

## 23. MUSLIM LAW

**MOHAMED FAIZAL** Mohamed Abdul Kadir SC  
*LLB (Hons) (National University of Singapore), LLM (Harvard);  
Attorney and Counsellor-at-law (New York);  
Deputy Chief Prosecutor, Crime Division, Attorney-General's Chambers;  
Member of the MUIS Appeal Board.*

23.1 It is sometimes suggested that procedural rules must never be used as a trap for the unwary, such that they end up hindering the ends of justice or have the effect of allowing substance to become subservient to form. While such an unexceptional statement of principle is hard to disagree with, it is also similarly axiomatic that such rules of procedure are often designed precisely to meet the ends of justice by allowing for the fair resolution of disputes. In order to balance these countervailing considerations, which, at times, can lean towards coming to diametrically opposed conclusions, the courts have been careful not to unthinkingly allow parties to deviate from procedural norms, for such non-compliance may, at times, themselves potentially hasten an unfair outcome that is at odds with notions of fair play and equity.

23.2 Appeal No 11 of 2018 reflects an application of these trite principles in the Muslim law context for proceedings under the Administration of Muslim Law Act<sup>1</sup> before the Syariah Court and the Appeal Board.

23.3 Appeal No 11 of 2018 involved an appeal from a decision of the Syariah Court on the division of matrimonial assets pursuant to the dissolution of a Muslim marriage, with the primary asset between the parties being a fully-paid for Housing and Development Board (“HDB”) flat which served as the matrimonial home (“the matrimonial flat”) for which the two parties and their son (“the intervener”) were tenants in common with equal shares. Significantly, for reasons that will become apparent at a later part of this chapter, the matrimonial flat had been bought just a few years prior to the proceedings and the five-year minimum occupation period (before such flat could be sold on the open market) had not yet been satisfied.<sup>2</sup>

23.4 The respondent and appellant had been married for close to three decades before the former commenced divorce proceedings in the

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1 Cap 3, 2009 Rev Ed.

2 Appeal No 11 of 2018 at [3].

Syariah Court.<sup>3</sup> In her original case statement, in which the respondent contended that her application was hastened by a lack of understanding between the parties, no claim was made on any of the appellant's assets, or for any maintenance. For completeness, it should be noted that the case statement represents a form of pleading or a formal statement which states the position of the party in the divorce proceedings, including setting out their ancillary claims in such proceedings.<sup>4</sup> Subsequently, the appellant filed an amended case statement ("the amended Case Statement") stating, *inter alia*, that there had been a loss of affection between the parties, lack of maintenance by the husband, and her having met another individual who had given her the happiness she sought. Again, no claim was made on the appellant's assets, though she had proposed that her daughter buy over her one-third share of the flat, with the respondent noting that the appellant had sacrificed for the family during the course of the marriage and in view of the fact that it was anticipated that the respondent's children would stay with the appellant. Subsequently, a *second* amendment was made to the case statement, in which the grounds for divorce were varied, this time alleging, *inter alia*, infidelity on the part of the appellant and lack of affection. Once again, no claim had been made in respect of the matrimonial home, any of the husband's assets or for maintenance.

23.5 In her affidavits in support of her case statement, however, the respondent advanced various allegations of improper conduct by the appellant, and, *for the first time, sought to claim various heads of maintenance as well as some share of the matrimonial assets, including the matrimonial flat and the appellant's Central Provident Fund ("CPF") moneys.*<sup>5</sup> In response, the appellant highlighted that quite apart from the fresh allegations being untrue (countering that the genesis of the matrimonial troubles, *inter partes*, was the result of the fact that the respondent had, as she herself conceded in the amended Case Statement, engaged in infidelity), the position taken by the respondent in the affidavits on the matter of her claims on the matrimonial assets were in stark contrast to her position in the amended Case Statement, in which no claim had been made on any of the appellant's assets or the matrimonial flat.<sup>6</sup>

23.6 At the hearing in the Syariah Court, for the first time, the respondent intimated a desire to effect a further amendment to her case statement in order to render it consonant with the stance taken in her

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3 Appeal No 11 of 2018 at [4].

4 Appeal No 11 of 2018 at [28].

5 Appeal No 11 of 2018 at [8]–[18].

6 Appeal No 11 of 2018 at [10]–[11].

affidavits.<sup>7</sup> In spite of objections from the appellant that she was bound by her pleadings (as set out in the three case statements that she filed), the Syariah Court summarily allowed such amendments through an oral application, without requiring the respondent to refile such case statement and without giving the appellant the opportunity to file any response (by way of affidavit). The parties then made their arguments on the substantive matters before the Syariah Court.

