DALAM MAHKAMAH TINGGI MALAYA DI MELAKA
DALAM NEGERI MELAKA, MALAYSIA
PETISYEN PERCERAIAN NO. MA-33-73-07/2024

In the matter of sections 53, 54(1)(a), (b) and/or (d) and 58 of the Law Reform (Marriage and Divorce) Act 1976;
And
Order 8 of the Divorce and Matrimonial Proceedings Rules 1980;
And
Parts VII and VIII of the Law Reform (Marriage and Divorce) Act 1976.

BETWEEN

TAY

... PETITIONER

AND

1. EE

... FIRST RESPONDENT

2. NG

... SECOND RESPONDENT

GROUNDS OF JUDGMENT

(Division of Matrimonial Assets)

A. INTRODUCTION

[1] This judgment concerns the division of matrimonial assets between the Petitioner wife and the First Respondent husband on the dissolution of a marriage of long standing. The parties were married on 16 October 1996. By the time of their separation in late September 2020 the marriage had subsisted for almost twenty-four years.

[2] The proceedings reached this Court as a contested petition for divorce. The dissolution of the marriage and the ancillary questions of custody, care and control, access and the children's tertiary education are no longer in issue. By the time the matter came on for determination, those matters had been resolved by the agreement of the parties. What remained, and what alone falls to be decided, is the financial settlement between the spouses.

[3] On 13 April 2026 this Court directed that the only remaining issue for determination was the identification, valuation and division of matrimonial assets pursuant to section 76 of the Law Reform (Marriage and Divorce) Act 1976 ("**the Act**"). On 23 April 2026 the parties recorded their agreement that the decree nisi would

be made absolute three months thereafter, that the care and control of the younger child would be with the Petitioner with reasonable access to the First Respondent, and that the parties would share equally the cost of that child's tertiary education. The present inquiry proceeds against that settled background.

[4] The dispute over the financial settlement is, in substance, a narrow one. The First Respondent is the registered proprietor of four immovable properties and of certain moveable assets, and was a member of the Employees Provident Fund ("**EPF**"). The Petitioner says that those assets, having been acquired during the marriage, are matrimonial assets in which she is entitled to share. The First Respondent says that they were acquired by his sole effort, that the Petitioner contributed nothing to their acquisition, and that they are not liable to division.

[5] The First Respondent also raises two preliminary objections. First, he contends that the Petitioner, by remaining in the marriage after learning of his adulterous relationship, tolerated the adultery and is thereby precluded from obtaining relief. Secondly, he submits that the Petition, having been presented only in July 2024 after the parties separated in September 2020, was filed after inordinate and unexplained delay and ought on that ground alone to be dismissed. He therefore invites the Court to dismiss the Petition in its entirety notwithstanding that the only issue remaining for determination is the division of matrimonial

assets. Those contentions fall to be considered first, for if either is well founded it is said to defeat the Petition altogether.

[6] The Second Respondent took no active part in the determination of the financial settlement, which lies between the Petitioner and the First Respondent. References in these grounds to "the Respondent" are, unless the context otherwise requires, references to the First Respondent.

B. BACKGROUND AND PROCEDURAL HISTORY

[7] The parties married on 16 October . There are two children of the marriage: a daughter, Ee born on , and a son, Ee , born on . Both children are now adults. As at the date of these grounds the daughter is twenty-seven and the son is nineteen and in tertiary education.

[8] It is not in dispute that the First Respondent is the natural father of a child, Ee , born to the Second Respondent, and that he has acknowledged that paternity. The Petitioner's case is that she came to learn of the relationship between the First and Second Respondents during the period of the Covid-19 pandemic, and that the relationship dated from about 2014. The First Respondent's position, as deposed in his affidavits and developed in his written submission, is that

whatever relationship there was had ceased after [illegible]'s birth. The precise history of that relationship is not material to the issue now before the Court and no finding upon it is required.

[9] The Petitioner left the matrimonial home in late September 2020, taking the two children with her, and went to reside elsewhere. The First Respondent has remained in the matrimonial home since then. The parties have lived apart since that time.

[10] The petition for divorce was filed on 16 July 2024. The pleadings were closed in the ordinary way: the First Respondent's Answer was filed on 27 April 2025 (Enclosure 20), the Petitioner's Reply on 13 May 2025 (Enclosure 23), the First Respondent's Rejoinder on 14 August 2025 (Enclosure 40) and the Petitioner's Surrejoinder on 2 September 2025 (Enclosure 42).

[11] Following the direction of 13 April 2026 confining the remaining issue to the division of matrimonial assets, the parties filed a series of affidavits and statements addressed to the assets and liabilities. These included the First Respondent's affidavit affirmed on 24 April 2026 (Enclosure 63), the Petitioner's affidavit on assets and liabilities affirmed on 27 April 2026 (Enclosure 65) and her supplementary affidavit affirmed on 5 May 2026 (Enclosure 68), the First Respondent's answering affidavits (Enclosures 69 and 71), the Petitioner's answering affidavit affirmed on 11 May 2026 (Enclosure 70), the First Respondent's further affidavit

affirmed on 25 May 2026 (Enclosure 75), and the Petitioner's Concise Statement dated 26 May 2026 (Enclosure 76). The First Respondent filed a supplementary affidavit to exhibit documents, affirmed and filed on 18 June 2026 (Enclosure 83), exhibiting a market commentary on the Kinrara units (exhibit AT-1) and a medical report (exhibit AT-2).

[12] Written submissions on the division were then exchanged: the Petitioner's submission dated 10 June 2026 (Enclosure 78), the First Respondent's written submission dated 11 June 2026 (Enclosure 80), the Petitioner's submission in reply dated 18 June 2026 (Enclosure 81), and the First Respondent's submission in reply dated 18 June 2026 (Enclosure 84).

C. <u>THE ASSETS AND LIABILITIES IN ISSUE</u>

[13] It is convenient to set out, at the outset and as neutrally as the affidavit material permits, the assets and liabilities which the parties have placed before the Court. The figures that follow are the parties' own estimates. No licensed valuation of any property has been produced, a matter to which I return below.

