IN THE HIGH COURT OF MALAYA AT SHAH ALAM

IN THE STATE OF SELANGOR

ORIGINATING SUMMONS NO. MT4-21-31-2002

BETWEEN

1. ZAINA ABDIN BIN HAMID @ S.MANIAM
2. SURINDIRAN A/L ZAINA ABDIN
   (lately a minor but now of full age)
3. MOHANASUBASH A/L ZAINA ABDIN
   (lately a minor but now of full age)
4. CHANDRIKA A/P ZAINA ABDIN
   (lately a minor but now of full age) ... PLAINTIFFS

AND

1. KERAJAAN MALAYSIA
2. KERAJAAN NEGERI SELANGOR
3. MAJLIS AGAMA ISLAM SELANGOR
4. MAJLIS PERUNDINGAN MALAYSIA UGAMA BUDDHA, KRISTIAN, HINDU, SIKH DAN TAO ... DEFENDANTS

GROUNDS OF DECISION

Introduction

The plaintiffs claimed they are Hindus. They say they never professed Islam. They are not Muslim converts. They further claim their case is not apostasy. Their complain before this court is despite they say they are Hindus, the government, Federal and State forcibly imposed Islamic law on them; in particular they were wrongly classified as Muslim under section 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 and were asked to get a declaration from the Syariah Court that they are no longer a Muslim before they can change their religion and name to that of a Hindu. They say politicians and state religious authorities cannot help them, but the court can because court interpret the law. Contending freedom of religion is guaranteed under Article 11 of the Federal Constitution, they now asked this court to declare certain provisions in the Administration of the Religion of Islam (State of Selangor) Enactment 2003 and Regulation 14(2)(b) of the National Registration Act 1959 unconstitutional and void.

Locus standi and legal interest of the 4th defendant

The 4th defendant is a society founded in 1982 and was registered pursuant to the societies Act 1965 (Act 335) on 6.8.1983. It consist of 11 member

organizations representing 5 major faiths in Malaysia, namely Buddhism, Christianity, Hinduism and Taoism. Unlike the 1st to 3rd Defendants, the 4th Defendant agree that this court had the jurisdiction to hear the plaintiffs application as the plaintiffs' case is neither conversion nor apostasy. The 4th defendant was added in to the proceeding at the instance of the plaintiff purportedly to assist the court in making a just and fair decision. The 4th defendant's legal interest in this case is whether the plaintiffs should be treated as a person professing the religion of Islam or otherwise.

Relief sought in this Originating Summons

By this Originating Summons, the plaintiffs seek for various declaratory relief relating to the interpretation and constitutionality of various statutes. The declarations sought by the plaintiffs as set out in the amended Originating Summons are as follows:

1. The words "his religion" in Article 11 (1) read together with Article 160 and Schedule 9, List II, Paragraph 1 of the Federal Constitution means the religion which a person chooses to profess and practice as his religion.

2. The phrase or phrases "person(s) professing the religion of Islam" in the Article 160 and Schedule 9, List II, paragraph 1 of the Federal Constitution and in section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 means "a person who acknowledges himself to be a believer of the religion of Islam".

3. The definition of a person as a "Muslim" in section 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (except paragraph (a)) is in breach of Article 3 and 11 (1) read together with Article 160 and Schedule 9,List II, paragraph 1 of the Federal Constitution and inconsistent with the same and/or is ultra vires section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 and is therefore null and void pursuant to Article 4 (1) of the Federal Constitution to the extent that

   a) it defines the plaintiffs as a Muslim and thereby imposes Islamic law on the plaintiffs otherwise than by reference to what the plaintiffs profess to be their own religion or practices as their own religion.

4. Any requirement implied or express as in section 61 (3) (b) (x) and 74 (2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 or in any other law that the plaintiffs should obtain permission or a decision from the Syariah Court or any other body or person howsoever formed or called before the plaintiffs can cease being treated as Muslims is null and void and of no effect as

   a) it is contrary to Article 3 and 11 (1) of the Federal Constitution read together with Article 160 and Schedule 9, List II, paragraph 1 of the Federal Constitution, and

b) such a requirement does not fall within the rights of religious groups to manage their own affairs under Article 11 (3) of the Federal Constitution.

