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GETTING TO KNOW RULE 44 OF THE MUSLIM MARRIAGE AND DIVORCE RULES

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Rule 44 of the Muslim Marriage and Divorce Rules (2001 Rev Ed) grants the Syariah Court and the Syariah Appeal Board seemingly unfettered discretion to adopt civil practices and procedures. Through analysis of key decisions including *BC v BD* (2011) 6 SSAR 96, *Kenyo Timur Ery Respati v Mohamed Jamalludin bin Mohamed Shariff* (2006) 4 SSAR 115 and *GM v GN* (2023) 9 SSAR 636, the article explores how careful innovation and clarity and consistency through precedent can be achieved when r 44 is applied as a principled tool to improve access to justice within an overarching legislative framework. The article concludes with recommendations for the continued relevance and application of r 44 demonstrating its value for developing Muslim family law practice and jurisprudence.

Shahrinah **ABDOL SALAM**[1]
LLB (National University of Singapore);
Advocate & Solicitor (Singapore);
Deputy Director of Legal Aid and Director 1 (Legal Representation and Advisory Team), Legal Aid Bureau.

1 Rule 44 of the Muslim Marriage and Divorce Rules[2] ("MMDR") on "Practice and procedure" grants broad discretion to the Syariah Court ("SYC") to adopt civil practices and procedures. This article examines how this provision is interpreted and recommends guidelines for its continued relevance and application.

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2 2001 Rev Ed.

I. Introduction – all matters, and all encompassing?

2 The Muslim Marriage and Divorce Rules 1999 was enacted on 1 August 1999[3] following amendments to the Administration of Muslim Law Act[4] on 1 August 1999[5] ("1999 Amendments"). Prior to that, there were no written rules of procedure governing proceedings in the SYC and the Syariah Appeal Board ("Appeal Board"). In comparison, civil family law proceedings are governed by procedural rules, starting with the Women's Charter (Matrimonial Proceedings) Rules[6] which had been in effect since 10 July 1981.[7] Lawyers practising Muslim family law who were familiar with civil family procedure likely conducted their cases in the SYC and before the Appeal Board as they would in civil courts, except where otherwise regulated administratively.[8]

3 Against this background, r 44 was drafted as a miscellaneous provision that would "catch all" relevant civil family provisions and make them potentially applicable to proceedings in the SYC and the Appeal Board. In 2018, r 44 was amended slightly to include a reference to practice directions issued by the Senior President of the SYC,[9] which at that time were a newly introduced mode of regulating the court's procedures:[10]

> In matters of practice and procedure not expressly provided for in these Rules and practice directions, the registrar, the Court or

3 Under s 145 of the Administration of Muslim Law Act 1966 (2020 Rev Ed).
4 Cap 3, 1985 Rev Ed.
5 The Administration of Muslim Law (Amendment) Bill (Bill No 18/1998) was introduced in Parliament on 20 April 1998 by then Minister for Law S Jayakumar. It was moved to be read for a second time on 20 June 1998 by then Minister for Community Development Abdullah Tarmugi.
6 1990 Rev Ed.
7 This subsidiary legislation is spent with the enactment of the Women's Charter (Matrimonial Proceedings) (Revocation) Rules 2014 on 1 January 2015. The relevant procedural rules were re-enacted in the Family Justice Rules 2014, which is now also spent, and the applicable subsidiary legislation currently in force is the Family Justice Rules 2024.
8 For example, administrative requirements were put in place for attending pre-court counselling and registry matters (such as filing timings for the manual registry) were directed by general court-issued notices.
9 Under s 34A(7) of Administration of Muslim Law Act 1966 (2020 Rev Ed).
10 Muslim Marriage and Divorce Rules (2001 Rev Ed) r 44.

> the Appeal Board may adopt the practice and procedure for the time being adopted in relation to civil proceedings in any court.

