INDIRA GANDHI MUTHO

v.

KETUA POLIS NEGARA & ORS

Court of Appeal, Putrajaya
Mohamed Zaini Mazlan, Faizah Jamaludin, Mohd Radzi Abdul Hamid JJCA
[Civil Appeal No: W-01(NCvC)(W)-486-07-2024]
24 August 2026

Tort: *Breach of statutory duty — Alleged wrongful neglect or non-performance of statutory duty — Appeal against dismissal of claim arising from police failure to execute warrant of committal for apprehension of appellant's former husband — Application to adduce further evidence on appeal — Whether further evidence ought to have been admitted under r 7(3A) Rules of the Court of Appeal 1994 — Whether Federal Court order had set aside recovery order or merely excused Inspector General of Police from enforcing it — Whether malice or bad faith was a necessary ingredient of the pleaded claim founded on alleged wrongful neglect or non-performance of the statutory duty under s 20(3)(f) Police Act 1967 — Whether public-law character of execution of warrant precluded private-law liability — Whether High Court was justified in finding that police had sufficiently and fully performed their duty — Whether appellant proved on the balance of probabilities that any omission by 1st respondent caused or prolonged separation from her child — Whether absence of causation defeated personal liability of 1st respondent and derivative liability under s 5 Government Proceedings Act 1956*

The appellant and Patmanathan were married in 1993 and had three children. On 31 March 2009, following his conversion to Islam, Patmanathan forcibly took the youngest child, Prasana Diksa, from the appellant. The High Court granted the appellant custody on 11 March 2010, and, upon Patmanathan's continued non-compliance, adjudged him guilty of contempt on 30 May 2014, issuing a warrant of committal directing the police to apprehend him and, separately, a recovery order under s 53 of the Child Act 2001. On 29 April 2016, the Federal Court reinstated *mandamus* against the Inspector General of Police only insofar as it required him to command execution of the warrant of committal, declining to compel execution of the recovery order. The warrant remained unexecuted. In October 2020, the appellant sued the 1st to 4th respondents in non-feasance in public office, alleging failure to execute the warrant with due diligence and a false or sham investigation. The High Court dismissed the action, holding that the appellant had no private right in the warrant's execution and that the police had taken sufficient steps, with no malice, bad faith or neglect established. The appellant appealed. Before judgment, she applied under s 69(3) of the Courts of Judicature Act 1964 and r 7 of the Rules of the Court of Appeal 1994 to adduce further evidence of 2025 transactions (encl 25) said to show that Patmanathan was in Malaysia. The Court dismissed this application on 20 April 2026. The issues before the

Court were (i) whether the further evidence ought to have been admitted under r 7(3A) of the Rules of the Court of Appeal 1994; (ii) the effect of the Federal Court's order on the recovery order; (iii) whether malice or bad faith was a necessary ingredient of the pleaded claim under s 20(3)(f) of the Police Act 1967; (iv) whether the public-law character of the warrant's execution, by itself, precluded liability in private law; (v) whether the High Court's evaluation of the police evidence could stand; and (vi) whether the appellant had established personal liability against the 1st respondent and, consequently, derivative liability against the 4th respondent under s 5 of the Government Proceedings Act 1956, or any independent basis of vicarious liability against the 2nd and 3rd respondents.

Held (dismissing the appellant's appeal):

(1) The proposed evidence in encl 25, concerning transactions said to have occurred through Patmanathan's identity card in August and September 2025, satisfied r 7(3A)(a), as it concerned events occurring after both the trial and the hearing of the appeal and so could not have been available at trial, but did not satisfy r 7(3A)(b). Even at its highest, it would not establish Patmanathan's whereabouts during the period material to the pleaded omissions, identify any step that would probably have led to his apprehension, or undermine the issue of causation. It could not have had a determining influence upon the decision under appeal, and encl 25 was accordingly dismissed. (paras 21, 22 & 24)

(2) The Federal Court had not, in the formal terms of its order dated 29 April 2016, set aside the recovery order of 30 May 2014, but had excused the Inspector General of Police from enforcing it and reinstated *mandamus* only in relation to the warrant of committal. The obligation to file monthly affidavits under the recovery order could not be used as a freestanding measure of non-compliance with that mandamus. Ground 4, that the Judicial Commissioner erred in law and/or fact in holding that the recovery order had been set aside by the Federal Court's order, succeeded only to this limited formal extent, without advancing the appeal. (paras 38-41)

(3) Malice or bad faith was not an additional threshold requirement of the pleaded claim founded upon wrongful neglect or non-performance. Assuming in the appellant's favour that the 1st respondent owed her an actionable duty and that the delays and deficiencies in the evidence were capable of amounting to a breach, those assumptions did not relieve her of the burden of proving causation and damage. (paras 42, 50 & 96)

