

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 14

Civil Appeal No 75 of 2016

Between

TMO

... Appellant

And

TMP

... Respondent

In the matter of District Court Appeal No 124 of 2015

Between

TMO

... Plaintiff

And

TMP

... Defendant

JUDGMENT

[Family Law] — [Muslims] — [Issues within jurisdiction of civil court]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

TMO
v
TMP

[2017] SGCA 14

Court of Appeal — Civil Appeal No 75 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA, Andrew Phang Boon Leong JA,
Judith Prakash JA and Tay Yong Kwang JA
30 November 2016

21 February 2017

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the judicial commissioner (“the Judge”) declining to grant the appellant-wife (“the Wife”) financial relief under s 121G, Chapter 4A of Part X of the Women’s Charter (Cap 353, 2009 Rev Ed). The Judge’s decision was reported as *TMO v TMP* [2016] 2 SLR 1198 (“the GD”). At the heart of this appeal lies the question of whether parties to a Muslim marriage whose marriage has been dissolved by an order of a foreign court, in this case a court in Johor Bahru, Malaysia (“Johor”), may seek financial relief consequential upon the divorce from the Singapore court.

Background

2 The facts before us are straightforward. The Wife and the respondent-husband (“the Husband”) were married on 13 February 1998 under Muslim law at the Registry of Muslim Marriages in Singapore. The parties have two children, aged nine and 13, who were both born in Singapore.

3 In 2008, the family relocated to Johor. A few years later, the Husband applied for a divorce in Johor. The Wife alleges that she learnt about this development for the first time on 30 March 2012 when she received a Johor court order dated 20 March 2012 granting interim custody of their children to the Husband. According to the Wife, she did not respond to the custody application as she harboured hopes of reconciling with the Husband.

4 On 10 April 2012, the Johor Sharia Subordinate Court granted a dissolution of the parties’ marriage. The Wife alleges that the divorce was obtained without her knowledge and that she only became aware of it when her lawyer in Johor performed a search two weeks later. Each party has since remarried.

5 Subsequently, the Wife brought contempt proceedings against the Husband in the Johor Sharia High Court for non-compliance with a court order dated 15 October 2012. Unfortunately, that order was not in evidence in the proceedings below and the basis for the contempt proceedings remains unclear to us. In any event, on 26 February 2013, the Johor Sharia High Court sentenced the Husband to 14 days’ imprisonment for contempt of court. During his incarceration, the Wife was given custody of their two children.

6 On 26 September 2012 (before the contempt proceedings were heard), the Wife applied to the Singapore Syariah Court for ancillary relief

(subsequent references to the “Syariah Court” refer to the Singapore Syariah Court). She sought, amongst other things, (a) *nafkah iddah* (maintenance of the Wife); (b) *mutaah* (a consolatory gift); and (c) division of matrimonial assets. The Husband attended the first two Pre-Trial Conferences (“PTCs”) on 30 January and 16 April 2013, but was absent from the hearing that was held on 21 August 2013. After the hearing, the Syariah Court granted *nafkah iddah* in the sum of \$1,500 for three months and *mutaah* in the sum of \$41,347 and further ordered that these sums be paid from the Husband’s share of the net sale proceeds of the matrimonial flat. The Syariah Court, however, refused to grant any order for the division of the matrimonial assets. It considered that pursuant to s 52(3) of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) (“AMLA”), such orders could only be made by the Syariah Court where the divorce proceedings were before the Syariah Court and the divorce decree was made by it. As orders for *nafkah iddah* and *mutaah* under ss 51(2) and 52(2) of the AMLA are not subject to the same conditions prescribed in s 52(3), the Syariah Court could make those orders.

7 The Wife then filed an application before the Family Justice Courts under Chapter 4A (Financial Relief Consequential on Foreign Matrimonial Proceedings) of the Women’s Charter for the division of the matrimonial assets. The proceedings were first heard in the Family Courts before a District Judge (“the District Judge”), whose decision was issued as *TGX v TGY* [2015] SGFC 134 (“the District Judge’s GD”). The Husband did not participate in the proceedings (see the District Judge’s GD at [4]). The matrimonial assets in respect of which the Wife sought division were:

- (a) A five-room HDB flat at Yishun (“the HDB Flat”);
- (b) A flat in Johor;

- (c) The rental yield generated from the rental of the HDB Flat between June 2008 and December 2012;
- (d) The sale proceeds of another property in Johor; and
- (e) The Husband's CPF balance of \$209,933.36 as at 4 September 2013.

According to the Wife, the total value of the matrimonial assets to be divided amounted to \$1,079,249.36.

8 The Wife's application was brought pursuant to s 121G of the Women's Charter. This is found at Chapter 4A in Part X of the Women's Charter. Chapter 4A was introduced by way of legislation in 2011 in order to provide an avenue for those whose marriages had been dissolved by an order of a foreign court to seek relief in respect of ancillary matters before a Singapore court. Specifically, s 121G provides as follows:

Orders for financial relief

121G. —(1) On an application by a party to a marriage for an order for financial relief, the court may make any one or more of the orders which it could have made under section 112, 113 or 127(1) in the like manner as if a decree of divorce, nullity or judicial separation in respect of the marriage had been granted in Singapore.

(2) Sections 112(2) to (10), 114 to 121 and 127(2) shall apply, with the necessary modifications, and as appropriate, to an order made under subsection (1).

(3) Upon the court making a secured order under subsection (1) or at any time thereafter, the court may make any order which the court could have made if the secured order had been made under section 112, 115 or 127.