5. The plaintiffs who profess themselves as Hindu are accordingly not "Muslims" within that part of the definition of a "Muslim" which is found to be constitutional in section 2 of the administration of the Religion of Islam (State of Selangor) Enactment 2003.

6. Any arrest and/or detention in any manner whatsoever of the plaintiffs and each of them by the servants, officers and/or agents of the 2nd defendant is contrary to and inconsistent with the plaintiffs' fundamental liberties and rights to life, freedom of religion and equality under the law under Article 3, 4 (1), 5, 8, 11 (1), 11 (2), 12 (3),153 (1) and 160 and Schedule 9, List II, Paragraph 1 of the Federal Constitution or any one of them and further is contrary to and/or inconsistent with Article 18 of the Universal Declaration of Human Rights 1948.

7. The issuance by the 2nd defendant by its servants, agents or officers of any warrant of arrest or any summons or other document purporting to require the plaintiffs and each of them to do or omit to do any act and threatening to issue a warrant of arrest in the event of default which is contrary to and inconsistent with the plaintiffs' fundamental liberties and rights to life, freedom of religion and equality under the law under

Articles 3, 4 (1), 5, 8, 11 (1), 11(2), 12 (3), 153 (1) and 160 and Schedule 9, List II, paragraph 1 of the Federal Constitution or any one of them and further is contrary to and/or inconsistent with Article 18 of the Universal Declaration of Human Rights 1948.

8. Any treatment howsoever of the plaintiffs and each of them as Muslims or as persons professing the religion of Islam by the defendants and each of them is contrary to and inconsistent with the plaintiffs' fundamental liberties and rights under Articles 3, 4 (1), 5, 8, 11 (1), 11 (2), 12 (3), 153 (1) and 160 and Schedule 9, List II, paragraph 1 of the Federal Constitution or any of them and further is contrary to and/or inconsistent with Article 18 of the Universal Declaration of Human Rights 1948.

9. Any compulsion or requirement on the plaintiffs and each of them howsoever to undergo any form of education, training, initiation, ceremony or act of worship in the Islamic faith and the application of any provision of the personal and/or the criminal law of Islam on the plaintiffs and each of them is and shall be considered contrary to and inconsistent with Articles 3, 4 (1), 5, 8, 11(1), 11(2), 12(3), 153 (1) and 160 and Schedule 1, List I, paragraph 6 (e) and List II, paragraph 1 of the Federal Constitution or any of them and/or ultra vires section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 and further is contrary to and/or inconsistent with Article 18 of the Universal Declaration of Human Rights 1948.

10. Regulations 5 (2), 14 (2) (b) of and/or the particular "Religion (only for Muslims)" required by the First Schedule to the National Registration Regulations 1990 are contrary to and/or inconsistent with Articles 3, 4 (1), 5, 8,11 (1), 11 (2), 12 (3), 153 (1) and 160 and Schedule 9, List I, paragraph 6 (e) and List II, paragraph 1 of the Federal Constitution or any of them are void in so far as they require and/or authorize the entry or the showing of any Muslim name in the Plaintiffs' National Registration Identity Cards whether as the plaintiffs' present name or as his or her former name.

10.1. In particular, Regulations 5 (2),14 (2) (b) and/or the particular "Religion (only for Muslims) required by the First Schedule to the National Registration Regulations 1990 are ultra vires National Registration Act 1959 (read with the Ninth Schedule, List I, paragraph 3 (e) and is therefore inconsistent and/or contrary to Article 8 (1) of the Federal Constitution.

11. In order to be relieved of humiliation and severe personal embarrassment, the plaintiffs shall henceforth in all records, deeds and writings and in all actions, proceedings, dealings and transactions, private as well as public, and on all occasions be known and referred to by the names set out in the corresponding column entitled "New Name" below in place of and in substitution for and with no mention of their former names set out in the corresponding column entitled "Former Name":-

	Former Name	New Name
a)	ZAINA ABDIN BIN HAMID @ S.MANIAM	BALACHANDRAN A/L S.MANIAM
b)	SURINDRAN A/L ZAINA ABDIN	SURINDRAN A/L BALACHANDRAN
c)	MOHANASUBASH A/L ZAINA ABDIN	MOHANASUBASH A/L BALACHANDRAN
d)	CHANDRIKA A/P ZAINA ABDIN	CHANDRIKA A/P BALACHANDRAN

12. The plaintiffs shall henceforth in all records, deeds and writings and in all actions, proceedings, dealings and transactions, private as well as public, and on all occasions be described and referred to as being of the Hindu religion and shall not be caused to be identified in any manner whatsoever as a Muslim or having at one time been a Muslim.

