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**LEE SEE MENG**  
**v.**  
**CHONGKHEEDDEE CIRIKWONG SENGLAI**

High Court Malaya, Shah Alam  
Julie Lack J  
[Divorce Petition No: BA-33-50-02/2021]  
27 December 2025

**Case(s) referred to:**

*Annathurai Venkidasalam v. Vani Welluven* [2024] 1 MLRA 472 (refd)  
*Clarkson v. Clarkson* [1930] 143 LT 775; [1930] 46 TLR 623 (refd)  
*GGC v. CCC &Anor* [2016] MLRHU 781 (refd)  
*Glaret Shirley Sinnapan v. Sivasankar Kunchiraman &Anor* [2022] MLRHU 2271; [2023] 9 MLJ 772; [2023] 1 CLJ 218 (refd)  
*Hai v. Pai &Anor* [2025] 3 MLRH 479; [2025] 8 MLJ 211; [2025] 5 CLJ 916; [2025] 3 AMR 887 (refd)  
*HLC v. PTL &Anor* [2024] 4 MLRH 289; [2024] 10 MLJ 640; [2024] 5 CLJ 117 (refd)  
*Ktl Sdn Bhd &Anor v. Leong Oow Lai &Another Appeal* [2014] MLRHU 1014 (refd)  
*N Indra Nathan &Anor v. Dato' Dr Abd Aziz Jamaluddin &Ors* [2022] MLRHU 2001 (refd)  
*Ooi Mei Chein @ Wei Mei Chein v. Micheal Tan Cheng Hai &Anor* [2013] MLRHU 1323; [2014] 9 MLJ 449 (refd)  
*Sivajothi K Suppiah v. Kunathasan Chelliah* [1999] 4 MLRH 266; [2000] 6 MLJ 48; [2000] 3 CLJ 175; [2000] 2 AMR 2072 (refd)  
*Teo Chee Cheong v. Chiam Siew Moi* [2025] 2 MLRA 1; [2025] 1 AMR 476 (refd)  
*Wee Hock Guan v. Chia Chit Neo &Anor* [1964] 1 MLRA 567; [1964] 1 MLJ 217 (refd)  
*Wong Kim Foong v. Teau Ah Kau* [1997] 3 MLRH 782; [1998] 1 MLJ 359; [1998] 1 CLJ 358 (refd)  
*Yay v. Who &Anor* [2023] MLRHU 48; [2023] 9 MLJ 169; [2023] 3 CLJ 135 (refd)  
*Yew Yin Lai v. Teo Meng Hai &Anor* [2012] MLRHU 1837; [2013] 8 MLJ 787 (refd)

**Legislation referred to:**

Evidence Act 1950, ss 101, 102, 103, 114(g)  
Guardianship of Infants Act 1961, s 3  
Law Reform (Marriage &Divorce) Act 1976, ss 53, 54(1)(a), (b), 58, 59, 76(1), (2), 88(3), 92, 93

**Counsel:**

*For the petitioner wife: Cyndi Chow Li Kian (Chan Wei Yang &Hang Qiu Min*



with her); M/s Josephine, L K Chow &Co  
For the respondent husband: Pritam Singh Sardar Singh (Davindar Singh Sardar Singh with him); M/s Rama Velu & Associates

[Granting divorce, child custody, maintenance, matrimonial property division, damages and costs.]

## JUDGMENT

**Julie Lack J:**

### Introduction

[1] This was a divorce petition instituted by the Petitioner Wife ("PW"), in which she sought, *inter alia*, a decree of divorce, joint guardianship with sole custody care and control of the child of the marriage, an order for the division of matrimonial assets, spousal and child maintenance including arrears, against the Respondent Husband ("RH"). The PW is also seeking damages from the 2nd Respondent for alleged adultery with the RH which the PW claimed had caused the breakdown of the marriage.

[2] The RH responded and cross-petitioned in October 2021 contending that the PW had conducted herself or behaved in such a manner that he could not reasonably be expected to continue living with her.

[3] At the conclusion of the trial, this court granted reliefs in part covering the divorce and claim for damages against the 2nd Respondent. The claim for child maintenance and other expenses were adjusted and allowed and more access provisions were accorded to the RH. The Court ruled that the PW is entitled to a half share of the matrimonial property and the sum equivalent value of her half share shall be deposited into a savings account for the Child to be applied towards the future needs and welfare of the Child.

### Background Facts

[4] The PW and the RH were in a relationship for approximately ten years prior to the legal registration of their marriage on 1 January 2017.

[5] Following their marriage, the parties resided together at the RH's parents' residence in Klang, Selangor (hereinafter referred to as "the Klang house").

[6] Their son was born on 1 February 2019.

[7] Together the couple bought a property - a double storey terrace house held under Individual Title HS(D) 155402 Lot No PT 147756, Mukim Klang, Selangor (the said property). The said property is registered in both the PW and RH's name in equal shares.

[8] The marriage was initially harmonious and happy. The PW was employed as a Specialist in HR Services, and the RH as a director of A Reborn Logistics



Sdn Bhd. Given the nature of his work, the RH was frequently out late entertaining clients.

[9] On 12 January 2019, while pregnant with the child of the marriage, the PW came across flirtatious and romantic messages on the RH's mobile phone. Despite this, she chose to forgive the RH, and the parties reconciled.

[10] Following the birth of the child, it became apparent to the PW that the RH had not ended his prior relationship. This marked a turning point in the marriage, which thereafter deteriorated irretrievably.

[11] In August 2019, the PW left the Klang House taking the child with her.

[12] Shortly thereafter, the PW commenced proceedings by way of Originating Summons No BA24F-292-08/2019 at the Shah Alam Family Court, seeking, *inter alia*, an order that custody, care, and control of the child be granted to her.

[13] On 18 February 2019, by consent, the parties agreed to enter into Consent Order in the following terms:

(a) The Joint Guardianship of the child named EDSON CIRIKWONG A/L CHONGKHEEDDEE CIRIKWONG (Birth Certificate No.: DV65678) ("the said child") is granted to the respondent husband and the petitioner wife:

(b) The custody, care and control of the said child is granted to petitioner wife;

(c) The respondent husband and/or the respondent husband's immediate family members, such as the Respondent Husband's parents and sibling (excluding Jasmine, also known as Orakarn Kathang Puy Faii, or any of the RH's girlfriend), are granted supervised access to the said child on alternate weekends, on Sunday from 12.00pm to 4.00pm, in the petitioner wife and/or the petitioner wife's presence at the Petitioner Wife's residence in the state of Selangor;

(d) The Petitioner Wife shall provide the Respondent Husband with video call access to the said child on alternate Saturdays, from 11.00am to 11.30am, during the weeks when the Respondent Husband does not have physical access to the said child;

(e) The Respondent Husband is required to pay monthly child maintenance in the sum of RM850.00 to the Petitioner Wife on or before the 7th of each month, into the PW's Maybank Savings Account No 108057388716, starting from February 2020;

(f) That the Respondent Husband is required to bear the monthly insurance premium payment of RM350.00 for the said child's



insurance policy with AIA Bhd, Policy No 7131871A00 directly to AIA Bhd;

(g) That the Respondent Husband shall grant the Petitioner Wife access to the RH's residence at No 12, Jalan TSM9, Taman Menara Maju, 41200 Klang, Selangor Darul Ehsan on 16 February 2020, at 11.00am, for the purpose of retrieving the PW's personal belongings and the said child's belongings, accompanied by the Petitioner Wife's sister and brothers-in-law; and

(h) No order as to costs.

### Notices Of Appeal

[14] These Grounds of Judgment address two Notices of Appeal filed by the following parties:

(1) Notice of Appeal dated 30 June 2025 filed by the RH, appealing against part of the decision of this Court, which concerned, *inter alia*, the findings on adultery as the cause of the breakdown of the marriage, matters relating to access to the child, child maintenance and ancillary expenses, division of matrimonial assets, and the award of costs; and

(2) Notice of Appeal dated 2 September 2025 filed by the 2nd Respondent, appealing against the entirety of this Court's decision, in particular the finding that she had committed adultery with the RH, as well as the award of damages in the sum of RM150,000.00 and costs in the sum of RM20,000.00.

### Absence Of 2nd Respondent

[15] The 2nd Respondent did not file any reply whatsoever to the PW's Amended Divorce Petition dated 17 October 2022, did not file any witness statement nor testify as a witness at the trial.

[16] She was absent at all material times for the duration of the whole proceedings.

### Expunged Documents

[17] Once the trial had commenced, and having regard to the earlier directions given during the pre-trial case management ("PTCM") briefings that the Court would not, save in exceptional circumstances, permit any further introduction of additional witnesses or documents, it was incumbent upon the parties to strictly comply with those directions. Despite these explicit and unambiguous instructions, the RH nonetheless sought, at a late stage of the proceedings, to introduce a number of additional documents, in clear disregard of the Court's case management orders. As the RH failed to demonstrate any exceptional circumstances justifying the late introduction of these documents, the attempt



was accordingly rejected.

[18] In the circumstances in the proper exercise of the Court's case management powers, and to uphold procedural fairness and the orderly conduct of the trial, the documents which counsel for the RH sought to file at that stage were disallowed and refused, namely:

- (1) Amended RH's Witness List dated 15 October 2024 (Encl 86);
- (2) Certificate under s 90A(2) Evidence Act of the RH dated 16 October 2024(Encl 87);
- (3) Witness Statement of Tan Kian Huey dated 16 October 2024 (Encl 88);
- (4) Additional Witness Statement of the RH (Encl 91);
- (5) RH's Additional Bundle of Documents (2) (Encl 92).