9 The question for the court below was whether Chapter 4A and more particularly, s 121G of the Women's Charter was applicable to Muslim

marriages that had been dissolved by a foreign *Syariah* court. The District Judge dismissed the Wife's application because she considered that s 3(2) of the Women's Charter precluded the application of Part X of the Women's Charter (within which Chapter 4A falls) to a Muslim marriage registered in Singapore (see the District Judge's GD at [35]). Furthermore, she held that ss 17A(2) and (3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), which vest jurisdiction over certain aspects of matrimonial proceedings affecting Muslim marriages in the civil courts concurrently with the *Syariah* Court, did not apply because the *Syariah* Court had held that it would *only* have the jurisdiction to make an order for the disposition of property under s 52(3) of the AMLA if the divorce proceedings had been filed in the *Syariah* Court and the decree had been made by the *Syariah* Court (see the District Judge's GD at [44]–[45]). As noted above, the divorce decree in this case had been made by a foreign *Syariah* court. The District Judge therefore concluded that the Family Courts had no jurisdiction to grant the reliefs that the Wife was seeking (see the District Judge's GD at [46]). The District Judge noted, however, that the Wife had at least two alternative recourses which she had not exhausted: (1) she could set aside the Malaysian divorce decree and then file for divorce in the *Syariah* Court in the course of which she could make the necessary application for the orders she sought; or (2) she could commence proceedings in the Malaysian courts for the necessary ancillary orders since the divorce had been granted by the Johor court (see the District Judge's GD at [38]).

10 Dissatisfied with the District Judge's decision, the Wife appealed to the High Court.

Decision below

11 The allocation to the relevant courts of jurisdiction over these matters is dealt with in part by s 17A of the SCJA. The Judge held that s 17A(1) of the SCJA *excluded* the jurisdiction of the High Court in respect of matters that came within the jurisdiction of the Syariah Court pursuant to certain provisions of the AMLA. However, she went on to hold that where the jurisdiction of the High Court has not been excluded in this way, the High Court retains its general jurisdiction over divorce and matrimonial matters (see the GD at [8]). Section 17A(2) in turn provides that the High Court has *concurrent* jurisdiction with the Syariah Court over certain matters, but its application is subject to the satisfaction of the conditions in s 17A(3) (see the GD at [10]). The Judge first concluded that the present case was *not* one where the jurisdiction of the High Court had been excluded pursuant to s 17A(1) of the SCJA. She then went on to consider whether the matter could come within the ambit of s 17A(2) of the SCJA, which, as we have noted, is concerned with jurisdiction that is *concurrent* with that of the Syariah Court. The Judge concluded that s 17A(2) did not apply first, because she considered it to be clearly the case that the Syariah Court did not have jurisdiction in this context; and second because to be applicable, a certificate from the Syariah Court under s 17A(3) would be required and this had not been obtained (see the GD at [11]).

12 The Judge considered that the High Court did have jurisdiction under s 17(a) of the SCJA (see the GD at [5] and [12]) and that this jurisdiction had not been excluded by s 17A(1). Nevertheless, she held that the High Court had no *power* to grant relief under s 121G of the Women's Charter because s 3(2) of the Women's Charter precluded the application of that power to situations where the divorcing parties had been married under Muslim law (as the

present parties were). Nor did she consider that s 17A(8) of the SCJA could assist the Wife because that is expressly limited to the exercise of the High Court's jurisdiction or powers under s 17A(2)(c) of the SCJA, which as noted at [11] above, was found not to apply in the present case. In any event, s 17A(8) of the SCJA would only allow for s 112 of the Women's Charter to apply and not s 121G of the Women's Charter (see the GD at [14]–[15]).

13 For these reasons, the Judge concluded that there was a lacuna in the law, in the sense that parties to a Muslim marriage that had been dissolved pursuant to a decree of divorce made by a foreign court could fall outside the jurisdiction both of the Syariah Court and also of the civil courts, leaving them with no recourse in these circumstances (see the GD at [17]). The Judge was of the view that although the existence of such a lacuna might be unsatisfactory, whether it ought to be plugged, and if so, whether this ought to be done by way of a provision in the AMLA or in the SCJA, was a matter for Parliament to decide (see the GD at [18]). She was satisfied it was beyond the competence of the court to plug such a gap especially in the absence of evidence of Parliament's intention as to whether Chapter 4A of Part X of the Women's Charter ought to extend to parties married under Muslim law. She was also satisfied that this was not a case in which the court could read words into a statute where these had not been expressly provided for, in the circumstances articulated in *Wentworth Securities Ltd v Jones* [1980] AC 74 (“*Wentworth*”) and adopted by this court in *Kok Chong Weng and others v Wiener Robert Lorenz and others (Ankerite Pte Ltd, intervener)* [2009] 2 SLR(R) 709 (see the GD at [20]–[22]).

14 In the circumstances, the Judge found that the High Court did not have the power to make any order under s 121G of the Women's Charter and dismissed the Wife's appeal.

Parties' arguments

The Wife

15 The Wife concedes that the Syariah Court is not empowered to make an order for the division of the matrimonial assets because it did not issue the decree of divorce. Therefore, the Wife's arguments centred on whether the High Court is empowered to grant the relief she seeks. In this regard, the Wife raises two main arguments.

16 Her primary argument is that the High Court should have "plugged the gap in the law". The Wife argues that s 17A(8) of the SCJA should be read to include the words "and section 121G" such that the provision reads:

(8) Notwithstanding section 3(2) of the Women's Charter (Cap. 353), section 112 ***and section 121G*** of that Act shall apply to the High Court in the exercise of its jurisdiction or powers under subsection (2)(c).

[additional words in bold-italics]

On her behalf it is said that the *Wentworth* test is satisfied especially since there is no plausible or even conceivable reason for ascribing to Parliament an intention to exclude parties to Muslim marriages from availing themselves of s 121G of the Women's Charter at the time that provision, and generally Chapter 4A of the Women's Charter, was enacted in 2011. In fact, it can be inferred (even though this was not specifically debated) that Parliament intended that s 121G would apply to *all* parties connected to Singapore. It was further said that Parliament could have been operating under a misimpression caused by a report of the Law Reform Committee which indicated that the Syariah Court did have the jurisdiction to make an order for the division or disposition of property where a Muslim marriage was dissolved by the decree of a foreign court (see Law Reform Committee, Singapore Academy of Law,

Report of the Law Reform Committee on Ancillary Orders after Foreign Divorce or Annulment (July 2009) at para 69). We note in passing that the latter argument in some respects runs counter to the former. The former is predicated on the notion that Parliament had the presumed or implicit intent to extend Chapter 4A to those who are party to a Muslim marriage; while the latter rests on the notion that Parliament had no such intention but that because this was caused by a mistaken understanding of the legal position, the court could intervene. Leaving aside the inconsistency, it is not clear to us on what basis the courts could amend, override or invalidate legislation on such a basis even assuming it were correct that Parliament had been mistaken.