[14] **The four immovable properties.** The First Respondent is the registered proprietor of four immovable properties which the parties have treated as falling for consideration in these proceedings. According to the affidavit material, they comprise:

(a) the matrimonial home, a double-storey terrace house at

Batu Berendam, 75350 Melaka, held under

Daerah Melaka Tengah, purchased in 2008 for RM190,000 and estimated by both parties to be worth between RM350,000 and RM400,000, subject to an outstanding housing loan of approximately RM51,554;

(b) a parcel of vacant land held under

Tempat Bukit Batu, Daerah Tampin, Negeri Sembilan, estimated to be worth between RM200,000 and RM250,000 and free of encumbrance;

(c) a strata unit at Pangsapuri Enggang, held under

, Pekan Kinrara, Daerah Petaling, Selangor (postal address), estimated by the parties to be worth between RM150,000 and RM200,000, subject to an outstanding loan of approximately RM12,344, according to the First Respondent's liabilities schedule; and

(d) a strata unit at Pangsapuri , held under

, Pekan Kinrara, Daerah Petaling, Selangor (postal address), estimated to be worth between RM150,000 and RM200,000, subject to an outstanding loan of approximately RM26,280.

[15] **The EPF monies.** It is common ground that the First Respondent attained the age of 55 in 2022 and that the sum of RM192,047.37 then stood to his credit in the Employees Provident Fund. It is equally common ground that the bulk of those monies has since been withdrawn, leaving a balance of RM6,157.37 as at 2026. The parties differ, however, as to the amount and timing of the withdrawals. The Petitioner contends that the First Respondent withdrew RM192,047.37 during 2021 and 2022 with the intention of defeating her claim to a share of the EPF monies, whereas the First Respondent says that he withdrew RM132,666.86 on 28 April 2022 upon attaining the age of 55. For the purposes of the present issues, nothing turns on that factual difference.

[16] The moveable assets disclosed comprise three vehicles, namely a Honda Civic , a Mercedes said to be in a badly damaged condition, and a Kawasaki motorcycle , together with a Maybank account (No.) carrying

a balance of RM553.98. In his reply submission (Enclosure 84), the First Respondent further states that two other Mercedes vehicles were disposed of before the determination of these proceedings, one having been sold on 6 February 2025 for RM1,200 and the other in 2023 for RM2,000.

[17] **Liabilities**. The liabilities disclosed by the First Respondent comprise the three housing loans secured over the immovable properties referred to above and a business loan of approximately **RM17,929.26**, said to relate to a partnership known as **H** . Separately, the First Respondent is liable to the Petitioner under a judgment of this Court (on appeal from the Labour Office) in the sum of **RM18,830.70** together with interest, and under an award of the Industrial Court at Kuala Lumpur in the sum of **RM103,500** together with interest. He further states that he has agreed to pay the Petitioner **RM50,000**, on behalf of the Second Respondent, as compensation for adultery. The First Respondent contends that these liabilities should be taken into account in determining the appropriate division of the matrimonial assets and that to disregard them would result in the Petitioner's unjust enrichment.

D. ISSUES FOR DETERMINATION

[18] The following issues arise for determination:

(i) whether the contentions that the Petitioner tolerated the adultery and that the petition was filed after inordinate delay are open to the First Respondent on the only matter now before the Court, and whether they have any bearing upon the division of matrimonial assets;

(ii) whether the four immovable properties, the EPF monies, the vehicles and the bank savings are matrimonial assets liable to division under section 76 of the Act;

(iii) what is the just and equitable division of those assets, having regard to the considerations in section 76(2), including the consequences of the First Respondent's failure to make full disclosure;

(iv) whether the judgment debts owed to the Petitioner and the agreed adultery compensation are to be set off against the division; and

(v) the operative orders, including valuation and the mechanics of division.

E. THE STATUTORY FRAMEWORK: SECTION 76 OF THE ACT

[19] The governing provision is section 76 of the Act, as amended by the Law Reform (Marriage and Divorce) (Amendment) Act 2017. In its amended form, and so far as material, it provides:

> *(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; (b) any debts owing by either party which were contracted for their joint benefit; (c) the needs of the minor children, if any, of the marriage; and (d) the duration of the marriage, and subject to those considerations, the court shall incline towards equality of division.*

> (5) *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.*

[20] Several features of the amended provision are central to this case and, because they govern every division of matrimonial assets in marriages dissolved after the amendment came into force, require emphasis at the threshold as the principles upon which such an inquiry is now to proceed. The amended section is to be construed purposively, in accordance with section 17A of the Interpretation Acts 1948 and 1967 ***(Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd*** [2005] 3 MLJ 97 (FC)), so as to give effect to the evident object of the 2017 amendment — the deletion of the joint-effort criterion and the introduction of express recognition of non-financial contribution. So construed, the section yields a connected body of principle, and a structured approach to its application, which I state below and apply to the facts of this case.

[21] **First,** the amendment of 2017 worked a deliberate change in the structure of section 76. The former subsections (3) and (4) — which had drawn a distinction between assets acquired by the joint efforts of the parties and assets acquired by the sole effort of one of them, and which gave the court only a discretion (as

opposed to an obligation) to divide the latter — have been deleted. Under the amended section the single, unifying concept is that of assets "acquired by them during the marriage". All such assets are matrimonial assets liable to division, and the court is directed, subject to the considerations in subsection (2), to incline towards equality of division.

[22] **Secondly,** the insertion of paragraph (aa) gives express statutory recognition to non-financial contribution. The contribution of a spouse who did not acquire the asset, but who contributed to the welfare of the family by looking after the home or caring for the family, is now a consideration of the same order as financial contribution. The significance of that change was explained by the High Court in ***Poonageswari a/p Krishnan v Bailand a/l Govindham*** [2019] MLJU 448 (HC), as reproduced by the Court of Appeal in ***Annathurai a/l Venkidasalam v Vani a/p Welluven*** [2023] 3 LNS 2191 (CA)._The object of the amendments, it was there observed, was to give due recognition to contribution in kind by the spouse who looks after the home and its members, so that wives and mothers who are homemakers from the inception of the marriage, or who intentionally choose to become full-time home managers, are no longer deprived of a division of the assets acquired for the welfare of the family by an inability to prove "joint effort" under the former wording; all assets acquired during the subsistence of the marriage are now to be considered as matrimonial property. ***<u>Although the legislative history and the</u>***

authorities speak, naturally enough, of wives and mothers, paragraph (aa) is in its terms gender-neutral. It protects "the other party who did not acquire the assets", and applies with equal force to a husband who has kept the home while the wife acquired the assets. What the paragraph recognises is the homemaking and caregiving role, not the sex of the spouse who performs it.

