

DALAM MAHKAMAH PERSEKUTUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN SIVIL NO. 02-18-2007(W)

ANTARA

MANOKARAM A/L SUBRAMANIAM ... PERAYU

DAN

RANJID KAUR A/P NATA SINGH ... RESPONDEN

KORAM: ZAKI TUN AZMI, PCA
ARIFIN ZAKARIA, FCJ
HASHIM DATO' HJ. YUSOFF, FCJ

JUDGMENT OF ZAKI TUN AZMI, PCA

1. More often than not, a divorce is acrimonious. Each party will try to extract from the divorce the most to his or her benefit. They will fight over every little issue. Their respective lawyers will advise to take full advantage of every little technicality of the law. One party will claim and the other will strenuously resist. Each must also be aware of their rights and comply strictly with the law. This case is one example where such situation had arisen.
2. From the facts that have been cited in much detail in the grounds of judgment of my learned brother Arifin Zakaria FCJ, it is clear that the Respondent or her counsel had overlooked, not just once, but a number of times during the proceedings to file the correct documents within the permitted time.
3. Reading from the chronological order of events in the record of

appeal I notice that an application for ancillary reliefs was first fixed on 28.10.1999 but because the judge did not have time to hear, it was postponed to a date almost one year later i.e. 14.9.2000. On this date, the application for ancillary reliefs by the Respondent was struck out because neither the Respondent nor her counsel was present. According to the Respondent, the date was wrongly recorded in her diary. To me, recording the date wrongly in the diary is not an excuse. On 21st September, one week later, the draft decree was sent to the Respondent's solicitors for approval. However since the Respondent's solicitors did not respond, the draft decree nisi was returned to the court for approval. A copy of the letter addressed to the court was sent to the Respondent's solicitors.

4. On 9.10.2000 the Appellant's solicitors filed in an application for an order that the decree nisi be made absolute. On 15.2.2001 four months later a sealed copy of the Notice of Application for ancillary reliefs together with supporting affidavit was sent to the Appellant's solicitors by the Respondent. On 27.3.2001 the Appellant's solicitors filed in court the decree nisi together with a certificate to make the decree nisi absolute. On 5.4.2001, the certificate making the decree nisi absolute was issued by the court. Even though Respondent discovered that her application for ancillary reliefs had been struck out by the court on 14.9.2000 no application was made to reinstate the application. That is another mistake.
5. The third mistake that the Respondent did was in not seeking leave to file an application for ancillary reliefs since this application for ancillary reliefs was not made in the petition or in the answer thereto. This requirement to obtain leave is quite well established by the

Court of Appeal judgment in *Chew Ling Hang v. Aw Ngiong Hwa*¹ and the Singapore case of *Tan Pau Soon v. Ling Beng Choo*², both cited by my learned brother in his judgment.

6. If effort had been made by the Respondent to check the law, it would be clear from these two cases and the textbook that leave is required. Had application for leave been filed and a stay of the decree nisi from being made absolute sought, immediately thereafter, I am sure the court will not hesitate to grant such application for stay. From these events, it can be clearly seen that the Respondent had committed several errors or omissions on her part. The Appellant of course is under no duty to point out to the Respondent her errors. It is up to the Respondent's solicitors or counsel to advise the Respondent accordingly.
7. I feel obliged to make these comments because the courts had been repeatedly accused of being unfair to parties when in fact parties themselves have failed to file in proper documents, make proper applications, and to do so within the time provided by law. It is not as if the lawyer concerned had interpreted the law differently. If there are authorities that support the Respondent's actions perhaps the court could be sympathetic with her. The result of all these oversight is injustice to the client.
8. So all in all, the Respondent did not protect her rights well. I do not like to comment who was at fault.
9. I agree with my learned brother Arifin FCJ that the duty of the court is to interpret and apply the law. In this case the words used in section

¹ (1997) 3 MLJ 107

² (1997) 2 SLR 372

76(1) and 76(3) are clear i.e. an order for division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. I am very sure that this is the interpretation that is to be given to section 76. Even Singapore had to amend their Women's Charter³ to enable that ancillary reliefs could be made at any time subsequent to the grant of a judgment of divorce.

10. In conclusion, I have this to say. I sympathise with the Respondent but the law is the law. In *Chai Sau Yin v. Kok Seng Fatt*⁴, Thompson LP said "This, however, is a Court of law and not a Court of morals and it is on that basis that the case must be decided." That case was in respect of the Moneylenders Ordinance.

11. In this present case, it is so clear that there is no room to argue that section 76 should be interpreted in the way the Respondent had asked us to do.

12. I therefore agree with my learned brother Arifin Zakaria FCJ that this appeal be allowed. Regarding costs, bearing in mind the circumstances I will not make any order for costs. Deposit to be refunded to the Appellant.

Dated : 4 September 2008

ZAKI TUN AZMI
President of the Court of Appeal
Malaysia

³ See new section 112 of the Singapore Women's Charter

⁴ [1966] 1 LNS 25