(4) The Federal Court's characterisation of the warrant's execution as a matter of public administration of justice did not decide that the appellant lacked a personal interest in its execution or that this, by itself, precluded liability in private law. However, a personal interest in the execution of a court order did not, without more, establish an actionable private-law duty or entitlement to damages, which depended on proof of the ingredients of the tort pleaded. (paras 51, 53 & 95)

(5) The High Court's unqualified conclusion that the police had sufficiently and fully performed their duty could not stand, given the material delay, absence of contemporaneous records, limited first-hand knowledge of the principal witnesses, and the limited probative weight of the relevant 72 police reports and the related operational material as demonstrating a sustained search for Patmanathan. These weaknesses were not, however, affirmative proof that no command was issued or steps taken, nor did they establish that the investigation was false or a sham. (paras 80 & 97)

(6) Causation was not proved on the balance of probabilities. Even on the assumptions most favourable to the appellant, the evidence identified no proved address at which Patmanathan would probably have been found, no border crossing at which a timely alert would probably have intercepted him, and no request to any authority which, made earlier, would probably have secured his apprehension. This failure was fatal to the claim, and, in the absence of personal liability on the part of the 1st respondent, no derivative liability arose against the 4th respondent under s 5 of the Government Proceedings Act 1956. The 2nd and 3rd respondents, not being bodies corporate or separate legal persons upon which vicarious liability under s 5 could be imposed independently, provided no alternative basis for the claim. (paras 85, 88, 89 & 90)

(7) The appeal failed on the narrow ground that causation was not proved, and not because the police response was satisfactory, the appellant lacked a personal interest in the warrant's execution, or delay was legally immaterial. The warrant of committal remained unexecuted, and the police's continuing statutory duty to execute it was undiminished. (paras 100-101)

Cases referred to:

Datuk Seri Panglima Mohd Sari Datuk Hj Nuar v. Vee Seng Development Sdn Bhd & Ors [2009] 2 MLRA 349 (refd)

Hertfordshire Investments Ltd v. Bubb [2000] 1 WLR 2318; [2000] EWCA Civ 3013 (refd)

Hill v. Chief Constable Of West Yorkshire [1988] 2 All ER 238 (distd)

Indira Gandhi Mutho v. Ketua Polis Negara & Ors [2021] MLRHU 2276 (refd)

Indira Gandhi Mutho v. Ketua Polis Negara [2016] 3 MLRA 356 (folld)

Indira Gandhi Mutho v. Ketua Polis Negara [2015] 1 MLRH 396 (refd)

Jay Laxmi Salt Works (P) Ltd v. State Of Gujarat (1994) 4 SCC 1 (refd)

Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2008] 2 MLRA 735 (refd)

Ketua Polis Negara v. Indira Gandhi Mutho [2015] 1 MLRA 493 (refd)

Maju Holdings Sdn Bhd v. Fortune Wealth (H-K) Ltd & Other Appeals [2004] 1 MLRA 832 (refd)

MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd [2016] 3 MLRA 144 (refd)

Ng Hoo Kui & Anor v. Wendy Tan Lee Peng & Ors [2020] 6 MLRA 193 (folld)

PP v. Mohamed Ali [1962] 1 MLRH 79 (distd)

R (Iran) v. Secretary Of State For The Home Department [2005] EWCA Civ 982 (refd)

Raymond Cheah Choon Sing v. Jurutera Daerah Jabatan Kerja Raya Seberang Perai Tengah & Ors [2018] 1 MLRA 40 (distd)

Renal Link (KL) Sdn Bhd v. Dato Dr Harnam Singh [1997] 1 MLRA 259 (folld)

Sin Heap Lee-Marubeni Sdn Bhd v. Yip Shou Shan [2004] 2 MLRA 21 (refd)

The Attorney General Of Malaysia v. Dato' Sri Mohd Najib Tun Haji Abdul Razak & Another Appeal [2025] 6 MLRA 155 (refd)

UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 2 MLRA 668 (folld)

Vellasamy Ponnusamy & Ors v. Gurbachan Singh Bagawan Singh & Anor [2020] 5 MLRA 190 (refd)

Legislation referred to:

Child Act 2001, s 53

Courts of Judicature Act 1964, s 69(1), (3), (4)

Evidence Act 1950, s 114(g)

Government Proceedings Act 1956, ss 5, 6(3), 7

Limitation Act 1908 [Ind], art 36

Police Act 1967, ss 3(3), 4(1), 20(1), (3)(f)

Rules of the Court of Appeal 1994, r 7(1), (2), (3), (3A)(a), (b)

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For the respondents: Liew Horng Bin (Siti Norashikin Hassanor with him); AG's Chambers

[For the High Court judgment, please refer to *Indira Gandhi Mutho v. Ketua Polis Negara & Ors* [2021] MLRHU 2276]

JUDGMENT

Faizah Jamaludin JCA:

Introduction

[1] This is the unanimous judgment of the Court.

