UYQ *v* UYP
[2020] SGCA 3

Case Number	: Civil Appeal No 133 of 2019
Decision Date	: 29 January 2020
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JA; Judith Prakash JA; Steven Chong JA
Counsel Name(s)	: Anamah Tan and Rebecca Vathanasin (Ann Tan & Associates) for the appellant; Chettiar Kamalarajan Malaiyandi and Ting Shi Jie Cyril (Rajan Chettiar LLC) for the respondent.
Parties	: UYQ — UYP

Family Law – Matrimonial assets – Division

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2019] SGHCF 16.]

29 January 2020

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

1 This is an appeal against the decision of the High Court judge ("the Judge") in relation to the division of matrimonial assets in *UYP v UYQ* [2019] SGHCF 16 ("the GD"). There is much in the Judge's decision that provides food for legal thought, not least because the principles stated therein come from the pen (or perhaps more appropriately in this modern age, keyboard) of a judge who is simultaneously one of the leading scholars in the field. Many of these issues undoubtedly warrant careful consideration, preferably by a full bench of five judges. However, we do take the opportunity to affirm the Judge's observations as to the *manner* in which the structured approach enunciated by this court in *ANJ v ANK* [2015] 4 SLR 1043 ought to be applied. Indeed, we pause to note, parenthetically, that the parties do not (correctly, in our view) take issue with these observations as such.

2 Turning to the Judge's observations, at the most general level, it is of the first importance to note that the rules and principles of law in any given field are not – and cannot be – writ in stone. To require otherwise would be a recipe for legal disaster. This point is of especial importance in the field of family law, as correctly pointed out by the Judge. The Judge had stated that the division of matrimonial assets pursuant to s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act") "must be made in the context of family law principles", as opposed to principles transplanted from other areas of the law (see the GD at [60]). A context specific approach makes practical sense. As the Judge was at pains to emphasise, due to the *very nature* of the task required of the court, it is "an impossible exercise" to attempt to take *every detailed record* of the marriage into account – all the more so where long marriages are concerned. Indeed, the nature of a marriage stands in stark contrast to a cold commercial relationship, where parties generally keep a close and calculative eye on each other. Attempting to dredge up every record is futile because human memory is fallible, and also constitutes an exercise in obfuscation, when viewed against the tendency for parties to try to locate every detail in *their* favour in the aftermath of a marriage breakdown.

3 All these considerations mean that a rigid, mechanistic and overly-arithmetical application of the structured approach in *ANJ v ANK* must be assiduously avoided.

(a) As we had emphasised in *ANJ v ANK*, it was never the intention of this court to have the structured approach apply in this manner or to replace the broad brush approach. We repeat and affirm our observations at [25] of *ANJ v ANK*: "[W]e do not pretend to be scientific. The broad brush is in no way replaced as we recognise all too clearly that in any marriage many things are done unrecorded – out of love, concern and responsibility – and not with the view to building up a case in the event the marriage fails. It would be a sad day for the institution of marriage if parties were to enter into a marriage with a mental outlook of tracking their contributions towards the marriage".

(b) We affirm the Judge's view that a rigid and calculative approach does not "accord with the aspirations of the family justice system to enable the harmonious resolution of family disputes and for the parties to continue family life after divorce in the most dignified manner possible". As she eloquently put it, "[t]he family justice system does not belittle the pain that often overshadows the joy experienced in the days before the marriage was broken; but it does exhort parties to reach deep to find a way forward" (see the GD at [61] and [66]).

4 In our view, it would assist the parties to find a way forward and put this painful chapter of their lives behind them by focusing on the *major details* as opposed to every conceivable detail under the sun. We caveat that this does not mean parties should swing to the other extreme by being remiss in submitting the relevant records. Put simply, there ought to be ***reasonable*** *accounting rigour that* ***eschews flooding the court with details that would obscure rather than illuminate*** . Henceforth, therefore, courts should discourage parties from applying the *ANJ v ANK* approach in a rigid and calculative manner. Parties would do well to understand that such an approach ***detracts*** from their respective cases instead of enhancing them. And in extreme situations where the court's time and resources have been wasted in a wholly disproportionate manner, a party may face sanctions in the form of the appropriate costs orders.

5 Turning to the facts of the present appeal, the Judge, applying the *ANJ v ANK* approach, arrived at a 67.5:32.5 division in favour of the appellant. However, she then adjusted the ratio downwards in favour of the respondent, arriving, finally, at a 60:40 division in favour of the appellant. It appears that the Judge made this (significant) downward adjustment based on the length of the marriage coupled with her view that, in long Dual-Income marriages, there should be an inclination towards equal division (see the GD at [52] and [106]). Even if an inclination towards equal division applied generally to long Dual-Income marriages (a point which we do not come to a definitive conclusion on in this appeal), regard must nevertheless be had to *the precise facts and circumstances* of the case since even an inclination towards equal division is, *ex hypothesi*, not one that is writ in legal stone. Whilst we had stated in *NK v NL* [2007] 3 SLR(R) 743 (at [29]) that "it is paramount that courts do not focus merely on a direct and indirect contributions dichotomy in arriving at a just and equitable division of matrimonial assets", this observation was made in the context of the need to have regard to the (non-exhaustive) list of factors in s 112(2) of the Act ("s 112(2)") as well. Looked at in this light, it appears that the factors stated in s 112(2) had already been taken into account by the Judge. Having regard to all the facts and circumstances of this case, we are of the view that the (initial) 67.5:32.5 division in favour of the appellant was correct. We emphasise that this is not a mere mechanistic application of the structured approach in *ANJ v ANK*. This was a case where, having regard to the appellant's considerable contributions overall, this was a just and equitable division of the parties' matrimonial assets. We therefore allow the appeal and divide the matrimonial assets in the ratio of 67:33 (rounded down from 67.5:32.5) in favour of the appellant.

6 We will now hear the parties on the issue of costs.