# GAK *v* GAL
# [2013] SGCA 19

| | |
|---|---|
| **Case Number** | : Civil Appeal No 27 of 2012 and Summons No 5380 of 2012 |
| **Decision Date** | : 22 February 2013 |
| **Tribunal/Court** | : Court of Appeal |
| **Coram** | : Sundaresh Menon CJ; Andrew Phang Boon Leong JA; V K Rajah JA |
| **Counsel Name(s)** | : Prabhakaran s/o Narayan Nair (Derrick Wong & Lim BC LLP) for the appellant; Josephine Choo and Quek Kian Teck (WongPartnership LLP) for the respondent. |
| **Parties** | : GAK — GAL |

*Family Law – Maintenance*

*Family Law – Matrimonial Assets – Division*

22 February 2013 Judgment reserved.

**Andrew Phang Boon Leong JA (delivering the judgment of the court):**

**Introduction**

1 This is an appeal against the decision of the High Court judge ("the Judge") in *GAK v GAL* [2012] SGHC 132 ("the GD"). The crux of the proceedings in the court below and in this appeal concern the question of whether a property which was transferred to the sole name of the respondent husband ("the Respondent") by his father ("the Father"), and the sale proceeds thereof, constituted a "gift" that fell within the meaning of the proviso to s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) (referred to respectively as "the Proviso" and "the Act").

**Factual Background**

***The parties***

2 The appellant wife ("the Appellant") and the Respondent were married on 15 November 1980. The Respondent is now 56 years old, and the Appellant is 55 years old. Their marriage lasted for about 30 years. They have two children of the marriage ("the Children"): a 30-year-old daughter, [M], and a 27-year-old son, [N].

3 The Appellant met the Respondent in the mid to late 1970s when they were both working for [Company A] Pte Ltd ("the Company"), a ship-chandling firm owned and run by the Respondent's family (see the GD at [3]). The Company was incorporated in 1979. According to the Respondent, the Father gifted shares in the Company to the Respondent's mother ("the Mother") and their four children ("the Siblings"), including the Respondent. The Appellant worked as a typist in the Company, while the Respondent was a boarding officer.

4 The parties continued to work in the Company after they got married. According to the Respondent, however, disagreements arose amongst the Siblings as to the management of the Company after the Father passed away in 1994. The Respondent was asked to leave the Company sometime in May or June 2000, and he resigned on 25 July 2000. The Respondent transferred his

shares in the Company to the Mother without consideration. The Appellant's last month with the Company was December 2000.

5 The Appellant's last-drawn gross monthly salary (including salary, allowances, commissions, benefits and bonuses but excluding CPF contributions), according to her, was $1,185, while the Respondent's last-drawn "monthly income", according to him, was $2,000.

***Facts relating to 30A Jansen Road ("the Property")***

6 The main dispute in the court below, and in this appeal, on the division of matrimonial assets concerned the issue of whether a property at 30A Jansen Road and the sale proceeds of the Property ("the Sale Proceeds") were part of the pool of matrimonial assets.

7 The Father gifted a few assets to each of the Siblings when they were between 19 and 22 years of age. In 1975, the Father gave one lot ("Lot A") of a property that he owned in Sri Lanka to the Respondent, and another lot ("Lot B") of that same property to the Respondent's elder brother, [G]. It should be noted that although the Judge accepted the Respondent's evidence that Lot A was given to him in 1977, the Respondent furnished documentary evidence in this appeal showing that he and [G] had in fact received Lot A and Lot B respectively on 1 October 1975. In 1975, the Father also gave the Respondent's elder sister, [H], a car and another property in Sri Lanka. The Father gave [G] another property in Singapore (*viz*, 11 Dix Road) in 1977. In 1979, the Father gifted the Property, a bungalow of about 10,000 square feet, to the Respondent's younger sister, [J]. According to the Mother, the Father transferred these properties to the Siblings in their sole names and for their sole benefit as part of his legacy, to ensure that the Siblings had "sufficient finances for themselves".

8 After the parties were married, they lived with [G] and [G]'s wife at 29 Jansen Road (which was across the road from the Property). The Father, the Mother, [J], [H] and [H]'s children lived at the Property.