#### **Issues To Be Determined**

[19] The issues that had to be addressed by this Court were the following:

- (i) Cause of the irretrievable breakdown of the marriage - whether it was due to the adultery committed by the RH and the 2nd Respondent or whether the PW conducted/behaved herself in such a way that the RH cannot reasonably be expected to live with her;
- (ii) Guardianship, Custody Care and Control of the Child;
- (iii) Access to the Child;
- (iv) Wife maintenance;
- (v) Child maintenance; and
- (vi) Matrimonial Assets.

#### **Parties Contentions**

[20] The PW asserts that prior to the breakdown of the marriage she and the RH had a close and loving relationship even though she rarely saw him on weekdays due to the nature of his occupation that required him to entertain his clients until late at night.

[21] However, on 12 January 2019, while pregnant at the material time, the PW discovered flirtatious and romantic messages from the 2nd Respondent on the RH's mobile phone, including messages such as "I love you" and "I miss you".



[22] Upon discovering the messages, the PW confronted the RH, who initially denied having committed any act of adultery with the 2nd Respondent. It was only after the PW showed him the messages that the RH admitted that he was having an affair with the 2nd Respondent. The PW was informed that the 2nd Respondent is a Thai national who worked at a nightclub, and that the RH had become acquainted with her in the course of entertaining clients as part of his employment.

[23] The PW elected to forgive the RH and resume the marriage after he assured her that he would sever all ties with the 2nd Respondent and devote his attention and care to the PW and their child.

[24] Following the birth of the child, it became apparent that the RH had not ended his prior relationship. This marked a turning point in the marriage, which thereafter deteriorated irretrievably. The PW said she experienced significant emotional distress, which rendered the living conditions in the house becoming increasingly intolerable for her.

[25] The PW sought the assistance of the RH's mother to help salvage their marriage hoping that his family would advise the RH to end his relationship with the 2nd Respondent. However, she found them to be unsupportive and unresponsive. Contrary to her expectations, they chose to facilitate and support the RH's illicit relationship with the 2nd Respondent.

[26] The PW said she felt increasingly isolated in the Klang house when she realized the RH's mother distancing herself from the PW. The family members avoided her and would retreat to their rooms when she came out to the living room. The PW related there was even an occasion when the RH brought back food cooked by the 2nd Respondent to the Klang House where the RH's mother had eaten the food and praised the food for being delicious.

[27] The PW said she experienced significant emotional distress which rendered the living conditions in the house intolerable for her.

[28] As a consequence of the irretrievable breakdown of the marriage, the PW felt she had no alternative but to leave the Klang house with the child in August 2019. The PW states that immediately following her departure, the RH brought the 2nd Respondent to reside with him and his family at the Klang house, where she was received and welcomed. The RH and the 2nd Respondent have since had a daughter who is presently three years old.

[29] The PW testified that the RH has failed to contribute financially towards the education of the child of the marriage, and that the PW has, at all material times, borne the responsibility of funding the child's education and other expenses.

[30] The PW relied on surveillance reports to corroborate her testimony concerning the relationship between the RH and the 2nd Respondent. The first surveillance report, conducted by PWS 3 over the period from 29 August 2019 to 31 August 2019, recorded the following observations:



(a) the RH was seen in the continuous company of the 2nd Respondent, during which they dined together and attended a nightclub together;

(b) the RH was observed spending the night at the 2nd Respondent's residence on 30 August 2019 and again on 31 August 2019; and

(c) on several occasions, the RH and the 2nd Respondent were seen holding hands and embracing one another.

[31] The second surveillance report, covering the period from 12 March 2021 to 14 March 2021, disclosed further conduct, namely:

(a) the RH and members of his family were seen dining and socialising together with the 2nd Respondent at a restaurant in Klang; and

(b) during a photography session at the restaurant, the 2nd Respondent was photographed sitting on the lap of the RH.

[32] In particular, emphasis was placed on the fact that the RH spent two consecutive nights staying overnight at the 2nd Respondent's residence, as recorded in the surveillance report. It was submitted that such conduct, viewed in its proper context and together with the other observed acts of intimacy, went well beyond mere social interaction or friendship. The PW contended that the act of spending the night at the 2nd Respondent's residence constituted strong circumstantial evidence of a sexual relationship and was therefore highly probative of adultery.

[33] In his reply and cross-petition, the RH placed responsibility for the breakdown of the marriage squarely on the PW. He emphatically denied the allegation of adultery and maintained that there was no third party involved in the marriage at the material time.

[34] The RH testified that the marriage broke down as a result of the PW's conduct, in particular her abandonment of the marriage by leaving the matrimonial home with the child. He asserted that, by her own actions, the PW had unilaterally brought the marriage to an end.

[35] The RH further contended that the PW's version of events was unfounded and inconsistent, and that she was neither a reliable nor a credible witness. He argued that the allegation of adultery was an afterthought, fabricated unjustly and unfairly to bolster her case following the breakdown of the marriage.

[36] The RH challenged the authenticity, veracity, and reliability of all the surveillance reports, executive summaries, and photographic prints contained in Enclosure 75. He asserted that these documents had been fabricated, manipulated, and edited to suit the PW's desired narrative, and contended that no reliance ought to be placed upon them.



[37] The RH testified that the marriage between him and the PW had long been troubled by serious misunderstandings and differences. He stated that on 20 August 2019, the PW misled his mother by claiming she was travelling to Johor Bahru to attend her sister's wedding and would return within a day or two. RWS 2 corroborated this account, testifying that the PW appeared normal and cheerful when she left the Klang house with the child, suggesting that her departure was premeditated rather than spontaneous.

[38] According to the RH, it was only upon service of the Originating Summons that he realised the PW had, in fact, abandoned the marriage and left permanently with the child. He further stated that, through his previous solicitors, he had written numerous letters to the PW's solicitors, emphatically denying all allegations made against him.

[39] The RH alleged that he subsequently filed his Petition for Divorce at the Shah Alam High Court. The PW thereafter filed her Petition for Divorce on 3 February 2021.

[40] The RH stated that he had initially believed that the filing of his divorce petition had automatically dissolved the marriage. He claimed that he only became aware that his previous solicitor had not obtained a formal divorce when he went to the National Registration Department (JPN) to register his marriage to the 2nd Respondent. He explained that, as a layperson, he had assumed that merely filing a divorce petition was sufficient to effect a divorce and that his misunderstanding was both innocent and unintentional.

[41] According to the RH, the marriage irretrievably broke down on 20 August 2019, when the PW left the Klang house and did not return. He maintained that the breakdown was due to domestic disputes, differences in religious beliefs, and the PW's desertion, including her absconding with the child without his knowledge. The RH contended that adultery was never the cause of the marital breakdown; rather, it was the PW's behaviour and conduct that rendered it unreasonable to expect him to continue living with her.

### **Decision Of The Court**

#### **2nd Respondent - Orakarn/Drakarn**

[42] It is appropriate to address, at the outset, the issue concerning the identity of the 2nd Respondent.

[43] Counsel for the RH contended that the PW had failed to prove that the person cited as the 2nd Respondent was the individual who committed adultery with the RH, on the basis that the name of the 2nd Respondent as stated in the Amended Petition for Divorce dated 17 October 2022 (Encl 51) differed from the name referred to in the evidence adduced at trial.

[44] The PW explained that the 2nd Respondent had already been cited in the original Petition for Divorce dated 3 February 2021 as "Orakarn Kathang". Upon obtaining further particulars through subsequent investigation, the PW



filed the Amended Petition for Divorce dated 17 October 2022 to reflect the name and details as "Drakam Kathang" (Thai Passport No: AB1043297). During the trial, it became apparent from the birth certificate of the RH's daughter, exhibited in the annexure to the PW's witness statement, that the correct particulars of the 2nd Respondent are "Orakarn Kathang", bearing the same Thai passport number.

[45] This Court is satisfied that, notwithstanding the variance in spelling, the PW has at all material times been referring to the same individual, namely Orakarn Kathang. The Thai passport number AB1043297, which appears consistently in the amended pleadings and documentary evidence, is more than sufficient to accurately identify and pinpoint the 2nd Respondent as the person involved in the adulterous relationship with the RH.

[46] The discrepancy in the spelling of the 2nd Respondent's name, one beginning with the letter "D" and the other with "O" amounts to a mere typographical or spelling error, which does not give rise to any genuine confusion as to identity. Such an error is not fatal and cannot be used as a shield to avoid or escape accountability for conduct that contributed to the breakdown of the marriage between the PW and the RH.

[47] In this regard, this Court is guided by the decision in *N Indra Nathan & Anor v. Dato' Dr Abd Aziz Jamaluddin & Ors* [2022] MLRHU 2001, which affirms that minor errors in names or printed text, where the identity of the person concerned is otherwise clearly established, do not vitiate proceedings. Accordingly, the RH's contention that the variance in spelling undermines the PW's case is rejected.

#### **Cause Of The Breakdown Of The Marriage**

[48] It is trite that the party who desires the court to give judgment as to its rights is the one who bears the burden of proof (ss 101, 102 and 103 Evidence Act 1950).

[49] In the present case, the PW bears the burden of proving that the marriage had irretrievably broken down as a result of an adulterous relationship between the RH and the 2nd Respondent.

[50] The Court's determination of this issue is to be made in accordance with ss 53 and 54(1)(a) of the Law Reform (Marriage & Divorce) Act 1976 both of which read as follows:

"Section 53 - Breakdown of marriage to be sole ground of divorce

(1) Either party to a marriage may petition for a divorce on the ground that the marriage has irretrievably broken down.

(2) The court hearing such petition shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances make it just and



reasonable to do so, make a decree for its dissolution.

#### Section 54- Proof of breakdown

(1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say:

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent

...".

