

L v C

[CaseAnalysis](#)
| [2018] MLJU 1053

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Malayan Law Journal Unreported

HIGH COURT (SIBU)

LIM HOCK LENG JC

DIVORCE PETITION NO SBW-33-10/1 OF 2018

8 August 2018

Wee Wui Kiat (Battenberg & Talma Advocates) for the petitioner.
Wong Ee Ping (Yap Hoi Liong & Co Advocates) for the respondent.

Lim Hock Leng JC:

GROUND OF DECISION

[1]The Wife Petitioner and the Husband Respondent were married in Sibu in 1994.

[2]From that marriage, they have 2 children.

[3]The Wife Petitioner filed the Divorce Petition on 31 January 2018, subsequent to which she sought an exemption under [section 106\(1\)\(vi\)](#) of the [Law Reform \(Marriage and Divorce\) Act 1976](#) by way of a Notice of Application which was filed on 14 June 2018. She wanted to be exempted from referring her matrimonial problems to a conciliatory body.

[4]The Husband Respondent opposed the Wife Petitioner's application.

[5]Preliminary objections were raised. It was contended that the application shall be by way of an Originating Summons, not by way of a Notice of Motion. It was also contended that the application ought to have been made prior to the filing of the Divorce Petition.

[6]Both preliminary objections are dismissed.

[7]In respect of the preliminary objections, the Court is in agreement with the decision in *C v A* [1998] 4 CLJ 38 where R. K. Nathan J, having considered the manner in which evidence is to be adduced during the proceedings, held: -

"Does this mean that if a petitioner intends to rely on proviso (vi) to [s. 106](#), the petitioner must first file an originating summons stating facts which the court ought to rely on, and upon being so satisfied, to give leave to the petitioner to then file a petition. I do not think so. It is not the intention of Parliament to cause hardship to litigants and more so in divorce matters where it might become necessary for parties to put an end to their marriage as soon as possible, so as to start their lives afresh. It is my judgment that if a petition is filed and it becomes necessary for the petitioner to comply with the proviso (vi) to [s. 106](#), so long as a preliminary objection is taken by the respondent, it is sufficient for the petitioner to either give oral

....

or affidavit evidence to satisfy the court that there are exceptional circumstances.”

[8]The reasoning puts paid to the preliminary objections based on the mode of, and the stage at which the evidence is to be adduced.

[9]Returning to the mainstream narrative, the pivotal issue is whether the Wife Petitioner is able to show exceptional circumstances which render reference to a conciliatory body impracticable.

[10][Section 106\(1\)](#) provides : -

“No person shall petition for divorce, except under sections 51 and 52, unless he or she has first referred the matrimonial difficulty to a conciliatory body and that body has certified that it has failed to reconcile the parties:

Provided that this requirement shall not apply in any case-

(vi) where the court is satisfied that there are exceptional circumstances which make reference to a conciliatory body impracticable”

[11]There was a robust exchange of affidavits : -

- (1) Affidavit in Support affirmed by the Wife Petitioner (enclosure 21).
- (2) Affidavit in Opposition affirmed by the Husband Respondent (enclosure 22).
- (3) Affidavit in Reply affirmed by the Wife Petitioner (enclosure 23).
- (4) Affidavit in Reply 2 affirmed by CTK (the son, whose full name need not be mentioned for the purposes of these proceedings) (enclosure 24).
- (5) Affidavit in Opposition II affirmed by the Husband Respondent (enclosure 25).
- (6) Affidavit in Opposition III affirmed by the Husband Respondent (enclosure 26).
- (7) Affidavit in Reply 2 affirmed by the Wife Petitioner (enclosure 28).

[12]The Wife Petitioner’s various allegations of abusive behavior, supported by the son’s affidavit, and lack of financial contributions on the part of the Husband Respondent are repeatedly denied.

[13]Depending on who is to be believed following a trial, the Husband Respondent had either stopped returning to the matrimonial home since 2016 (by the account of the Wife Petitioner) or was prevented from returning to the matrimonial home since 2017 (by his account).

[14]Going by high and trite authority, the Court cannot embark on a scrutiny of the affidavits in detail. There would otherwise be a trial based on the affidavits. As such, the Wife Petitioner is unable to establish exceptional circumstances which would render the requisite reference to a conciliatory body impracticable. She is required to refer her matrimonial problems to a conciliatory body, in keeping with the main thrust of **section 106**.

[15]The Wife Petitioner’s application is dismissed with costs of RM1,000.00 subject to payment of the allocatur fee.