9 In 1985, due to his ailing health, the Father decided to return to Sri Lanka with the Mother and [J]. On the Father's instructions, Lot A was transferred to [J] and Lot B to the Mother. This was done by way of a deed dated 4 December 1985 signed by the Father on behalf of the Respondent and [G]. (The Mother and the Siblings had previously empowered the Father to act on their behalf by granting the Father a power of attorney.) The Father also instructed [J] to transfer the Property to the Respondent's sole name, and this transfer was completed by way of an indenture of assignment dated 10 December 1986.

10 The Property was left unoccupied (save for short periods of time when the Father, the Mother and [J] visited Singapore) from 1986 until 1995 when it eventually was sold for $4.2 million. According to the Respondent, he felt that he should not continue staying at 29 Jansen Road. He also sold the Property "for liquidity", and also because it was becoming dilapidated, and (according to the Appellant at least) to ensure that the parties would have enough funds to buy a matrimonial home which they could maintain financially, with excess funds to finance the Children's education, medical expenses, insurance plans for the family, and a comfortable retirement fund for the parties. The Sale Proceeds were used to purchase, *inter alia*, the parties' matrimonial flat at Serangoon North ("the Matrimonial Flat") in 2000. The Matrimonial Flat is held by the parties as joint tenants.

11 In or around April 2009, the Appellant applied for a Personal Protection Order ("PPO") against the Respondent. She later withdrew the PPO application on the Respondent's undertaking not to commit family violence or enter [N]'s room (which was then occupied by the Appellant) in the Matrimonial Flat. The Respondent left the Matrimonial Flat in November 2009 and moved to a rented

property.

12 The Appellant filed for divorce on 16 March 2010, and interim judgment was given on 28 December 2010. The fact relied upon to prove the irretrievable breakdown of marriage was that each party had behaved in such a way that the other could not reasonably be expected to live with him or her.

**The decision in the court below**

13 The Judge found that the Property was a gift from the Father to the Respondent for his sole benefit (see the GD at [19]). In so far as the Sale Proceeds were concerned, the Judge found that the Appellant had failed to establish that the Respondent intended the Sale Proceeds to form part of the pool of matrimonial assets (see the GD at [28]). The Judge placed significant weight on the fact that the Sale Proceeds were deposited into bank accounts held in the Respondent's sole name and that the evidence indicated that he had kept the Sale Proceeds under his control (see the GD at [28] and [30]–[35]).

14 The Judge thus concerned herself with the issue of the division of the Matrimonial Flat only, as well as the maintenance of the Appellant, and ordered that (see the GD at [1]):

(a) The Matrimonial Flat was to be apportioned 40% to the Appellant and 60% to the Respondent;

(b) The Appellant had an option to purchase the Respondent's 60% share in the Matrimonial Flat based on market value exercisable within 30 days from 29 February 2012, with costs of the transfer of the Matrimonial Flat and all incidental expenses to be borne by the Appellant;

(c) If the Appellant failed to make her election, the Matrimonial Flat was to be sold within 120 days from 29 February 2012 and the sale proceeds of the Matrimonial Flat were to be apportioned 40:60 in favour of the Appellant and the Respondent respectively;

(d) A lump sum maintenance of $80,000 shall be paid by the Respondent to the Appellant in four equal quarterly instalments with effect from 1 March 2012; in the alternative, this was to be deducted from the Respondent's 60% share in the Matrimonial Flat; and

(e) Costs fixed at $4,000 in favour of the Respondent were to be deducted from the Appellant's share in the sale proceeds of the Matrimonial Flat, or from the lump sum maintenance of $80,000 payable by the Respondent, in particular from the first quarterly instalment due on 1 March 2012.

**The issues in this appeal**

15 The key questions in this appeal centred on four related issues, the first three of which are closely related.

16 The first issue ("Issue 1") is whether the Property (and the Sale Proceeds thereof) constitute (as the Judge had found) a "gift" within the meaning of the Proviso and therefore falls outside the pool of matrimonial assets that is to be divided between the parties pursuant to s 112(1) of the Act.