[23] **Thirdly,** it follows from the first two features that authorities decided before the amendment, which classified matrimonial assets by reference to the now-repealed subsections (3) and (4) and treated assets acquired by the sole effort of one party as "non-matrimonial property" that the court was not obliged to divide, no longer govern the characterisation of property. The three-fold classification in ***Yap Yen Piow v Hee Wee Eng*** [2016] 1 LNS 1060; [2017] 1 MLJ 17 (CA), decided before the amendment came into force, retains its utility only as a description of the law it stated; in so far as it rested upon the obligatory or discretionary character of the division according to whether the asset was acquired by joint or by sole effort, it must now be read subject to the amended section. A court determining a division after the amendment is to apply the statute as amended, and not a classification tied to a provision Parliament has removed. It is necessary, however, to be precise about what the amendment changed and what it did not. The amendment abolished the former distinction at the stage of characterisation: whether an

asset is a matrimonial asset liable to division no longer depends upon whether it was acquired by the joint effort of the parties or by the sole effort of one of them. But the extent of each party's contribution has not, by that change, become irrelevant. It survives, though at a different stage of the inquiry. Contribution is no longer a criterion of characterisation; it is a factor going to quantum. That an asset was acquired and financed by one spouse alone, and registered in that spouse's sole name, no longer answers the question whether it is divisible — it plainly is — but it remains a consideration, under paragraph (a), bearing upon the shares in which the divisible pool is to be divided. The error of the pre-amendment approach, when applied to a marriage dissolved after the amendment, is to treat what is now a question of quantum as though it remained a question of characterisation, and so to withhold from division an asset the statute requires to be divided.

[24] **Fourthly,** the considerations in subsection (2) are cumulative and not alternative, and the closing words of the subsection direct the court to incline towards equality of division. Equality is therefore the point of departure. The financial contribution recognised by paragraph (a) and the non-financial contribution to the welfare of the family recognised by paragraph (aa) are contributions of the same order, so that a spouse who has contributed under one head is not to be treated as having contributed under neither, and a spouse who has contributed under both is entitled to recognition

under both. A division otherwise than in equal shares requires justification by reference to the statutory considerations, and the burden of displacing equality lies upon the party who seeks a departure from it. In a marriage of long duration in which a spouse has contributed both by work and by the care of the home and family, an equal division will ordinarily follow. I would add this, by way of caution against an over-rigid reading of the closing words. The section directs the court to "incline towards" equality; it does not enact a rule of equal division. Equality is the prima facie position and the yardstick against which any proposed division is to be tested, not a straitjacket. As the Court of Appeal observed in ***Annathurai***, the inclination towards equality does not mandate a division in equal shares; the division remains a matter for the discretion of the court, to be exercised judicially by reference to the considerations in subsection (2), and the exercise is one of fair and equitable distribution and not of strict arithmetical accounting. That the court may, in a proper case, depart from equality is illustrated by ***Nirmala Ramasamy v Baramaguru Mariappen*** [2025] 10 CLJ 831 (CA), where the Court of Appeal, notwithstanding the inclination towards equal division, awarded the homemaker spouse a thirty per cent share of the assets then in issue, that share reflecting the whole distributive picture, including the assets she had already received in full. Equality is therefore both the point of departure and the point of return: the court begins there, and departs only so far as the statutory considerations, taken together, require, the burden of justifying any departure lying upon the party who seeks it.

[25] **Fifthly,** the division is governed by the considerations enumerated in subsection (2). Conduct, fault and the comparative blamelessness of the parties are not among them, and are not, of themselves, a ground for enlarging or diminishing a spouse's share. Nor is delay in the institution of a petition duly brought a ground for refusing a division to which a contributing spouse is otherwise entitled. Authorities concerned with the proof of breakdown under section 54, or with delay in invoking the court's process to disturb settled rights, are directed to questions distinct from the division and do not control it. I have said that conduct and fault find no place in the division. That is not because the considerations in subsection (2) are to be read as a rigidly closed list; the Court of Appeal in ***Annathurai*** recognised that the court is not precluded from having regard to other relevant or appropriate circumstances bearing upon a fair and equitable division. It is for a different and more fundamental reason. The moral blameworthiness of a spouse is not a circumstance relevant to the distribution of property between the parties. The section is concerned with contribution, with debts contracted for joint benefit, with the needs of the children and with the duration of the marriage, and with the fair division of what the parties have acquired; it is not an instrument for the apportionment of fault. A spouse's adultery does not enlarge the other's contribution, and

the innocence of the claiming spouse does not augment it. Conduct is therefore excluded not by the closure of the list, but because it is foreign to the distributive exercise that the section commits to the court.

[26] **Sixthly,** a party to proceedings for the division of matrimonial assets is under a duty to make full, frank and clear disclosure of his or her means. Where a party in possession of the relevant material fails without sufficient explanation to value the assets or to produce the documents within his knowledge and control, the court is entitled, in the exercise of the power recognised by section 114(g) of the Evidence Act 1950, to draw inferences adverse to him: to resolve uncertainty in valuation against the defaulting party, and to bring to account assets which he has removed from his hands during the currency of the proceedings, whether by withdrawal, sale or other disposal. A party cannot, by his own default, deprive the other of a share the statute confers, nor profit from the want of evidence which his own non-disclosure has produced. Allied to the duty of disclosure is the court's power to address the dissipation of assets. Where a spouse has, in contemplation of or during the breakdown of the marriage or the currency of the proceedings, disposed of, withdrawn, transferred or otherwise put beyond reach a matrimonial asset in a manner calculated to defeat or diminish the other's claim, the court is not confined to the assets that happen to remain. It may bring the asset, or its value, back into account, and divide the pool as

though the asset had not been removed, visiting the consequences of the removal upon the share of the party responsible for it. The principle was given effect by the Court of Appeal in ***Nirmala Ramasamy***, where immovable properties hastily transferred by the husband to his mother, for love and affection and without consideration, shortly before the divorce, were held to be matrimonial assets dissipated to frustrate the division and were brought back into the divisible pool. The principle is to be distinguished from the case of a spouse who has merely dealt with an asset in the ordinary course of affairs; what it reaches is the disposal designed, or having in the circumstances the effect, of stripping the pool to the prejudice of the other spouse. The inference, it should be added, is an aid to fact-finding and not a substitute for it. It operates to resolve against the defaulting party such uncertainties as his own default has created, and to draw against him the reasonable inferences that the evidence he has withheld would, if produced, have been unlikely to rebut. It does not entitle the court to conjure assets into existence without any evidential foundation, nor to fix a value untethered to the material before it. Properly applied, the inference sharpens the conclusions available upon the evidence; it does not manufacture evidence.