[2] For more than seventeen years, the Appellant has been separated from her youngest child, Prasana Diksa. Prasana Diksa was 11 months old when she was taken by the Appellant's former husband, Patmanathan a/l Krishnan ("Patmanathan"), on 31 March 2009. A succession of orders made by the civil courts has not secured her return. The warrant of committal against

Patmanathan remains unexecuted. He has not been apprehended, and Prasana Diksa has not been recovered.

[3] This case concerns more than the private grief of a mother. It concerns the authority of the courts, the binding force of their orders, and the duty of the police to execute lawful warrants issued by them. On 29 April 2016, the Federal Court settled the question of the police's statutory duty in this case under s 20(3)(f) of the Police Act 1967. It held that, on the facts and circumstances of this case, the Inspector General of Police ("IGP") could not refuse to command his officers to execute the warrant of committal against Patmanathan.

[4] The question in the present appeal is different. The Appellant now claims damages for the alleged wrongful non-performance by the IGP and the police of their respective statutory duties concerning the execution of the warrant. We must determine the content of those duties, what the evidence establishes as to their performance, and whether any proved omission probably prolonged the Appellant's separation from Prasana Diksa or caused any other loss for which damages are claimed.

[5] Those inquiries must be kept distinct. Deficiencies in the evidence concerning performance may justify criticism of the police response and may support a finding of non-performance. They do not, however, without more, establish that any such non-performance probably caused the loss claimed. Equally, a failure to prove causation neither establishes that the police response was satisfactory nor diminishes the continuing obligation of the police to execute the warrant of committal and give effect to lawful orders of the courts.

Material Background

[6] The Appellant and Patmanathan were married on 10 April 1993 under the Law Reform (Marriage and Divorce) Act 1976 and had three children. Patmanathan converted to Islam on 11 March 2009 and thereafter converted the children. On 31 March 2009, he forcibly took Prasana Diksa, then 11 months old, from the Appellant without her consent. On 29 September 2009, he obtained an order from the Syariah High Court granting him custody of the three children. The learned Judicial Commissioner stated at paras [1] and [12] of the High Court's judgment under appeal that Prasana Diksa was taken in 2010 and after the civil custody order. With respect, that chronology is incorrect. The Federal Court recorded the date as 31 March 2009 at paras [6] and [29](a) of its judgment: see *Indira Gandhi Mutho v. Ketua Polis Negara* [2016] 3 MLRA 356, FC. We adopt that binding chronology.

[7] On 11 March 2010, the Ipoh High Court granted the Appellant custody, care and control of the three children and ordered Patmanathan to deliver Prasana Diksa to her immediately ("custody order"). Patmanathan's appeal was struck out for failure to pursue it diligently. On 27 November 2012, the Federal Court dismissed his application for leave to appeal. On 8 August 2012, the Ipoh High Court granted a decree *nisi* in respect of the parties' marriage.

[8] The Appellant commenced contempt proceedings on 23 September 2013 and obtained leave on 18 October 2013. Patmanathan contested the application by relying on the Syariah custody order. On 30 May 2014, following a contested hearing, he was adjudged guilty of contempt and ordered to be imprisoned until he purged the contempt by delivering Prasana Diksa to the Appellant ("committal order"). The accompanying warrant of committal commanded the Sheriff and every police officer to apprehend Patmanathan and convey him to Tapah Prison ("warrant of committal"). Neither the committal order nor the warrant of committal required the police to file monthly affidavits reporting the steps taken to execute it.

[9] Separately, on 30 May 2014, the Ipoh High Court made a recovery order under s 53 of the Child Act 2001 for the recovery of Prasana Diksa ("recovery order"). Unlike the committal order, the recovery order imposed investigative and reporting requirements, including filing monthly affidavits and the production of the investigation diary. Although both orders were directed towards securing compliance with the custody order, they differed in their legal bases, operative terms and the obligations which they imposed.

[10] On 12 September 2014, the Ipoh High Court issued a *mandamus* order compelling the then IGP to execute both the warrant of committal and the recovery order: see *Indira Gandhi Mutho v. Ketua Polis Negara* [2015] 1 MLRH 396, HC. On 17 December 2014, a majority of this Court allowed the IGP's appeal and discharged the *mandamus* order: see *Ketua Polis Negara v. Indira Gandhi Mutho* [2015] 1 MLRA 493, CA. The majority regarded the enforcement as involving private rights and held that the police retained discretion. Tengku Maimun Tuan Mat JCA (as she then was) dissented. Her Ladyship held that the dispute had developed into a matter concerning the administration of justice and that, under s 20(3)(f) of the Police Act 1967, the police were under a statutory duty to execute both the warrant of committal and the recovery order.