17 The second issue ("Issue 2") is whether, assuming that (pursuant to Issue 1 above) the Property is indeed a gift within the meaning of the Proviso, the Respondent nevertheless dealt with

part or the entire of the Sale Proceeds in such a manner as to clearly evince an intention on his part to bring the Sale Proceeds into the pool of matrimonial assets to be divided between the parties, and whether the Sale Proceeds could thus *cease to be a gift*. We pause to note – parenthetically – that there is possibly a further issue with regard to what we shall refer to as the "substantial improvement exception", *viz*, whether, assuming that the gift has *not* been brought within the pool of matrimonial assets *by the donee spouse*, the *specific condition* in the Proviso has nevertheless been satisfied with the result that the gift is *still* brought within the pool of matrimonial assets on the ground that the asset concerned had in fact been "substantially improved" by either the spouse other than the donee spouse (henceforth referred to as "the other spouse") or by both spouses. *However*, on the facts of the present appeal, it is clear that there is insufficient evidence supporting the applicability of the substantial improvement exception. Not surprisingly, therefore, the parties did not canvass this particular issue in the appeal and we thus say no more about it.

18 Based on our findings on Issue 1 and Issue 2, we would then need to decide whether the division of matrimonial assets as ordered by the Judge ought to be interfered with. This is the third issue ("Issue 3").

19 Finally, the Appellant also takes issue with the decision of the Judge in so far as *maintenance* is concerned. This is the fourth issue ("Issue 4").

20 Let us consider each of these issues *seriatim*. However, before proceeding to do so, it would be apposite to set out the applicable legal principles.

**The applicable legal principles**

21 Section 112(10) of the Act reads as follows (with the Proviso in italics and bold italics):

(10) 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** .*

[emphasis added in italics and bold italics]

22 The Proviso is, on a literal reading, straightforward enough. As observed in the Singapore High Court decision of *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*") (at [32]), the Proviso was intended to give effect to the donor's intention and to prevent unwarranted windfalls from accruing to the other spouse. However, as noted in *Chen*

*Siew Hwee* (at [33]–[36]), there are exceptions to the general rule that assets acquired by way of gift or inheritance by one of the parties should not constitute part of the pool of matrimonial assets, such as the substantial improvement exception or where the asset is the matrimonial home. It also bears emphasising that where there is ambiguity in the donor's intention, the court would have to interpret the donor's intention with reference to the objective facts. This point, as we will see, is of particular relevance in the present case. Let us turn now to consider *Issue 1*.

**Issue 1**

***The undisputed facts***

23 In order to resolve this particular issue, it is appropriate first to set out the relevant (and undisputed) facts.

24 As we alluded to above (at [7]), it is undisputed that the Father gifted Lot A to the Respondent alone. It was also undisputed that the Respondent transferred Lot A to [J] and that [J] transferred the Property (which was then in her name) to the Respondent.

***The disputed facts***

25 There were, however, several points at which the parties were wholly at odds.

26 The first point of dispute related to the Father's intention with regard to the respective exchange of properties briefly described above (at [9]). The Respondent argued that there had, on the Father's instructions, been *an exchange or swap of what were still gifts from the Father to the Respondent and [J] – except that, with such an exchange, the Respondent would receive the Property whilst [J] would receive Lot A instead.* The Respondent further submitted that such an exchange was desired by the Father because he intended (owing to health reasons) to return to live in Sri Lanka with the Mother and [J], whilst the Respondent would continue to reside in Singapore with his family. The Respondent also maintained (and the Mother deposed an affidavit attesting to the same) that, as with the transfer of Lot A, the Property was intended for the Respondent's sole benefit. The Property was transferred to the Respondent's sole name as the Mother and the Father did not wish to intervene in their children's family matters, and left it up to the Siblings to take the necessary steps to benefit their own families (if any). We should add that the Father and [J] have since passed away and could not provide evidence in this regard.

27 The Appellant had initially accepted that there had been a mere exchange of gifts, but her contention was that the Property was intended by the Father to be a gift to the Respondent, the Appellant and the Children, *and not to the Respondent solely*. This was apparent in her various affidavits. She submitted that the Father did so out of gratitude to the Appellant for her contributions to the Company, and to ensure that the Respondent's family was financially secure as the Respondent was then financially unable to purchase a home. However, the Appellant subsequently changed her tack somewhat, the result of which was the application for the admission of new evidence ("the new evidence") *via* Summons No 5380 of 2012 ("the Application") in this appeal.