[27] **Seventhly,** a debt owed by one spouse to the other, established independently of the matrimonial proceedings — whether by the judgment or award of a court or tribunal of competent jurisdiction,

or by an agreement reached between them — is not a debt "contracted for their joint benefit" within paragraph (b), and is not a matrimonial asset. Such an obligation is not to be set off against the creditor spouse's share in the division, for to do so would be to require that spouse to surrender, in the division, the very sum already adjudged or agreed to be due to her; it remains payable according to its terms. The debts properly brought into account under paragraph (b) are confined to those contracted for the joint benefit of the marriage, such as the loans charged on the matrimonial assets, which are to be discharged from the proceeds before division.

[28] **Eighthly,** the assets to be divided are those existing at the dissolution of the marriage. The function of the court, as ***Sivanes Rajaratnam v Usha Rani Subramaniam*** [2002] 3 CLJ 300 (CA), approved by the Court of Appeal in ***Annathurai***, makes plain, is to effect a fair and equitable division of the matrimonial assets that exist at the time of the divorce, and not to undertake a retrospective accounting of the income and expenditure of the parties over the life of the marriage. The pool is therefore identified as at the dissolution of the marriage, and is ordinarily to be valued as at the date of division, so that the parties share in each asset at its present worth; and an asset which existed during the marriage but has since been dissipated or drawn down is brought to account at the value it then had, the burden of its loss falling upon the party responsible. Where the spouses separated

and ceased to function as a single economic unit well before the dissolution, the weight to be given to the inclination towards equality, in respect of assets acquired by the sole effort of one spouse after that separation, may in a proper case be tempered, the rationale of shared contribution having by then weakened. That refinement is not engaged here, for each of the assets in issue was acquired during the period of cohabitation and before the parties separated.

[29] **Ninthly,** the burden of proof is distributed in this way. A party who asserts that an asset acquired during the marriage is nonetheless not divisible — because it was owned before the marriage, or belongs beneficially to a third party, or is the asset of a business or partnership rather than of the spouse in whose name it stands — bears the burden of proving that assertion. Registered proprietorship in the name of a spouse is prima facie proof that the asset is his, and a bare averment to the contrary, unsupported by the documents within the proprietor's own control, will not displace it. So much is illustrated by ***Nirmala Ramasamy***, where the husband's insistence that his landholdings were enterprise or business assets, unsupported by accounts or instruments, failed, and the Court of Appeal held that the evidential burden had been wrongly placed upon the homemaker wife. The party who seeks a division otherwise than in equal shares bears the separate burden of justifying that departure by reference to the considerations in subsection (2).

[30] **Tenthly,** the division under section 76 is a global exercise directed at the matrimonial estate as a whole, and not a separate adjudication upon each asset in isolation. The court's task is to arrive at a just division of the estate; the proportion in which a party is entitled to share that estate is one question, and the means by which the entitlement is satisfied — whether by the transfer of particular assets, the sale of others, or a balancing payment — is another. The court may therefore allocate individual assets unequally, or transfer a particular asset wholly to one spouse, provided that the division of the estate taken as a whole reflects the parties' respective entitlements. The point is illustrated by ***Nirmala Ramasamy***, where the homemaker spouse, having already received two assets in their entirety, was awarded a thirty per cent share of the remainder, the fairness of the result being measured by the division of the estate as a whole and not asset by asset.

[31] **Eleventhly,** the division of matrimonial assets under section 76 is to be kept distinct from the other heads of financial relief the Act provides, and from obligations arising outside the Act altogether. The division of property recognises the parties' contributions to the assets acquired during the marriage; the maintenance of a spouse or child under sections 77 and 92 to 95 answers the different question of continuing need; and a debt owed by one spouse to the other under the judgment or award of another court or tribunal, or under an independent agreement, is

an obligation enforceable in its own right. These heads of relief are not fungible, and an entitlement under one is not to be discounted or set off against an entitlement under another, for to do so would deny a party a remedy the law separately confers. It is for this reason that the independent debts owed to the Petitioner, and the agreed compensation for adultery, form no part of the matrimonial pool and are not to be set against her share, and that her having been remunerated for her labour as an employee in no way diminishes her contribution as a spouse.

[32] That the EPF monies of a member spouse form part of the matrimonial assets is settled. The point was so decided by the Court of Appeal in ***Koay Cheng Eng v Linda Herawati Santoso*** [2008] 4 CLJ 105; [2008] 4 AMR 159 (CA), and was applied in ***Glaret Shirley Sinnapan v Sivasankar Kunchiraman & Anor*** [2023] 1 CLJ 218 (HC), where the court applying the amended section 76, ordered the transfer to the wife of one-half of the sum standing to the husband's credit in the EPF pursuant to section 53A of the Employees Provident Fund Act 1991.