[51] The court in *HLC v. PTL & Anor* [2024] 4 MLRH 289; [2024] 10 MLJ 640; [2024] 5 CLJ 117 held that only sexual intercourse was sufficient to constitute adultery. The learned judge referred to the English case of *Clarkson v. Clarkson* [1930] 143 LT 775; [1930] 46 TLR 623 in finding that:

"adultery is explicitly defined as voluntary sexual intercourse between a man and a woman who are not married to each other, with at least one party being married to someone else."

[52] In *GGC v. CCC & Anor* [2016] MLRHU 781, *Lee Swee Seng J (as His Lordship then was)* also cited *Clarkson v. Clarkson* and stated as follows:

"(69)...from the definition, other forms of sexual contacts short of sexual intercourse is not adultery though parties may have said to have an affair or that they have been unfaithful to their spouse. In other words, it is not adultery of the mind that is being made punishable with a damages award against the adulterer or adulteress, but the physical act that had resulted in the breakdown of the marriage of the innocent party. "

[53] An allegation of adultery is undoubtedly a serious one. Nevertheless, the standard of proof applicable is on a balance of probabilities. That said, in light of the gravity of the allegation, the evidence must attain a higher degree of probability, although it need not meet the criminal standard of proof beyond reasonable doubt. This principle was reaffirmed in *Hai v. Pai & Anor* [2025] 3 MLRH 479; [2025] 8 MLJ 211; [2025] 5 CLJ 916; [2025] 3 AMR 887.

[54] The criteria for establishing adultery was neatly explained in *Wee Hock Guan v. Chia Chit Neo & Anor* [1964] 1 MLRA 567; [1964] 1 MLJ 217, where it was held that:

"The evidence must go beyond merely establishing suspicion or the



opportunity to commit adultery and must be such as to satisfy the Court that from the nature of things adultery must have been committed; where the evidence is entirely circumstantial, the Court will not draw the inference of guilt unless the facts relied on are not reasonably capable of any other explanation. The inference of adultery arises when there is proof of the disposition of parties to commit adultery, together with the opportunity to commit it".

[55] Direct evidence is not necessary. Circumstantial evidence is sufficient. In *Glaret Shirley Sinnapan v. Sivasankar Kunchiraman & Anor* [2022] MLRHU 2271; [2023] 9 MLJ 772; [2023] 1 CLJ 218, where the learned judge held:

"...the courts in Malaysia and in England have held that circumstantial evidence is sufficient to prove adultery since it is impossible to obtain direct evidence of adultery.

"the test that has been applied in our courts time and again to infer adultery is that promulgated by the English Courts in *Farnham v. Farnham* [1925] 133 LT 320 namely:

'The inference of adultery arises when there is proof of the disposition of the parties to commit adultery, together with the opportunity to commit it'."

[56] In *Yew Yin Lai v. Teo Meng Hai & Anor* [2012] MLRHU 1837; [2013] 8 MLJ 787 the learned judge held:

"(47) Adultery has also to be inferred from the circumstances which excludes any presumption of innocence in favour of a person against whom it is alleged. Proof of adultery must be of such character as would lead a reasonable man to conclude no other inference than the misconduct. Mere probability is not enough. "

[57] In the present case, the evidence adduced by the PW to substantiate her claim comprises her own oral testimony, the RH's admission of his adulterous relationship with the 2nd Respondent, and the surveillance reports prepared by PWS 3. When considered cumulatively, this body of evidence provides a coherent and compelling basis from which the Court can draw the inference that an adulterous relationship existed between the RH and the 2nd Respondent.

### **The Surveillance Reports**

[58] There were two separate surveillance reports prepared by PWS 3 on the instructions of the PW for the purpose of monitoring the movements of the RH. In both reports, PWS 3 identified the RH as the surveillance target.

[59] With regard to the surveillance reports and the CDs containing videos recorded therein, I am in complete agreement with the PW's contention that



such evidence ought to be admitted as the PW had called PW 3 who is the maker of the reports and she had given evidence as to the authenticity of the reports. This Court finds that the PW had fulfilled the requirements as laid down in the case of *Ktl Sdn Bhd & Anor v. Leong Oow Lai & Another Appeal* [2014] MLRHU 1014 where the learned judge had established the two conditions to fulfil the admissibility of Part C documents:

"[34] If a document is classified as a Part C Document, the party adducing that document bears the evidential burden to satisfy the court on a balance of probabilities the following 2 conditions of admissibility of that document (2 Conditions of Admissibility):

(a) in accordance with the rule against documentary hearsay, the maker of the Part C Document has to be called as a witness - the Federal Court's judgment in *Capital Insurance Bhd v. Cheong Heng Loong Goldsmiths (KL) Sdn Bhd* [2005] 1 MLRA 768; [2005] 6 MLJ 593; [2005] 4 CLJ 1; [2005] 6 AMR 177, at 20, 21-25 and 28. If the maker of a Part C Document cannot be called as a witness, the party adducing that document has to satisfy the court regarding the application of any one of the exceptions to the hearsay rule such as ss 32(1)(a) to ss 32(1)(a) [ss 32(1)(i) and (j) EA only apply to criminal proceedings according to s 32(2)], ss 33 to 37, 73A(1), (2) and/or 90A(1) EA [s 90C EA provides that s 90A EA shall prevail over, among others, any other provision of EA relating to the proof of evidence]; AND

(b) "primary evidence of the Part C Document as understood in s 62 EA must be adduced in court as required by s 64 EA- the Supreme Court's decision in *Kpm Khidmat Sendirian Berhad v. Tey Kim Suie* [1994] 1 MLRA 195; [1994] 2 MLJ 627; [1994] 3 CLJ 1; [1994] 2 AMR 1445, at 631. It is to be noted that Explanation 3 of s 62 EA provides that a document produced by a computer (in compliance with s 90A EA) is primary evidence. If "primary evidence" of a Part C Document is not available, s 64 EA provides that "secondary evidence" [within the meaning of s 63(a) to (e) EA] of the Part C Document can only be admitted as evidence if there is proof of the application of any one of the paragraphs in s 65(1)(a) to (g) EA."

[60] After carefully weighing the evidence, this Court accepts the surveillance reports and all associated documents related to it. There is no reason to doubt those documents as well as all the other Part C documents labelled as ID at the trial.

[61] Coming back now to the matter at hand, the first surveillance report, covering the period from 29 August 2019 to 31 August 2019, is found at pp 300–351 of Bundle B. During this three-day period, the RH was observed in the company of the Co-Respondent, during which they were seen dining



together and attending a nightclub together. There were several instances where the RH and the 2nd Respondent were seen holding hands and embracing one another, as evidenced by the photographs at pp 320, 321, 333, 334, 344, and 345 of Bundle B2. Video footage capturing the RH holding the hand of the 2nd Respondent appears at p 411 of Bundle B2.

[62] Crucially, the first surveillance report recorded that the RH spent the night at the 2nd Respondent's residence on 30 August 2019 and again on 31 August 2019. This timeframe coincides squarely with the PW's evidence that she discovered the RH's adulterous relationship in August 2019. The RH's presence at the 2nd Respondent's residence for two consecutive nights constitutes strong, obvious, and compelling circumstantial evidence of an intimate relationship involving sexual intercourse. When viewed together with the public displays of physical affection namely hugging, holding hands, and close bodily contact; the inference that the relationship between the RH and the 2nd Respondent was sexual in nature, and not merely platonic, is irresistible. I find that the first surveillance report, on its own, establishes the relevant timeline and is more than sufficient to prove adultery on a balance of probabilities to a higher degree.

[63] The second surveillance report, which covered the period from 12 March 2021 to 14 March 2021, depicted events that occurred long after the PW had already left the Klang house in August 2019. For that reason, I find that the second surveillance report is of limited assistance in determining the cause of the breakdown of the marriage, as it does not directly bear on the state of the marital relationship at the material time.

[64] That said, the second surveillance report remains relevant insofar as it demonstrates that the RH continued his intimate relationship with the 2nd Respondent even after the PW had left the matrimonial home. In this report, the RH and members of his family were seen dining and socialising together with the 2nd Respondent at a seafood restaurant in Klang, as captured in the video footage at p 411 of Bundle B2. During a photography session at the same restaurant, the 2nd Respondent was seen sitting on the lap of the RH (p 359 of Bundle B2).

[65] This Court's approach in accepting and relying on the surveillance evidence is consistent with the decision in *Yay v. Who & Anor* [2023] MLRHU 48; [2023] 9 MLJ 169; [2023] 3 CLJ 135, the facts of which are somewhat similar to the instant case. In that case, the petitioner wife likewise engaged private investigators to conduct surveillance on the respondent husband and the 2nd Respondent. The surveillance revealed intimate behaviour between the respondent husband and the 2nd Respondent in public, including acts of physical closeness and familiarity. The learned judge accepted the surveillance evidence as credible and reliable, and held that such evidence constituted strong circumstantial proof of an adulterous relationship notwithstanding the absence of direct evidence of sexual intercourse.

[66] Similarly, in the present case, the surveillance evidence tendered through PWS 3 captured conduct between the RH and the 2nd Respondent which



went well beyond mere friendship or social association. As in *YAY v. WHO*, the observed acts of physical intimacy, coupled with evidence of overnight stays, provide compelling circumstantial evidence from which adultery may properly be inferred on a balance of probabilities. I therefore find no reason to depart from the approach adopted in *YAY v. WHO*, and I accept the surveillance evidence in this case as credible, reliable, and probative of the adulterous relationship alleged.