17 The Wife’s second argument is that there is actually no gap in the law if the “presumption of updating construction” is applied. In essence, where the interpretation of legislation is intended to develop in meaning with developing circumstances, it is presumed that Parliament intends the court to apply to the legislation a construction that continually updates its wording to allow for changes since the legislation was initially framed. In this case, the Wife appears to be arguing that by reason of the introduction of s 121G of the Women’s Charter, when construing the court’s power under s 112 of the Women’s Charter which is applicable even to Muslim marriages in certain circumstances, this should be read to extend to situations where the decree of divorce, nullity or judicial separation was made abroad. On this basis, it is said that s 17A(8) of the SCJA should be read to extend s 121G of the Women’s Charter to Muslim marriages.

The Husband

18 Although the notice of appeal was served on the Husband at his Johor address, the Husband did not participate in the appeal. He also did not

participate in the proceedings either before the Judge or the District Judge. While he appeared for the first two PTCs that were held before the Syariah Court, he did not attend any of the subsequent hearings.

Our decision

19 We begin by setting out in general terms how jurisdiction is apportioned between the Syariah Court and the High Court with specific reference to matters affecting Muslim marriages.

Relationship between the Syariah Court and the High Court

20 The laws regulating certain aspects of family life in Singapore, in particular the formation and dissolution of marriages, are different for Muslims and non-Muslims. These different systems of family law are administered separately by separate courts, namely, the Syariah Court and the High Court. As might be expected in such circumstances, issues can at times arise over the delineation of the jurisdiction of each court. The allocation of jurisdiction in this context is governed by three principal statutes, namely, the AMLA, the SCJA and the Women's Charter.

21 Section 35 of the AMLA sets out the jurisdiction of the Syariah Court. It provides:

Jurisdiction

35.—(1) The Court shall have jurisdiction throughout Singapore.

(2) The 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 known in the Muslim law as *fasakh*, *cerai taklik*, *khuluk* and *talak*;

(c) *betrothal*, *nullity of marriage* or *judicial separation*;

(d) *the disposition or division of property on divorce* or *nullification of marriage*; or

(e) *the payment of emas kahwin*, *marriage expenses* (*hantaran belanja*), *maintenance* and *consolatory gifts* or *mutaah*.

(3) In all questions regarding *betrothal*, *marriage*, *dissolution of marriage*, including *talak*, *cerai taklik*, *khuluk* and *fasakh*, *nullity of marriage* or *judicial separation*, the appointment of *hakam*, the disposition or division of property on divorce or nullification of marriage, the payment of *emas kahwin*, marriage expenses (*hantaran belanja*) and consolatory gifts or *mutaah* and the payment of maintenance on divorce, the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law, as varied where applicable by Malay custom.

[emphasis added]

22 Whether the Syariah Court has jurisdiction is thus dependent on two conditions. The first is that the parties to the dispute must either be Muslim or have been married under the provisions of Muslim law. The second is that the dispute must relate to the matters identified in ss 35(2)(a) to (e) of the AMLA. Where the Syariah Court has jurisdiction over a matter that falls within ss 35(2)(a), (b) or (c) of the AMLA, such jurisdiction is *exclusive* and the High Court shall have no jurisdiction over those matters. This is provided for by s 17A(1) of the SCJA, the effect of which is to exclude the jurisdiction vested in the High Court by ss 16 and 17 of the SCJA in cases where the Syariah Court is in a position to exercise jurisdiction under ss 35(2)(a), (b) or (c) of the AMLA. For convenience, we set out the whole of s 17A with added emphases:

Civil jurisdiction — concurrent jurisdiction with Syariah Court in certain matters

17A.—(1) Notwithstanding sections 16 and 17, *the High Court shall have no jurisdiction* to hear and try any civil proceedings

involving matters which come within the jurisdiction of the Syariah Court under section 35(2)(a), (b) or (c) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.

(2) *Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act, the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —*

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on divorce.

(3) Where civil proceedings involving any matter referred to in subsection (2)(b) or (c) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the High Court, the High Court shall stay the civil proceedings —

(a) involving any matter referred to in subsection (2)(b) or (c), if the civil proceedings are commenced on or after the commencement of proceedings for divorce in the Syariah Court or after the making of a decree or order for divorce by the Syariah Court or on or after the registration of any divorce under section 102 of the Administration of Muslim Law Act (Cap. 3) between the same parties, unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court;

(b) involving any matter referred to in subsection (2)(b), if proceedings for divorce are commenced in the Syariah Court or a decree or order for divorce is made by the Syariah Court or a divorce is registered under section 102 of the Administration of Muslim Law Act between the same parties after the commencement of the civil proceedings, unless a Syariah Court continuation certificate in respect of the civil proceedings has been filed with the High Court.

(3A) For the purposes of subsection (3), any reference to the registration of any divorce, or to a divorce that is registered, under section 102 of the Administration of Muslim Law Act shall be construed as a reference to the registration of a divorce or to a divorce that is registered under that section

before the date of commencement of section 24 of the Administration of Muslim Law (Amendment) Act 2008.

(4) For the purposes of subsection (3), where the proceedings in the Syariah Court are commenced on the same day as the civil proceedings in the High Court, the proceedings in the Syariah Court shall be deemed to have been commenced before the civil proceedings.

(5) Subsection (3)(a) shall not apply if the civil proceedings referred to therein are commenced in the High Court by the consent of the parties to the proceedings and the certificates of attendance of the parties issued under section 35A(7) of the Administration of Muslim Law Act have been filed in accordance with Family Justice Rules.

(6) Subsection (3)(b) shall not apply if the civil proceedings referred to therein are continued by the consent of the parties to the proceedings and the certificates of attendance of the parties issued under section 35A(7) of the Administration of Muslim Law Act (Cap. 3) have been filed in accordance with Family Justice Rules.

(7) For the avoidance of any doubt, the High Court, in exercising its jurisdiction or powers under subsection (2), shall apply the civil law.

(8) Notwithstanding section 3(2) of the Women's Charter (Cap. 353), section 112 of that Act shall apply to the High Court in the exercise of its jurisdiction or powers under subsection (2)(c).