23.7 After hearing the parties, the Syariah Court made an order, *inter alia*, requiring the appellant to pay the respondent maintenance, splitting the proceeds from the sale of the matrimonial flat 70:30 in favour of the respondent, and requiring the appellant to transfer \$25,000 of his CPF moneys to the respondent.<sup>8</sup> On the matter of its decision not to require the parties to file any revised case statements or supporting affidavits before making such orders, the Syariah Court reasoned as follows:<sup>9</sup>

[T]o require [the respondent] to make further amendments to her pleadings would be *unnecessary and a mere formality*. In this situation where [the respondent] has changed her mind and has provided adequate notice to [the appellant] before the hearing stage, [the Syariah Court] did not think it was unfair in the procedure or in the manner in which [the Syariah Court] allowed her to make those claims. [emphasis added]

23.8 The appellant appealed on the basis of, *inter alia*, the respondent's failure to plead for the orders she had been given by the Syariah Court.

23.9 The Appeal Board allowed the appeal. The Appeal Board intimated its disagreement with the contention on the part of the Syariah Court that any amendment to the pleadings would have been "unnecessary and a mere formality", noting that a party would not be allowed to seek a relief or rely on essential material facts that were not set out in their pleadings.<sup>10</sup> It noted that, as was the case in civil law proceedings,<sup>11</sup> there was a need to balance the desire to amend such pleadings against the justice of the case. As there was no evidence proffered by the respondent that she had made a mistake in the case statements that she had filed, there was no basis to allow for any amendments and to do so would be to give her an undeserved second bite of the cherry.<sup>12</sup>

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7 Appeal No 11 of 2018 at [19].

8 Appeal No 11 of 2018 at [22]–[27].

9 Appeal No 11 of 2018 at [21].

10 Appeal No 11 of 2018 at [30]–[31].

11 See, eg, *Parakou Shipping Pte Ltd v Liu Cheng Chan* [2016] SGHC 48 at [13].

12 Appeal No 11 of 2018 at [31]–[35].

23.10 In any event, the Appeal Board noted that, on the facts, even if the pleadings had been properly amended, it would not have been minded to allow the amended claims for maintenance and the CPF moneys to have succeeded. In the Board's view, the conclusion of the Syariah Court on these fronts would have resulted in the respondent being unjustly enriched by the divorce proceedings.<sup>13</sup> This was especially so taking into account the parties' respective financial standing and the needs of both parties. In particular, the Appeal Board noted that the respondent had more CPF moneys than the appellant and that the latter would have care and control of their minor child.

23.11 On the matter of the order made by the Syariah Court *vis-à-vis* the sale of the flat, the Appeal Board noted that the order could not have been legally made as a sale could not be effected of such a property for which the minimum occupation period requirement had not been satisfied.<sup>14</sup> While the Appeal Board opined that the fairest outcome in this regard would have been for the respondent's interest to be transferred to the appellant and their son after a refund of the wife's CPF moneys used to purchase the matrimonial home, as the appellant had no financial means to effect such a refund of the moneys, the Appeal Board was constrained to order the flat to be surrendered to HDB.<sup>15</sup>

23.12 Appeal No 11 of 2018<sup>16</sup> should not be seen as standing for the proposition that belated amendments will *ipso facto* be rejected. Instead, as the Appeal Board took pains to highlight, two questions ought to be asked: first, whether such amendments would cause prejudice the other party in a way which cannot be compensated financially, and secondly, whether the amendments amount to giving a second bite of the cherry. While seemingly adopting the pronouncement in the civil sphere that "it is harder to say that justice favours allowing an amendment when it is sought in the middle of trial", the Appeal Board did not nonetheless close the door to such a possibility, if the party seeking such an amendment had a "compelling reason" for such an application. Appeal No 11 of 2018 therefore quite rightly emphasises the point of the need to ensure that the justice of the case would be met by allowing an amendment, while highlighting that parties do themselves no favours by seeking to effect such belated amendments. That said, this did not mean that one ought to lose sight of trying to do justice on the substantive case before any tribunal – as the Appeal Board highlighted, *even if the pleadings (that is, the case statement) had been properly amended*, it would still have been

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13 Appeal No 11 of 2018 at [36]–[37].

14 Appeal No 11 of 2018 at [38].

15 Appeal No 11 of 2018 at [39].

16 See para 23.2 above.

unconvinced, on the matter of the merits of the case, that it would have been just or appropriate to allow the orders made by the Syariah Court on maintenance and the CPF moneys to stand in view of the circumstances and financial standing of both parties.