*The Application*

28 The new evidence that the Appellant sought leave to adduce consisted of:

(a) The title search and copies of documents evidencing transactions in relation to the Property ("the documents of title");

(b) A letter dated 21 August 2012 from the Appellant's previous solicitors; and

(c) Letters dated 23 April 2012 from Ang Mo Kio Police Division Headquarters to the Appellant and [M] ("letters from the police").

29 The Appellant sought leave to admit the documents of title to show that the Property was acquired for consideration, and was therefore not a gift. One of the documents of title was a deed of assignment dated 11 September 1979 providing that the Father transferred the Property to [J] for $150,000. Another was an indenture of assignment providing that, on 10 December 1986, the Respondent acquired the Property from [J] for $400,000. The Appellant also sought to introduce a letter from her previous solicitors dated 21 August 2012 explaining why the documents of title, though obtained prior to the hearing of the ancillary matters before the Judge, had not been adduced in her affidavits. The Appellant's previous solicitors stated that the documents of title were left out of her affidavits as the Appellant instructed them that the Respondent "had been gifted [the Property] by way of a transfer from [[J]]".

30 The Appellant also sought to introduce letters from the police in response to the Respondent's implied assertion that she had taken 21 pieces of blue sapphires and 58 pieces of rubies ("the Gemstones") that he claimed he had kept in the master bedroom of the Matrimonial Flat before he left the Matrimonial Flat in November 2009. The letters from the police stated that no further action would be taken against the Appellant and [M] with respect to the Respondent's report on the missing Gemstones.

*Applicable principles on admission of the new evidence*

31 It would first be helpful to set out the applicable principles on the admission of new evidence on appeal. It is trite that under O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), the Respondent has to demonstrate "special grounds", which, as a general rule, means satisfying the three conditions in *Ladd v Marshall* [1954] 1 WLR 1489 (the "*Ladd v Marshall* test") (see also the decision of this court in *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 at [21]). The three conditions of the *Ladd v Marshall* test are as follows:

(a) The evidence could not have been obtained with reasonable diligence for use during the hearing of the ancillary matters;

(b) The evidence must be such that, if given, would probably have an important influence on the result of the case, though it need not be decisive; and

(c) The evidence must be such as is presumably to be believed or apparently credible.

32 The courts have, however, allowed, in certain cases, the admission of new evidence despite the applicant's failure to demonstrate that all three conditions of the *Ladd v Marshall* test were satisfied. In *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 ("*Su Sh-Hsyu*"), for example, this court noted that while in most cases, the *Ladd v Marshall* test achieved justice by upholding the public interest in the finality of litigation, there were exceptional cases in which (as noted by Laddie J in *Rajinder Singh Saluja v Partap Singh Gill* [2002] EWHC 1435 (Ch)) "a rigid application of the [*Ladd v Marshall* test] might engender injustice", and, in these cases, the court has "the power to employ its wide discretion to assess with some latitude the adduction of new evidence" (see *Su Sh-Hsyu* at [31]). This court, in *Cheng-Wong Mei Ling Theresa v Oei Hong Leong* [2006] 2 SLR(R) 637 ("*Theresa Cheng-Wong*") (at [39]), also emphasised that the *Ladd v Marshall* test should not be applied rigidly as if it were a statutory provision.

33 Courts have, *inter alia*, exercised the discretion to admit new evidence despite the applicant's failure to satisfy the first condition of the *Ladd v Marshall* test where the new evidence revealed that some deception, fraud or deliberate suppression of material evidence was perpetuated on the trial court by one party (see *Su Sh-Hsyu* at [36]; *Hamilton v Brodie Brittain Racing Ltd* (Court of Appeal (Civil Division), 13 December 1995) and *Linton v Ministry of Defence* [1983] NI 51 (both the last mentioned decisions of which were cited in *Su Sh-Hsyu* at [28]–[30] and [33]–[34], respectively)). New evidence has also been admitted in an appeal where a party was denied a fair opportunity by the trial judge to put forth relevant facts before the court (see, for example, the decision of this court in *Wong Phila Mae v Shaw Harold* [1991] 1 SLR(R) 680 at [16]), or where the trial judge made a decision on a point of a "substantive nature" that parties had not had the opportunity to address (see *Theresa Cheng-Wong* at [40]–[45]).