(9) In this section —

“Syariah Court” means the Syariah Court constituted under the Administration of Muslim Law Act;

“Syariah Court commencement certificate” means a commencement certificate issued by the Syariah Court under section 35A(4) of the Administration of Muslim Law Act;

“Syariah Court continuation certificate” means a continuation certificate issued by the Syariah Court under section 35A(4) of the Administration of Muslim Law Act.

23 Where the Syariah Court has jurisdiction over a matter that falls within ss 35(2)(d) or (e) (and incidentally also ss 51 or 52(3)(c) or (d) of the AMLA,

it shares that jurisdiction *concurrently* with the High Court. This is provided for by s 17A(2) of the SCJA which has been reproduced above.

24 Hence, parties who were married under Muslim law and who are then divorced may, during or after the divorce proceedings in the Syariah Court, apply to *either* the Syariah Court *or* the High Court for ancillary relief. But this is subject to the conditions set out in ss 17A(3), (5) and (6) of the SCJA, and in general terms, these contemplate that the jurisdiction of the High Court may be invoked with the consent of the parties to the proceedings or with the leave of the Syariah Court.

25 Where a matter does *not* fall within the jurisdiction of the Syariah Court, the High Court retains residual jurisdiction over the matter. This is provided for by ss 16 and 17 of the SCJA, which confer upon the High Court “jurisdiction under any written law relating to divorce and matrimonial causes” where this has not been excluded by any other provision vesting jurisdiction in the Syariah Court. This was also the approach adopted by this court in *Madiyah bte Atan v Samsudin bin Surin* [1998] 2 SLR(R) 327 (“*Madiyah*”), where the court held that because the relevant application did not come within the jurisdiction of the Syariah Court (by reason of the fact that the parties’ divorce was pronounced by a *kadi* rather than by the Syariah Court), it was the High Court that had jurisdiction to hear the application (at [36]). We note, however, that one aspect of *Madiyah* invites reconsideration and we will return to that at the end of this judgment.

26 We highlight one other important provision that governs the relationship between the Syariah Court and the High Court in respect of matrimonial matters, namely, ss 3(1) and (2) of the Women’s Charter, which provides as follows:

Application

3.—(1) Except as otherwise provided, *this Act shall apply to all persons in Singapore* and shall also apply to *all persons domiciled in Singapore*.

(2) Parts II to VI and Part X and sections 181 and 182 *shall not apply to any person who is married under, or to any marriage solemnized or registered under, the provisions of the Muslim law or of any written law in Singapore or in Malaysia providing for the registration of Muslim marriages.*

[emphasis added]

Section 3(2) of the Women’s Charter thus excludes its application in specific respects to parties married under Muslim law. These include the formation and termination of marriages, the marital relationship and various economic aspects of family life. In our judgment, this was effected because these areas are governed *separately* by Muslim law (including the AMLA) and come within the jurisdiction of the Syariah Court. We note in this connection that when the Women’s Charter was introduced in 1961, Parliament saw it fit not to extend the reach of the Women’s Charter to Muslim marriages because these were governed by other relevant laws. As noted by the Parliamentary Secretary to the Minister for National Development, Inche Yaacob Bin Mohamed, during the Second Reading of the Women’s Charter Bill 1961 (*Singapore Parliamentary Debates, Official Report* (6 April 1960) vol 12 at col 465):

... I have stressed just now that *the marriages of Islamic people are controlled by the Muslims Ordinance* [the predecessor of AMLA], which is still under study by the Select Committee, and very soon we will be in a position to know how things stand. *The enactment of this Women's Charter will not interfere with any section of the community.* ... [emphasis added]

27 In our judgment, the purpose that underlies s 3(2) of the Women’s Charter is the need to manage possible overlaps between Muslim law and non-Muslim law by providing for the circumstances under which each system of

law would or could apply to Muslim marriages. Where a matter is already governed by Muslim law and comes within the jurisdiction of the Syariah Court, s 3(2) operates to exclude the operation or application of those parts of the Women's Charter to such a marriage. This applies to those parts of the Women's Charter as are enumerated in s 3(2) itself, namely, Parts II to VI and X and ss 181 and 182 of the Women's Charter.

28 That this was the intention behind s 3(2) of the Women's Charter may also be gleaned from the *Report of the Select Committee on the Women's Charter Bill (Bill No 16/60)* (Parl 1 of 1960, 20 May 1960). One of the issues raised in the report was that cl 3(2) of the Women's Charter Bill 1961 in its original form did not exclude the application of cl 166 (the predecessor of ss 181 and 182 of the Women's Charter) from Muslim marriages. Clause 166 of the Women's Charter Bill 1961 provided that marriages solemnized under any law, religion, custom or usage must be registered under the provisions of the Women's Charter. This was seen to give rise to a potential problem because the Muslim Ordinance as it then stood already provided for the registration of Muslim marriages, and there was some confusion as to whether Muslim couples would be required to separately register their marriages under the Women's Charter as well (see Minutes of Evidence (Appendix II) at paras 357-361). Eventually, because the registration of Muslim marriages was provided for under the Muslim Ordinance, cl 3(2) of the Women's Charter Bill 1961 was amended to exempt Muslim marriages from the requirements of cl 166.

29 In our judgment, what follows from this is that when a matrimonial dispute involving parties to a Muslim marriage falls within the jurisdiction of the Syariah Court, s 3(2) of the Women's Charter makes it clear that certain parts of the Women's Charter *shall not* apply to that marriage. Section 35(3)

of the AMLA further clarifies that the Syariah Court is to apply Muslim law, as varied where applicable by Malay custom:

(3) In all questions regarding betrothal, marriage, dissolution of marriage, including talak, cerai taklik, khuluk and fasakh, nullity of marriage or judicial separation, the appointment of hakam, the disposition or division of property on divorce or nullification of marriage, the payment of emas kahwin, marriage expenses (hantaran belanja) and consolatory gifts or mutaah and the payment of maintenance on divorce, the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law, as varied where applicable by Malay custom.

30 If the dispute is one in respect of which the High Court *shares* jurisdiction *concurrently* with the Syariah Court and if the High Court takes jurisdiction over the matter under s 17A(2) of the SCJA (see above at [23]), s 17A(7) of the SCJA expressly provides that it shall apply the *civil law*.