[11] On 29 April 2016, the Federal Court allowed the Appellant's appeal, set aside the order of this Court and reinstated the High Court's *mandamus* order only insofar as it required the IGP to command the execution of the warrant of committal: see *Indira Gandhi Mutho v. Ketua Polis Negara* [2016] 3 MLRA 356, FC. The Federal Court's formal order required compliance within seven days of service, excluded the Syariah custody order dated 29 September 2009, and remitted the judicial review proceedings to the Ipoh High Court to monitor the progress of execution. It did not reinstate *mandamus* for the recovery order.

[12] The Federal Court's decision defines the duty material to this appeal. The Court held that Patmanathan's defiance of the custody and committal orders had ceased to be merely a private dispute and had become a challenge to the administration of justice. It further held that executing warrants, including warrants of committal, fell within the duties of police officers under s 20(3) of the Police Act 1967, and that the IGP could not refuse to command execution of the warrant. The material passages at paras [31] to [35] are set out below:

"[31] With respect we disagree. This case does not relate purely to the private right of the appellant and Pathmanathan [sic] over the custody of the three children. The private dispute between the two parties had somewhat developed into a challenge to the administration of justice. Pathmanathan, despite having exhausted all avenues to challenge the custody order granted by the civil High Court, is now wilfully disobeying the court's order. After his application for leave to appeal was rejected by this court, he still refused to hand over PD to the appellant. When the contempt proceeding was instituted against him, he defended his action. When he was found guilty of contempt for disobeying the custody order, he appealed to the Court of Appeal. But when his appeal was struck out, he disappeared together with PD.

[32] The chronology of events in this case showed that Pathmanathan has no respect for the court's order. He had willingly submitted himself to the jurisdiction of the civil court and due process was accorded to him but when the case did not turn out in his favour, he decided to ignore the court's order. We are of the view that this kind of conduct cannot be condoned. The administration of justice will be brought into disrepute if the court's order is wilfully disobeyed by a party against whom a warrant of committal had been issued after he was found guilty of contempt of court."

"[33] We are of the view that Pathmanathan must be apprehended to face justice. In order to do so, the warrant of committal needs to be executed and the proper authority to do so has to be the police. The general duties of police officers under the command of the IGP are provided for under s 20(3) of the Police Act 1967 which provides:

> (3) Without prejudice to the generality of the foregoing provisions or any other law, it shall be the duty of a police officer to carry out the purposes mentioned in subsection 3(3); and he may take such lawful measures and do such lawful acts as may be necessary in connection therewith, including:
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> (a) apprehending all persons whom he is by law authorised to apprehend;
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> ...
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> (f) executing summonses, subpoenas, warrants, commitments and other process lawfully issued by any competent authority;
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> ...
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> (j) giving assistance in the protection of life and property;
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> ...
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> (m) escorting and guarding prisoners and other persons in the custody of the police."

[34] It can be seen from the above that the duties of a police officer include the execution of warrants. This must include warrants of committal issued resulting from a contempt proceeding. In that light, we are of the view that on the facts and circumstances of this case the IGP cannot refuse to command

his officers to execute the warrant of committal issued by the civil High Court. Thus, when the IGP declared his intention not to execute the said warrant of committal, an order of *mandamus* can be issued against him.

[35] Therefore, we would answer the question posed to us in the following manner. An order in the nature of *mandamus*, under para 1 of the Schedule to the Courts of Judicature Act 1964 can be directed to the IGP to compel him to command the execution of the warrant of committal (Form 108 of the Rules of Court 2012) when the IGP has demonstrated a refusal to execute or command the execution of the said warrant of committal. But, for the reasons given earlier, we cannot answer the same with regard to the recovery order issued by the civil High Court."

[13] The Federal Court therefore held that s 20(3)(f) of the Police Act 1967 imposed a statutory duty on the police to execute the warrant of committal, and ordered the IGP, by *mandamus*, to command his officers to execute the warrant. It did not formally set aside the recovery order, nor did it compel the IGP to execute that order. The investigative and monthly reporting requirements contained in the recovery order consequently formed no part of the *mandamus* ordered in relation to the warrant. Nor did the Federal Court decide whether, or in what circumstances, wrongful neglect in the performance of the statutory duty relating to the warrant would be actionable in damages at the suit of the Appellant. The present action raises that distinct private-law question, together with the related questions of breach, causation and damage.

Procedural History

[14] The appeal is against the decision of the High Court at Kuala Lumpur dated 28 June 2024, which dismissed the Appellant's claims against the four Respondents with no order as to costs.

The Application To Adduce Further Evidence

[15] Before turning to the merits, we record that this Court on 20 April 2026 unanimously dismissed encl 25, with no order as to costs. We now give our full reasons for that decision.