34 At the hearing, we reserved our decision on the Application and allowed Mr Prabhakaran Nair ("Mr Nair"), counsel for the Appellant, to make references to the new evidence in his oral submissions. We also directed the Respondent to file a reply affidavit addressing a few issues to, *inter alia*, account for the fact that the indenture of assignment of 10 December 1986 stated that the Property was sold to the Respondent for $400,000. After considering the parties' submissions, we have decided to dismiss the Application. We turn now to the reasons for our decision.

*Our decision to dismiss the Application*

35 Dealing first with the more straightforward aspect of the new evidence, *viz*, the letters from the police, we are of the view that the second condition of the *Ladd v Marshall* test is not satisfied, inasmuch as this evidence was not material to the Judge's decision or to our decision in this appeal.

36 In so far as the documents of title are concerned, while the second and third conditions of the *Ladd v Marshall* test are satisfied, it is undisputed that the first condition is not. The Appellant obtained the documents of title *before* the hearing of the ancillary matters before the Judge. Mr Nair admitted that such evidence could have been adduced earlier and the fact that the Appellant's previous solicitors did not do so was not, at least in and of itself, an adequate excuse. In our view, neither was the Appellant's claim that she did not see the significance of the documents of title at that point in time.

37 The Appellant argued that the Respondent had deceived the court by representing that the Property was a gift, and the documents of title struck at the heart of the Judge's decision. We do not think this allegation (which is a serious one to make) is borne out, particularly in the light of the Respondent's explanation in his reply affidavit to the Application.

38 The Respondent explained that, despite what was indicated on the deed of assignment dated 11 September 1979, [J] did not pay $150,000 to the Father. [J] was merely 20 years old then and had just started working in the Company. The Respondent also maintained that he did not, and that it was not possible for him to, pay $400,000 for the Property. Indeed, by the Appellant's own evidence, from 1980 to the time that the Property was transferred to the Respondent, the Respondent earned a meagre salary and was "financially unstable to purchase a home". In the Respondent's reply affidavit to the Application, he stated that he was told by the Father that it was necessary to specify the value of $400,000 on the indenture of assignment as that was the estimated value of the Property, and he did not question the Father. The Respondent also told [J] that he did not have money to pay her for the Property, and [J] did not ask to be paid. The Father had given various properties to the Siblings (as set out above at [7]) when they were between 19 to 22 years of age, and they did not pay for these properties even though the legal documentation for the transfer stated that consideration had passed.

39 While we note that the Respondent did not challenge the authenticity of the documents of title, and that these documents would constitute objective evidence of potentially fundamental importance to the issues in this appeal (thus, satisfying both the second and third conditions of the *Ladd v Marshall* test), we are of the view that this case is not one which justifies a relaxation of the first condition of the *Ladd v Marshall* test, and are thus of the view that the Application should be dismissed. The Application is also dismissed in relation to the letter from the Appellant's previous solicitors. The Appellant possessed the necessary evidence before the hearing of the ancillary matters and could well have made her arguments before the Judge on the nature of the exchange of properties between the Respondent and [J].

***Our decision on Issue 1***

40 Notwithstanding our decision to dismiss the Application, we find in favour of the Appellant on Issue 1. The key question in so far as this particular issue is concerned is whether or not there had indeed been an exchange of gifts effected on the Father's instructions, with the result that the acquisition of the Property by the Respondent was by way of a gift from the Father in the same way that Lot A was.