[67] Although the RH sought to discredit the surveillance reports and urged the Court to reject their contents, his challenges to the authenticity, veracity, and reliability of the surveillance evidence were wholly unsubstantiated. The RH alleged that the surveillance reports had been fabricated, manipulated, and edited to suit the PW's version of events. However, these allegations were not supported by any cogent or contrary evidence. Mere objections, bare assertions, or speculative accusations, without more, are insufficient to displace otherwise admissible and credible evidence. Significantly, the surveillance evidence was tendered through PWS 3, the person in charge and a representative of the surveillance agency, who testified and was subjected to cross-examination. In the absence of any expert evidence or factual material contradicting the authenticity of the reports, this Court finds that the RH's objections were no more than unsupported denials and carry little evidential weight.

[68] The RH also impugned the evidence of PWS 3, characterising it as bare testimony unsupported by proof that she was a duly authorised representative of P.I. Maxguard. It was further argued that the absence of date stamps or printed markings on the video recordings and photographic prints rendered the surveillance evidence unreliable and inadmissible.

[69] Having carefully examined the surveillance reports, video recordings, and photographs, and having heard and considered the oral testimony of PWS 3, this Court rejects the RH's contentions. PWS 3 was subjected to extensive and rigorous cross-examination, yet her evidence remained consistent, coherent, and unshaken. She was candid, unbiased and consistent. Nothing material was elicited to undermine her credibility, authority, or the integrity of the surveillance process. Her testimony stood untarnished throughout the trial. I therefore find that the surveillance reports and the oral evidence of PWS 3 were cogent, credible, and reliable, and that there was no material contradiction or inherent improbability disclosed under cross-examination to cast doubt on the authenticity or probative value of the surveillance evidence.

[70] Further, I am not persuaded that the failure to produce the original digital files, in the circumstances of this case, justified the invocation of an adverse inference under s 114(g) of the Evidence Act 1950. The RH failed to demonstrate any real prejudice occasioned by the absence of such files, nor did he establish that the surveillance materials tendered were tampered with or fabricated.

[71] On the contrary, the surveillance reports, in particular the 1st one, clearly depicted conduct between the RH and the 2nd Respondent which went



beyond mere friendship or platonic association. In particular, the reports captured acts of physical intimacy and recorded two separate occasions on which the RH spent the night at the 2nd Respondent's residence. When assessed cumulatively, this evidence was more than sufficient to meet both the burden and the applicable standard of proof on a balance of probabilities, *albeit* to a higher degree, as required in allegations of adultery.

[72] This conclusion is fortified by the decision in *Yay v. Who & Anor* [2023] MLRHU 48; [2023] 9 MLJ 169; [2023] 3 CLJ 135, where the learned judge affirmed that credible and reliable surveillance evidence, even though circumstantial in nature, may be sufficient to establish adultery within the meaning of s 54(1)(a) of the Law Reform (Marriage & Divorce) Act. In that case, the court accepted surveillance evidence depicting cohabitation and intimate conduct between the respondent and the 2nd Respondent as meeting the requisite standard of proof, notwithstanding the absence of direct evidence of sexual intercourse. The learned judge held as follows:

"[26] As such, just one act of voluntary sexual intercourse would suffice to establish adultery in the context of s 54(1)(a) of the Law Reform (Marriage & Divorce) Act. In any event, as alluded to earlier, it was my finding that the Respondent and Co-Respondent had cohabitated at the Respondent's residence at least in 2017, which, although circumstantial evidence was sufficient to prove that adultery had been committed. "

[27] There were also video recordings taken sometime in 2018, which showed the Respondent and Co-Respondent with another couple in a restaurant, where they were sitting intimately, with the Co-Respondent sliding over and leaning her head on the Respondent's shoulder. Her dressing and mannerism were indicative that her relationship with the Respondent as more than platonic, contrary to what the Co-Respondent had claimed.

[28] Although SP 2 was remunerated by the Petitioner for his services in conducting the surveillance on the Respondent and Co-Respondent, I found him to be direct, candid and unbiased. He painstakingly went through the frames and explained his findings in detail. He had withstood the test of cross-examination and in the final analysis, I had no reason to doubt his credibility. "

[73] In the instant case, I found that the evidence adduced has proven on a balance of probabilities that the Respondent and 2nd Respondent had committed adultery and this had led to the breakdown of the marriage between the PW and the Respondent. The video footage and photographs taken in August 2019, at the time the PW left the Klang House showed there was a serious and intimate relationship between the RH and the 2nd Respondent. It ties in with the PW's narration of how she discovered the affair and why she left the Klang House.

#### **Admissions By The RH**



[74] During cross-examination, the RH admitted that the man captured in the surveillance footage was himself. He further acknowledged that he had known the 2nd Respondent since 2019, coinciding with the period when the PW discovered flirtatious messages on his handphone. The relevant testimony from the Notes of Proceedings is reproduced below for ease of reference:

"CWY: Okay. But at p 337, that's you and her walking into the lift lobby, yes? Her as in Ms Orakarn Kathang.

CKD: I can say, I think so, it's me.

CWY: I think so, yeah. Page 338, the Myvi BLF615, that's your car at that time, yes?

CKD: Yes.

CWY: Page 342, that is you and her eating at Jalan Klang Lama food stall on 31 August 2019, yes?

CKD: The date I'm not sure, but I think it's me.

CWY: It's you.

CKD: I think it's me, yeah.

CWY: Page 343, 344 and 345, all of this is you and Ms Orakarn Kathang, yes?

CKD: I think it's me.

CWY: You think it's you, yeah. Okay. Mr Chong, I'm going to put it to you from this investigation report that the photos were taken on 31 August 2019, from 29th of August 2019 to 31st of August 2019. All of this shows that you were in a relationship with the 2nd Respondent, which is Ms Orakarn Kathang at that time already. Yes or no?

CKD: No. No relationship.

CWY: Page 359, that's you and Ms OrakarnKanthong, correct?

CKD: Correct, yes.

CWY: She is sitting on your lap?

CKD: Yes.

CWY: Alright, I'm also going to put it to you that this investigation report clearly shows that you had committed adultery, yes?



CWY: So, when did you actually start to know Ms Orakarn Kathang?

CKD: I know her somewhere around 2019. "

[75] More damning is his admission during cross-examination that he was with the 2nd Respondent during the time the PW had moved out of the Klang House ie around August 2019. Notes of Proceeding on this is here:

"CWY: I'll rephrase, Yang Arif. Early on during the trial, during the cross-examination of my client, your Counsel had put to her that during the time when Ms Lee had left the matrimonial property, you were together with Ms Orakarn Kathang at her place, tending to her roommate.

CKD: Your earlier question is, I stay there or Igo there?

CWY: You went there.

CKD: I went there, yes, I did. "

#### **Failure Of The 2nd Respondent To Reply/Testify**

[76] It is also pertinent to take into consideration the failure of the 2nd Respondent to reply and/or answer to the allegations of adultery by the PW also substantiates the fact that she and the RH had committed adultery together. The 2nd Respondent has chosen not to attend the trial even though she was informed of the trial dates.

[77] Consequently, I found merit in the PW's argument that the 2nd Respondent's decision/refusal to testify not only gave rise to an adverse inference against her but also tacitly suggested her admission of the allegations or an inability to effectively counter those allegations. I view the silence of the 2nd Respondent and her absence and decision to not offer testimony to be implicit admission of all the allegations against her.

#### **Birth Of The RH's Daughter On 17 February 2022**

[78] The PW sought to rely on the birth of the RH's daughter on 17 February 2022, which occurred during the subsistence of the marriage, as definitive proof of adultery. However, this contention cannot be accepted. Section 54(1)(a) of the Law Reform (Marriage and Divorce) Act 1976 requires that the act of adultery relied upon must have occurred on or before the date of the irretrievable breakdown of the marriage. The birth of the child some three years thereafter does not, without more, constitute material or definitive proof of adultery for the purposes of s 54(1)(a) LRA 1976.

#### **Whether RH Had Established Unreasonable Behaviour On The Part Of The PW**



[79] The RH has made several accusations against the PW, alleging that she was solely responsible for the breakdown of the marriage. He claimed it was due to her refusal to follow or participate in the religious customs, beliefs, rituals, practices, and culture of the Thai Buddhist religion of the RH and his family; particularly in relation to the upbringing of the child or because of her alleged unreasonable behaviour, suspicion, selfishness, unilateral decision-making without consulting the RH, and financial considerations, all of which purportedly led to serious misunderstandings and differences. He further stated that the PW did not perform housework while staying with his family in the Klang house.

[80] This Court finds that the RH has failed to adduce cogent evidence to support his assertions. The Court further finds that the RH has not proven that the irretrievable breakdown of the marriage was caused by the PW abandoning the marriage and absconding with the child on 20 August 2019 without his consent.

[81] Apart from the testimony of RWS 2, there was no independent or objective evidence adduced to corroborate the various allegations advanced by the RH. Upon a careful and holistic evaluation of the evidence tendered by the RH and RWS 1, this Court finds that none of the allegations levelled against the PW were proven on a balance of probabilities. In particular, the RH failed to produce any credible, reliable, or corroborative evidence to substantiate his claim that irreconcilable differences in religious beliefs existed between the parties.

[82] It must be borne in mind that the relationship between the parties was not fleeting or superficial. On the contrary, it was a long-standing relationship that spanned more than nine years prior to the breakdown of the marriage. The parties had been romantically involved for a considerable period before entering into matrimony. In such circumstances, any fundamental or material differences in religious beliefs would reasonably have surfaced during the course of that lengthy relationship. It strains credulity to suggest that such differences only emerged suddenly after the marriage had taken place.

