

IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM

CIVIL APPEAL NO. 15 OF 1998

SIA LEONG KUAN

V

LAU HUA KUOK

Before : FUAD, P.; HUGGINS, J.A. AND SILKE, J.A..

Date of Hearing : 4 NOVEMBER, 1999.

Date of Judgment : 4 NOVEMBER, 1999.

J U D G M E N T

FUAD, P.:

We have before us Madam Sia Leong Kuan (“the wife”) who was at one time married to Mr Lau Hua Kuok (“the husband”). The matter we have to consider arose in this way. On 9 February 1998 the husband filed a petition for divorce. The petition, notice of proceedings and other necessary documents were served personally on the wife on 17 March 1998. On 6 June 1998 the Chief Justice granted the husband a decree nisi, the wife not having appeared. He made various orders about the custody of the children, access, maintenance and the matrimonial property.

Later the same morning the wife appeared before the Chief Justice and informed him that she had been waiting outside the Court. The Chief Justice accepted this explanation for her absence and revoked the decree nisi he had just given. He noted that no Answer had been filed in the time required, and instructed her to put in an Answer

within 14 days. The wife did not file the Answer within the time allowed and this was noted by the Registrar, who fixed the petition for hearing.

On 12 October 1998 the wife came before the Registrar and applied for leave to file her Answer out of time. The Registrar refused her application. The next thing that happened was that on the 11 November 1998 the Chief Justice granted the husband a decree nisi and made various ancillary orders. The wife was not present on that day.

On 10 December 1998 the solicitors, who until then had been representing her, filed a Notice of Appeal but the Notice was never served on the other side. The husband obtained an order making the decree nisi absolute on 29 December 1998. On 13 January 1999 the solicitors ceased to act for the wife, by leave of the Court.

On 24 May 1999 the wife filed an affidavit saying, inter alia, that she did not agree with the Chief Justice's decision because she was not in Brunei when the decree nisi was given; she was not informed of the hearing date of the 11 November by her solicitors; and she never wanted a divorce because she had done nothing wrong. She denied all her husband's allegations and she asked for various other orders. The Registrar wrote to the wife on the 7 October 1999 saying that her application for an extension of time to file her Petition of Appeal would be heard by the Chief Justice on the 13 October. It seems that her affidavit was treated as an application for this purpose.

On 13 October 1999 the wife did not appear before the Chief Justice and her application was dismissed. On the 16 October the wife called on the Chief Justice in his chambers and explained why she had not been present on the 13 October - the letter informing her of the date of the hearing had been received by her after that day had passed. The Chief Justice told the wife that he would not alter his decision but that she was free to renew her application to the Court of Appeal if she so wished.

Before us today, the wife has shown us a draft Petition of Appeal which presumably she would file if she were given leave to file it out of time. In that Petition

she seeks to challenge the maintenance order, the children's custody order and the order relating to the matrimonial property. However she also produced a letter (which was translated to us) in which she seems to maintain her position that the decree nisi should never have been given. As we understand her, she added that if the Court felt bound to uphold the divorce then she wished to challenge the orders relating to her maintenance, the custody of the children, and the family property.

We have to say that we have the greatest possible sympathy for Madam Sia Leong Kuan but this does not entitle us to ignore the true legal position. The fact is that over a year ago she was refused leave to file an Answer out of time and no appeal was made against the Registrar's decision. We know that she is puzzled about what has taken place. She does not understand the relevant, rather complicated, law. However, there is nothing we can do to help her. We therefore dismiss her application to file a Petition of Appeal out of time to enable her to appeal against the orders made by the Chief Justice on 11 November 1998.

DATO PADUKA KUTLU TEKIN FUAD
President, Court of Appeal

SIR ALAN HUGGINS
Judge, Court of Appeal

WILLIAM JAMES SILKE
Judge, Court of Appeal

Appellant

In Person

Mr Andrew Ong

For Respondent