[16] After the main appeal had been heard, but before judgment was delivered, the Appellant filed encl 25 under s 69(3) of the Courts of Judicature Act 1964 ("CJA 1964") and r 7(1), (3) and (3A) of the Rules of the Court of Appeal 1994 ("RCA 1994") for leave to adduce further evidence. We heard the application on 5 February 2026 upon the motion, the competing affidavits, the written submissions and the authorities. At our direction, the parties thereafter filed additional submissions and authorities on the appellate approach to post-trial evidence, the reception of disputed evidence, remittal and prejudice. We considered all that material.

[17] The proposed evidence consisted of screenshots of SARA100 assistance and BUDI95 petrol benefits said to have been received and redeemed using Patmanathan's identity card ("MyKad") in August and September 2025. The

Appellant contended that the redemptions showed that Patmanathan was in Malaysia and that the Respondents' continuing failure to locate and apprehend him demonstrated a serious failure to discharge their duties.

[18] The Appellant submitted that s 69 CJA 1964 empowered this Court to receive and evaluate the evidence; that the material came from government databases; and that the Respondents, having answered it by affidavit, would suffer no prejudice. She relied, among other authorities, on *Datuk Seri Panglima Mohd Sari Datuk Hj Nuar v. Vee Seng Development Sdn Bhd & Ors* [2009] 2 MLRA 349, *MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd* [2016] 3 MLRA 144, *Hertfordshire Investments Ltd v. Bubb* [2000] EWCA Civ 3013; [2000] 1 WLR 2318, and *Vellasamy Ponnusamy & Ors v. Gurbachan Singh Bagawan Singh & Anor* [2020] 5 MLRA 190.

[19] The Respondents submitted that evidence of subsequent events is admitted sparingly, with due regard for finality; that the proposed material neither falsified a basic assumption made at trial nor concerned the pleaded period; and that its factual implications were disputed and could not fairly be treated as proved without oral evidence or a new trial. Their authorities included *Maju Holdings Sdn Bhd v. Fortune Wealth (H-K) Ltd & Other Appeals* [2004] 1 MLRA 832, *Sin Heap Lee-Marubeni Sdn Bhd v. Yip Shou Shan* [2004] 2 MLRA 21, *R (Iran) v. Secretary of State for the Home Department* [2005] EWCA Civ 982; and *The Attorney General of Malaysia v. Dato' Sri Mohd Najib Tun Haji Abdul Razak & Another Appeal* [2025] 6 MLRA 155.

[20] Section 69(1) CJA 1964 gives this Court full discretionary power to receive further evidence, whether orally, by affidavit or by deposition; s 69(4) permits it to draw inferences of fact and give the judgment or make the order which ought to have been given or made. Rule 7(2) RCA 1994 dispenses with the need for leave in respect of evidence concerning matters occurring after the decision under appeal, while r 7(3) exempts such subsequent matters from the requirement of special grounds. Those provisions neither render immaterial evidence admissible nor displace the Court's discretion, which must be exercised with due regard to the principle of finality. Rule 7(3A) RCA 1994 provides:

> "(3A) At the hearing of the appeal further evidence shall not be admitted unless the Court is satisfied that:
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> (a) at the hearing before the High Court or the subordinate court, as the case may be, the new evidence was not available to the party seeking to use it, or that reasonable diligence would not have made it so available; and
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> (b) the new evidence, if true, would have had or would have been likely to have had a determining influence upon the decision of the High Court or the subordinate court, as the case may be."

[21] The condition in r 7(3A)(a) was satisfied because the proposed evidence concerned events occurring after both the trial and the hearing of the appeal and therefore could not have been available at trial. The decisive question arises under r 7(3A)(b). The authorities governing evidence of subsequent events express the same inquiry by asking whether the subsequent change substantially affects a basic assumption on which the decision at trial was based. Under either formulation, the proposed evidence must be capable of materially influencing the decision under appeal.

[22] In our view, the requirement in r 7(3A)(b) was not satisfied. The proposed evidence concerned transactions said to have occurred through Patmanathan's MyKad in August and September 2025. The 1st respondent's media statement of 27 January 2020 was the immediate factual trigger for the action. The pleadings were not, however, literally confined to that date: they extended to the dates on which the Statement of Claim and the Defence were filed and included steps then said to be continuing. That clarification does not alter the result. The proposed transactions occurred almost five years after the pleadings closed, after the trial and the High Court's decision, and after the main appeal had been heard. The case was pleaded and tried upon the acts, omissions and investigative steps placed before the High Court; it was not founded upon the transactions alleged in 2025. Even accepting the screenshots as authentic and taking the Appellant's inference at its highest, that Patmanathan was personally present in Malaysia in 2025, the evidence would not establish his whereabouts during the period material to the pleaded omissions, identify a step which, if taken earlier, would probably have resulted in his apprehension, contradict a material finding concerning that period, or undermine the issue of causation. It therefore could not have had, or been likely to have had, a determining influence upon the decision under appeal.

