Account	(6,482.15)	31 Jul 06
4	New Bank Account	42,236.88	31 Jul 06
5	Merill Lynch Account	147,120.00	30 Jul 06
6	Coutts Account	2,955,013	31 Jul 06

7	Coutts Loan for YY Draycott Park	(420,000)	31 Jul 06
8	Wife's UOB Account	29,160.25	31 Jul 06
9	Husband's CDP shares	174,849.10	30 Jun 06
10	Wife's CDP shares	18,500	31 Jul 06
11	Husband's CPF	315,382.93	31 Jul 06
12	Husband's CPF shares	46,410	31 Jul 06
13	DBS Upswing fund	18,276.60	31 Jul 06
14	AIA policy	6,903.45	31 Aug 06
15	NTUC (Life assured: D)	9,042.14	31 Aug 06
16	AIA policy (Life assured: C)	3,750.00	13 Jun 03
17	Prulink Asian Reach Managed Fund	24,700.00	Jul 06
18	OUB Manulife Financial Account	126,309.00	24 Aug 06
19	Audi A8	109,190.00	31 Jul 06
20	Wife's "overspending" to be accounted for	189,000.00	Court assessed
21	TTT shares	2,327,444.21	1 Jul 04
22	Loan to Husband's sister	23,000.00	Court assessed
23	Jewellery bought by the Wife during the marriage (" Jewellery ")	To be assessed	
	Total:	10,039,805.41+	Jewellery

15 In relation to items 20 and 22, I had determined that the wife was not entitled to spend these sums of money, and that these sums should constitute part of the matrimonial assets for which she would be held to account. As for item 23, the value of the jewellery was not available at the time and I had, in Order 7, ordered that they be valued by an appraiser and that such value be added to the total value of the matrimonial assets for division.

16 The total value of the matrimonial assets is \$10,039,805.41, not counting the value of the jewellery (which is not expected to alter this sum significantly).

Division of matrimonial assets

17 In assessing the division of matrimonial property, the court is required by s 112(2) of the Women's Charter to have regard to all the circumstances of the case, including the following:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) so far as they are relevant, the following matters referred to in s 114(1):
 - (i) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (ii) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (iii) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (iv) the age of each party to the marriage and the duration of the marriage;
 - (v) any physical or mental disability of either of the parties to the marriage;
 - (vi) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
 - (vii) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

18 The parties had been married for slightly over eight years, from February 1996 to April 2004

when the decree nisi was granted. Two children were born of the marriage. By all accounts it was a very happy marriage in the initial years and it was destroyed only when the wife discovered in January 2003 that the husband had an affair with her best friend. Indeed when the wife discovered an earlier affair in 2002 that the husband had with his former girlfriend, she had forgiven him for the sake of their children and because he had seemed very remorseful. I took into account the wife's contribution to the eight years of marriage in terms of bearing and raising the children and looking after the household, bearing in mind that the matrimonial assets came mostly from the husband. He was 39 years of age when he married the wife, and had acquired most of the assets (by value) before the marriage, e.g. the matrimonial home.

19 In the event, I assessed that a fair division in the circumstances would be a 35% share to the wife and ordered accordingly. With this division, it was a matter of awarding to her the assets listed in the table in Order 8 as these were most convenient to be distributed to her.

20 I should add that counsel for the husband had alleged that the wife had siphoned out money during the period that she controlled certain bank accounts. I had considered the evidence laid out before me and was satisfied that this allegation was not borne out. The wife had undergone a difficult period during the transitional period before the determination of the divorce and ancillaries and had to utilise the moneys for family expenses. Although she appeared to have incurred certain expenditures unreasonably, I found that these could be explained as a natural reaction of a person in her circumstances rather than part of a malicious plan to siphon away the assets as counsel had, with great force, alleged. To the extent that those expenditures were not reasonable, I had made the wife account for them. These are reflected in items 20 and 22 of Schedule A of the order of 24 April 2007.

Maintenance

21 In January 2004, the Family Court ordered the husband to pay maintenance of \$8,000 per month to the wife and children with effect from October 2003. In March 2004 the High Court increased it to \$12,000 per month, backdated to October 2003.

22 I took into account the fact that the husband's income after tax in the last seven years was about \$20,000 per month. I also took into account that the wife, who did not work throughout the marriage and with two children to look after did not intend to work, had an income capacity from the assets she would receive from the division of about \$2,600 per month (after tax). Taking into consideration all the circumstances of the case including the factors set out in s 114(1) of the Women's Charter, I was of the view that the husband should be ordered to pay maintenance to the wife in the sum of \$5,000 per month and to each child \$2,500 per month.

23 The circumstances of the case begs for a lump sum maintenance settlement of the wife's maintenance. The wife is bitter about the divorce and the husband has the capacity to pay a lump sum which would remove a potential source of future conflict and enable the parties to focus on the needs of their children. As the wife was 41 years of age, I applied a multiplier of 18 years and ordered a lump sum (rounded off) of \$1,000,000 to be paid by the husband to the wife in lieu of maintenance.

Costs order

24 There had been considerable costs incurred in determining the issue of matrimonial assets mainly due to submissions made by counsel for the husband that the wife had siphoned out assets. I had found that this allegation was without merit. In view of this and of the division I eventually ordered, I adjudged that costs should be ordered against the husband.

Epilogue: Civil Appeal 99 of 2007

25 On 26 July 2007, pursuant to the order giving the parties liberty to apply, the wife applied for execution of the orders I had made notwithstanding that the appeals were pending. The lease for the apartment she was residing in with her children would run out in October 2007 but the husband had not handed over possession of the matrimonial home which I had ordered to be distributed to her. In addition I had also ordered that the rental proceeds for the matrimonial home be paid over to her with effect from 1 May 2007 which he had not done pending appeal. In response, counsel for the husband said that the wife has the means to make interim provisions pending appeal.

26 I took into account that the matrimonial home may be the subject of a lease that made it difficult for the husband to hand over possession before its term was up. However this did not justify his retaining the rental proceeds which the wife might require in order to continue paying rent, whether in the present rented apartment or in another one after the lease for that ran out. As an interim order pending disposal of the appeals, I ordered the husband to pay to the wife all rental proceeds from the matrimonial home within seven days of receipt, and to pay all arrears from 1 May 2007 within seven days of my order. I also ordered that upon expiry of the existing tenancy or its earlier termination, the husband was to deliver vacant possession of the matrimonial home to the wife within seven days thereof. Upon the wife's application I also ordered the husband to pay to the wife maintenance of \$5,000 per month with effect from 1 August 2007, which sums may be deducted from the lump sum maintenance ordered.

27 The husband filed an appeal against these interim orders on 17 August 2007. I had made those orders to ensure that the wife and daughters had a roof over their heads and enable her to receive some maintenance pending disposal of the appeals.

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