13. The plaintiffs and each of them shall not be considered as Malay under Article 160 of the Federal Constitution as they do not profess or practice Islam as their religion.

Chronology of event

The 1st to 3rd defendants contest this application. They contend that the provisions under challenge are applicable to the plaintiffs because the plaintiffs have not obtained an order from the Syariah Courts giving them permission to "leave" Islam.

An application was then made by the 1st to the 3rd defendants to strike out the Originating Summons herein under Order 18 rule 19 of the Rules of High Court 1980 as being an abuse of the court's process because the matters raised herein were within the jurisdiction of the Syariah High Court.

The Shah Alam High Court ruled in the defendants' favour and the Originating Summons was struck off. The plaintiffs appealed to the Court of Appeal. The appeal was allowed and the case was remitted to the High Court for determination on its merits.

The High Court had on 6th October 2010 referred five (5) questions of law to the Federal Court for its determination under section 84 of the Courts of Judicature Act 1964. However, the Federal Court dismissed the reference without answering the questions. The 5 questions are now before me and they are as follows:-

1. Whether the definition of a "Muslim" in section 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 is inconsistent with Article 11 (read with Articles 3, 5, 8, 153 and Item 1, List II, 9th Schedule) of the Federal Constitution:

    1.1 paragraph (b), (c), (e) and (f), and

    1.2 paragraph (d) read together with section 113.

2. Whether the application of Islamic Law on a person professing himself to be Hindu but is considered a Muslim under the Islamic Law is inconsistent with Article 11 (read together with Article 3, 5, 8, 153 and Item 1, List II 9th Schedule) of the Federal Constitution.

3. Whether the condition that a person must first get declaration from the State Religious Council (Majlis Agama Islam) or the Syariah Court that he or she is no longer a "Muslim" before he or she is recognizes by the relevant authorities as a person who does not profess Islam unconstitutional under Article 11 (read together with Article 3, 5, 8, 153 and Item 1, List II 9th Schedule) of the Federal Constitution.

4. Whether the parents of a child under the age of 18 have the right to determine the religion of that child pursuant to Article 11 and 12 (4) of the Federal Constitution.

5. Whether the National Regulations 1990, in particular regulation 14, to impose the requirement for deleting entry of "Islam" in the applicant's Identity Card (IC) that he produce a certificate or a declaration or an order from Syariah Court that he has apostatized is inconsistent with Article 11.

The plaintiffs withdraw question no. 4 since it is no longer relevant as all the plaintiffs are now above 18.

Facts

The 1st plaintiff is a Malaysian citizen of Indian ethnicity. He was born on 5.8.1951. He is 62 years old (he was 52 years old at the time this Originating Summons was filed in 2002). The 1st plaintiff was born to a Muslim parents. His father was an Indian who converted to Islam to marry the 1st plaintiff's Malay mother. The 1st plaintiff's father took the name of Hamid alias Maniam. The 1st plaintiff's mother is a Malay, named Zaharah bt Imbi. In their identity documents, the 1st plaintiff's parents were shown as being Muslim. That explain why the 1st plaintiff's name is Zaina Abdin bin Hamid. Despite his identity documents say he is a Muslim, the 1st plaintiff avers that throughout his live, his parents brought him up as a Hindu. By a Deed Poll dated 16.3.1973 (gazette by G.N No. 1686 of 1973 dated 24.5.1973), the 1st plaintiff had adopted a new Hindu name, Balachandran a/l S.Maniam. Subsequently, he made a statutory declaration that he is a Hindu. On 5.2.1986, the 1st plaintiff married a Hindu, Suseila a/p M. Athiam in accordance with the Law Reform (Marriage and Divorce) Act 1976. The 1st plaintiff is the natural and lawful father of the 2nd to 4th plaintiffs. The Identity Card of the 2nd to 4th plaintiffs were not produced in court. Through the written submission of the 2nd defendant, this court was told that in the application forms for the Identity Card for the 2nd and 3rd plaintiffs, their mother had stated the religion of the 2nd and 3rd plaintiffs as "Islam". But in the application form for the Identity Card for the 4th plaintiff, the 1st plaintiff stated the religion of the 4th plaintiff as "Hindu". Sometimes in the year 2000 or early 2001, the 1st plaintiff had made an application to the National Registration Department (NRD) to have details in his Identity Card changed. But his application was rejected by the NRD

on the ground that the application is not complete as he failed to state the reasons to change his name.