4 Rule 44 is unusually broad compared to typical procedural rules. Other than circumscribing the scope of discretion by a broad reference to civil proceedings, there appears to be no other limits for the adoption of civil court's practices or procedures. In comparison, legislative provisions usually specify the scope and manner of discretion. One of the canons of statutory interpretation is that Parliament does not legislate in vain[11] and parliamentary intent can be established by "[a] purposive interpretation [which] simply requires one to approach the literal wording of a statutory provision bearing in mind the underlying purpose of that provision as reflected by and generally in harmony with the express wording of the legislation".[12] In the context of court proceedings under the Administration of Muslim Law Act 1966[13] ("AMLA"), which was operating within its own unique model of Muslim law, the broad drafting of r 44 suggests strongly that parliamentary intent was to allow the SYC and the Appeal Board to determine its own practice and procedure without unnecessarily limiting judicial development with prescribed procedures which had not yet been tested or adopted in the SYC and the Appeal Board.

5 What do the words "practice and procedure" in r 44 refer to, and what does it mean to "adopt" those other practices and procedures?

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11 This is a common law principle on statutory interpretation (see *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43], cited in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]). The Chief Justice explained this rule at [43]:

> The law enacted by Parliament is the text which Parliament has chosen in order to embody and to give effect to its purposes and objects. In line with this, the meaning and purpose of a provision should, as far as possible, be derived from the statute first, based on the provision(s) in question read in the context of the statute as a whole.

12 *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [71(c)], *per* Sundaresh Menon CJ.

13 2020 Rev Ed.

II. Applying r 44 of Muslim Marriage and Divorce Rules 1999 – principles in procedure

6 Rule 44 came into the spotlight recently in several reported decisions. But as far back as 2007 there is at least one reported decision showing how this provision could be applied in SYC proceedings.

A. Filling an unintended procedural gap

7 *Qhairun Nishah bte Mahamood v Raheel s/o Abdul Rashid*[14] was a summons-in-chambers application in which the applicant sought to have her ex-husband liable for a bank term loan in their joint names which was secured by a property held in her sole name. The wife appealed when the SYC dismissed her application because the issue was not raised in the divorce proceedings. The Appeal Board agreed that the doctrine of *res judicata* applied and affirmed the decision, but it also made an *obiter dictum* about the application of r 44.

8 It noted that there was a preliminary issue of procedure – was the application correctly made by way of a summons-in-chambers application, which was clearly the civil procedure for making an application in a pending action or matter? The SYC was empowered to vary its own orders by a new s 52(6) of the AMLA (introduced in the 1999 Amendments), but there was no provision for a summons-in-chambers application or a procedure for variation application. The Appeal Board was of the view that it was opportune for the court to examine "whether the irregularity is fatal to the application" and to address "what a civil court would have done in such cases".[15] But since no arguments were made, it did not deliberate on the issue. Nonetheless, this was an indication that the SYC ought to, in the appropriate case, consider how the practice and procedure of civil proceedings may be adopted in its own proceedings.

14 (2007) 4 SSAR 138.
15 *Qhairun Nishah bte Mahamood v Raheel s/o Abdul Rashid* (2007) 4 SSAR 138 at [25].

B. Innovation in adoption

9 The opportunity came in the form of *BC v BD*.[16] The ex-husband filed an application in 2011 to set aside ancillary orders made in his absence. Conceding that no provision existed in the MMDR for setting aside court orders, both parties submitted that if these were civil proceedings, the applicable provision was O 13 r 8 of the Rules of Court.[17] Relying on r 44, the learned president considered at length civil case authorities and commentary in the *Singapore Court Practice 2009*[18] on how to "adopt the practice in the Family Court and Court of Appeal on the setting aside of default judgments, under O 13 R 8 of the Rules of Court".[19]

10 The court found that the application before it was not even filed in compliance with that civil procedure. It took judicial notice that an application in civil proceedings for setting aside is to be made on its merits (where it is a regular judgment) or by first setting aside the order for substituted service and then applying to set aside the order (on the basis that it was an irregular judgment). However, in this case, there was no application to set aside the order for substituted service even though the husband's application was premised on his claim that the substituted service order was obtained by "misrepresentation" – it was a bare application to set aside the ancillary orders in the decree for divorce. Considering the position under civil procedure was a principled innovation by the court to fill a gap in the MMDR.