[83] The RH further advanced a series of allegations impugning the PW's conduct, asserting that she behaved unreasonably, was persistently suspicious, selfish, and generally neglectful of her duties as a spouse. However, these allegations were articulated in broad and sweeping terms, devoid of particulars and unsupported by any cogent evidence. No documentary proof, contemporaneous records, or independent testimony was produced to lend credibility to these assertions. Moreover, the RH himself was seldom at home and thus was in no position to testify credibly that the PW neglected her household duties.

[84] In the absence of credible corroboration, this Court is constrained to conclude that the allegations amounted to little more than bare assertions, unsupported by proof. It is trite law that the burden of proof rests squarely upon the party who makes an allegation. Accordingly, it was incumbent upon the RH to adduce cogent, reliable, and convincing evidence to substantiate the



serious allegations he chose to level against the PW. Having failed to do so, those allegations cannot be sustained.

[85] RWS 2, being the mother of the RH, cannot be regarded as a wholly disinterested witness, as she was plainly testifying in support of her son. That said, this Court is mindful that the mere existence of a familial relationship between a witness and a party does not, in and of itself, render the witness unreliable or untruthful. There is no legal presumption that the evidence of a related witness must be approached with suspicion or automatically discounted.

[86] Nevertheless, in circumstances where serious allegations are made, it is prudent to approach such evidence with caution and to look for some form of independent, cogent, and reliable corroboration. This is especially so where the allegations advanced by both RWS 1 and the RH strike at the character and conduct of the PW.

[87] In this regard, the testimony of RWS 2 must be treated with careful scrutiny. During cross-examination, certain aspects of her evidence differed from, and were at times inconsistent with, her earlier testimony. These inconsistencies undermine the reliability of her evidence and must be treated with caution. Under cross-examination, RWS 2 acknowledged that the PW was aware of and had knowledge of the religious practices observed by the RH and his family. Indeed RWS 2 had also acknowledged that the PW had respected those religious beliefs and had raised no objection to their observance. Significantly, RWS 2 also confirmed that the PW had accompanied the family in performing prayers for the Child's full moon ceremony in accordance with Thai Buddhist practices.

[88] With respect to household responsibilities, the PW testified that she assisted with domestic chores, including cleaning the bedroom and attached bathroom shared with the RH, washing and maintaining both their clothes as well as the Child's clothing. In any event, RWS 2 candidly admitted that she herself had no objection to undertaking household chores at the Klang house while the other family members were at work.

[89] This evidence stands in stark contrast to the narrative advanced by the RH and RWS 1, and it substantially undermines the allegation that the PW was disrespectful of religious beliefs or neglectful of her responsibilities. In the absence of any corroborative evidence supporting the RH's version, and in light of the contradictory testimony of RWS 2, this Court is unable to accept the serious allegations made against the PW.

[90] Having carefully considered the testimonies of all the witnesses and evaluated the evidence in its totality, this Court finds that the allegations advanced against the PW stand wholly unsubstantiated. They do not attain the requisite threshold of proof in civil proceedings. In the absence of cogent and reliable evidence, these allegations amount to no more than bare and unproven assertions, to which this Court is not prepared to attach any evidentiary weight.



[91] There is one further matter that warrants specific mention, namely the RH's assertion that he was unaware that the marriage had not yet been dissolved at the time he commenced a relationship with the 2nd Respondent. This assertion was neither pleaded nor raised at any earlier stage of the proceedings and surfaced only during the RH's testimony. It therefore constitutes a new defence raised belatedly. Apart from being procedurally impermissible, the explanation is to my mind, inherently implausible and bears all the hallmarks of a mere afterthought, advanced in an attempt to evade responsibility. The RH cannot reasonably expect this Court to accept such an account. In any event, it is trite law that parties are bound by their pleadings, and a party is not entitled to rely on new facts or defences that were never pleaded. This Court therefore rejects the RH's assertion in its entirety.

[92] It is the finding of this Court that the PW did not abandon the marriage nor desert the RH. Rather, the evidence demonstrates that the PW was compelled to leave the matrimonial home as a consequence of the RH's conduct, which rendered it intolerable and unreasonable for her to continue residing in the marriage. Significantly, there is a complete absence of evidence from the RH to suggest that the PW's conduct was so intolerable that he could not reasonably be expected to live with her. Had that truly been the case, it would have been reasonable to expect the RH to have initiated divorce proceedings at an earlier stage.

[93] Accordingly, this Court finds that the irretrievable breakdown of the marriage cannot be attributed to the PW, as the RH has failed to discharge the burden of proof required to establish such a case. On the contrary, the PW has amply proven, on a balance of probabilities, that the irretrievable breakdown of the marriage was caused by the adultery committed by the RH with the Co-Respondent.

### **Damages For Adultery**

[94] The power of the court to order the 2nd Respondent to pay to the PW damages for adultery is found in ss 58 and 59 of the LRA 1976:

"Section 58 - Damages for adultery may be claimed against co-respondent

(1) On a petition for divorce in which adultery is alleged, or in the answer of a party to the marriage praying for divorce and alleging adultery, the party shall make the alleged adulterer or adulteress a co-respondent, unless excused by the court on special grounds from doing so.

(2) A petition under subsection (1) **may include a prayer that the co-respondent be condemned in damages** in respect of the alleged adultery.

(3) Where damages have been claimed against a co-respondent:



(a) if, after the close of the evidence for the petitioner, the court is of the opinion that there is not sufficient evidence against the co-respondent to justify requiring him or her to reply, the co-respondent shall be discharged from the proceedings; or

(b) if, at the conclusion of the hearing, the court is satisfied that adultery between the respondent and co-respondent has been proved, **the court may award the petitioner such damages as it may think fit**, but so that the award shall not include any exemplary or punitive element.

#### Section 59 - Powers of court on claim to damages for adultery

(1) The court may award damages against a co-respondent notwithstanding that the petition against the respondent is dismissed or adjourned.

(2) The court shall have power, when awarding damages, to direct that such damages or any part thereof, be vested in trustees upon trust to pay the income or capital thereof for the benefit of the minor children, if any, of the marriage or, where the petitioner is required to pay maintenance to the respondent, in or towards the payment of such maintenance, and subject thereto in trust for the petitioner.

(3) Whenever in any petition presented by a husband the alleged adultery has been established against the co-respondent, **the court may order the co-respondent to pay the whole or any part of the costs of the proceedings**; provided that no such order for costs shall be made if the respondent was at the time of the adultery living apart from the husband and living the life of a prostitute or if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman. "

[Emphasis Added]

[95] This Court accepts the PW's contention that, having established adultery on the part of the RH, she is entitled to an award of damages pursuant to s 59 of the Law Reform (Marriage and Divorce) Act 1976.

[96] In this regard, the Court is mindful that damages awarded under s 59 are not punitive in nature. Rather, they are compensatory, and are intended, so far as money can achieve, to place the innocent spouse in the position she would have been in had the breakdown of the marriage not occurred. This principle was affirmed in *Yay v. Who & Anor* [2023] MLRHU 48; [2023] 9 MLJ 169; [2023] 3 CLJ 135.

[97] In assessing the appropriate quantum of damages, this Court was guided by the principles enunciated in *Hai v. Pai & Anor* [2025] 3 MLRH 479; [2025] 8



MLJ 211; [2025] 5 CLJ 916; [2025] 3 AMR 887, where the court identified, *inter alia*, the following considerations relevant to the award of damages for adultery:

[97] The awarding of damages to an aggrieved person in cases where a spouse has committed adultery is generally rooted in the principles of compensation for harm suffered due to the wrongful actions of another. I would add the following reasons for why damages are awarded against an aggrieved person for adultery committed by his or her spouse.

[98] Emotional and psychological distress - adultery often causes significant emotional trauma to the aggrieved spouse, including feelings of betrayal, humiliation, and loss of trust. The court may award damages to compensate for the mental anguish, depression, or anxiety suffered as a direct consequence of the adulterous relationship.

[99] Loss of consortium - consortium refers to the companionship, affection, and support that spouses are expected to provide each other in a marriage. Adultery disrupts this bond, depriving the aggrieved spouse of these benefits. Damages may be awarded to account for this loss.

[100] Damage to reputation - in some cases, the adulterous act may lead to public humiliation or damage the reputation of the aggrieved spouse, particularly in close-knit communities or professional environments. Courts may consider this reputational harm when determining damages.

[101] Accountability - damages may serve as a form of accountability for the adulterous spouse or their co-respondent. By awarding damages, the court underscores the moral and social breach caused by adultery, reaffirming the sanctity of marital commitments.

[102] Economic impact - adultery may have financial repercussions, such as costs related to separation, divorce proceedings, or therapy. Additionally, if the adulterous spouse diverts family resources to support their extramarital partner, it may lead to financial harm to the aggrieved spouse, which may be considered in awarding damages. "

[98] Applying these principles to the present case, this Court has taken careful account of the particularly distressing circumstances under which the PW discovered the RH's adulterous relationship with the 2nd Respondent. The PW became aware of the affair at a time when she was pregnant with the Child. It requires little elaboration to appreciate the profound emotional pain and psychological distress occasioned by the realisation that, while she was carrying the RH's child, he was being unfaithful and disloyal to her.

[99] The RH's betrayal was further aggravated by his repeated assurances to the PW that he would terminate the affair, only for her to later discover that



the relationship had continued clandestinely. This sustained deception inevitably deepened the PW's sense of betrayal and emotional suffering. The evidence also demonstrates that the 2nd Respondent had, in effect, supplanted the PW's position as the lawful wife of the RH, thereby undermining the sanctity of the marriage and subjecting the PW to humiliation and mental anguish.

[100] Matters were compounded by the RH's conduct towards the PW following the discovery of the affair. He withdrew from her emotionally and physically, frequently leaving her alone at night and returning to the matrimonial home only in the early hours of the morning. At a time when the PW was particularly vulnerable, she was deprived of the support and reassurance reasonably expected of a spouse. This isolation was further exacerbated by the conduct of the RH's family, who failed to provide any meaningful support and instead distanced themselves from the PW.

