

HONG KONG / JUDGMENT

KAR (aka RA, KA) v. NSL

[2023] HKFC 210

COURT

Family Court

DECIDED

20 October 2023

CASE / FILE NUMBER

FCMC11862/2021

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FCMC 11862/2021

[2023] HKFC 210 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 11862 OF 2021

BETWEEN KAR Petitioner (also known as RA, KA) and NSL Respondent

Coram: Deputy District Judge W.Y. Ho in Chambers (Not open to Public) Date of Hearing: 28 April
2023 Date of Handing Down Judgment: 20 October 2023

JUDGMENT

(Maintenance Pending Suit & Legal Costs Provision)

This is the Petitioner's application for the following orders: Maintenance pending suit and interim periodical payments in the total sum of HK\$40,500 per month; Provision for legal costs at HK\$55,000 per month; and The Respondent continue to pay the mortgage payments, utility fees, management fees, domestic helper fees, school fees and educational expenses of the child.

BACKGROUND

The parties were married on 23 July 2008. The divorce petition was filed on 22 November 2021. As at the date of the hearing, the Petitioner is 39 years old and the Respondent is 45 years old. Both have received tertiary education. They have one daughter aged 12 as at the date of this decision. On 7 June 2022, the Petitioner filed a summons requesting for leave to permanently remove the child from Hong Kong to Hyderabad, India. By reason of the Respondent's objection to the

removal summons, I called for a social investigation report and an international social investigation report (ISIR). On 22 September 2022, parties agreed leave be granted to the Petitioner to permanently relocate the child to India on or before April 2023. Parties further agreed on various holiday access and general access matters. DISCUSSION I do not intend to repeat the trite principles to be considered in an application for maintenance pending suit and/or interim periodical payments. Suffice to say, I am aware of and have considered the general principles laid out in the case of *HJFG v KCY* [2012] 1 HKLRD 95. Furthermore, I do not intend to repeat the well-known principles relating to legal costs provision as set out in the case of *Currey v Currey* [2007] 1 FLR 946. I do not intend to repeat each and every submission made by the parties in this decision. Suffice to say, I have considered parties submissions in reaching my decision, and where appropriate, I shall deal with those salient submissions in this decision. Backdating the provision of maintenance Mr. Marwah, counsel for the Petitioner, submitted the provision of interim maintenance and maintenance pending suit should be backdated to the date of petition. I note that despite the Petitioner's claim of impecuniosity since November 2021, the Petitioner stated in her 2nd Affidavit she was able to draw a monthly salary of HK\$59,000 from the Respondent's company until January 2022. Though she claims she had been placed under financial pressure since November 2021 and that her savings were substantially depleted from April 2022 onwards, her application for interim maintenance and maintenance pending suit was not made until 20 September 2022. Having considered the evidence, I am only prepared to backdate any interim maintenance provision to the date of the present application. The Petitioner's and Child's Reasonable needs The Petitioner sets out, in her updated Form E, her monthly expenses in Hong Kong and her estimated monthly expenses in India. Mr. Marwah confirmed that since the child and Petitioner have not yet relocated to India, the India expenses are estimates only. Counsel further confirmed his latest instructions were that the Petitioner plans to relocate by June 2023. Estimated living expenses in India Having considered the Petitioner's estimated total monthly expenses in India (including that of the child's expenses) of HK\$101,200, I find this estimated sum to be a gross exaggeration. The investigation officer of the ISIR (the investigation officer) stated at page 10 of the report that a monthly earning of RS 6.5 lakh (equivalent to approximately HK\$62,000) is considered to be good enough to live in Hyderabad and this sum as a family earning is considered a monthly income belonging to the upper middle class income group in India. The total sum claimed by the Petitioner at HK\$101,200 is more than 60% above the average upper middle class family income in India. This does not commensurate with her previous standard of living in Hong Kong, which can only be described as middle class by Hong Kong living standards. I find it very difficult to believe the estimated expenses claimed by the Petitioner are reasonably necessary to meet her financial needs in India. The Petitioner's estimated monthly school fees of HK\$7,500 per month in India is wholly unsupported even on her own evidence. According to an email from the chosen school, the estimated school fees of the child for the academic year only amounts to RS 520,400 (which is equivalent to approximately HK\$49,000). This is equivalent to approximately HK\$4,000 per month. In so far as the other estimated India expenses, Mr. Marwah concedes the Petitioner does not have any documentary proof to support the estimated sums as claimed in the Form E. The Petitioner merely produced a utility bill, a car rental quotation, and a friend's rough estimate as