Jurisdiction

Before me, the 1st to 3rd defendants raise the issue that this High Court had no jurisdiction to hear the plaintiffs' application as the subject matter involves renunciation of Islam and apostasy. They say the proper forum to hear this application is Syariah High Court. Reliance was placed on the following cases:

1. Mamat bin Daud & Ors v Government of Malaysia [1987] 1 MLJ 119
2. Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur [1994] 4 CLJ Supp 419
3. Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah Bukit Mertajam & Anor [1991] 1 CLJ (Rep) 77
4. Soo Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Anor [1999] 2 CLJ 5.
5. Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors [2004] 6 CLJ 242.

In response, learned counsels for the plaintiffs argued this court has the jurisdiction as this is not apostasy case and the subject matter involves the interpretation of statute and the impact of the Federal Constitution on statute law. Support for this proposition is found in the Federal Court

decision in Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 CLJ 253 in which it was held that it is not enough that the subject matter of the dispute is within the Syariah court's jurisdiction. In addition, it must also be shown that all parties to the dispute professed Islam. The Syariah court only has jurisdiction if both requirements are fulfilled. This decision was reaffirmed by the Federal Court in a subsequent case of Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor (Kerajaan Malaysia, Intervener) & Anor [2008] 4 CLJ 309. In that case, the Federal Court held at para 12, 16, 18 and 19 as follows:-

> Held [12] The issue is simple. Is it this court or the Syariah High Court that is seized with the jurisdiction to decide whether the stated provisions of the said enactments are in accordance with the provision of the Federal Constitution? That is the net effect of the issue posed in this application...
>
> Held [16] The motion clearly prays for an order that the issue whether the impugned provisions are consistent with the precepts of Islam as provided by paragraph 1, State List, Ninth Schedule of the Federal Constitution must be decided by the Syariah High Court as provided by art 121 (1A) of the Federal Constitution. That clearly is asking for the interpretation of the provision of the Constitution. Nowhere in the Constitution says that the interpretation of the Constitution, Federal or State is a matter within the jurisdiction of the Syariah Court to do. The jurisdiction of Syariah Courts are confined to the limited matters Enumerated in the State List and enacted by the respective state enactments.

On the issue of whether article 121 (1A) of the Constitution has ousted the jurisdiction of the civil court, this is the ruling of the Federal Court:

> Held [18] Reliance was made on the provision of art 121 (1A) of the Constitution. With respect, this article does not confer jurisdiction on Syariah Courts to interpret the Constitution to the exclusion of this court.
>
> [19] As I have said a number of times, ending with Latifah, that provision was inserted to avoid a situation as in Myriam v Mohamed Ariff [1971] 1 MLJ 265, not to oust the jurisdiction of this court in matters that rightly belong to it. Before the jurisdiction of this court is excluded, it must be shown that the Syariah Court has jurisdiction over the matter first. That is not the case here.

In addition to the above, learned counsels for the plaintiffs also submit that the ratio decidendi of the Federal Court's decision in Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 has been implicitly, if not explicitly, overruled by the decision of the Federal Court in Latifah bt Mat Zin and Abdul Kahar bin Ahmad. It is submitted that the majority of the Court in Lina Joy based their decision on two key assumptions:

(i) that murtad or "apostasy" is a matter of Islamic law; and

(ii) so long as a matter is a matter of Islamic law, the Syariah Courts have jurisdiction.

Learned counsels for the plaintiffs further submit that the Federal Court in Latifah bt Mat Zin and Abdul Kahar bin Ahmad have decided that the second assumption is incorrect.