[101] Taking all these factors into consideration, the timing of the discovery of the adultery, the RH's continued deception, the effective displacement of the PW's role as wife, the humiliation and emotional trauma suffered by her, and the absence of familial support—this Court is satisfied that an award of RM150,000.00 constitutes a fair, reasonable, and proportionate measure of compensatory damages under s 59 of the Law Reform (Marriage and Divorce) Act 1976.

#### **Guardianship, Custody, Care And Control Of The Child**

[102] The parties are in agreement that the arrangements relating to the guardianship, custody, care, and control of the Child shall remain as stipulated in the Consent Order recorded on 18 February 2020.

[103] Accordingly, it is hereby ordered that the parties shall continue to have joint guardianship of the Child, with custody, care, and control vested in the PW.

#### **Access To The Child**

[104] From the evidence adduced, it is apparent that the PW has been the Child's primary caregiver and has assumed the principal responsibility for the Child's upbringing since the parties went their separate ways.

[105] With respect to access, the PW contends that the existing arrangement as set out in the Consent Order should be maintained. Under those terms, the RH and his immediate family members are to be granted supervised access to the Child on alternate weekends, specifically on Sundays from 12.00pm to 4.00pm, at the PW's parents' residence in Selangor. In addition, the RH is to have video call access on every alternate Saturday from 11.00am to 11.30am during the weeks in which he does not have physical access to the Child.

[106] In para 72(e) of his Amended Answer to Petition and Cross-Petition, the RH sought an order for unsupervised access to the Child on alternate



weekends from Saturday at 10.00 am. to Sunday at 4.00 pm. at his parents' residence in Klang.

[107] However, during the course of the trial, the RH departed from his pleaded position and adopted a markedly different stance. He proposed unsupervised access on random weekdays and/or weekends and further sought additional access for the Child to spend Chinese New Year with him commencing from 2026, as well as an equal division of the Child's school holidays. The PW objected to this shift in position, contending that such reliefs were not pleaded and that it is trite law that parties are bound by their pleadings. On that basis, the PW submitted that this Court ought not to entertain or grant reliefs that were neither pleaded nor properly particularised.

[108] That said, it bears emphasis that parents must be reminded that while their marital relationship may have come to an end, their responsibilities and relationship with their child endure and must be preserved, nurtured, and protected. Although this Court is of the view that custody, care, and control of the Child should remain with the PW pursuant to s 88(3) of the Law Reform (Marriage and Divorce) Act 1976, this does not render the RH devoid of any meaningful role in the Child's life. On the contrary, the Child's relationship with his father ought to be fostered, and the bond between them should be allowed to develop and be maintained in a manner consistent with the Child's best interests.

[109] Section 3 of the Guardianship of Infants Act 1961 sets out the duties of a guardian and affirms that both parents bear equal responsibilities in respect of the child's support, health, and education. Having regard to these statutory duties, and bearing in mind the overarching principle that the welfare of the Child is paramount, this Court is satisfied and makes the finding that there is no compelling justification to uphold the PW's objection to the RH's request for further access.

[110] The PW's expressed fear that any grant of unsupervised access may result in the Child being taken out of Malaysia to Thailand is, with respect, speculative and unsupported by objective evidence. That concern rests solely on the RH's family background and Thai descent originating from the Kedah - Thailand border. Without more, such circumstances cannot reasonably give rise to an inference of an intention or likelihood of child abduction. There is no evidence that the RH has ever attempted to remove the Child from the jurisdiction, nor is there any evidence of concrete preparations, travel arrangements, or past conduct suggestive of such a risk. The Court must be careful not to impose restrictions on a parent's access based on mere apprehension or conjecture, particularly where such fears are not grounded in demonstrable facts. In the absence of credible evidence of a real, tangible, and imminent risk, the PW's concern, although subjectively genuine, does not justify the curtailment of the RH's access to the Child.

[111] That said, the Court has also taken into careful consideration the fact that the Child has, since the parties' separation, been primarily cared for by the PW and is not particularly familiar with the RH or his extended family. The



Court further take into account that the RH has not been diligent in consistently exercising his access rights under the Consent Order, with the result that the Child has come to regard the RH as something of a stranger. The RH himself admitted during cross-examination that he had only requested to visit the Child on three occasions in the year 2024. Additionally, he failed to exercise his entitlement under clause (d) of the Consent Order, which accords him the right to have video call access to the Child on weekends when he does not have physical access.

[112] The PW also urged the Court to take into account the Child's feelings and willingness to meet the RH. While the views of a child may be relevant and deserve due consideration, they must be assessed in light of the Child's age, maturity, and the surrounding circumstances. Balancing all these factors, the Court is mindful of the need to protect the Child's emotional well-being while, at the same time, facilitating the gradual rebuilding and strengthening of the relationship between the Child and the RH in a manner that serves the Child's best interests.

[113] Having taken into careful consideration the PW's concerns regarding unsupervised and overnight access particularly in light of the Child's present unfamiliarity with the RH and the Child's tender age - I am of the view that a phased access regime ought to be adopted. Such an approach would best facilitate the gradual rebuilding and strengthening of the relationship between the Child and the RH, while safeguarding the Child's emotional well-being.

[114] Accordingly, with effect from the date of this Order, the existing supervised access arrangement as set out in prayer 59(e) shall continue until the Child attains the age of seven (7) years. Supervised access may take place either at the PW's home or at any public venue to be mutually discussed and agreed upon by the parties.

[115] Upon the Child attaining the age of seven (7) years, access shall transition to unsupervised day access on alternate weekends, whether on a Saturday or Sunday, from 10.00am to 6.00pm In addition, the RH shall be granted unsupervised access to the Child on the first day of Chinese New Year on alternate years.

[116] Upon the Child attaining the age of seven (7) years, access shall transition to unsupervised day access on alternate weekends, whether on a Saturday or Sunday, from 10.00am to 6.00pm In addition, the RH shall be granted unsupervised access to the Child on the first day of Chinese New Year on alternate years.

[117] For all forms of unsupervised and overnight access, the wishes and comfort of the Child shall be taken into account, having regard to the Child's age and maturity. As emphasised earlier, the RH bears the responsibility of building a meaningful relationship with the Child, earning the Child's trust, and establishing a genuine bond before extended access can be successfully exercised. While it may be easy to assume the status of a father, the role of fatherhood must be demonstrated through consistent presence, effort, and



care.

[118] The PW's complaint that the RH has made little or no effort to connect with the Child, and that he has failed to meaningfully exercise his existing access rights under the Consent Order, may therefore not be without basis. Such conduct could reasonably have led the PW to conclude that the RH was indifferent to the welfare and interests of the Child.

[119] In order to mitigate these concerns and to protect the Child from emotional distress, I am of the view that the Child should not be compelled to go with the RH if the Child expresses a genuine reluctance to do so. It is incumbent upon the RH to be more proactive in fulfilling his parental responsibilities, to play a greater role in the Child's life, and to demonstrate sincerity and commitment in fostering a bond with the Child. To abruptly remove the Child from a familiar environment and place him in the RH's household surrounded by individuals with whom the Child has little familiarity would risk causing unnecessary anxiety and trauma.

[120] The RH cannot simply re-enter the Child's life and demand access as of right. The Child must not be left to fear a sudden disruption to his daily routine and sense of stability merely because the RH chooses to assert his access. It is trite law that the right of access is fundamentally the right of the Child, and not that of the parents. Consequently, while the RH is granted substantially all the access sought, such access shall at all times remain subject to the Child's willingness and best interests.

#### **Maintenance Of The Child**

[121] With reference to paras 59(g) and 59(i) of the Amended Petition for Divorce, the PW seeks the following orders against the RH:

- (i) that the RH pays monthly maintenance for the Child commencing at the sum of RM850.00, with periodic increases of approximately RM300.00 every few years until the amount reaches a cap of RM2,500.00;
- (ii) that the RH bears half of the Child's educational expenses, including reimbursing the PW for one-half of the educational expenses already incurred and paid by her; and
- (iii) that the RH pays for the Child's AIA insurance policy at a monthly premium of RM350.00.

[122] In contrast, the RH has indicated that he is only willing to pay a total sum of RM850.00 per month as maintenance for the Child, inclusive of the AIA insurance premium, without any provision for future increases as the Child grows older. The RH has further taken the position that he is unwilling to contribute towards the Child's educational expenses.

[123] It bears emphasis that, as the father of the Child, the RH is under a clear



legal obligation to maintain his Child. This duty is statutorily enshrined in ss 92 and 93 of the Law Reform (Marriage and Divorce) Act 1976, which provide as follows:

Section 92 - Duty to maintain children

Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

Section 93 - Power for court to order maintenance for children

(1) The court may at any time order a man to pay maintenance for the benefit of his child:

- (a) if he has refused or neglected reasonably to provide for the child;
- (b) if he has deserted his wife and the child is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

...

[124] In *Sivajothi K Suppiah v. Kunathasan Chelliah* [1999] 4 MLRH 266; [2000] 6 MLJ 48; [2000] 3 CLJ 175; [2000] 2 AMR 2072, the learned High Court Judge held that a father bears the duty to maintain his child in a manner commensurate with the standard of living previously enjoyed by the child. Guided by this principle, the RH, as the father of the Child, ought to be held accountable, to a reasonable extent, for the Child's maintenance, educational expenses, and insurance coverage.