[33] **The approach in summary.** Drawing these principles together, the division of matrimonial assets in a marriage dissolved after the 2017 amendment is to proceed in the following ordered way. First, the court identifies the pool: every asset acquired by either party during the marriage, together with any asset owned before the marriage that has been substantially improved during it within

section 76(5), and including any asset dissipated or disposed of so as to defeat the other's claim. Secondly, all such assets are matrimonial assets liable to division; their characterisation does not turn upon whether they were acquired by joint or by sole effort, and an asset is not removed from the pool merely because it stands in the sole name of, or was financed by, one spouse. Thirdly, the court values the pool and provides for the discharge, from the gross value, of the debts contracted for the joint benefit of the marriage under paragraph (b). Fourthly, the court takes equality of division as its prima facie position, in obedience to the closing words of subsection (2). Fifthly, the court asks whether the considerations in paragraphs (a), (aa), (c) and (d), weighed together, justify a departure from equality, the burden of justifying a departure lying upon the party who seeks it, and conduct and fault being left out of account. Sixthly, the court brings into account assets undisclosed or dissipated, drawing such inferences against a defaulting party as the justice of the case requires. Seventhly and finally, the court arrives at a division that is fair and equitable in all the circumstances — which is the object the section exists to serve — and not an exercise in strict accounting. Throughout, the exercise is a global one, directed at a fair division of the estate as a whole rather than at each asset in isolation; the assets are identified as those existing at the dissolution of the marriage and are ordinarily valued as at the date of division; the burden of showing an asset to be non-divisible lies upon the party who so asserts; and the exercise is kept distinct from the separate questions of the maintenance of spouse and children and of debts independently owed between the parties. It is by reference to this approach that the present case falls to be decided.

F. ANALYSIS AND DETERMINATION

(i) The Preliminary Contentions: Tolerance of Adultery and Delay

[34] Although the First Respondent advanced these two contentions as part of his case on the division, they are properly addressed first, because their effect, if accepted, would be to dispose of the petition altogether. The First Respondent invites the Court to dismiss the petition on the ground that the Petitioner tolerated his adultery and on the ground of her inordinate and unexplained delay in filing the petition. In support of the former he relies upon ***Lob v Hob; Cob (Party-Cited)*** [2025] MLRHU 2121 (HC), and in support of the latter upon ***Khor Cheng Wah v Sungei Way Leasing Sdn Bhd*** [1996] 1 MLJ 223 (CA) and ***Prabakaran Mukunan v Amritakumari Savandarajan*** [2026] MLRHU 208 (HC).

[35] Both contentions are misconceived, for the same and an anterior reason. The dissolution of the marriage is not in issue. By the direction of 13 April 2026 the only remaining issue was confined

to the identification, valuation and division of matrimonial assets, and on 23 April 2026 the parties recorded their consent to the decree nisi being made absolute. A party who has consented to the grant of the decree cannot, in the same breath, invite the Court to refuse it. The relief the First Respondent seeks — dismissal of the whole petition — is simply not available on the question that remains for decision.

[36] The authorities relied upon do not assist the First Respondent, because they are directed to a different question. ***Lob v Hob*** concerned proof of the breakdown of a marriage under section 54 of the Act, and in particular whether a spouse who has tolerated an adulterous relationship over an extended period may later rely upon that same conduct as the cause of the breakdown. That is a question going to the grant of a decree, not to the division of assets once a decree is to be granted. ***Khor Cheng Wah***, in which the Court restated the principle that a litigant who seeks the court's intervention in a manner affecting his rights must do so timeously, was concerned with delay in invoking the court's process to disturb settled rights. It has no application to a petition duly filed and a decree granted by consent.

[37] There is, in any event, a more fundamental answer. The division of matrimonial assets under section 76 is governed by the considerations enumerated in section 76(2). Conduct and fault are not among them. The Court is directed to have regard to

contribution, to debts contracted for joint benefit, to the needs of minor children and to the duration of the marriage; it is not directed to weigh the comparative blamelessness of the parties, still less to deny a contributing spouse her share on account of delay in commencing proceedings she has properly brought. The contention that the Petitioner "slept on her rights" is, on the only issue before the Court, beside the point. I therefore decline to entertain the invitation to dismiss the petition, and turn to the division.

(ii) **Whether the Assets Are Matrimonial Assets Liable to Division**

[38] The First Respondent's principal answer to the claim for division is that the four properties are "non-matrimonial property" acquired by his sole effort, to which the Petitioner made no contribution, and which the Court is therefore **not obliged to divide**. He bases that submission on the threefold classification of assets articulated by the Court of Appeal in ***Yap Yen Piow***, as reproduced by the High Court in ***Soo Pao Ching v Foo Say Suan*** [2021] MLRHU 2830 (HC), namely: assets acquired by joint effort, which the Court is obliged to divide; assets acquired by the sole effort of one spouse, which the Court may, but is not obliged to, divide; and assets acquired before the marriage. He further relies on ***Balakrishnan Kaliappan v Shameena Nathesan*** [2019] 5

MLRA 40; [2019] 7 CLJ 762 for the proposition that a matrimonial home is not necessarily a matrimonial asset.

[39] The difficulty with that argument is that its central distinction — between joint-effort and sole-effort assets, with a discretion to divide only the latter — derives from the law as it stood before the 2017 amendment. ***Yap Yen Piow*** was decided in November 2016, and the classification it set out is expressly tied to the former section 76(3). The premise of that classification, that sole-effort assets are "non-matrimonial property" which the court is not obliged to divide, no longer holds. Under the amended section, as explained above and as the Petitioner's authorities ***Glaret Shirley Sinnapan*** and ***Poonageswari*** make plain, all assets acquired during the marriage are matrimonial assets, and the question is no longer whether the court is obliged to divide them but how, the court being directed to incline towards equality. To decide this case by reference to the superseded dichotomy would be to apply a provision Parliament has repealed.

[40] Nor does ***Balakrishnan Kaliappan*** carry the First Respondent's case. The point there was a confined one: that a dwelling in which the parties cohabited is not, merely by reason of that fact, a divisible asset, for example where it belongs to a relative of one of the parties, or is rented, or is otherwise not held in the name of either spouse. That has no purchase here. The matrimonial home is registered in the First Respondent's sole name as proprietor of

the entire (1/1) share, as the registered document of title confirms; the Petitioner's assertion in one of her affidavits that it is held in joint names is not borne out by the register. It was purchased in 2008 during the marriage, and it is plainly an asset of the parties. The reservation in ***Balakrishnan Kaliappan*** does not detach it from the matrimonial pool.