I agree with the view of learned counsels for the plaintiffs. The questions before this court is an application for declaratory relief under Article 4 of the Federal Constitution that various provisions of the Selangor Enactment are inconsistent with the Federal Constitution and for a consequential relief that the plaintiffs are not included within that part of the Selangor Enactment that is found constitutional. Clearly the declaratory orders asked for is not within the jurisdiction of the Syariah Court. In the circumstances, I ruled that this court has the jurisdiction to hear this application.

Question 1

Whether the definition of a "Muslim" in section 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 is inconsistent with Article 11 (read with Articles 3, 5, 8, 153 and Item 1, List II, 9th Schedule) of the Federal Constitution.

Section 2 of the Administration of the Religion of Islam (State of Selangor) enactment 2003 provides:

> "Muslim means:
>
> (a) a person who professes the religion of Islam;

(b) a person either or both of whose parents were at the time of the person's birth, a Muslim;

(c) a person whose upbringing was conducted on the basis that he was a Muslim;

(d) a person who is commonly reputed to be a Muslim;

(e) a person who has converted to the religion of Islam in accordance with Section 108; or

(f) a person who is shown to have stated, in circumstances in which he is bound by law to state the truth, that he was a Muslim, whether the statement be oral or written.

The argument put forth by learned counsels for the plaintiffs are simple. The phrase used in Item 1, List II, Schedule 9 of the Federal Constitution is "persons professing the religion of Islam". Therefore, only paragraph (a) in the definition of "a Muslim" in section 2 of the Selangor Enactment 2003 is consistent with the Federal Constitution. Given the dictionary meaning of the word "profess" is the individual declares or express what his or her religion, learned counsel for the plaintiffs conclude by saying profess means what the person say he or she is and not what other people say he or she should or should not be. Therefore, only those person under the definition (a) can be classified as Muslim. With that definition in mind, the plaintiffs sought to show how the definition in paragraph b, c, d, e, f were said to be inconsistent with the Federal Constitution. For ease of reference, I reproduce them below.

Paragraphs in the definition of a Muslim	Plaintiffs' interpretation
(a) a person who profess the religion of Islam	- No complaint because the wordings is identical with Item 1, List II, 9th Schedule of the Federal Constitution
(b) a person either or both of whose parents were at the time of the person's birth, a Muslim	- inconsistent with the requirement of the Constitution that requires Islamic law only to be applied over "persons professing the religion of Islam. - imposes an inherited status on individuals. - a person professing Islam may have been born to Muslim parents. But a person born to Muslim parents may not necessarily profess Islam
(c) a person whose upbringing was conducted on the basis that he was a Muslim	- inconsistent with the phrase "person professing Islam. A person could have been brought up a Muslim but that does not mean he professes Islam.
(d) a person who is commonly reputed to be a Muslim	- the most absurd of the definitions. It imposes Islamic law on a person who professes another religion just because others think he is a Muslim. This definition had no connection with the phrase "person professing the religion of Islam

(e) a person who has converted to the religion of Islam in accordance with section 108	- a person cannot be said to be "professing" for all time merely because he or she had converted to Islam at some point. Islamic law on this matter must be considered subordinate to the words of the Federal Constitution.
(f) a person who is shown to have stated in circumstances in which he is bound by law to state the truth, that he was a Muslim, whether the statement be oral or written	- to define a person as a Muslim merely because at some point he had made such a declaration is inconsistent with the Federal Constitution.

The argument of state law being inconsistent with the Federal Constitution is not something new. In Lina joy v Majlis Agama Islam Wilayah Persekutuan & Anor [2004] 6 CLJ 242, one of the issue arose is whether the definition of Muslim in section 2 of the Administration of Islamic Law (Federal Territory) Act 1993 [which is pari materia with section 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003] is inconsistent with the Federal Constitution. At page 266 in that case, Faiza Thamby Chik J had stated:

> "I am of the view that s.2 of the 1993 Act is enacted pursuant to art.74 (2) Of the Constitution. The enabling art.74 (2) confers wide jurisdiction to the Federal Government to enact syariah laws to the same extent as

provided in item 1 in the State list (see para 6(e) list 1, Ninth Schedule). Section 2 of the 1993 Act is directly designed for the purpose of implementing syariah laws on the Muslim and it is not in any way designed to curtail the freedom of religion under art. 11(1).