[125] Clause (e) of the Consent Order expressly provides that the RH is to pay a sum of RM850.00 per month to the PW for the maintenance of the Child. That order was recorded in 2020, when the Child was still an infant. Five years have since elapsed, and the Child is now older and attending kindergarten. It is self-evident that, as a child grows, his needs increase, and this naturally results in higher living and educational expenses.

[126] This Court agrees with the PW's contention that a monthly sum of RM850.00 is no longer sufficient to meet the Child's reasonable needs. The PW has provided a breakdown of the expenses incurred in raising the Child. While some of the items claimed appear unnecessary or, in all likelihood,



overstated, the bulk of the expenses are reasonable, necessary, and entirely consistent with the ordinary needs of a child of that age.

[127] While an increase in child maintenance is warranted, this Court does not accept the PW's proposal that maintenance be automatically increased by RM300.00 every few years. The needs of a child are not static and may increase or, in some circumstances, reduce. The law already provides an avenue for either party to apply for variation upon a material change of circumstances.

[128] The next issue for determination is whether the RH possesses the financial capacity to provide an increased amount of maintenance for the child. In addressing this issue, this Court is mindful that any order for maintenance must be reasonable and proportionate to the RH's financial means. The Court is required to strike a careful balance between meeting the reasonable needs of the child and ensuring that the maintenance obligation imposed does not exceed the RH's ability to pay or result in an undue financial burden. Maintenance should therefore reflect both the best interests of the child and the financial realities of the parent.

[129] The PW contends that the RH is financially capable of doing so and submits that the evidence demonstrates that he enjoys a lifestyle wholly inconsistent with the income position he has presented to this Court.

[130] In support of this contention, the PW highlighted several aspects of the RH's lifestyle. First, the RH services a monthly car loan instalment of RM4,093.00 for a Mercedes Benz bearing registration number GT 988. Secondly, the RH admitted, in a YouTube video posted by Majlis Tindakan Pengguna Negara - MTPN on 6 July 2023, that he is one of the founders of A Reborn Logistics Sdn Bhd. In that same video, the said company was awarded the Consumers Choice Award for the years 2023 - 2024, which reasonably suggests that the company is financially stable and performing well. Thirdly, the RH holds the honorific title of "Dato SrL, a designation generally associated with individuals of considerable social standing and financial capacity.

[131] The documentary evidence further shows that the RH's designation within the company is that of a director, as reflected in his payslips. In addition to the Mercedes Benz instalment, the RH is also servicing a separate monthly loan of RM1,000.00 for a Volkswagen Jetta, as evidenced by transaction slips at pp 265–270 of Bundle B1.

[132] The RH has disclosed a monthly income of RM10,000.00 with deductions amounting to RM8,297.25. When viewed against his financial commitments and overall lifestyle, this Court is entitled to scrutinise the credibility of the RH's asserted income position and to draw reasonable inferences as to his true earning capacity.

[133] During cross-examination, the RH asserted that he had borrowed money or taken loans to meet his financial obligations. No documentary evidence was



produced to substantiate this assertion. In the absence of proof, this explanation is neither persuasive nor credible.

[134] Of further significance is the fact that the RH's admission that he personally pays for the Mercedes Benz represents a clear departure from his pleaded case. In para 24A of his Amended Reply dated 6 December 2022, the RH had expressly pleaded that the Mercedes Benz was paid for by the Company. This inconsistency further undermines the credibility of his evidence.

[135] The RH appeared to make a concerted attempt to minimise or evade his responsibility, including disputing the accuracy of documentary evidence and the contents of the YouTube video, and asserting that he was neither a director nor a founder of the Company.

[136] Having considered the evidence in its entirety, this Court finds that the RH has deliberately concealed the true extent of his earnings in an attempt to evade his legal duty to maintain the Child. This conclusion is supported by *Ooi Mei Chein @ Wei Mei Chein v. Micheal Tan Cheng Hai & Anor* [2013] MLRHU 1323; [2014] 9 MLJ 449, in which the High Court held that selective disclosure of documents may justify an inference that a party has not candidly revealed his true financial position:

"[67] Applying the *Young v. Young* approach to this issue, I am simply not able to view the RH's response as to his so-called meagre means in a benign light. The RH did himself no favour by disclosing only the barest minimum of information and that too which was not necessarily credible. In my view, it does not at all appear that the RH had laid bare the metaphorical cupboard for curial scrutiny. Rather I think that there has been selective presentation of the financial affairs of the RH. The affidavits of the RH and the documents that he has exhibited have all been heavily criticised by Ms Lalitha Menon and I might add rightly so. The RH has not been forthright and has not revealed the true state of his financial position. It is hardly likely that the RH would have left a lucrative job with Neptune Freight Services Sdn Bhd and allowed himself to be left with a meagre income such that he can only offer RM3,500.00 as child maintenance and no maintenance at all for the PW. "

[137] The RH has urged the Court to take into account the fact that he has since formed a new family and now bears responsibility for the maintenance of a young daughter. While the Court acknowledges this submission, it is of the view that the mere fact that the RH has entered into a relationship with the 2nd Respondent and has a child from that relationship does not, in and of itself, diminish or displace the financial obligations he owes to his son with the PW. These obligations remain extant and enforceable notwithstanding any change in the RH's personal or 'marital' circumstances.

[138] Having carefully considered the RH's true financial means, the Court is satisfied that he is capable of contributing to the Child's maintenance at a level



higher than that proposed by him, notwithstanding his responsibility towards a new family.

[139] Taking into account the Child's reasonable needs, the RH's earning capacity, and the principle of shared parental responsibility, the Court finds that a sum of RM1,200.00 per month, representing the RH's share of the Child's maintenance, is reasonable, fair, and conservative. This amount adequately provides for the Child's day-to-day living expenses while not imposing an undue financial burden on the RH.

[140] With respect to the AIA insurance policy, the evidence, supported by the relevant documentary exhibits, shows that the policy has since been upgraded to provide enhanced and beneficial coverage for the Child. The resulting increase in the premium is not substantial. In these circumstances, and having regard to the Child's best interests, this Court is of the view that the RH shall continue to bear the cost of the AIA insurance policy.

[141] As for educational expenses, this Court is of the view that such costs ought to be borne equally by both parties. The PW is gainfully employed and has indicated her willingness to contribute one-half of the Child's educational expenses. An equal apportionment is therefore fair, reasonable, and consistent with the shared parental responsibility of the parties.

#### **Arrears Of Child Maintenance (RM4,250.00)**

[142] The PW is claiming the total sum of RM4,250.00 which is made up of RM850.00 per month for 5 months which the monthly maintenance the RH should have paid for the Child from the months of September 2019 to January 2020. These were the months when the PW left the Klang House until the Consent Order was recorded.

[143] The RH did not pay or contribute any sums of money to support the Child's living expenses during that period and the PW was left on her own to care for the Child. It is useful to be reminded that the obligation to maintain the Child is a continuous duty that exists for parents irrespective of when the Consent Order was entered. This Court had earlier on made the decision that the PW's departure from the Klang House was justified due to the intolerable living conditions she was subjected to due to the adultery of the RH.

#### **Matrimonial Property**

[144] The division of matrimonial assets upon the dissolution of a marriage is governed by s 76 of the LRA which reads as follows:

"Section 76 - Power of court to order division of matrimonial assets

(1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.



(2) In exercising the power conferred by subsection (1) the court shall have regard to:

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets or payment of expenses for the benefit of the family;

(aa) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;

(c) any debts owing by either party which were contracted for their joint benefit;

(d) the needs of the minor children, if any, of the marriage;

(e) the duration of the marriage,

and subject to those considerations, the court shall incline towards equality of division.

...

(6) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts. "

[145] The property in dispute is a double-storey terrace house held under Individual Title HS(D) 155402, Lot No PT 147756, Mukim Klang, Daerah Klang, Selangor. The property was purchased on 18 September 2018 at a purchase price of RM981,000.00 and is presently charged to CIMB Bank. It is undisputed that the property is registered in the joint names of the PW and the RH.

[146] The PW contends that, at all material times, the said property constituted a matrimonial asset.

[147] The RH, however, maintains that the property does not fall within the category of matrimonial property but was acquired purely as an investment. He asserts that the PW's name was included in the title only at the insistence of her parents, allegedly as a form of security. In substance, the RH contends that there was a post-nuptial agreement between the parties whereby they were to contribute equally towards the purchase of the property. He argues that, as the PW allegedly failed to honour her share of the financial contribution, she is not entitled to claim an equal share in the proceeds of the property. In advancing this argument, the RH further points out that the marriage lasted only two years and seven months and that he alone serviced the monthly instalments and bore the upkeep of the property.



[148] In his written submissions, the RH proposed that the property be valued and sold, and that upon settlement of all outstanding mortgages, rates, taxes, and other outgoings, as well as all costs and expenses incidental to the sale, all sums paid by him towards the purchase and maintenance of the property including the deposit, instalments, and interest be calculated and refunded to him. He further proposed that the remaining balance thereafter be divided equally between the PW and the RH, with the PW's one-half share to be held by them jointly in trust for the benefit of the Child until the Child attains the age of eighteen (18) years, with liberty to apply.

[149] In the alternative, the RH suggested that the property be sold and, after settling all outstanding liabilities and costs, thirty per cent (30%) of the net proceeds be allocated to the PW, with the remaining seventy per cent (70%) retained by the RH. Under this alternative proposal, the PW's thirty per cent (30%) share is likewise to be held jointly by the parties in trust for the benefit of the Child until the Child reaches the age of eighteen (18) years, with liberty to apply.

[150] Although learned counsel for the RH persistently characterised the property as a mere "investment asset", I am unable to agree with that characterisation. In my view, such a contention is misconceived. Having regard to s 76 of the Law Reform (Marriage and Divorce) Act 1976, it is trite that assets falling within the scope of that provision include property acquired during the subsistence of a marriage, regardless of the label subsequently sought to be attached to it.