31 If the High Court takes jurisdiction specifically under s 17A(2)(c) of the SCJA (that is where the dispute relates to disposition or division of property consequent upon divorce), s 17A(8) of the SCJA further provides that s 112 of the Women's Charter (which sets out the court's power to divide the matrimonial assets upon a divorce) shall apply notwithstanding s 3(2) of the Women's Charter.

32 The Judge was alive to all this but thought, in essence, that s 3(2) of the Women's Charter remained an obstacle standing in the way of the High Court giving any relief in this case because s 17A(8) of the SCJA, which seemingly held the potential to override s 3(2) of the Women's Charter, only applied where the High Court was acting pursuant to s 17A(2)(c), which was not the case here. Further, and in any case, s 17A(8) of the SCJA only overrode s 3(2) of the Women's Charter to the extent that it empowered the

High Court to apply s 112 of the Women's Charter to a Muslim marriage and not s 121G, which was the material provision on which the Wife was seeking to rely in this case.

33 To assess this, it is necessary to revisit the proper construction of s 3(2) of the Women's Charter, having regard to its purpose which we have identified at [27]-[29] above. In our judgment, when regard is had to that purpose, which as we have said, is *to avoid conflicts between the civil law and Muslim law where there is an overlap in the application of both these systems by reason of the concurrent jurisdiction of the High Court and the Syariah Court*, it must follow that s 3(2) is to be construed subject to a very important qualification. That qualification is this: where the Syariah Court has *no* jurisdiction over a matrimonial dispute involving parties to a Muslim marriage and the High Court takes residual jurisdiction over the matter as a consequence (see above at [25]), s 3(2) of the Women's Charter *would not* apply at all. This follows because in such a case, there would be no *conflict* of jurisdiction since it is the High Court alone that has jurisdiction. In these circumstances, there would be no basis for the disapplication of the Women's Charter, which contains the default body of law applicable to persons in Singapore and which would apply even to Muslims who are involved in a matrimonial dispute over which the Syariah Court has *no* jurisdiction. To construe s 3(2) otherwise would lead to a legal vacuum as the facts of the present case demonstrate. There is nothing to suggest that this was the intention behind s 3(2).

34 On the contrary, construing s 3(2) in this way would be consistent with Parliament's intention as to how the jurisdiction of the courts should be delineated between the Syariah Court and the High Court. Aside from the references we have already made to the legislative debates and materials at

[26] and [28] above, we also consider it relevant that during the Third Reading of the Muslim Law (Amendment) Bill 1999, which vested concurrent jurisdiction in the Syariah Court and the High Court over certain ancillary matters, the then Minister for Community Development and Minister-in-charge of Muslim Affairs, Mr Abdullah Tarmugi, said as follows (*Singapore Parliamentary Debates, Official Report* (15 April 1999) vol 70 at cols 1249–1250):

Sir, several representors strongly pushed for the Syariah Court to be the only forum to hear matrimonial disputes between Muslims, fearing that giving an avenue to the Civil Courts would *undermine and diminish the authority of the Syariah Court*. They felt that in the past, Muslims had little choice but to go to the Civil Courts, as the Syariah Court did not have adequate resources to deal with their disputes. The Select Committee deliberated over these concerns at length. *It concluded that Muslims, as citizens of this country, must be allowed the same right of access to the Civil Courts as non-Muslims.*

There may also be instances where the legal issues in a case need to or can only be resolved in the Civil Court. For instance, in disputes over property, the legal claim could involve third parties who are non-Muslims. Another example will be cases involving property or parties overseas. *Let me reiterate that the Bill does not in any way undermine the authority of the Syariah Court.*

[emphasis added]

35 It is evident that in vesting concurrent jurisdiction in the High Court in certain circumstances, Parliament was concerned to ensure that the authority of the Syariah Court would not be undermined or diminished. In circumstances where the Syariah Court has *no jurisdiction* to begin with, there can be no risk of undermining the authority of the Syariah Court even if the High Court were to assume jurisdiction and apply the Women's Charter. Furthermore, this would ensure that Muslims would be accorded the same rights and protection as non-Muslims in Singapore.

36 Against the backdrop of that general framework, we return to the facts before us to examine whether the Syariah Court has jurisdiction over the Wife's application for division of matrimonial property.

Whether the Syariah Court has jurisdiction

37 The present case involves parties to a Muslim marriage who obtained a divorce from a foreign court. The Wife concedes that in such circumstances, the Syariah Court has no jurisdiction to grant a division order since the parties' divorce was not before it. As we have observed at [6] above, the Syariah Court was of the same view and therefore dismissed the Wife's application for division of property. We agree with both the Wife and the Syariah Court.

38 As noted above at [21], the starting point for determining whether the Syariah Court has jurisdiction over the matter is s 35 of the AMLA. That provision makes it clear that the Syariah Court has jurisdiction over ancillary reliefs at least as a general rule. But what is the position where the divorce has been decreed by a foreign court? Here is it relevant to consider s 52(3) of the AMLA, which provides:

(3) The Court may, *at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under section 102 before 1st March 2009, on the application of any party, make such orders as it thinks fit with respect to —*

- (a) the payment of *emas kahwin* and marriage expenses (*hantaran belanja*) to the wife;
- (b) the payment of a consolatory gift or *mutaah* to the wife;
- (c) the custody, maintenance and education of the minor children of the parties; and
- (d) the disposition or division of property on divorce or nullification of marriage.

[emphasis added]

39 In our judgment, the words “at any stage of the proceedings for divorce” contemplate “proceedings for divorce” that have been or are being brought *before* the Syariah Court. In other words, the Syariah Court’s powers under s 52(3) may only be invoked where an application for divorce has been made to the Syariah Court. This was also the conclusion reached by the High Court in *Muhd Munir v Noor Hidah and other applications* [1990] 2 SLR(R) 348 (“*Muhd Munir*”) and subsequently also by this Court in *Madiyah*. We note that *Muhd Munir* and *Madiyah* were both decided in relation to the predecessor provision of s 52(3) of the AMLA, which provided:

Provisions consequent on matrimonial proceedings

...