[41] Applying the amended section 76 to the assets in issue, the position is as follows. Each of the four immovable properties was acquired during the subsistence of the marriage; each is therefore an asset "acquired ... during the marriage" within section 76(1) and a matrimonial asset liable to division. The matrimonial home, purchased in 2008, is the clearest case. The vacant land at Tampin and the two strata units at Kinrara are, on the evidence, likewise acquisitions made during the marriage and registered in the First Respondent's sole name; none is shown to have been owned before the marriage, and section 76(5) is not engaged. The EPF monies are matrimonial assets on the authority of ***Koay Cheng Eng***. The vehicles and the bank savings, being moveable assets acquired during the marriage, are likewise within the pool.

[42] The First Respondent's assertion that the two Kinrara units belong not to him but to the . ..   partnership cannot be accepted. The units are registered in his sole name. He has produced no partnership deed, no partnership accounts and no document of any kind evidencing that the partnership is the

beneficial owner of the units or financed their purchase. A bare assertion in a written submission, unsupported by evidence, cannot displace the inference that arises from registered proprietorship. I find that the two Kinrara units are matrimonial assets of the First Respondent. The burden of proving that the units belonged beneficially to the partnership, and not to him, lay upon the First Respondent as the party who so asserted; he has not begun to discharge it.

(iii) <u>The Petitioner's Contribution and the Inclination Towards Equality</u>

[43] The assets being matrimonial assets, the division falls to be made by reference to the considerations in section 76(2), the Court inclining towards equality. The First Respondent contends that the Petitioner is entitled to nothing because she made no contribution: she was, he says, a "full-time career woman" who worked late, earned a salary of her own, and left the cooking and care of the children to his mother; she was not, on his account, a homemaker at all.

[44] That contention misunderstands the structure of section 76(2). Contribution, for the purposes of the section, is not confined to direct financial contribution towards the acquisition of a particular asset. Paragraph (a) speaks of contributions in money, property *or work*, and of the payment of expenses for the benefit of the

family; paragraph (aa) recognises, as a distinct and sufficient form of contribution, the looking after of the home and the caring for the family. These are cumulative, not alternative. A spouse who both earns and keeps the home contributes under both heads; she is not to be treated as having contributed under neither.

[45] On the affidavit material the Petitioner's contribution over the life of the marriage was substantial and of both kinds. She was married to the First Respondent for almost twenty-four years before separation. She worked, on the First Respondent's own account, in the H business at a modest wage. She deposes, and it is consistent with the long duration of the marriage and the raising of two children to adulthood, that she discharged the responsibilities of a wife and mother. The First Respondent's portrait of her as a wife who contributed nothing to the family is not borne out; it is, moreover, difficult to reconcile with his own pleaded position, recorded in his Answer, that the Petitioner was a good wife who assisted him in the affairs of the household and performed her role as a wife — an admission the Petitioner was entitled to rely upon, and did.

[46] The factors in section 76(2) here point, on balance, towards an equal division. The marriage was a long one (paragraph (d)). The Petitioner contributed to the welfare of the family over its duration, both by her work and by her care of the home and children

(paragraphs (a) and (aa)). The countervailing consideration, that the assets were acquired and financed by the First Respondent and registered in his name, is a real one and is weighed below; but under the amended section it no longer carries the consequence for which the First Respondent contends. The needs of the minor children (paragraph (c)) now carry little weight, both children having attained majority, though the parties' agreement as to tertiary education provision remains in place. Taking these considerations together, the proper starting point, and on the facts the proper conclusion, is an equal division of the net value of the matrimonial assets. The treatment of the matrimonial home and of the First Respondent's non-disclosure, to which I now turn, confirms rather than displaces that conclusion.

[47] The pattern of an equal division of a matrimonial home in a long marriage, where the wife was a homemaker and the husband bore responsibility for the breakdown, is illustrated by ***Annathurai***, where the Court of Appeal upheld the equal division of the matrimonial home in a marriage of comparable length, the husband being at fault by reason of his extra-marital conduct. The present facts fall within that pattern.

[48] The Petitioner nevertheless seeks more than an equal share of the matrimonial home. She asks that the First Respondent's entire interest be transferred to her or to the children. She relies

on ***Nirmala Ramasamy***. Properly understood, however, that decision does not establish a principle that the matrimonial home, or any particular matrimonial asset, should ordinarily be transferred outright to one spouse. Its significance lies in the Court of Appeal's application of the amended section 76: the Court recognised the wife's non-financial contributions as homemaker and caregiver, rejected the husband's attempt to understate his means and characterise assets as business or family assets without proof, and brought dissipated assets back into account. The division ultimately ordered remained a calibrated exercise of discretion on the facts. The present case is materially different. I accept that the matrimonial home is a matrimonial asset and that the Petitioner made real contributions, both directly and indirectly, over a long marriage. Those matters justify an equal division. They do not justify an order transferring the whole of the First Respondent's interest to her or to the children. The children are now adults. There is no present accommodation need of minor children requiring the home to be preserved for them. Nor do the factors in section 76(2), viewed as a whole, justify a departure from equality in the Petitioner's favour. The proper order is therefore an equal division of the net value of the matrimonial home, not an outright transfer of the entire property. This follows from the global character of the section 76 exercise. The Petitioner's entitlement is to an equal share of the matrimonial estate taken as a whole, which an equal division of the home, together with her equal shares of the other assets, fairly satisfies; it does not convert into a claim to the whole of any single asset.

(iv) **<u>Non-Disclosure and Adverse Inference</u>**

[49] A feature of this case which bears directly upon the division is the First Respondent's failure to make full and frank disclosure of his means. Notwithstanding the direction of 13 April 2026 that the parties identify and value the assets and produce supporting documents, the First Respondent has produced no licensed valuation of any of the four properties. For the two Kinrara units he has produced only a market commentary by an estate agent (exhibit AT-1); for the matrimonial home and the Tampin land he has produced only estimates said to be drawn from advertisements. He has disclosed no income tax returns, no accounts of the H partnership of which he was a member, and no statements for the bank account at HSBC which the Petitioner says he holds. He withdrew the greater part of his EPF savings before the division could be effected, and he disposed of two vehicles during the currency of the proceedings.