Further down at the same page, he went on to say:

"The purpose of s.2 of the 1993 Act is merely to define a Muslim since the Constitution did not provide any definition. This is important because Syariah laws are applicable only to Muslim. Without a definition provision, there would be confusion in relation to the application of the syariah laws. Without a definition section (s.2 of the 1993 Act), only then could the 1993 Act be said to be ultra vires art.11 (1) since it imposes syariah law on everyone regardless of religion. Therefore s.2 of the 1993 Act complements art.11 (1) by limiting the application of the syariah law to Muslims only."

Similar issue arose in the case of Lim Yoke Khoon lwn Pendaftar Muallaf, Majlis Agama Islam Selangor & Yang Lain [2006] 4 CLJ 513. In that case, Abdul Hamid Mohamad J held the definition of "a Muslim" in section 2 of the Selangor Enactment 2003 is not inconsistent with the Federal Constitution. I chose to adopt and follow the decision in both the cases cited above. I entirely disagree with learned counsels for the plaintiffs' submission that this court must only interpret the phrase "person professing the religion of Islam" and the impugned definitions cannot be regarded as extensions and interpretation of the phrase "person professing the religion of Islam". As has been held by the court, the definition section

merely sought to identify whom to be regarded as Muslim. By adopting the interpretation the way they did, the plaintiffs equate the word "profess" to "the definition of Muslim". This approach is erroneous and misleading. The definition of Muslim is necessary to explain what is meant by persons professing the religion of Islam. If the plaintiffs interpretation is to be accepted by the court, it would create chaos and havoc amongst the Muslim community in this country. Islam is not about whether one say he or she is a Muslim. It goes beyond that. It involves "akidah", "iktikad" and way of life. 99.99% of the Malay Muslim in this country are Muslim because their parents are Muslim. We called them "Islam keturunan". A true Muslim will never ever say he is not a Muslim. Muslim takes religion of Islam seriously.

By virtue of paragraph (b) and (f) of the definition, the plaintiffs are correctly classified as Muslim. Thus, Islamic law is applicable on them. Eventhough they say they never professed Islam. Although they say they are Hindus, prior to the amendment, prayer 5 of the Originating Summons is pleaded as follows:-

> "Plaintif Pertama tidak lagi seorang Islam kerana beliau sendiri mengakui dirinya sebagai seorang Hindu dan mengamalkan agama Hindu dan cara hidup Hindu mengikut pilihan beliau sendiri."

The above prayer shows that the 1st plaintiff initially admit that he was at one time in his life was a Muslim by birth. But now, he wants to leave Islam. Our law never prohibit him to leave Islam. What he needs to do is

obtained the declaration from the Syariah Court. Not by words of mouth. Our law does not recognise words of mouth as a way to leave Islam. Under those circumstances, it is my view that the argument advanced by the plaintiffs is nothing but an attempt to assert his own interpretation that "only person who says he or she is a believer of Islam" is to be regarded as a Muslim. No court of law will ever agree with the plaintiffs on that interpretation. One don't require declaration from court to interpret in that manner. Apparently there is no short cut to leave Islam. The plaintiffs must follow the law and regulations. On that score, question 1 is answered in the negative.

Moving on to question 2 and 3 together.

Question 2

Whether the application of Islamic Law on a person professing himself to be Hindu but is considered a Muslim under the Islamic Law is inconsistent with Article 11 (read together with Article 3, 5, 8, 153 and Item 1, List II 9th Schedule) of the Federal Constitution.

Question 3

Whether the condition that a person must first get declaration from the State Religious Council (Majlis Agama Islam) or the Syariah Court that he or she is no longer a "Muslim" before he or she is recognizes by the

relevant authorities as a person who does not profess Islam unconstitutional under Article 11 (read together with Article 3, 5, 8, 153 and Item 1, List II 9th Schedule) of the Federal Constitution.

The impugned provisions of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 are section 61 (3) (b) (x) and section 74 (2). For ease of reference, I reproduce them below.

Section 61 (3) (b) (x) provides:

> The Syariah High Court shall in its civil jurisdiction, hear and determine all actions and proceedings if all the parties to the actions or proceedings are Muslims and the actions or proceedings relate to-(x) a declaration that a person is no longer a Muslim.

Section 74 (2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 provides:

> 74 (2) For the avoidance of doubt, it is hereby declared that a Muslim shall at all times be acknowledged and treated as a Muslim unless a declaration has been made by a Syariah Court that he is no longer a Muslim.