(3) *In any application for divorce* the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to —

- (a) the payment of emas kahwin to the wife;
- (b) the payment of a consolatory or mutaah to the wife;
- (c) the custody, maintenance and education of the minor children of the parties; and
- (d) the disposition or division of property on divorce.

[emphasis added]

Nevertheless, as will be apparent shortly, the difference in wording between the previous and current version of that provision is not material to our analysis.

40 In *Muhd Munir*, the High Court was faced with four separate custody applications. The parties in all four applications were Muslims and married under the provisions of Muslim law. In three of the four cases, the parties were divorced pursuant to decrees of the Syariah Court. In the remaining case, the

parties were divorced by mutual agreement before a *kadi* and the divorce was subsequently registered under s 102 of the AMLA as it then stood. The issue before the court was whether the Syariah Court had exclusive jurisdiction over the custody applications. At that time, s 16(2) of the SCJA provided that the High Court had no jurisdiction to hear and try any civil proceedings which came within the jurisdiction of the Syariah Court. This has since been replaced by the present s 17A of the SCJA. The complication that arose was that while s 52(3)(c) of the AMLA as it then was empowered the Syariah Court to make custody orders, s 35 of the AMLA (which is in material respects similar to the present s 35 of the AMLA) did not specifically mention custody as one of the matters over which the Syariah Court was to have jurisdiction.

41 Chan Sek Keong J (as he then was) proceeded to consider the effect of ss 35(2) and 52(3)(c) of the AMLA. In respect of s 35(2), Chan J concluded that by expressly omitting custody of children as a subject matter, the Legislature did not intend to confer jurisdiction on the Syariah Court to hear and determine issues with respect to custody of children. He said as follows at [20]:

... the expression “jurisdiction” as used in s 16(1) of the SCJA with reference to the Syariah Court, when read together with s 35 of AMLA, means the authority of the Syariah Court to exercise any judicial power given by AMLA in respect of the types of subject matter prescribed by s 35(2) which are, specifically, marriage, divorce, betrothal, nullity, separation of marriage, disposition or division of property on divorce or the payment of *emas kahwin*, maintenance, and consolatory gifts and *mutaah*. As custody of children is a subject matter expressly omitted from s 35(2), I should hold, applying the *expressio unius* rule of construction, that *the Legislature did not intend to confer jurisdiction on the Syariah Court to hear and determine issues with respect to custody of children.* [emphasis added]

42 Chan J then went on to consider the effect of s 52(3)(c). He concluded that the words “in any application for divorce” in s 52(3) meant that the Syariah Court could only exercise its power under that section in or in connection with its divorce jurisdiction. In other words, there must have been a divorce application before the Syariah Court before the powers prescribed in s 52(3) could be exercised by the Syariah Court; and since in one of the cases, the divorce had been agreed before a *kadi*, the Syariah Court in any event could not exercise those powers in that situation (at [21]–[22]).

43 *Muhd Munir* was subsequently considered and affirmed by this court in *Madiyah*. That case involved two Muslim parties who were married in accordance with Muslim law. They appeared before a *kadi* and registered a consensual divorce. No orders were made in respect of their HDB flat because the *kadi* lacked the requisite jurisdiction and power. The respondent husband voluntarily agreed to transfer the flat to the appellant wife. However, the husband absconded before the intended transfer was effected. The wife then sought a declaration as to the parties’ respective interest in the flat. One of the issues which the Court of Appeal considered was whether the High Court had jurisdiction to hear the matter.

44 The Court of Appeal held that s 35 of the AMLA as it then was only vested jurisdiction in the Syariah Court where there was a “dispute” relating (among other things) to the disposition or division of property on divorce. The court held that there was in fact no “dispute” between the parties, and accordingly, the Syariah Court had no jurisdiction (at [20]–[21]). Nevertheless, the Court of Appeal proceeded to consider what the position would be if there was a dispute over the disposition of property and concluded that the matter would have to be heard by the High Court rather than by the Syariah Court. This was because a consensual divorce by a *kadi* did not

require any application to the Syariah Court at all, and this meant that the Syariah Court was in no position to exercise its judicial powers under s 52(3). In coming to its decision, the Court of Appeal considered two Syariah Court decisions, *Rahmat bin Slammat v Rozika bte Nabiwullah* Syariah Court Appeal No 273 of 1992 and the appeal from that case, Appeal No 22 of 1993 (at [29]–[30]):

29 ... In the first case of *Rahmat bin Slammat v Rozika bte Nabiwullah* Syariah Court Appeal No 273 of 1992, there was a preliminary objection on the ground that the Syariah Court had no jurisdiction to hear the matter. The issue as framed was whether the appellant, who had registered a divorce by mutual consent under s 102(3) of AMLA, could apply to the Syariah Court for an order with respect to ancillary matters. The President of the Syariah Court, after referring to the case of *Muhd Munir*, answered in the negative. He held:

12 Although the Syariah Court under s 35(2) of AMLA had jurisdiction to hear and determine a dispute relating to the disposition or division of property on divorce ... in the case where the parties had registered their divorce by mutual consent, there was no occasion for the Syariah Court to exercise its power under s 52(3) since there was no divorce application before it. For that matter, there was nothing elsewhere in AMLA that would empower the Syariah Court to exercise its jurisdiction under s 35(2) in the case where the parties had registered their divorce by mutual consent.

