

THE COURT OF APPEAL MALAYSIA IN PUTRAJAYA

(APPELLATE JURISDICTION)

IN THE FEDERAL TERRITORY OF PUTRAJAYA

CIVIL APPEAL NO: W-02(W)-470-03/2024

BETWEEN

HCL

...APPELLANT

AND

1. PTL

2. GEN

...RESPONDENTS

In the High Court of Malaya at Kuala Lumpur

Divorce Petition No.: WA-33-30-01/2021

Between

HCL

...Plaintiff

And

1. PTL

2. GEN

...Defendants



CORAM

**SUPANG LIAN, JCA.
LIM CHONG FONG, JCA.
ALWI BIN ABDUL WAHAB, JCA.**

GROUND OF JUDGMENT

INTRODUCTION

- [1]** This appeal concerns the dissolution of marriage and the consequential issues of maintenance and the division of matrimonial assets.
- [2]** The Appellant, who was the petitioner in the High Court proceedings, is the wife.
- [3]** The First Respondent, who was the respondent in the High Court proceedings, is the husband.
- [4]** The Second Respondent, who was the co-respondent in the High Court proceedings, is the third party.



[5] We heard the appeal on 10th July 2025. Upon hearing the parties, we allowed the appeal in part and also allowed the cross-appeal, with each party bearing his or her own costs.

[6] We now set out the grounds of our decision, in particular on a salient point of law in respect of which we respectfully differed from the learned High Court Judge.

BACKGROUND

[7] The Appellant and Respondent were married and had their marriage registered on 12th July 1997. At the time, the Appellant was already a mother of a two-year-old daughter from a previous marriage. They later have five children of their own all of whom have now attained age of majority.

[8] Shortly after their marriage, the Appellant and Respondent on 9th August 1997 entered into a post-nuptial agreement (“**Agreement**”) which addressed provisions for spousal and child maintenance as well as adultery wherein, amongst others, it is provided that the Respondent is permitted to maintain at least a mistress during the course of the marriage.

[9] The marriage between the Appellant and Respondent eventually broke down irretrievably and the Appellant on 15th



January 2021 initiated divorce proceedings in the High Court including against the Second Respondent for adultery.

IN THE HIGH COURT

[10] After trial, the learned High Court judge ordered the marriage to be forthwith dissolved and made consequential orders therefrom.

[11] However, both the Appellant and the Respondents were dissatisfied with the Decision and hence brought their respective appeal and cross appeal to the Court of Appeal.

FINDINGS OF THIS COURT

[12] Although this appeal emanates from a matrimonial dispute trial, our function here is nonetheless that of review only just like in a civil dispute trial. Thus, we will not ordinarily intervene unless the learned High Court judge is plainly wrong; see ***Ng Hoo Kui & Anor v. Wendy Tan Lee Pheng, Administrator of the Estates of Tan Ewe Kwang, Deceased & Ors*** [2020] 10 CLJ 1 (FC) and ***Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd*** [2012] 1 LNS 1416 (CA).



- [13] Before us, the parties basically re-hashed their respective arguments advanced in the High Court.
- [14] Upon our review, we find that the learned High Court Judge's Decision is not plainly wrong as reasoned in Her Ladyship's comprehensive grounds of judgment ("GOJ") reported as ***HLC v. PTL & Anor* [2024] 4 MLRH 289** save for three matters.
- [15] We will delve on the three matters here only.
- [16] The first matter pertains to whether the Agreement is valid and binding as the matter of law.
- [17] In this regard, the learned High Court Judge held as follows in the GOJ:

"[14] It was essential to acknowledge that marital agreements hold statutory recognition under the Law Reform (Marriage and Divorce) Act 1976 ("Law Reform (Marriage and Divorce) Act"), specifically in s 56, which states:

Section 56 - Rules to provide for agreements to be referred to Court

Provisions may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the



reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit. [Emphasis Added]

[15] Marital agreements have also been referred to in several cases including Lim Thian Kiat v. Teresa Haesook Lim Nee Teresa Haesook [1997] 3 MLRH 466; [1997] 5 CLJ 358, where it was held by James Foong J (as he then was) that the Court had sufficient authority to decide on the validity of a marital agreement.

[16] At this juncture, it was fundamental to emphasise that although it has been said that a marriage contract has to be differentiated from other commercial contracts, the fact of the matter is that marriage is a voluntary agreement between consenting adults. As long as there is no violation of any law, parties to a marriage, therefore, have the right to make decisions about their own relationships and lifestyle preferences according to their unique needs, desires, and circumstances. This includes deciding the terms and boundaries of their marriage. In my view, no external entity, including this Court, should have the authority to dictate the dynamics of a married couple's life within their marriage.