Learned counsels for the plaintiffs argued that for the purpose of determining whether a Hindu is still a Muslim or not, it is unconstitutional to apply Islamic law. They further argue, given the plaintiffs have a right to profess "his religion" and that the word "profess" means self acknowledged, this mean each of the plaintiff cannot be subjected to permission in order to enter into or leave a religion by their former religion.

Hence, learned counsels for the plaintiffs submit the provisions of section 61(3)(b)(x) and 74(2) of the Selangor Enactment 2003 are unconstitutional. I totally disagree with the plaintiffs' contention. Their argument is devoid of merit. Section 61 (3) (b) (x) and 74 (2) of the Selangor Enactment 2003 are not unconstitutional. These provisions are enacted pursuant to article 74 (2) of the Federal Constitution. All it say is any Muslim who wish to leave Islam must get the certification from the Syariah Court. Until and unless Syariah Court makes the certification to the contrary, a person is deemed to be a Muslim. The provisions is intended to avoid any doubt as to whether a person is a Muslim or not; see Kamariah bte Ali & Ors v Kerajaan Negeri Kelantan & Anor [2002] 3 CLJ 773. To simply accept the plaintiffs word of mouth that they are Hindus and never profess Islam as suffice to confirm they are not Muslim, it would create chaos and confusion with the administrative authority which manages the affairs of Islam and the Muslim community and consequently the non Muslim community as a whole; see Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor [2004] 6 CLJ 247. With the decision in Lina Joy and Kamariah's case, it is now settled law that provisions requiring Muslim to get a declaration from Syariah Court in order to get out of Islam is not unconstitutional.

To persuade this court to agree with them, learned counsels for the plaintiffs stated that the issue is whether it would be inconsistent with the guarantee of religious liberty found in Article 11 for the Government to require a person to obtain the permission of Islamic religious authorities before Islamic law ceases to apply to him, even when that person says he never ever professed Islam as his religion. My answer to this argument is

this. The plaintiffs failed to appreciate the fact that the law does not recognize the person's own words that he is a Hindu in order to renounce or to disassociate himself from Islam when he was classified as Muslim under the law. Our law only recognize certification from Syariah Court to declare that he is not a Muslim. The answer to question two and three is negative.

Question 5

Whether the National Regulations 1990, in particular regulation 14, to impose the requirement for deleting entry of "Islam" in the applicant's Identity Card (IC) that he produce a certificate or a declaration or an order from Syariah Court that he has apostatized is inconsistent with Article 11.

National Registration Regulations 1990 is a regulation made pursuant to the power given to the Minister by section 6 of the National Registration Act 1959 (Revised 1972). The impugned regulation in the National Registration Regulations 1990 challenged by the plaintiffs relates to regulation 14 (2) (b) which states:

> 14 (2) Any person registered under these Regulations who applies to change his name under sub-regulation (1) shall submit to the registration officer with a statutory declaration which-
>
> a) certifies the fact that he has absolutely renounced and abandoned the use of his former name in lieu thereof has assumed a new name; and

(b) contains the reason for such change of name, other than a conversion of religion.

The effect of regulation 14 (2) (b) is it prohibits a person from changing his or her name when a change of religion is the reason for the change of name. The complain of the plaintiffs can be summarized as follows:-

1. They are caught by the impugned regulation because they were wrongly classified as Muslim and wrongly treated as "Muslim converts" when they have always professed and practiced Hinduism and are not changing their religion.

2. The impugned regulation arbitrarily interferes with the plaintiffs' ability to freely express their identity as a Hindu.

3. The prohibition of religious converts from changing their name has no rational connection to safeguarding the security of Malaysia; see Minister for Home Affairs, Malaysia & Anor v Jamaluddin Othman [1989] 1 CLJ 105.

4. The impugned regulation has deprived the plaintiffs their right to a name and a right to privacy.

Under those circumstances, learned counsels for the plaintiffs submit that this regulation cannot stand in the face of the Constitutional protection to a person to profess his or her own religion and must be declared void.

In response, the defendants submit regulation 14 (2)(b) is not unconstitutional on the following grounds:

1. The Minister may make any regulations to regulate the registration process and procedures to be followed by the National Registration Department for administration purposes; and

2. Such regulation is not a substantive provision but only a regulation on process and procedures that best suit the roles of the Department.