11 Rather than throwing out the husband's application, the court considered the preliminary issue of whether the substituted service order was obtained regularly. Having decided it was, it applied civil law principles on setting aside regular judgments (citing *Mercurine Pte Ltd v Canberra Development Pte Ltd*)[20] and held that the ex-husband had not established a *prima facie* defence to the wife's claim for custody or for the matrimonial flat because

16 (2011) 6 SSAR 96.
17 2006 Rev Ed.
18 *Singapore Court Practice* (Jeffrey Pinsler SC, gen ed) (LexisNexis, 2009).
19 *BC v BD* (2011) 6 SSAR 96 at [5].
20 [2008] 4 SLR(R) 907.

he had failed to show a "triable or arguable issue".[21] This case illustrates the complexities of adopting civil procedure – the court and counsel may be aware of it, but without understanding the overarching legislative framework in the Rules of Court[22] or the fundamental civil principles, there can be no proper adoption of civil procedures.

C. Clarity in approach

12 The most definitive case for the adoption of civil procedure under r 44 is *Kenyo Timur Ery Respati v Mohamed Jamalludin bin Mohamed Shariff*[23] ("*Kenyo Timur*"). This is a case in which the Appeal Board held the doctrine of *forum non conveniens* applied to SYC proceedings and adopted civil procedure to govern the stay of application proceedings. The parties married in Jakarta and subsequently registered their marriage at the Registry of Muslim Marriages ("ROMM"), Singapore. The wife applied for divorce in the SYC and four months later, the husband applied for divorce in the Religious Court of Central Jakarta. At the divorce hearing, the husband made an oral application for a stay of proceedings which was granted. The wife appealed.

13 The Appeal Board, affirming the decision on the stay of proceedings, decided that civil law principles of *forum non conveniens* and *lis alibi pendens* were applicable and could be adopted because r 44 empowered it to do so: "There is no provision in AMLA on the subject of stay of proceedings other than s 36 which does not apply to this case. As such this Board would look at the practice of civil courts when dealing with such issue for assistance."[24] Implicit in the decision is that stay of proceedings is a matter of practice and procedure which falls within the ambit of the provision.

21 *BC v BD* (2011) 6 SSAR 96 at [41].
22 2006 Rev Ed.
23 (2006) 4 SSAR 115.
24 *Kenyo Timur Ery Respati v Mohamed Jamalludin bin Mohamed Shariff* (2006) 4 SSAR 115 at [18].

D. Jurisdiction and power are not matters of procedure

14 It was years later that the SYC and the Appeal Board had another opportunity to consider and report on the application of r 44 in relation to a stay of proceedings application, and this time, the reasoning was made explicit. In *GM v GN*,[25] parties were South African citizens who contracted a Muslim marriage followed by a civil marriage in community of property[26] in South Africa. In March 2022, the wife filed an application in the High Court of South Africa for leave to institute an action for divorce and ancillary relief in respect of the civil marriage. She obtained leave and subsequently filed the action on 6 April 2022. The husband filed a divorce application in the SYC on 25 April 2022 and, on 6 July 2022, he filed an action in the South African court asserting that the South African court lacked jurisdiction to determine the divorce. On 7 July 2022, the wife filed an application in the SYC to stay the divorce proceedings.

15 The learned senior president reasoned that, "the determination on whether proceedings should be stayed involves a consideration … on whether it should be exercising the jurisdiction it already has"[27] and that further, "the exercise of discretion by the Court to decline the exercise of its jurisdiction is a matter of practice and procedure … [and] rule 44 allows the Court to adopt 'the practice and procedure for the time being adopted in relation to civil proceedings in any court'".[28] The court disagreed that the SYC does not have power to grant an order for stay of proceedings (by reason of *forum non conveniens*) because there is no statutory provision in the AMLA conferring it such power. In distinguishing the present case from its earlier decision in *ER v ES*,[29] which involved an application for a Mareva

25 *GM v GN* (2023) 9 SSAR 636; and before the Syariah Appeal Board, *GM v GN* (2024) 9 SSAR 645.

26 A "marriage in community of property" is a marital property regime whereby all assets and liabilities are held as "joint estate" and shared equally between the spouses (see Matrimonial Property Act 88 of 1984, Chapter III "MARRIAGES IN COMMUNITY OF PROPERTY", enacted in the Republic of South Africa).