[23] That conclusion disposes of the application. It is therefore unnecessary to determine whether the online material was hearsay; whether Patmanathan or a third party used his MyKad; whether the disputed evidence should be received orally or by affidavit; whether this Court should evaluate it or remit the matter for determination; or whether any prejudice could be cured by costs or the admission of further evidence. Those questions would arise only if the proposed evidence first satisfied the threshold of materiality under r 7(3A)(b). It did not.

[24] Accordingly, having regard to r 7(3A), the principles governing evidence of subsequent events and the principle of finality, no basis was shown for exercising our discretion to admit the proposed evidence. Enclosure 25 was therefore dismissed with no order as to costs.

[25] The proposed evidence therefore forms no part of the record upon which the merits of this appeal fall to be determined. On those merits, the Appellant seeks an order setting aside the dismissal of her claim and entering judgment

on liability, with damages to be assessed. The Respondents seek the dismissal of the appeal with costs. No written reply submissions on the merits were filed.

The Pleaded Claim And The High Court's Decision

[26] Against that background, the Appellant commenced the present suit in October 2020. Her Statement of Claim identified the cause of action as the tort of non-feasance in public office. She alleged that the 1st respondent had failed to execute the relevant court orders with due diligence, had not taken reasonable steps to apprehend Patmanathan and had thereby caused or prolonged her separation from Prasana Diksa. She further alleged that the investigation was false or a sham and that the failure was knowing, reckless or malicious. Those allegations particularised the alleged wrongdoing but did not alter the cause of action pleaded.

[27] At trial, the High Court accepted that s 20 of the Police Act 1967 and the operative court orders imposed a duty upon the police. Relying in part upon *Raymond Cheah Choon Sing v. Jurutera Daerah, Jabatan Kerja Raya Seberang Perai Tengah & Ors* [2018] 1 MLRA 40, the learned Judicial Commissioner also accepted that a claim framed in non-feasance was, in principle, legally maintainable.

[28] The High Court nevertheless rejected the claim on its legal footing. It held that the Federal Court had, in effect, set aside the recovery order, with the result that the only subsisting obligation was the execution of the warrant of committal. It further held that, because the Federal Court had characterised the execution of that warrant as a matter concerning the public administration of justice, the Appellant had no private right capable of supporting a cause of action in damages in respect of its execution.

[29] The High Court also rejected the claim on the facts. It accepted the Respondents' evidence regarding the investigative measures taken within and outside Malaysia, including evidence concerning Interpol and enquiries in southern Thailand. It found that the police had taken sufficient steps to locate Patmanathan and that the Appellant had not established malice, bad faith, improper motive or neglect. The High Court accordingly dismissed the action against all four Respondents.

[30] That dismissal after a full trial is not inconsistent with the earlier refusal to strike out the action in *Indira Gandhi Mutho v. Ketua Polis Negara & Ors* [2021] MLRHU 2276, HC. At the interlocutory stage, the High Court held that the pleaded claim was not plainly unsustainable and should not be summarily terminated before the evidence was tested. Its observations on the legal viability of the claim did not determine whether the Appellant could prove liability on the evidence at trial. That is the question which now arises on appeal.

Issues On Appeal

[31] The memorandum of appeal contains ten grounds. In English, the grounds were that the learned Judicial Commissioner erred in law and/or fact:

1) in dismissing the Appellant's claims against the Respondents in their entirety;

2) in holding that the Appellant was required to establish malice and/or bad faith in order to prove the pleaded tort of non-feasance against the Respondents;

3) in holding that, consistently with the Federal Court's order dated 29 April 2016, no order of *mandamus* had been made against the 1st respondent to enforce or execute the recovery order dated 30 May 2014;

4) in holding that the recovery order had been set aside by the Federal Court's order;

5) in holding that the Appellant had failed to prove the tort of non-feasance against the 1st respondent;

6) in holding that the Appellant had no cause of action founded upon her private rights in relation to the execution and enforcement of the warrant of committal by the 1st respondent;

7) in failing to consider that the 1st and 2nd respondents had conducted a false investigation in their search for Patmanathan;

8) in failing to consider that the 1st and 2nd respondents had not conducted a reasonable police investigation in their search for Patmanathan;

9) in failing to consider that the 2nd respondent was vicariously liable for the tort said to have been committed by the 1st and 2nd respondents and was liable under s 5 of the Government Proceedings Act 1956; and

10) in failing to consider that the 3rd and 4th respondents were vicariously liable for the tort said to have been committed by the 1st respondent and were liable under s 5 of the Government Proceedings Act 1956.