3. The determination of whether a person is a Muslim or no longer a Muslim is not the role or within the jurisdiction of the Department.

I agree with the view advanced by learned counsels for the defendants that regulation 14 (2) (b) is not unconstitutional. The regulation is purely for administrative purposes. The plaintiffs cannot use the concept of freedom of religion and freedom to choose a name to challenge the regulation. There is no absolute or total freedom. There are regulations to be followed. The answer to the issue raised by the plaintiffs has been answered by the Federal Court in the case of Lina Joy. Delivering the majority decision in that case, Ahmad Fairuz FCJ had this to say:

> "Saya juga bersetuju jika JPN terima pengakuan seseorang bahawa dia telah keluar dari agama Islam berasaskan perisytiharan yang dibuat olehnya maka JPN mengambil risiko apabila mengecapkan, secara silap, seseorang sebagai bukan Muslim manakala mengikut undang-undang Islam, orang itu masih belum lagi keluar dari agama Islam. Ini juga akan menyenangkan mereka yang telah dilahir dan dididik sebagai seorang Muslim, tetapi bersikap

acuh tak acuh atau tidak peduli kepada agama Islam diklasifikasikan sebagai bukan Muslim hanya semata-mata untuk mengelak dari dihukum atas kesalahan-kesalahan di bawah undang-undang Islam. Ini semua akan mengakibatkan celaan dari masyarakat Muslim. Atas sebab-sebab inilah, sama seperti pandangan penghakiman majoriti, saya percaya, JPN telah menggunapakai dasar bahawa akuan statutori sahaja adalah tidak cukup untuk membolehkan perkataan "Islam" dikeluarkan dari KP seseorang Muslim. Ini adalah kerana hal keluar dari agama Islam itu adalah suatu perkara yang berkaitan dengan undang-undang Islam dan kerana itu JPN menggunapakai dasar yang memerlukan penentuan oleh pihak berkuasa agama Islam sebelum JPN boleh bertindak untuk memadamkan perkataan "Islam" daripada KP seseorang Muslim. Atas pertimbangan-pertimbangan seperti yang dihuraikan di atas, saya setuju dengan penghakiman majoriti bahawa sesungguhnya dasar JPN itu adalah sesuatu yang sesempurnanya munasabah".

The decision of the Federal Court on the effect of the regulation is binding on this court. Although the issue in that case is to cancel the word "Islam" and not to change one's name the rationale is the same. The Registration Department require certification or declaration from Syariah Court that a person is no longer a Muslim before the change of name can be done. The impugned regulation did not ABSOLUTELY prohibit change of name. The restriction imposed is reasonable. One cannot equate or treat changing of religion and name like changing cloths. On those grounds, I hold the impugned regulation is not unconstitutional. The plaintiffs are considered as Muslims by operation of the law. They are bound by regulation 14 (2) (b).

Conclusion

What the plaintiffs had requested in this case is not something new. This is simply a case of the plantiffs who wish their words that they are Hindus and never practiced Islam should prevail over and above what the law say and they should not be made to be subjected to Islamic law. It is not true that the government forced Islamic law on the plaintiffs because in order to determine whether the plaintiffs are Muslim or not, Islamic law must be applied. On the issue of freedom of religion, I find the plaintiffs have alleged that they have been practicing Hinduis throughout their life without any problem. No one stop the plaintiffs from changing their religion and name. What the plaintiffs need to do achieve their objective is to follow the law and the regulations. On the aforesaid grounds, I dismiss the plaintiffs' application with cost.

Dated 11th January 2013

Hadhariah bt Syed Ismail
Judge
High Court
Shah Alam

Salinan diakui sah

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Setiausaha Kepada
Y.A. Puan Hadhariah binti Syed Ismail
Hakim
Mahkamah Tinggi Shah Alam

Solicitors for the Plaintiffs	:	Messrs Kanesalingam & Co
Solicitors for the 1st Defendant	:	Attorney General Chambers
Solicitors for the 2nd Defendant	:	State Legal Adviser of Selangor
Solicitors for the 3rd Defendant	:	Messrs Aishah Kama & Sabri
Solicitors for the 4th Defendant	:	Messrs Chooi & Co.