sent by a phone message. I find the purported proof submitted to be unhelpful and unsupportive of the estimated sums claimed in the Petitioner's Form E. There is no information as to the size of the household the purported utilities proof and the friend's purported estimate expenses relate to. The car rental quotation is irrelevant as the Petitioner's family told the investigation officer the family has 3 cars at their disposal, of which the Petitioner could use at any time. There is clearly no need for the Petitioner to rent a car when she gets to India. I note from the ISIR the Petitioner's family is considered wealthy by India's standards. The Petitioner's parents are highly regarded in their community and the Petitioner's brother is a successful businessman who owns a few companies. According to the ISIR, the Petitioner's family lives in a posh locality in the city and the house is approximately 2400 square feet. Housekeeping is done by the maids and the family has 3 cars at their disposal. The ISIR states at page 8 of the report: Mr Axxxx said they are an extremely private family and would like to keep it that way. The family has all the amenities required to live the good life. The family has many running businesses and it is up to his sister Axxxxx, what she wants to do after her return, the family is upon [sic] to have her in the current business, or if she decided to start something of her own, and the family would support her. The investigation officer concluded at paragraph 8 of the conclusion section of the ISIR: The living standards of the family can be regarded as that of an upper middle class family with all basic and necessary items in the house. The family is clearly supportive of the Petitioner's move back to India, and have informed the investigation officer the Petitioner and the child would be staying with them in their current house. The family plans to move into a bigger house of which one entire floor will be for the Petitioner and her child's use. By reason of the matters set out in the ISIR, I queried whether it was realistic to propose the Petitioner would incur rental expenses after her move to India. Mr. Marwah submitted it was the Petitioner's intention to move out eventually. However, having read the ISIR, I find counsel's submission hard to accept. It is clear from the ISIR, the family support is strong, and it is highly likely the Petitioner will be living in an accommodation with her parents in which she is not obliged to pay rent. In summary, save and except the child school fees, I find the Petitioner's estimated expenses in India to be unsupported by evidence. In so far as the Petitioner claims to be suffering from health issues and being unable to return to work until two years later, there has not been any medical evidence produced to support this claim. On the contrary, the Petitioner's family told the investigation officer the family is prepared to offer the Petitioner immediate employment upon her return to India. I therefore do not accept the Petitioner will be unable to earn any income in the foreseeable future. In fact, it is highly likely the Petitioner will be earning an income once she reaches India. According to Mr. Marwah's submission, the Petitioner's estimated monthly income will be HK\$13,000 per month upon her return to the workforce. In such circumstances, I do not accept the Petitioner will continue to be unemployed after she leaves Hong Kong. Given the lack of evidence to support the estimated expenditure in India and any comparable references of expenditure likely to be incurred by the Petitioner and child, the court is unable to come to a determination of what would constitute a reasonable sum to meet the Petitioner and child's reasonable financial needs whilst living in India. Hong Kong expenses As for the reasonable needs of the Petitioner and the child whilst they are in Hong Kong, I note most of the substantial expenses (for example, mortgage payments and school fees) are paid by the Respondent, as

conceded in the Petitioner's Form E. As for other miscellaneous sums, I find most of the items to be exaggerated. For example: Contribution to parents in the sum of HK\$69,996 per annum is unnecessary when the parents are clearly wealthier and enjoy a higher standard of living than that compared to the Petitioner and Respondent. Food and meals out of home amount to HK\$192,000 per annum is excessive. Clothing and shoes of the child amount to HK\$48,000 per annum is excessive by the family's living standards. Medical and dental expenses of the Petitioner and the child amounting to HK\$120,000 per annum are not supported by medical reports or any medical evidence to show the Petitioner has any medical condition requiring long term medical treatment. Expenses relating to the company (e.g. office rent) should not be counted as personal expenses. Hence having considered the Petitioner's Form E expenses, I am of the view the reasonable needs of the Petitioner per month is HK\$19,000 and the child is HK\$17,000 for living in Hong Kong (excluding mortgage payments, domestic helper fees, utilities, management fees, school fees). I set out my view of the reasonable expenses to be incurred in Hong Kong below:

Item	Amount	
Petitioner's general monthly expenses		
Food	\$6000	
Household expenses	\$4000	
Others (pets, Spotify, Netflix)	\$1000	
Petitioner's personal monthly expenses		
Meals out of home	\$3000	
Transport	\$2000	
Clothing/shoes	\$3000	
Personal grooming	\$1500	
Entertainment / presents	\$1000	
Holiday	\$1050 (as set out in Form E)	
Medical	\$2000	
Child's expenses		
Extra tuition	\$2000 (in addition to the sum paid by the Petitioner's brother)	
School books	\$1100	
Transport to school	\$2000	
Medical / Dental	\$1000	
Extra-curricular activities	\$1000	
Entertainment / presents	\$500	
Holiday	\$1050 (as set out in Form E)	
Clothing / shoes	\$500	
Lunches / pocket money	\$1000	
Other transport	\$600	
Uniform	\$400	
Others (phone)	\$250	
Litigation Funding	In so far as litigation funding is concerned, I note the Petitioner was refused legal aid on the 26 August 2022. Having considered the evidence, I am satisfied the Petitioner does not have assets that be readily deployed for the purposes of settling litigation fees and I am satisfied she does not have any assets or means to act as security for borrowing funds for litigation. I am of the view the requirements laid down in the case of <i>Currey v Currey</i> are satisfied and that the Petitioner should be awarded litigation funding. I note the Form H filed on 25 April 2023 does not provide a detailed breakdown of the costs. A more detailed breakdown is set out in the Petitioner's 2nd Affidavit instead. However, the total sum estimated in the Petitioner's 2nd Affidavit is different from that in the Form H. Furthermore, some sums in the breakdown are no longer correct. For example, there is no further need to finalize the parties' Answers to the Questionnaires as the same has been filed into court already. In summary, I find the costs breakdown set out in the Petitioner's 2nd Affidavit to be an over-estimate. Save and accept the decree nisi, the case is ready to be set down for case management hearing and the documents that need to be filed for the purposes of the case management hearing are largely filed. There is therefore not much work to do from now until the financial dispute resolution () hearing. In such circumstances I am of the view that from the date of the maintenance pending suit hearing until the FDR hearing, the reasonable sum to be spending on litigation fees is around HK\$200,000 (inclusive of the FDR hearing). It is estimated that from the date of this judgment until the FDR hearing, there would be a time lapse of approximately 12 months. I therefore award HK\$17,000 per month to the Petitioner as litigation funding up until the FDR hearing. Whether the Respondent has means to satisfy an order for interim maintenance The parties are in dispute	