[32] Ground 1 was an omnibus challenge to the dismissal of the action. In their written submissions, the Respondents addressed Grounds 2 and 5 together, Grounds 3 and 4 together, Ground 6 separately, Grounds 7 and 8 together, and Grounds 9 and 10 together. Ground 5, which challenged the ultimate finding that the tort of non-feasance had not been proved, necessarily overlapped with

the questions of the tort's legal ingredients, the evaluation of the evidence and causation.

[33] For the purposes of analysis, the ten grounds of appeal can therefore be reduced to the following five issues:

1) the legal effect of the Federal Court's decision upon the recovery order, including whether the 1st respondent remained under any enforceable obligation to execute that order or comply with its investigative and reporting requirements (Grounds 3 and 4);

2) what the Appellant was required to prove in respect of the pleaded claim founded upon wrongful neglect or non-performance, including whether malice or bad faith was a necessary ingredient (Grounds 2 and 5);

3) whether the High Court erred in treating the public-law character of the execution of the warrant of committal as extinguishing the Appellant's direct and personal interest and, by itself, precluding liability in private law (Ground 6);

4) whether the High Court's evaluation of the police evidence can stand and, if not, what conclusions that evidence permits concerning the performance of the statutory duty relating to the warrant (Grounds 7 and 8 and, to that extent, Ground 5); and

5) whether the Appellant proved causation and damage and, consequently, whether personal or derivative liability was established against any of the four Respondents (Grounds 1, 5, 9 and 10).

[34] The determinative questions are therefore narrower than some of the submissions suggested. We address those questions in the order stated above.

Appellate Approach To The Evidence

[35] An appellate court does not interfere with a trial judge's findings of fact merely because it might have reached a different view. Proper weight is due to findings which turn upon the demeanour and credibility of witnesses whom the trial judge saw and heard.

[36] Intervention is permissible where a finding rests upon an inadequate appreciation of documentary evidence, a failure to consider material admissions, an inference unsupported by primary facts, or a misdirection as to the weight of evidence: *Renal Link (KL) Sdn Bhd v. Dato' Dr Harnam Singh* [1997] 1 MLRA 259; *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 2 MLRA 668; and *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng & Ors* [2020] 6 MLRA 193, FC.

[37] Much of the controversy here does not depend on demeanour. It concerns dates, the provenance and content of documents, the witnesses' means of knowledge, and the effect of admissions made during cross-examination. This Court is as well placed as the High Court to evaluate those matters. For the reasons given below, the High Court's evidential evaluation cannot be accepted without substantial qualification.

The Recovery Order

[38] We first correct an imprecision in the High Court's judgment. The Federal Court did not, in the formal terms of its order dated 29 April 2016, set aside the recovery order of 30 May 2014. It is therefore inaccurate to say, without qualification, that the recovery order itself was set aside.

[39] The legal consequence is nevertheless clear. The Federal Court held in its reasons that the recovery order ought not to have been made, excused the IGP for not taking action to enforce it, declined to compel its execution, and reinstated *mandamus* only in relation to the warrant of committal. That limitation was deliberate and must be given effect. After the Federal Court's decision, the 1st respondent was not subject to *mandamus* to execute the recovery order.

[40] It follows that the obligation to file monthly affidavits, which appears in the recovery order and not in the committal order, cannot be used as a freestanding measure of non-compliance with the Federal Court's *mandamus*. The admission that no such affidavits were filed cannot sustain the pleaded claim in respect of the remaining committal limb.

[41] Ground 3 therefore fails. Ground 4 is made out only to the formal extent that the recovery order was not itself set aside. That limited success does not advance the appeal, as the Federal Court declined to compel execution of the recovery order and reinstated *mandamus* only in relation to the warrant of committal.

The Tort Of Non-Feasance

[42] Non-feasance describes a failure to perform an act that ought to be performed. The label does not, by itself, create strict liability whenever the required result is not achieved. The source and content of the duty, the omission said to constitute its breach, causation and damage must still be proved.

[43] The statutory framework is express. Section 3(3) of the Police Act 1967 states the purposes for which the Royal Malaysia Police ("the Force") is employed. Section 4(1) places the Force under the command of the IGP. Section 20 then identifies the general duties of police officers. The material provisions are:

> Section 3(3): "The Force shall subject to this Act be employed in and throughout Malaysia (including the territorial waters thereof) for the

maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence."

Section 4(1): "The Force shall be under the command of an Inspector General who shall be a police officer and shall be responsible to the Minister for the control and direction of the Force and all other persons appointed or engaged for police duties, and who shall have all the powers conferred on a Commissioner or a Chief Police Officer."

Section 20(1): "Every police officer shall perform such duties and exercise such powers as are by law imposed or conferred upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superior officers in the Force."