[151] Section 76 of the LRA 1976 empowers the Court to divide matrimonial assets acquired by the parties during the marriage, and the focus of the inquiry is on the timing and circumstances of the acquisition rather than the subjective intention of one party. The fact that a property is said to have been acquired as an "investment" does not, without more, remove it from the category of matrimonial property if it was acquired during the marriage and registered in the joint names of the parties.

[152] This principle was reaffirmed by the Court of Appeal in *Teo Chee Cheong v. Chiam Siew Moi* [2025] 2 MLRA 1; [2025] 1 AMR 476, where the Court held as follows:

"[34] We are of the view s 76(1) LRA confers a discretion on the High Court to divide and/or sell "any assets acquired...during the marriage". We will describe all assets acquired during a marriage which can be divided and/or sold by the court under 76 LRA as "Assets (Section 76 LRA)".

[153] The property in question was acquired in September 2018, well after the solemnisation of the marriage between the PW and the RH. It therefore falls squarely within the category of matrimonial assets and is subject to this Court's jurisdiction for the purposes of division under s 76 of the Law Reform (Marriage and Divorce) Act 1976.



[154] In *Wong Kim Foong v. Teau Ah Kau* [1997] 3 MLRH 782; [1998] 1 MLJ 359; [1998] 1 CLJ 358, the Court provided clear guidance on the principal considerations to be taken into account when exercising the Court's discretion in the division of matrimonial assets, namely:

"... Now, in my judgment, in determining the division of the matrimonial assets under s 76(2) of the 1976 Act, the courts should not apply strictly the formula of apportioning the matrimonial assets according to the parties' respective financial contributions but instead should take a broader view of the respective financial and other contributions made by the parties together with the needs of minor children, if any, of the marriage. In short, the courts must incline and be responsive to the concept of equality of division. The courts too must have regard to the non- financial contributions of a spouse falling within the purview of s 76(4) of the 1976 Act. It must be remembered that the factors laid down in ss 76(2) and 76(4) of the 1976 Act are not mutually exclusive.

It is obvious that the underlying purpose of s 76 of the 1976 Act is to provide for a just and equitable division of the matrimonial assets between the spouses. It is also obvious that on a true construction of s 76 of the 1976 Act, particularly reading it as a whole, a spouse's contribution to the welfare of the family is a relevant consideration when the court exercises its power under sub-s (1) of s 76 of the 1976 Act....".

[155] It is the view of this Court that s 76(2) of the Law Reform (Marriage and Divorce) Act 1976 is clear and self-explanatory. In exercising its discretion, the Court is to incline towards an equal division of matrimonial assets, irrespective of which party contributed more financially to their acquisition. The Court is not to place undue emphasis on identifying the party who was primarily responsible for the financial contributions. Rather, both financial and non-financial contributions made by each spouse including contributions in the form of care, support, and maintenance of the family must be taken into account.

[156] This approach also puts to rest the RH's insistence that the PW had allegedly breached a so-called "post-nuptial agreement" under which the parties were purportedly to share equally the loan repayments and other expenses relating to the property. This contention cannot be accepted. The correct legal framework governing the division and distribution of matrimonial assets is prescribed by s 76 of the LRA 1976. That statutory provision in the Act cannot be displaced, curtailed, or overridden by any private arrangement or alleged agreement between the parties.

[157] Accordingly, no weight can be attached to the alleged post-nuptial agreement relied upon by the RH. The Court's discretion in relation to the division of matrimonial property must be exercised strictly in accordance with s 76 of the LRA 1976, having regard to all the relevant circumstances of the



case and the contributions both financial and non-financial made by the parties during the marriage.

[158] The RH has emphasised that the marriage lasted only two years and seven months. While the duration of the marriage is a relevant factor, it cannot be viewed in isolation. The evidence before this Court shows that the parties were in a serious, long-term relationship for more than nine years prior to formalising their union through marriage. That extended period of cohabitation and commitment is a relevant and material consideration in assessing the parties' respective contributions and in determining the overall justice of the division of matrimonial assets.

[159] Further, an additional factor not to be overlooked would be that during the course of the marriage, the PW became pregnant and gave birth to the parties' son. Pregnancy, childbirth, and the responsibilities attendant upon caring for a young child constitute significant non-financial contributions, which the Court is obliged to take into account when exercising its discretion under s 76 of the Law Reform (Marriage and Divorce) Act 1976.

[160] Had there been no adultery and had the marriage subsisted, the RH, PW, and the Child would have resided in the property as a family unit. The property was strategically located in a good area and in close proximity to the Klang house, making it suitable as a matrimonial home. The Court accepts and prefers the PW's evidence, on a balance of probabilities, over that of the RH regarding the original intention behind the acquisition of the property, as it is more probable, rational, and consistent with the family's circumstances at the material time. The PW's explanation that the property was not purchased for investment purposes is both credible and compelling; had it been otherwise, there would have been no need to include her name in the loan facility and thereby assume additional financial liability. This account aligns with common sense and commercial reality. Unfortunately, as a direct consequence of the RH's adultery, the marriage irretrievably broke down, and the parties' plans for the property to serve as a future home for their young family could not be realized.

[161] The adulterous and disloyal conduct of the RH during the PW's pregnancy was an additional and material factor that weighed heavily in my decision to order an equal apportionment of the matrimonial property between the parties. This approach is consistent with the decision of the Court of Appeal in *Annathurai Venkidasalam v. Vani Welluven* [2024] 1 MLRA 472, which affirmed that a court is not confined strictly to the matters enumerated in ss 76(1) and (2) of the Law Reform (Marriage and Divorce) Act 1976, and is entitled to take into account other relevant and appropriate circumstances in the interests of justice. In the present case, it was the RH's adulterous conduct that caused the breakdown of the marriage and left the PW with no choice but to leave the Klang house with the infant child and to fend for herself, without any financial or emotional support from the RH.

[162] Having considered all the circumstances of the case in their totality, this Court is satisfied that the PW is entitled to an equal apportionment of the



matrimonial property. In addition, the Court finds that the relief sought by the PW in this regard is reasonable and proportionate. The PW has proposed that the matrimonial property be dealt with in accordance with prayer 59(m) of the Amended Divorce Petition, namely that she transfers her one-half share of the property to the RH, upon which the RH shall procure a fresh loan facility in his sole name and pay to the PW the assessed market value of her one-half share. The sum equivalent to the PW's share shall be deposited into a savings account for the Child, to be jointly held with the PW, and shall be applied towards the future needs and welfare of the Child.

[163] In the alternative, the PW has proposed that the matrimonial property be sold within one year from the date of the Decree Nisi, and that the net proceeds of sale, after all lawful deductions, be divided equally between the parties. The PW's share of the proceeds shall likewise be deposited into the Child's savings account jointly held with the PW, to be utilised exclusively for the Child's future needs.

[164] What may be gleaned from the PW's proposals is her clear intention that the proceeds representing her one-half share of the matrimonial property be preserved exclusively for the Child's future use and expenses. The PW will not personally derive any financial benefit from this arrangement. Far from being motivated by self-interest, this proposal reflects a genuine and thoughtful concern for the welfare and best interests of the Child. This, in my view, is a generous and considerate approach to the division of the matrimonial property, as it places paramount importance on the benefit, interests, and welfare of the Child. The Court accordingly accepts this arrangement, being satisfied that it is fair, equitable, and made solely for the Child's benefit.

[165] In light of this Court's acceptance of the reliefs prayed for by the PW, it is hereby ordered that the PW and the RH shall elect which of the alternatives set out in Prayer 59(m)(i) or (ii) is to be adopted in dealing with the matrimonial property. The value of the matrimonial property shall be ascertained by a certified valuer, and the costs of the valuation report shall be borne equally by the parties.

#### Costs

[166] The principles governing the exercise of the Court's discretion in awarding costs are well established. Costs are always in the discretion of the Court, which must be exercised judicially and in accordance with settled principles. In the ordinary course of events, a successful litigant is entitled to an award of costs unless there is some conduct on his or her part which justifies a departure from that general rule.

[167] In the present case, judgment has been entered in favour of the PW, and there is no basis upon which she should be deprived of her entitlement to costs. Having regard to the number of days the trial was conducted, the nature and complexity of the issues considered, and the volume of documents and evidence placed before the Court, an award of costs in the sum of RM50,000.00 is fair, reasonable, and justified.



**Conclusion**

[168] In conclusion having considered the petition and cross-petition, having undertaken a thorough examination of the evidence adduced and the submissions put forth by both parties, the Court granted the following orders:

- (i) divorce was granted and the decree nisi was ordered to be made absolute immediately;
  - (ii) joint guardianship of the Child was given to both parties;
  - (iii) sole custody, care and control of the Child was given to the PW;
  - (iv) the RH was granted access in accordance with the terms set out above in this judgment;
  - (v) the RH was ordered to pay child maintenance in the sum of RM1,200.00 per month into the PW's bank account by the 7th day of each month;
  - (vi) the RH to pay the outstanding child maintenance amounting to RM4,250.00;
  - (vii) the parties to share equally the educational expenses of the Child;
  - (viii) the RH to continue to pay the AIA insurance policy of the child;
  - (ix) the PW is entitled to a half share of the matrimonial property and the sum equivalent value of her half share shall be deposited into a savings account for the Child to be applied towards the future needs and welfare of the Child;
  - (x) the 2nd Respondent is to pay general damages in the sum of RM150,000.00 and costs of RM20,000.00 to the PW; and
  - (xi) Costs of the proceedings in the sum of RM50,000.00 is to be paid by the RH to the PW subject to allocator.
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