over whether the Respondent has extra sources of income and the amount earned from those extra sources. Though the Respondent admits he has a construction company, he claims it is making a loss. It is trite that the court should not be conducting detailed investigations on the parties financial details when considering an application for maintenance pending suit. In his Form E, the Respondent claims his monthly income to be approximately HK\$100,000. However, I note the Respondent's 2020/2021 tax return shows he had an annual income of HK\$2,301,333 and his provisional tax for the next year was HK\$1,852,969. This is equivalent to an income of \$191,777.75 per month. The Respondent claims he would be earning significantly less in the coming years due to having maximized his flight time. However, I find this to be speculation on his part and without evidentiary support from his employer. Despite having previously given directions to the Respondent to file his affirmation in opposition, he failed to file the same. The Respondent has not produced any letters from his employer, or any form of evidence from his employer to say he would be prohibited from flying in the near future or that his flight times would be limited. At the hearing, the Respondent attempted to produce flying guidelines and other manuals purportedly in support of the claim his flying hours will be significantly reduced in the future. When I asked him whether he was seeking leave to file an affirmation in opposition out of time, he confirmed he was not. I therefore refused to receive the new documentary evidence from the Respondent unless the same was filed by way of an affirmation. Having considered the evidence before me, I am satisfied the Respondent has the means to comfortably afford the Petitioner's maintenance pending suit, the child's interim periodical payments, and the Petitioner's legal costs provision. In so far as the Respondent claims his monthly expenditure to be in the sum of HK\$170,000 odd, I find various items of his expenditure to be exaggerated. For example, the sum of HK\$78,600 per annum for meals out of home together with the sum of HK\$92,080 per annum for groceries means the Respondent spends a sum of \$170,680 annually on food alone. Moreover, in counting the expenses of the UK property, the Respondent has not counted the rental income earned from the said property that would set-off at least a part of those expenses. Having considered the evidence as a whole, I am of the view the Respondent's income is sufficient to meet his own personal expenses, the mortgage instalment expenses, the provision of maintenance to both the Petitioner and the child, and legal costs provision to the Petitioner. By reason of the matters set out above, I make the following orders: The Respondent shall pay the following sums to the Petitioner commencing from 20 September 2022 until the Petitioner and child relocate to India or until further order, to be paid on the 20th day of each successive month: A sum of HK\$19,000 per month as maintenance pending suit for the Petitioner; and A sum of HK\$17,000 per month as interim maintenance for the child. The Respondent shall pay to the Petitioner a sum of HK\$17,000 per month for the Petitioner's reasonable litigation costs from the date of this order until the FDR hearing (inclusive of the FDR hearing) or until further order. The Respondent shall be responsible for paying the following expenses until further order: The mortgage instalments of the former matrimonial home at the address set out in the Petitioner's summons dated 20 September 2022 (the Former Matrimonial Home); The utility bills of the Former Matrimonial Home; The management fees of the Former Matrimonial Home; The child's school fees before and after relocation to India; and The domestic helper fees of HK\$4,000 per month during the time a domestic helper is still employed

for the Petitioner and child whilst they are still living in Hong Kong. COSTS Although I have made no order relating to the provision of maintenance after the Petitioner s relocation to India, I nevertheless regard the Petitioner as being successful in her application. I see no reason why costs should not follow the event. I therefore make a costs order nisi as follows: Costs of the Petitioner s summons be to the Petitioner to be summarily assessed, with certificate for counsel. Unless any party applies to vary the costs order within 14 days hereof, the costs order shall become an order absolute. The Petitioner shall lodge and serve her statement of costs within 14 days after the costs order turns absolute and shall propose further appropriate consequential directions for the court s consideration. (W.Y. Ho) Deputy District Judge Mr. Shaphan Marwah instructed by Oldham, Li & Nie, for the Petitioner The Respondent acting and appearing in person PAGE PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V (#p# (#p# gdwm gdwm l|l|l|l ~lZlK gd3T4 h3T4 gd3T4 gda@ h3T4 h3T4 h3T4 h3T4 h3T4 gda@ gda@ gd3T4 gda@ h3T4 ho^* ho^* hx.w gda@ gda@ ho^* ho^* ho^* kdQ ho^* hx.w gd"_ gd"_ gdx.w hx.w hx.w gd"_ gd"_ gd- gd- gd- e]lWlNlE &`#\$ &`#\$ [Content_Types].xml _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /EE\} theme/theme/_rels/ themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/ themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> :i#z *\mT zo/< xC&1 ({m8 mQ:j P0} W~7gb W~7g xC&1 ({m8 8sJR dKHD6 9TQ7 NZ(E cE(X =CrD CACV Windows User Blank Form for Judgment.dotx Windows User Microsoft Office Word Judiciary CACV Title Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=156150
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/kar-aka-ra-ka-v-ns1-2023

Prepared on 28 October 2026 · Esheria