[50] The principle engaged is well established. A party to matrimonial financial proceedings is under a duty to make full, frank and clear disclosure of his financial affairs. Where documents peculiarly within his possession are withheld without satisfactory explanation, the court is entitled to draw an adverse inference

under section 114(g) of the Evidence Act 1950. The duty, and the consequence of its breach, were stated by Mahadev Shankar J in ***Leow Kooi Wah v Philip Ng Kok Seng & Anor*** [1997] 3 MLJ 133 (HC). The same principle was recently applied in ***NAM v PAA & JLN*** [2026] CLJU 12, cited by the Petitioner (Enclosure 82), where the Court observed at paragraph [68] that a husband is under an obligation to make full, frank and transparent disclosure of his means, and that shortcomings in such disclosure justify the drawing of adverse inferences. At paragraph [69], the Court further held that the husband's failure to produce basic financial documentation justified an adverse inference under section 114(g) of the Evidence Act 1950 as to his true financial position. The same evidential principle applies in the present case.

[51] The First Respondent's explanations for his non-disclosure do not withstand scrutiny. He says that he could not obtain valuations because the Petitioner had taken the original title documents from his mother's house. That assertion is unsubstantiated; but even if accepted, it provides no answer. A licensed valuation of a property does not depend upon possession of the issue document of title, and the records of the relevant land office and strata authority are independently obtainable. The asserted want of the title documents, moreover, says nothing of his failure to disclose his income tax returns, his partnership accounts and his bank statements, all of which lay within his own knowledge and control. His further explanation, that he has no income at all and

subsists on offerings from a temple, sits uneasily with a man who owns four properties, has serviced three housing loans, conducted a business, held substantial EPF savings and owned several vehicles, and into whose Maybank account, on the Petitioner's evidence, monthly sums were deposited in cash. As in ***Nirmala Ramasamy***, a bare assertion of impecuniosity, unsupported by accounts, does not displace the inference that the deponent has not disclosed the true state of his affairs.

[52] I therefore draw the following inferences. First, the true value of the four properties is at least at the upper end of the ranges the First Respondent has himself put forward, and any uncertainty in valuation arising from his default is to be resolved against him. Secondly, the EPF monies that stood to his credit, and the proceeds of the vehicles he sold during the proceedings, remain assets for which he must account and which form part of the pool to be divided; their removal from his hands does not remove them from the reckoning. These inferences inform the orders made below. I should make plain how the first of these inferences operates alongside the valuation I direct. The primary and preferred basis of division is a valuation of the properties by a single licensed valuer, which the orders provide for, and which yields a figure neither party can impeach. The adverse inference as to value is not a substitute for that valuation; it is a safeguard against the First Respondent's default. If, but only if, he obstructs or fails to facilitate the valuation, the value of the properties is to

be taken at the upper end of the ranges he has himself advanced, so that his own want of co-operation cannot be permitted to depress the Petitioner's share.

(v) The Employees Provident Fund Monies

[53] The EPF monies are matrimonial assets. The First Respondent accepts that RM192,047.37 stood to his credit when he attained the age of 55 in 2022. That he has since withdrawn the greater part of it does not defeat the Petitioner's entitlement to a share; the sum that existed is brought to account, and the Petitioner is entitled to one-half of it, consistently with the order made in ***Glaret Shirley Sinnapan***, where the wife was awarded one-half of the husband's EPF savings.

[54] The First Respondent protests that his withdrawals, made in 2021 and 2022, cannot have been designed to defeat a claim he could not then have foreseen, the petition not having been filed until July 2024. There is some force in that as an answer to the Petitioner's charge of deliberate dissipation, and I make no finding that the withdrawals were made with the specific intention of defeating her claim. But the point does not assist him on the entitlement. The parties had separated in September 2020, and the breakdown of the marriage was by then a fact; the EPF savings that existed during the marriage were a matrimonial asset, and they do not cease to be divisible merely because the

member spouse, being of age, has since drawn them down. The Petitioner's share is to be calculated upon the sum the First Respondent admits stood to his credit, namely RM192,047.37. One-half of that sum is RM96,023.69.

[55] Given the First Respondent's stated want of liquid means, an order requiring immediate payment of that sum in cash would be unworkable. The practical and just course is to make the Petitioner's entitlement to RM96,023.69 in respect of the EPF a charge upon, and payable out of, the First Respondent's share of the net proceeds of the division of the immovable properties. To that extent the consequences of his having drawn down the fund fall, as they should, upon his own share.

(vi) <u>The Vehicles and Bank Savings</u>

[56] The vehicles are matrimonial assets of modest value. Two Mercedes vehicles were sold during the proceedings for RM1,200 and RM2,000 respectively; a Honda Civic, a damaged Mercedes and a Kawasaki motorcycle remain. The First Respondent is to account for the proceeds of the two vehicles already sold, and the Petitioner is entitled to one-half of those proceeds. The three remaining vehicles are to be sold and the net proceeds divided equally, or, if the parties prefer, the First Respondent may retain them upon paying the Petitioner one-half of their agreed or assessed value. The Maybank balance of

RM553.98 is to be divided equally. These items are of small value and are dealt with for completeness; they do not alter the substance of the division.

(vii) The Judgment Debts and the Adultery Compensation

[57] The First Respondent seeks to bring into account, as liabilities reducing the matrimonial pool, the two judgment sums he owes the Petitioner (RM18,830.70 and RM103,500, with interest) and the RM50,000 adultery compensation agreed at mediation. That cannot be done.

[58] These three sums are not matrimonial assets, and they are not debts "contracted for the joint benefit" of the parties within section 76(2)(b). The two judgment sums are debts owed by the First Respondent (or his business) to the Petitioner arising from her separate claims in respect of her employment and its termination; they were established by the judgment of this Court on appeal from the Labour Office and by the award of the Industrial Court. They are independent obligations, enforceable in their own right, and owed to the Petitioner. To allow them to reduce her share of the matrimonial assets would be to require her to surrender, in the division, the very sums the courts have already adjudged to be due to her. The RM50,000 is compensation for adultery, agreed at mediation and payable to the Petitioner on behalf of the Second Respondent; it too is an independent liability and no part

of the matrimonial pool. The First Respondent's attempt to set these sums off against the division is rejected. They remain payable according to their terms.

[59] The debts that are properly to be brought into account under section 76(2)(b) are the housing loans charged on the properties, which were contracted for the benefit of the family and which are to be redeemed from the gross proceeds of sale before division. The H business loan stands on a different footing: it is a business liability, not shown to have been contracted for the joint benefit of the marriage, and it is not a charge upon the assets to be divided. It is not deducted from the matrimonial pool.