[17] As was aptly put by Lord Phillips in the UK Supreme Court case of Radmacher (formerly Granatino) v. Granatino [2010] UKSC 42:

The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future. [Emphasis Added]

[18] The English legal position towards acceptance of marital agreements has been permissive and receptive in certain circumstances. This could be seen in the earlier cases of M v. M (Pre-nuptial Agreement) 5 [2002] 1 FLR 654 and K v. K [2003] 1 FLR 120.

[19] I am mindful that these English cases may not be binding on Malaysian courts, but s 47 of the Law Reform (Marriage and Divorce)



Act clearly states that this Court may apply principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings. The provision reads:

Section 47 - Principles of law to be applied

Subject to the Provisions contained in this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings. [Emphasis Added]"

[18] Although the Appellant had challenged that the Agreement is void because it was not executed by her voluntarily, the learned High Court Judge nonetheless found otherwise and upheld the validity of the Agreement.

[19] Notwithstanding the foregoing, the central issue before us in this appeal is whether the Agreement is valid and enforceable in light of the alleged contravention of s. 56 of the Law Reform (Marriage and Divorce) Act 1976 (“**the Act**”), which provides as follows:

“Section 56 - Rules to provide for agreements to be referred to Court

Provisions may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.”



- [20] It is common ground between the parties that, to date, no rules have been promulgated under the Divorce and Matrimonial Proceedings Rules 1980 pursuant to s. 56 of the Act.
- [21] Upon examining the GOJ, we find that the learned High Court Judge has seemingly overlooked the fact that such rules have yet to be promulgated; thus, not addressed on this point in the GOJ.
- [22] We note that s. 56 has previously been considered in three cases, namely *Liau Oi Choo v. Johnny Tanujaya Tjioeng* [2022] CLJU 2974, *Ramesh Prasad v. Logambal Gopal* [2013] CLJU 884 and *Lim Thian Kiat v. Teresa Haesook Lim Nee Teresa Haesook* [1997] 3 MLRH 466. While the first two cases did not directly address the validity or enforceability of pre-nuptial or post-nuptial agreements, the third case contains a discussion on the scope of s. 56 of the Act. In that case, James Foong J (as His Lordship then was, later FCJ) held as follows:

"I am not in agreement with Miss Liew's contention. I am of the view that this prearrangement of the "provision may be made by rules of court" is not confined only to the rules and regulations as set out in the Divorce and Matrimonial Proceedings Rules 1980. The "rules of court" must surely include the principle enactment - Rules of the High Court 1980 'RHC', which governs all proceedings brought in the High Court, unless otherwise provided. There is no exclusion of the RHC in the said Act or other legislation relating to divorce proceedings within the jurisdiction of this court. For this, the reference to the "provision may be made by the rules of court" must include those provided in the



RHC if they are not disclosed in the Divorce and Matrimonial Proceedings Rules 1980.”

[23] Respectfully, even if one were to adopt the interpretation advanced in ***Lim Thian Kiat v. Teresa Haesook Lim Nee Teresa Haesook (supra)***, our examination of the Divorce and Matrimonial Proceedings Rules 1980 and Rules of the High Court 1980 (now Rules of Court 2012), reveals that neither contains any provision regulating agreements contemplated under s. 56 of the Act. There remains, therefore, a complete absence of procedural rules governing the reception, consideration, or approval of such agreements within the statutory framework envisaged by s. 56 of the Act.

[24] In our view, s. 56 of the Act is a deliberate legislative provision intended to facilitate the formulation of a procedural framework through subsidiary legislation for the recognition and consideration of pre-nuptial and post-nuptial agreements. The provision recognises that such agreements concern matters of considerable public importance, including the dissolution of marriage, maintenance, and the division of matrimonial assets.

[25] We are unable to accept the proposition that pre-nuptial or post-nuptial agreements may be treated as automatically admissible and enforceable in matrimonial proceedings in the absence of the rules contemplated under s. 56 of the Act.



Historically, such agreements have not been accorded automatic recognition, and their acceptance in certain foreign jurisdictions has evolved within distinct statutory, cultural, and social contexts. It must be appreciated that the social norms and legal traditions prevailing in those jurisdictions differ significantly from those in Malaysia, where societal values remain comparatively more conservative. Thus, in Malaysia, where matters relating to marriage and divorce engage important public policy considerations, the admissibility and enforceability of such agreements ought to be governed by a clear legislative framework rather than by judicial innovation in the absence of enabling rule.