41 Contrary to what was alleged by the Respondent, we are of the view that the Property was intended by the Father to be a gift to the Respondent *and his family*, and not merely to the Respondent alone. Although we accept (and this is not disputed by the Appellant) that Lot A was intended to be a gift to the Respondent alone, it was more probable than not that the Father had *changed* his intention and intended to provide for *the Respondent's entire family via* the Property, given that, by the time the exchange of properties occurred, the Respondent had not only gotten married but also had children as well. The fact that the Father (because of his ailing health) and the Mother as well as [J] returned to and intended to remain in Sri Lanka was but one reason for the exchange of properties, and this reason, we might add, was not necessarily inconsistent with an intention that the Property was to be for the Respondent's family. After his marriage, the Respondent had expressed to the Father that he wanted to continue living in Singapore with his family, and it was "[f]or this reason" (in the Respondent's words), that the Father instructed that the properties be exchanged. It appears to us that the contexts in which the Father had gifted Lot A to the Respondent in 1975 and transferred the Property to the Respondent in 1986 are entirely different. When the Property was transferred to the Respondent, he had been married for a little over six years and had two children. Given that the Respondent did not even have the means to purchase a home for his family in Singapore, we accept the Appellant's account that the Father, in directing the exchange of properties, wanted to ensure that the Respondent's family was financially secure. The parties' conduct after the properties were exchanged (while, in itself, may not have constituted sufficient evidence of the Father's intention) was corroborative of our finding that the Father intended to benefit the Respondent's family with the Property. Both parties, and in particular, the Appellant, maintained the Property, and the Respondent's family used the Property as their residential address in identification documents and in the Children's school records. We also accept that the parties had made a "joint decision" to sell the Property in 1995 to acquire funds to, *inter alia*, purchase a matrimonial home of a reasonable size that they could maintain financially, and that (by the Respondent's own admission) most of the Sale Proceeds were spent on his family through the years. In our view, such conduct was consistent with the Father's intention that the Property was intended for the Respondent's family.

42 The Respondent relied on the Mother's evidence that, as with the transfers of properties to the other Siblings (see above at [7]), the Property was for the Respondent's sole benefit, and he was left to benefit his family if he so wished. We would point out that the comparison with the transfers of properties to the other Siblings was not entirely helpful, as the transfers were made to them *before*

they were married or had their own families, unlike the circumstances prevailing at the time that the Property was transferred to the Respondent. We would also caution against placing undue weight on the Mother's affidavit, in the light of the possibility (and in our view, the likelihood) that her evidence was not wholly neutral, but predisposed towards the Respondent's case. In fact, the tone and contents of her affidavit suggest that she and the Appellant did not have an altogether rosy relationship. In so far as the Respondent sought to rely on the fact that the Property was (as in the case of Lot A) transferred to his sole name, and not to the parties jointly, it is just as plausible that this was simply an arrangement made by the Father with regard to the legal title to the gifted properties, and this was not necessarily inconsistent with his intention *in substance* to benefit the Respondent's family with the Property. And, in so far as the Respondent sought to argue that he and his family had never moved to live in the Property itself, we find this particular argument to be neutral at best (significantly, in the light of our analysis above of the Mother's affidavit, this argument is also to be found in that particular affidavit as well). After all, they were already residing at 29 Jansen Road and the Property was (owing to its size as well as the high costs of renovation) probably unsuitable as a matrimonial home (this is supported by the fact that the parties ultimately settled on a matrimonial home of reasonable size (as noted above at [41])). The fact that the Respondent's family remained in 29 Jansen Road was, in our view, likely to be for reasons of practical convenience, and was by no means inconsistent with what we have found to be the Father's intention in instructing that the Property be transferred to the Respondent. We also find it highly significant that a portion of the Sale Proceeds was used to fund the purchase of the Matrimonial Flat in the *joint names* of the Appellant and the Respondent as *joint tenants* (see above at [10]).

43 As we have found that the Property was intended by the Father to be a gift to the Respondent and his family, it would follow that the Sale Proceeds should be included in the pool of matrimonial assets available for distribution.