27 *GM v GN* (2023) 9 SSAR 636 at [5].

28 *GM v GN* (2023) 9 SSAR 636 at [7].

29 (2021) 8 SSAR 389.

injunction, the court said that a Mareva injunction "is a form of equitable relief or remedy",[30] whereas a decision to stay proceedings within the court's jurisdiction is not. The Appeal Board agreed.

16 *ER v ES* was a case in which the wife, a Singapore citizen, who had filed for divorce against her Moroccan husband, applied for a Mareva injunction in Singapore. Claiming that the husband would remove his assets from Singapore, her application was for a "freezing order" until the conclusion of the proceedings. Surprisingly, her application was not premised on any statutory power in the AMLA or the MMDR. She argued that since there is no express provision in the AMLA that confers upon the SYC the jurisdiction or power to make an order for Mareva injunction, the SYC has such power because SYC "should have the same powers as the Family Justice Courts".[31] The wife did not base her argument on r 44 either, though the court inferred that this was what she needed to do to address the argument that "where the rules are silent, SYC can exercise the same jurisdiction as other courts".[32]

E. Understanding the legislative framework beyond procedure

17 Though novel, the wife's arguments lacked an appreciation of the legislative framework and the constitution of the SYC. The court in *ER v ES*, held that as a "creature of statute", it was "only seised of the jurisdiction that [had] been conferred upon it by relevant provisions in the legislation creating it".[33] Since there is no provision in the AMLA similar to the Family Justice Act 2014[34] or the Women's Charter 1961,[35] the SYC, unlike the Family Justice Courts, does not have power to grant an order for the interim preservation of property by injunction. The power to

30 *GM v GN* (2023) 9 SSAR 636 at [5].
31 *ER v ES* (2021) 8 SSAR 389 at [14].
32 *ER v ES* (2021) 8 SSAR 389 at [23].
33 *ER v ES* (2021) 8 SSAR 389 at [13], citing *Ng Chye Huey v Public Prosecutor* [2007] 2 SLR(R) 106 at [17].
34 2020 Rev Ed. Section 26(2)(*b*) of the Family Justice Act 2014 (2020 Rev Ed), read with section 18 of the Supreme Court of Judicature Act 1969(2020 Rev Ed) and paras 5(*a*) and 5(*c*) of its First Schedule.
35 2020 Rev Ed. See s 132 of the Women's Charter 1961 (2020 Rev Ed).

grant a Mareva injunction was not a procedural issue but a form of equitable relief or remedy outside the scope of r 44. In other words, without jurisdiction and power, there can be no legal basis for prescribing a procedure to exercise such power.

18 The distinction between jurisdiction and powers is not academic. In *Muhd Munir v Noor Hidah*,[36] the High Court endorsed the following analysis:[37]

> … there is a distinction between the jurisdiction of the court and its powers, and this suggests that the word 'jurisdiction' is used to denote the types of subject matter which the court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

19 The court in *ER v ES* noted that had Parliament intended to give the SYC such power, it would have been done by way of primary legislation, *ie*, the AMLA.[38]

20 The court also held that the SYC did not exercise "inherent jurisdiction". This issue has been laid to rest by the Court of Appeal in *TMO v TMP*[39] which held that where a matter did not fall within the jurisdiction of the SYC, it was the High Court that retained residual jurisdiction over the matter. Since ss 35 and 52(3) of the AMLA do not provide jurisdictional basis for injunctive relief, the SYC cannot grant it. The Appeal Board agreed that the power to grant injunctive relief is not a matter of practice and procedure and not intended to be covered by r 44.

F. Upholding Muslim values in the development of the law

21 Rule 44 has also been invoked by the Appeal Board pertaining to matters of procedure of the ROMM. The case of

36 [1990] 2 SLR(R) 348.
37 *Muhd Munir v Noor Hidah* [1990] 2 SLR(R) 348 at [19], citing the Malayan Court of Appeal in *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1, *per* Thomson CJ.
38 *ER v ES* (2021) 8 SSAR 389 at [25].
39 [2017] 1 SLR 585 at [25]