30 On appeal, the Appeal Board of the Syariah Court in Appeal No 22 of 1993 affirmed the above decision after considering the case of *Muhd Munir* ([14] supra) which we shall return to shortly. The Appeal Board held as follows:

6 [T]hough the Syariah Court has under s 35(2) of AMLA jurisdiction to hear and determine the dispute relating to the disposition or division of property on a divorce or the payment of (*emas kahwin*), maintenance and consolatory gifts in the case where the parties had registered their divorce by mutual consent, there was no occasion for the Syariah Court to exercise its power under s 52(3) *since there was no divorce application before it and there is no other provision in the AMLA that empowers the Syariah Court to exercise its jurisdiction under s 35(2) where the divorce is registered by mutual consent.*

[emphasis in original]

45 The Court of Appeal then considered *Muhd Munir* and held that one of the pre-conditions to invoking the Syariah Court's powers under s 52(3) is an application invoking the Syariah Court's *divorce* jurisdiction (at [34]). The Court of Appeal then concluded that since the divorce was registered by a *kadi*, the Syariah Court's divorce jurisdiction had not been invoked and there was therefore no basis for the Syariah Court to invoke the powers set out in s 52(3). It went on to hold as follows (at [35]):

... the Syariah Court has no judicial power under AMLA in respect of the disposition or division of property on divorce, even though this application concerns one of the subject matters prescribed in s 35(2) of AMLA. *Since there is no occasion for the Syariah Court to exercise its judicial powers, this leads to an absence of "jurisdiction" under s 16 of the SCJA to deal with the matter.* [emphasis added]

46 It is apparent from the preceding discussion that the position adopted by both the civil courts and the Syariah Court was that the Syariah Court could only exercise its powers under the then s 52(3) of the AMLA when there was an *application for divorce before the Syariah Court*. As we have noted at [39] above, s 52(3) was amended on 30 April 1999 pursuant to the Administration of Muslim Law (Amendment) Act 1999 (No 20 of 1999). Amongst other changes, the words "In any application for divorce" were deleted and replaced by the words "for divorce or nullity of marriage". For ease of reference, we reproduce the provisions as follows. The old s 52(3) provided:

(3) *In any application for divorce* the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to ... [emphasis added]

47 In contrast, the amended s 52(3) provided:

(3) The Court may, at any stage of the proceedings *for divorce or nullity of marriage* or after making a decree or order for

divorce or nullity of marriage, or after any divorce has been registered whether before or after the commencement of the Administration of Muslim Law (Amendment) Act 1999 under section 102, on the application of any party, make such orders as it thinks fit with respect to ... [emphasis added]

48 The question is whether Parliament intended to change this position when it made these amendments to s 52(3), and specifically, whether Parliament intended to displace the requirement that there be an application for divorce before the Syariah Court before it could exercise its powers under s 52(3) of the AMLA.

49 In our judgment, it is clear that Parliament had no such intention. First, in respect of the amendments to s 52(3), the *Report of the Select Committee on the Administration of Muslim Law (Amendment) Bill (Bill No 18/98)* (Parl 9 of 1999, 10 February 1999) made no observation regarding the removal of the words “In any application for divorce”. The Committee instead focused on the insertion of the words “nullity of marriage”, and stated that those words were inserted for the following reasons (at p iv):

(2) Nullity of Marriage

17 A representor cited a recent case in the Syariah Court where an issue arose as to whether a man could apply to nullify his marriage, and whether the Syariah Court has jurisdiction to deal with ancillary matters arising from nullification of marriage. The Syariah Court has all along treated applications of nullification of marriage by men and the ancillary matters arising from nullification as being under its jurisdiction. The present AMLA however is not explicit on these matters, and seems to only allow women to apply for nullification of marriage. Under Islam, a man can do so if his spouse renounces the religion or if the marriage was not solemnised according to the strict Syariah requirements. To avoid any doubt, the Committee recommends that the Bill be amended to give explicit powers to the Syariah Court to hear an application by a man to nullify his marriage and to deal with ancillary issues arising from nullity of marriage in accordance with Syariah law.

50 Considering the clauses of the Bill in succession, the Committee observed (at p E7–8):

Concern has been expressed that there is no explicit provision in the AMLA for the Syariah Court to make orders on ancillary issues arising out of nullification of marriage. To avoid uncertainty, amendments (2) and (3) [which insert the words “or nullity of marriage” and “or nullification of marriage”] seek to clarify that the Court has powers to make such orders.

51 Indeed, the issue of whether the Syariah Court’s powers under s 52(3) of the AMLA may be exercised only upon an application for divorce in the Syariah Court was never discussed. The Parliamentary Debates in respect of the Administration of Muslim Law (Amendment) Bill 1999 were also silent on this issue (see Second Reading of the Administration of Muslim Law (Amendment) Bill (*Singapore Parliamentary Debates, Official Report* (30 June 1998) vol 69) and Third Reading of the Administration of Muslim Law (Amendment) Bill (*Singapore Parliamentary Debates, Official Report* (15 April 1999) vol 70)). These all militate against the conclusion that the amendment to s 52(3) of the AMLA had anything to do with changing the position as to when recourse could be had to the Syariah Court’s power under that section.

52 Second, the words “*after making* a decree or order for divorce or nullity of marriage” [emphasis added] in s 52(3) of the AMLA suggest that it must be the Syariah Court making the decree or order that can exercise the powers under s 52(3). It would be more internally consistent with the rest of the provision to read s 52(3) of the AMLA as requiring the “proceedings for divorce or nullity of marriage” to be before the Syariah Court as well. In our judgment, the removal of the words “In any application for divorce” pursuant to the 1999 amendments was nothing more than a drafting change to more elegantly extend the provision to cover cases of nullification in addition to

divorces rather than to bring about any change to the substantive law as to whether those powers could be exercised aside from where there were divorce (or, after 1999, nullification) proceedings before the Syariah Court.

53 The position reflected in *Mohd Munir* and *Madiyah* therefore continues to apply. The Syariah Court can only exercise its powers under s 52(3) of the AMLA if there are proceedings for divorce or nullity of marriage *before* the Syariah Court, or if the Syariah Court had granted a decree or order for divorce or nullity of marriage. Turning to the facts of the present case, it is clear that there are no proceedings for divorce before the Syariah Court given that the parties' divorce was obtained from the Johor court. Since the Syariah Court's divorce jurisdiction is not engaged, it is not entitled to invoke its powers under s 52(3) to grant the orders sought in the present application.

Whether the High Court may grant relief

54 In our judgment, it follows that the High Court will have residual jurisdiction over the application pursuant to ss 16 and 17 of the SCJA (see above at [25]). We emphasise that the High Court is *not* assuming jurisdiction pursuant to s 17A(2) of the SCJA. Section 17A(2) only confers *concurrent* jurisdiction on the High Court in respect of matters over which the Syariah Court has jurisdiction. But that is not the case here since, as we have observed, the Syariah Court does not have jurisdiction. Accordingly, ss 17A(7) and (8) of the SCJA, which are predicated upon the High Court taking jurisdiction under s 17A(2), are inapplicable to the present case.