**Issue 2**

44 In the light of our conclusion on Issue 1, it is unnecessary for us to consider Issue 2.

**Issue 3**

45 The practical difficulty presented to this court is that a significant amount of the Sale Proceeds (*viz*, $2.5 million) is *not presently available for division*. The Respondent submitted that this amount had been converted into the Gemstones, which were subsequently stolen. He alleged that the Gemstones had been kept in the master bedroom of the Matrimonial Flat, which was locked, but that the Appellant had engaged a locksmith to unlock the door without his knowledge. Mr Nair argued, to the contrary, that the Respondent's act in purportedly spending the bulk of the Sale Proceeds (some $2.5 million) on the Gemstones and his version of events as to how they were subsequently lost were simply part of a ploy on his part to spirit away the Sale Proceeds which constituted part of the pool of matrimonial assets. Mr Nair also pointed to the fact that the Respondent had closed a number of bank accounts holding significant portions of the Sale Proceeds in quick succession at about the same period that the Appellant applied for a PPO, when it was clear that the marriage had broken down irretrievably. In particular, the Respondent's Standard Chartered Time Deposit Account No CCC ("Account CCC"), which the Respondent held in his sole name and which contained most of the balance of the Sale Proceeds (*viz*, $2,167,156.30), was closed in April or May 2009 to, allegedly, purchase the Gemstones.

46 We note that the Respondent had been less than helpful to the court on the whereabouts of the monies which were withdrawn from Account CCC. The Respondent in his third affidavit of 28 April 2011 merely stated (in response to the Appellant's Request for Interrogatories dated 14 April 2011)

that Account CCC was closed and the closing balance was withdrawn in cash and not deposited into any bank account. The first time that the Respondent alleged that the monies in Account CCC were used to purchase the Gemstones, and that they were kept in the master bedroom, and were now lost, was in his ninth affidavit filed on 27 September 2011. The existence of the Gemstones had not been disclosed in his previous affidavits, including his Affidavit of Assets and Means (filed on 24 February 2011), despite his claim that the Gemstones were purchased in April or May 2009 and discovered to be lost only in September 2011.

47 The Respondent produced a purchase agreement entered into with one Ms Sorada Wetchakari ("Ms Wetchakari"), a Thai national, dated 21 June 2008 ("the Purchase Agreement") in which it was stated that the purchase price for the Gemstones was $2.5 million, of which $100,000 was to be paid on 21 June 2008 and $2.4 million was to be paid by 31 December 2008. In our view, the authenticity of the Purchase Agreement ought to be viewed with no small measure of suspicion, in the light of unexplained discrepancies in the documentation that the Respondent furnished before the court as evidence that he had purchased the Gemstones. While the Respondent adduced one receipt stating that he paid $100,000 to Ms Wetchakari on 21 June 2008, the other receipt (in contrast to what was provided for in the Purchase Agreement) stated that *$2.1 million* was paid on *3 May 2009 in accordance with a purchase agreement for gemstones dated 3 May 2009 instead*. The Respondent has not explained why the amount that he eventually paid for the Gemstones (at least as recorded in the receipts) was less than $2.5 million, or whether and when the additional $300,000 was paid. (We note, in this regard, that the Respondent maintained in his Ancillary Matters Fact and Position Sheet, filed subsequently, that the Gemstones were purchased for $2.5 million.) There was also no explanation as to why the receipt referred to another purchase agreement dated 3 May 2009. It appears to us that the Gemstones transaction was not genuine. By any yardstick, this would have been a baffling transaction given the amount involved, the lack of a proper document trail and, most pertinently, the absence of any prior documented history of the Respondent being involved in the investment of gemstones. We find that the receipts appear to have been conveniently made out in order that the amount and date of payment would coincide somewhat with the closing balance of Account CCC, in response to the Appellant's complaint in her eighth affidavit of 18 August 2011 that the Respondent had failed to account for the whereabouts of the monies withdrawn from Account CCC.

48 In this regard, we also note that the amount invested in the Gemstones was an enormous amount which had no precedent in the context of the known investments of this particular family. For completeness, we would state that there is only some evidence that a Mr Udeni, the Respondent's Sri Lankan friend who is residing in Bangkok, gave the Respondent unpolished gemstones of relatively lower quality and value about 10 years ago. There is, however (and this is the crucial point), no evidence before us of any history as such of the Respondent's investments in gemstones. The Respondent's pattern of investment had, instead, consisted largely of earning interest payments from deposits in time deposit accounts. Added to all this was the fact that the Respondent was – assuming his version of events to be true – converting such a sizeable amount of cash into a basically illiquid asset.