(viii) <u>The "Dual Role" and Unjust Enrichment Contention</u>

[60] The First Respondent finally contends that the Petitioner is unjustly enriched, in that she claims in one forum as a "career woman" (in her employment and industrial claims) and in this forum as a homemaker (under section 76), and that she stands to acquire substantial wealth from a combination of sources. The contention is without legal foundation. There is no inconsistency between the two positions: a wife may at once be an employee, entitled to the remedies the law affords an employee against her employer, and a spouse who has contributed to the family and is entitled to a share of the matrimonial assets. Section 76(2) itself recognises contribution in money *and* in work *and* in

homemaking; the Petitioner's having been remunerated for her labour does not disentitle her to recognition of her contribution to the family. The suggestion that the division would unjustly enrich her is, in truth, a complaint that she is entitled to what the statute provides. It is rejected.

G. CONCLUSION

[61] Drawing the threads together, my conclusions on the issues are these. The contentions that the Petitioner tolerated the adultery and that she delayed unduly do not arise on the only matter before the Court and afford no answer to the division. The four immovable properties, the EPF monies, the vehicles and the bank savings are matrimonial assets acquired during the marriage and liable to division under the amended section 76. The First Respondent's reliance on the superseded distinction between sole-effort and joint-effort assets is misplaced, and his claim that the Kinrara units belong to a partnership is unsupported by evidence. Having regard to the considerations in section 76(2) — the long duration of the marriage, the Petitioner's contribution in both work and homemaking, and the First Respondent's acquisition of the assets in his name — and giving effect to the statutory inclination towards equality, the just and equitable division is an equal one. That conclusion is reinforced by the adverse inference properly drawn from the First Respondent's failure to make full disclosure. The judgment debts and the

adultery compensation are independent liabilities and are not to be set off against the Petitioner's share.

H. ORDERS OF THE COURT

[62] For the reasons given, and upon the decree nisi being made absolute, I make the following orders. They are framed to give effect to an equal division of the net value of the matrimonial assets, and to provide a workable mechanism for valuation and realisation. In framing them I have preferred, so far as the circumstances allow, a clean division by realisation and payment to the continuance of the parties in shared ownership, so that the financial ties between them may be severed and future litigation between them avoided.

(1) **Valuation.** The four immovable properties shall be valued by a single licensed valuer agreed upon by the parties within thirty (30) days of the decree nisi being made absolute, failing which agreement a licensed valuer shall be appointed by the Court on the application of either party. The costs of the valuation shall be borne by the First Respondent. Should the First Respondent obstruct or fail to facilitate the valuation, the value of each property shall be taken, for the purposes of the division, at the upper end of the range he has himself put forward in these proceedings.

(2) **The matrimonial home.** As to the matrimonial home (No. Batu Berendam, 75350 Melaka; , Mukim Batu Berendam, Daerah Melaka Tengah), the First Respondent shall, within three (3) months of the valuation, elect either (a) to purchase the Petitioner's one-half share at the valuation, paying her one-half of the net value after redemption of the outstanding charge; or (b) to concur in the sale of the property in the open market, the outstanding charge being redeemed from the gross proceeds and the net proceeds being divided equally between the parties. If the First Respondent does not elect within that period, the Petitioner shall have the option to purchase his one-half share on the same basis; and in default of either party purchasing, the property shall be sold and the net proceeds divided equally.

(3) **The other three properties.** The vacant land at Tampin Tempat Bukit Batu, Daerah Tampin, Negeri Sembilan) and the two strata units at Pangsapuri Enggang, Kinrara and Geran 3, Lot ....., Pekan Kinrara, Daerah Petaling, Selangor) shall be sold in the open market at not less than the valuation within six (6) months of the valuation. The outstanding charges (if any) on the

two strata units shall be redeemed from the gross proceeds, and the net proceeds of each property shall be divided equally between the parties. The Petitioner's one-half share of the net proceeds of each property shall be paid to her within thirty (30) days of receipt of the proceeds of sale.

(4) **Sale below value.** If any of the said properties is sold below the value determined under order (1), the Petitioner shall be entitled to be paid the shortfall in her one-half share, calculated by reference to that value.

(5) **EPF monies.** The First Respondent shall pay the Petitioner the sum of RM96,023.69, being one-half of the RM192,047.37 that stood to his credit in the Employees Provident Fund, such sum to be a first charge upon and payable out of his share of the net proceeds of the properties divided under orders (2) and (3).

(6) **Vehicles and savings.** The First Respondent shall account for and pay to the Petitioner one-half of the proceeds of the two Mercedes vehicles sold during the proceedings (one-half of RM3,200, namely RM1,600). The three remaining vehicles shall be sold and the net proceeds divided equally, or the First Respondent may retain them upon paying the Petitioner one-half of their agreed or assessed value. The balance in the Maybank account No. shall be divided equally.

(7) **Judgment debts and adultery compensation.** It is declared that the judgment sum of RM18,830.70 (with interest), the Industrial Court award of RM103,500 (with interest) and the agreed adultery compensation of RM50,000 are not matrimonial assets and are not to be set off against the division; they remain payable to the Petitioner according to their terms.

(8) **Empowerment of the Registrar / Land Administrator.** Should the First Respondent fail or neglect to execute any instrument or document necessary to give effect to these orders, the Deputy Registrar or Senior Assistant Registrar of this Court is empowered to execute the same on his behalf; and the relevant Land Administrator and Registrar of Titles are directed to make and register all entries and endorsements necessary to give effect to these orders.

(9) **Penal notice.** A penal notice shall be endorsed on the order against the First Respondent.

(10) **Costs and liberty to apply.** Having regard to the First Respondent's failure to comply with the direction to value and disclose, the costs of and incidental to the determination of the division shall be borne by the First Respondent in the sum of RM20,000.00. There shall be liberty to apply.

[63] The petition for the division of matrimonial assets is allowed to the extent and upon the terms set out above.

Dated : 3 July 2026

(YA Dato' Sri Raja Segaran A/L S. Krishnan)
(Judicial Commisioner)
High Court Of Malaya
Malacca High Court

(MELAKA)

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