[26] Accordingly, we are of the considered view that the legislative intention underlying s. 56 of the Act cannot be given full effect until the requisite rules are promulgated. In the absence of such rules, there exists no procedural mechanism through which the court may properly scrutinise, evaluate, or endorse agreements of the nature contemplated by the section. We therefore hold that, until rules are enacted pursuant to s. 56 of the Act, pre-nuptial and post-nuptial agreements cannot be regarded as valid, admissible and enforceable for the purposes of matrimonial proceedings under the Act.

[27] We are mindful that s. 56 of the Act employs the word “may” rather than “shall”. However, it is well established that the word “may”, depending on the statutory context and



legislative purpose, may carry a mandatory rather than a merely permissive effect. In this regard, we find considerable guidance in the observations of Lee Swee Seng J (now FCJ) in ***Maya Maju (M) Sdn Bhd v. Putrajaya Homes Sdn Bhd*** [2018] CLJU 124 held as follows with emphasis added by us:

“[59] In as much as the word "shall" may at times convey a directional rather than a mandatory requirement, likewise the word "may" depending on the context may also denote a mandatory requirement rather than a directional one when the option is exercised. See the case of Wasim Beg v. State of Uttar Pradesh AIR 1998 SC 1291 and Re Fettel (1952) 52 SR (NSW)”

[28] The aforesaid principle was subsequently endorsed and applied by the Court of Appeal in ***Apex Communications Sdn Bhd v. Sumber Khazanah Sdn Bhd & Another Appeal (In Liquidation)*** [2026] 2 CLJ 477, where Azimah JCA (now FCJ) undertook a comprehensive analysis of the dual directory and mandatory effect of the word “may”. The relevant passages are reproduced below with emphasis added by us:

“[29] Learned counsel for Apex had primarily relied upon the decision of Lee Swee Seng J (now FCJ) in the case of Maya Maju (M) Sdn Bhd v. Putrajaya Homes Sdn Bhd [2018] CLJU 1245; [2018] 1 LNS 1245; [2018] MLJU 1629. In Maya Maju, His Lordship was put to the similar task to break the interpretative stalemate between two differing interpretations over a largely similar arbitration clause to the arbitration clause in the appeals before us. The arbitration clause in Maya Maju was codified in condition 63 of a condition of contract read alongside a PWD 203 contract. This is largely similar to the instance before us where the subject arbitration clause is contained within the second



subcontract and the arbitration clause is incorporated into the IESB LA. Condition 63 also stipulated that should the contractor be dissatisfied with the decision of the employer's representative ("ER") (in our appeals, the appointed officer), the contractor may refer the matter to arbitration:

...

[31] Astutely (and we are thoroughly in agreement), Lee Swee Seng J (now FCJ) had aptly appreciated that **the use of the 'permissive' word "may" in condition 63 ought not to be taken simplistically from its literal permissive (or optional) meaning.** Thus, His Lordship first remarked that a 'directory' interpretation of the permissive word "may" here would squarely contradict the true 'mandatory' context and spirit of the arbitration clause...

...

[37] **His Lordship (Lee Swee Seng now FCJ) further expanded on an example in which the operative word "may" can carry both a directory (optional) and a mandatory meaning.** His Lordship used s. 418 of the National Land Code ("NLC") in respect of an aggrieved party's 'directory' option to appeal, as well as 'mandatory' compliance with an appeals procedure if the aggrieved the party so chooses to appeal against the decision of a Land Administrator:

[60] By way of example one can refer to section 418 of the National Land Code 1965 which reads:

'(1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator MAY, at any time within the period of three months beginning with the date on which it was communicated to him, APPEAL therefrom to the Court. ...

[61] Surely it is not mandatory for the aggrieved person to appeal to the Court for the decision of the Registrar for instance but if he elects to, he must follow the time frame provided of three months and that time frame is not optional and shall follow the relevant provisions in relating to civil procedure.