49 In addition, the Purchase Agreement indicated that the entire transaction was concluded *by cash*. More importantly, the amount of cash involved was in *the millions in Singapore dollars. Further*, according to the Respondent, he did not place the three pouches containing the Gemstones in a safety deposit box but, instead, allegedly placed them in a box which was locked up in the master bedroom of the Matrimonial Flat. This was the equivalent of placing over two million dollars in cash in a locked drawer in a bedroom. We are not persuaded by the Respondent's explanation that he left the Gemstones in the master bedroom as he did not want to bring items of such high value with him to his rented premises. Indeed, it does not comport with either logic or commonsense that, on the facts as

well as in the context of *this* case, one would (as the Respondent alleges he did) put millions of dollars at risk in one domestic location; more likely than not, a reasonable person in this type of situation would utilise the security that is inherent in the facilities of a bank instead. We also note that the Respondent did not bother checking on the Gemstones until *nearly two years later*, when he alleged that, upon returning to the Matrimonial Flat with his solicitor on 1 September 2011, he discovered that the Gemstones were missing (whereupon he made police reports). Even after he had been informed by the Appellant's former solicitors in a letter dated 26 November 2009 that she had engaged a locksmith to unlock the door of the master bedroom, there was no indication on the evidence before us that the Respondent had been anxious to ensure that his most valuable possession in the form of the Gemstones had not been removed. The logical inference to be drawn from the timing at which these allegations were made (as was noted above at [47]) is that they were relied upon to explain away the whereabouts of the monies withdrawn from Account CCC. All this renders the Respondent's version of events (and his explanation that the Gemstones were intended as a form of savings and investment) a rather unbelievable (and even fantastic) one.

50 In the circumstances, the Respondent has, in our view, failed to account for $2.5 million of the Sale Proceeds. Indeed, he has sought, instead, to proffer a completely different explanation – which we have rejected in no uncertain terms. He has, in fact, failed to discharge the duty of full and frank disclosure which underpins s 112 of the Act. In the circumstances, we are, as this court determined in a similar situation in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"), entitled to draw adverse inference against the Respondent. As was the case in *NK v NL* (at [62]), we are of the view that, in the circumstances of the present case, it might be more just and equitable (as well as practical) to order a higher proportion of the assets in hand to be given to the Appellant. This would also give effect (albeit in a more general fashion, as was also the case in *NK v NL* (see *ibid*) to the adverse inference which this court has drawn against the Respondent.

51 In our view, it would be just and equitable for the Matrimonial Flat to be transferred in its entirety to the Appellant and to also order that the Respondent pay to the Appellant the sum of $200,000 (taking into account the possibility, as submitted by the Respondent's counsel, that the Matrimonial Flat has increased in market value).

**Issue 4**

52 Having regard to the award by this court in relation to the division of matrimonial assets as well as all the relevant circumstances before the court, we are of the view that the order of maintenance made by the Judge in the court below should stand. We would add that it would not, in our view, be appropriate to make an order for maintenance in so far as the Children are concerned as they have both completed their tertiary education and are able to support themselves financially.

**Conclusion**

53 For the reasons set out above, we allow the appeal with regard to the division of matrimonial assets, but dismiss the appeal with regard to maintenance. We order that the Matrimonial Flat be transferred to the Appellant's sole name within three months of the date of this judgment. The Appellant shall bear legal costs of the transfer of the Matrimonial Flat and all incidental expenses, including stamp duty. In the event that the Respondent does not execute, sign or indorse the relevant documents for the transfer of the Matrimonial Flat to the Appellant, the Registrar of the Supreme Court shall be empowered to execute, sign or indorse such documents on the Respondent's behalf. Payment of the sum of $200,000 by the Respondent to the Appellant should also be made within three months of the date of this judgment. The Respondent should also return the Appellant's jewellery (which the Appellant last alleged was kept in a safe deposit box in the Respondent's name) if

the jewellery is still in his possession within seven days of the date of this judgment. We also order that the lump sum maintenance of $80,000 awarded by the Judge be paid by the Respondent to the Appellant within three months of the date of this judgment, if this has not already been paid.

54 Having regard to all the circumstances, we order the Respondent to bear the costs of the proceedings both here as well as in the court below (except in relation to the costs of the Application which should be borne by the Appellant). For the avoidance of doubt, although we dismissed the appeal with regard to maintenance, this was (as explained at [52] above) due to the award made with regard to the division of matrimonial assets. The usual consequential orders will apply.