Abdul Jabar bin Johar v Saripah bte Latiff[40] involved the registration of *rujuk* (reconciliation), or revocation of divorce. The husband had pronounced *talak* on 29 November 2012 and on the same day, he and the wife reported it to the SYC by way of an administrative process.[41] On 5 January 2013, the husband pronounced *rujuk* as parties had reconciled and wished to remain married, and two days later, they reported this to the SYC. On 21 May 2013, at the divorce hearing, the SYC recorded the *talak* given on 29 November 2012 and issued a decree of divorce[42]. However, their application to register the reconciliation and revocation of divorce with the *Kadi* at the ROMM was rejected because they were out of time. Under s 102(2)(*a*) of the AMLA, the application for revocation of divorce must be made within seven days of the revocation, and further, the three-month discretionary period under s 107 of the AMLA had been exceeded in this case.

22 The parties appealed. The Appeal Board held that the predicament of the parties was to be resolved by applying civil procedure on abridgment of time. It regarded the "power to enlarge or abridge the time prescribed by any written law for doing any act",[43] provided for in s 7 of the Supreme Court of Judicature Act,[44] as a matter of procedure that could be adopted for ROMM proceedings. Underlying this, as the Appeal Board made very clear by a reference to the Holy Qur'an, was the necessity to avoid injustice toward the parties and the promotion

40 (2013) 6 SSAR 323.

41 This administrative process was then known as "*talak declaration* process".

42 Under Muslim law, where the husband has pronounced *talak* and subsequently he and his wife reconciled during the wife's *iddah* period, the decree of divorce records the divorce, and it is registered in the Register of Divorces under s 100(3) of the Administration of Muslim Law Act 1966 (2020 Rev Ed). However, there are no ancillary orders to be made because the reconciled parties are continuing in their marital relationship. A husband may divorce his wife up to three times, but he may not reconcile with her (during *iddah* period) after the third pronouncement of *talak*, nor can he remarry her (after the *iddah* period has passed) unless the wife marries another man, consummates that marriage and is divorced by him. A revocation of divorce must be registered in the Register of Revocation of Divorces under s 100(2) of the Administration of Muslim Law Act 1966 (2020 Rev Ed).

43 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), First Schedule, para 7.

44 Cap 322, 2007 Rev Ed.

of public interest to preserve a functioning marriage ("interest of the Muslim *ummah*").[45]

III. Recommendations – an organic approach, in a principled manner

23 The cases examined reveal three critical principles to guide the proper application of r 44.

24 First, understanding fundamental legal principles for careful innovation. Rule 44 does not substitute express rules of practice and procedure, nor should it be applied carelessly to "plug the gap" in a way that would be inconsistent with legislation or the underlying civil law doctrine. The contrast between *GM v GN* (proper procedural adoption for stay applications) and *ER v ES* (impermissible jurisdictional expansion for Mareva injunctions) illustrates this critical boundary. Rule 44 must be applied with well-reasoned legal arguments, as can be seen from *BC v BD* and *GM v GN*.

25 Second, clarity and consistency through precedent. Where the SYC and the Appeal Board have adopted an aspect of civil practice and procedure, and applied it to a case before it, that application should hold for similar-fact cases. This requires, as a matter of best practice, for decisions on r 44 to be systematically recorded and reported to build coherent jurisprudence. The progression from *Kenyo Timur* to *GM v GN* demonstrates how case development can clarify and strength procedural adoption.

26 Third, prompt legislative and administrative updates. The legislative rules or the administrative rules in the court's practice directions should be updated at the earliest opportunity to reflect the clear adoption of civil procedures. Amendments to the MMDR in 2018 and 2022 (which introduced new rules such as rr 24A and 24B on the filing of affidavits and r 40A which puts beyond doubt that an appeal does not operate as a stay of proceedings on the

45 *Abdul Jabar bin Johar v Saripah bte Latiff* (2013) 6 SSAR 323 at [27].

order or decision, or on its enforcement) exemplify an organic but principled approach to rule development.

27 The value of r 44 lies in its deliberate legislative design to enable the judicial development of practice and procedure within the substantive Muslim family law space. It is for lawyers and law reformers to ensure that the procedural development is coherent and compatible with the overarching legal framework and principles, thus transforming r 44 from a gap-filling provision into a tool for the principled development of Muslim family law practice.