[62] I agree with learned counsel for the Defendant that in the event the Plaintiff does not want to resolve the matter in Arbitration, the Plaintiff may choose to let the matter end there and then. It does not in any event, confers a discretionary right for the Plaintiff to either litigate or arbitrate the matter. (emphasis added)

[38] In exact similar fashion, the word “may” in s. 418 of the NLC cannot be interpreted in a manner that the avenue of impugning the decision of the Land Administrator can vary from the singularly stated method of an appeal. It still remains that if the party aggrieved intends to impugn the decision it is mandatory (without any other option) for the aggrieved party to proceed with an appeal and not a judicial review. Thus, the word “may” there similarly does not provide for the option to appeal or the option to file for judicial review. Instead (and squarely similar to the appeals before us), the word “may” prescribes the mandatory procedure of an appeal if an aggrieved party intends to impugn the decision of the Land Administrator. Thus, the actual options stemming from the word “may” there similarly prescribes:

- (i) first option: to accede and accept the decision of the Land Administrator; or*
- (ii) second option: if dissatisfied or aggrieved, file an appeal against the impugned decision of the Land Administrator.*

[39] Thus, alike the effect of the word “may” in the appeals before us, it carries a directory (optional) effect on the decision either to appeal or not appeal and at the same time a mandatory effect on the procedure of appeal to be followed (if the aggrieved party decides to appeal). The same way SKSB is not at liberty to opt for litigation before the court, an aggrieved person under s. 418 of the NLC was not at liberty to proceed with any other remedies (such as a judicial review) save and except the explicitly prescribed appeals procedure.”

[29] Applying the reasoning in *Maya Maju (M) Sdn Bhd v. Putrajaya Homes Sdn Bhd* (supra) and *Apex Communications Sdn Bhd v. Sumber Khazanah Sdn Bhd & Another Appeal (In Liquidation)* (supra), we are satisfied that the word “may” in s. 56 of the Act does not



confer an unfettered discretion upon the court or litigants to disregard the procedural framework contemplated by the legislator. Rather, the provision envisages that agreements of the kind described therein are to be dealt with through subsidiary legislation specifically enacted for that purpose. The permissive wording merely reflects that parties may choose whether or not to invoke the statutory mechanism. However, once such agreements are sought to be relied upon in matrimonial proceedings, the statutory scheme contemplates that the prescribed procedural framework must exist and be complied with.

[30] In the present case, no such rules have been enacted. Consequently, the statutory mechanism contemplated by s. 56 remains incomplete and incapable of operation. It follows that the Agreement relied upon by the parties cannot presently be accorded validity or enforceability under the Act.

[31] Nevertheless, our conclusion regarding the invalidity of the Agreement does not affect the decree of divorce granted by the learned High Court Judge. Although the Agreement may have been relied upon in relation to the First Respondent's adulterous conduct, the learned Judge independently found that the marriage had irretrievably broken down due to irreconcilable differences between the parties. That finding has not been shown to be erroneous and is sufficient, in and of itself, to sustain the order for divorce.



[32] The second matter pertains to the shares in the companies owned by the First Respondent. The learned judge has altered the percentage of the Appellant's entitlement from 25% when orally pronounced to 20% in the fair order without explanation. We find that this is a mistake that ought to be rectified.

[33] The third and final matter pertains to the Respondent's cross appeal on the shares in KT Land Sdn Bhd and Pustaka Seri Intan Sdn Bhd (collectively "**Companies**") amongst other companies owned by the Respondent. In this regard, the learned judge orally pronounced that 25% of the shares in these Companies be transferred to the Appellant. This is a mistake because the learned High Court Judge overlooked that the Companies were acquired by the Respondent prior to the marriage. It is plainly provided in s. 76(5) of the Act as follows:

"76. Power of Court to order distribution of matrimonial assets
(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."

Thus, this mistake must again be rectified.



CONCLUSION

[34] For the foregoing reasons, we therefore partly allowed the appeal and cross appeal by varying the Decision so as to reflect the second and third matters above.

[35] We also ordered that the parties bear their own costs here.

Dated this 10th July 2026

Sgd.

LIM CHONG FONG
COURT OF APPEAL JUDGE



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STATUTE/LEGISLATION REFERRED TO:

s. 56 & s. 76(5) of the Law Reform (Marriage and Divorce) Act 1976.

CASES REFERRED TO:

Ng Hoo Kui & Anor v. Wendy Tan Lee Pheng, Administrator of the Estates of Tan Ewe Kwang, Deceased & Ors [2020] 10 CLJ 1;
Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd [2012] 1 LNS 1416;
Liau Oi Choo v. Johnny Tanujaya Tjioeng [2022] CLJU 2974;
Ramesh Prasad v. Logambal Gopal [2013] CLJU 884;
Lim Thian Kiat v. Teresa Haesook Lim Nee Teresa Haesook [1997] 3 MLRH 466;
Maya Maju (M) Sdn Bhd v. Putrajaya Homes Sdn Bhd [2018] CLJU 124;
Apex Communications Sdn Bhd v. Sumber Khazanah Sdn Bhd & Another Appeal (In Liquidation) [2026] 2 CLJ 477;