55 The Wife presently seeks relief pursuant to s 121G of the Women's Charter, which is found in Part X, Chapter 4A of the Women's Charter. Although s 3(2) of the Women's Charter, *on its face*, excludes the application of Part X to parties married under Muslim law, as we have noted at [33]

above, the exclusion only applies *when the Syariah Court has jurisdiction over the matter*. Given that the Syariah Court has *no jurisdiction* over the present application, in the sense that it is not in a position to exercise its judicial power to divide the matrimonial assets in this case pursuant to s 52(3) of the AMLA, the exclusion under s 3(2) of the Women's Charter *does not* apply at all. The High Court is therefore empowered to grant relief under s 121G of the Women's Charter, including an order for division of matrimonial assets.

56 To find otherwise would lead to the unsatisfactory position where the Wife would be unable to obtain matrimonial relief from the Syariah Court because the AMLA does not confer jurisdiction on it for the purpose of seeking reliefs that are consequential upon her divorce (due to the divorce having been decreed by the court in Johor). If she also was unable to obtain matrimonial relief from the High Court on the basis that s 3(2) of the Women's Charter prevents the court from exercising its powers under s 121G of the Women's Charter, both courts would be powerless and this would entitle the Husband to avoid having the parties' matrimonial property in Singapore divided simply by obtaining his divorce overseas. We do not think that Parliament intended such an anomalous result.

57 It was suggested by the District Judge that two alternative remedies remain available to the Wife. The first is that she could apply to set aside the Johor divorce on the basis that it was obtained without her participation and apply for a fresh divorce in Singapore (or argue that the Johor divorce should not be recognised and apply for a fresh divorce in Singapore). The second is that she could apply for the relief she presently seeks from the Johor court and then attempt to enforce that order in Singapore. There are, however, significant difficulties with both options.

58 In our judgment, the first option is no longer open to the Wife. This is because the Wife appears to have participated in the Johor divorce proceedings by filing contempt proceedings against the Husband in the Johor Sharia Court and obtaining custody of her two children while the Husband was incarcerated (see [5] above). She had also engaged counsel to represent her in the proceedings then. Furthermore, the Wife obtained relief in the form of *nafkah iddah* and *mutaah* from the Syariah Court in Singapore on the basis of the Johor divorce (*nafkah iddah* and *mutaah* under ss 51(2) and 52(2) of the AMLA may only be granted when the woman to a Muslim marriage has been divorced) (see [6] above). The Wife has therefore either waived her right to challenge or is estopped from challenging the validity of the Johor divorce.

59 In respect of the second option, the assets the Wife presently seeks to divide are a Johor property, the HDB Flat, the rental yield from the HDB Flat, the sale proceeds of another Johor property and the Husband's CPF monies (see [7] above). It is a well-established rule that foreign orders affecting immovable property are orders *in rem* and generally have no effect on rights in property situated *outside* the jurisdiction of the court granting the order (*ie*, the *lex situs* rule) (see *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2016) at para 75.243). Therefore, a Johor court order that purported to divide the HDB Flat and the Husband's CPF monies may well not be enforceable in Singapore.

60 Indeed, it was difficulties of this nature that Parliament sought to resolve with the introduction of Chapter 4A of the Women's Charter, pursuant to which the High Court was empowered to order financial relief consequent upon divorces granted by overseas courts where these are recognised as valid in Singapore. During the Second Reading of the Women's Charter (Amendment) Bill, the Minister for Community Development, Youth and

Sports, Dr Vivian Balakrishnan, stated (*Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at cols 2048–2049):

Lastly, a new Chapter 4A of Part X will be introduced in the Charter to empower the Singapore courts to provide financial relief for divorces granted in overseas courts which are also recognised in Singapore. Under the present law, the Singapore court has power to grant important ancillary financial orders for maintenance of the ex-spouse and children and for the division of matrimonial assets if the parties obtain a divorce from a Singapore court, but not if they have already obtained a divorce overseas. Sir, with the increasing number of Singaporeans working and residing overseas and increasing marriages between locals and foreigners, this proposed provision will help those who are made vulnerable by foreign divorces and who have a relevant connection to Singapore to seek relief.

Let me give Members an example: A Singaporean woman who marries a foreigner and then lives in a matrimonial home in Singapore. Suppose the foreign spouse then obtains a divorce from a foreign court which is recognised in Singapore but for some reason makes no financial provisions. Currently, the Singaporean spouse will have no financial remedy in Singapore because the Singapore courts do not have the power to make such ancillary orders. With this new Chapter, the courts here will be able to make orders on matrimonial assets in Singapore and the maintenance for divorces that were obtained in foreign courts. This will plug an existing gap. The related amendments will also be made to the Central Provident Fund Act to effect this, as CPF monies may constitute part of the matrimonial assets to be divided between parties.

[emphasis added]

There is nothing to suggest that Parliament intended to provide this remedial measure *only* to non-Muslims.

61 Finally, we touch on an aspect of the decision in *Madiyah* which involved a situation similar to the present case in that the Syariah Court was found not to have jurisdiction over the dispute because the parties' divorce was effected by a *kadi* and did not involve any divorce application to the Syariah Court. The dispute was found to fall within the High Court's

jurisdiction. However, the Court of Appeal held that the Women's Charter could not apply because the parties were Muslim (at [40]). Although this was not expressly stated, we presume the Court of Appeal was influenced by s 3(2) of the Women's Charter in coming to this conclusion. The Court of Appeal proceeded to divide the matrimonial property according to the general principles of trust. We note, however, that the purpose of s 3(2) of the Women's Charter had not been considered in that case. Given the analysis we have set out above as to the proper interpretation of s 3(2), we would respectfully depart from the approach adopted in *Madiyah* in this regard.

Conclusion

62 In the circumstances, we allow the appeal. In the light of our findings above, the matter is to be remitted to the Judge to decide the orders to be granted, if any. We make no order as to the costs of the appeal.

Sundaresh Menon
Chief Justice

Chao Hick Tin
Judge of Appeal

Andrew Phang Boon Leong
Judge of Appeal

Judith Prakash
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Mohamed Ibrahim and Sri Balan s/o Krishnan (ACHIEVERS LLC)
for the appellant.