Section 20(3): "Without prejudice to the generality of the foregoing provisions or any other law, it shall be the duty of a police officer to carry out the purposes mentioned in subsection 3(3); and he may take such lawful measures and do such lawful acts as may be necessary in connection therewith, including:

(a) apprehending all persons whom he is by law authorised to apprehend;

...

(f) executing summonses, subpoenas, warrants, commitments and other process lawfully issued by any competent authority."

[44] Read together, these provisions identify the public purpose, the chain of command and the operative duty. The words "shall perform" and "it shall be the duty" are mandatory. Section 20(3)(f), as authoritatively applied by the Federal Court, left no discretion to refuse to execute this warrant. At the same time, s 20(3) speaks of lawful measures and lawful acts which may be necessary. It requires genuine and lawful measures directed towards the execution of the warrant, but it does not make the police insurers of a successful apprehension. Although the duty to act is mandatory, success is not guaranteed. Failure to apprehend and failure to act are not synonymous.

[45] The Appellant relied upon *Raymond Cheah (supra)*. That case concerned a claim in negligence arising from the failure to maintain a public road and the operation of ss 5 and 7 of the Government Proceedings Act 1956. The claim was approached by reference to the ordinary requirements of negligence: the existence of a duty, breach of that duty, causation and damage. The Court also held that, within that statutory setting, the former common law distinction between misfeasance and nonfeasance did not bar the claim.

[46] *Raymond Cheah* must nevertheless be kept within its statutory and factual setting. It neither establishes strict liability for every omission by a public authority nor determines the ingredients of a free-standing tort labelled "non-feasance". Its relevance is more limited. It demonstrates that, where liability is founded upon negligent breach of an actionable duty, malice or bad faith is not an additional ingredient merely because the defendant is a public authority.

[47] The Respondents relied upon *Jay Laxmi Salt Works (P) Ltd v. State of Gujarat* (1994) 4 SCC 1. It is correct that the Supreme Court of India stated that an omission classified as nonfeasance had to be characterised by malice or bad faith. That statement, however, was made while considering the meaning and scope of art 36 of the Indian Limitation Act 1908, which specifically referred to actions for malfeasance, misfeasance or nonfeasance independent of contract. Read as a whole, the judgment held that those expressions did not exhaust the law of torts. It recognised that negligent planning or failure to perform a public duty might be actionable in tort without falling within those classifications.

[48] We therefore do not accept that *Jay Laxmi* establishes a general rule that malice or bad faith is an indispensable ingredient whenever a claim arising from the omission of a public authority is characterised as one in non-feasance. Nor do we consider it necessary in this appeal to determine the existence or precise elements of non-feasance as an independent tort. The substance of the pleaded complaint is the wrongful neglect or non-performance of duties said to have been imposed by law. Assuming in the Appellant's favour that those duties were actionable at her suit, she was still required to prove breach, causation and damage. Malice or bad faith was not an additional threshold requirement. Ground 2 succeeds only to that limited extent.

[49] It is unnecessary, for the determination of this appeal, to decide the full extent of any private-law duty actionable in damages arising from s 20 of the Police Act 1967 and the committal order, or to recognise and define a wider, independent tort of non-feasance. We assume, in the Appellant's favour, that the 1st respondent owed her an actionable duty to command, and through the police force to take reasonable and lawful steps towards the execution of the warrant. We also assume, without deciding, that the delays and deficiencies identified below could amount to a breach.

[50] Those assumptions isolate the decisive issue. The Appellant still had to prove, on the balance of probabilities, that proper performance would probably have led to Patmanathan's apprehension, Prasana Diksa's recovery or the avoidance of an identifiable part of the loss claimed.

The "No Private Right" Reasoning

[51] We turn to a part of the High Court's reasoning that we are unable to affirm. The Federal Court held that the execution of the warrant of committal concerned the public administration of justice. That explained why the police could not treat its execution as merely a private dispute and why *mandamus* was available. It did not decide that the Appellant lacked a direct and personal interest in the execution of the warrant, nor did it decide that the public character of the statutory duty, by itself, precluded liability in private law.

[52] The Appellant obtained the underlying custody and committal orders, and the warrant was issued pursuant to the committal order obtained by her. She alleges that the continued non-execution prolonged her separation from

Prasana Diksa and caused personal loss. The public interest in obedience to court orders and the Appellant's personal interest in the execution of the warrant can coexist. Recognition of one does not negate the other.

[53] The necessary distinction is between an interest in performance and legal liability in damages. A sufficient interest to obtain public-law relief, and a direct personal interest in the execution of a court order, do not, without more, establish an actionable private-law duty or an entitlement to damages. That entitlement depends upon proof of the ingredients of the tort pleaded, including duty, breach, causation and damage. We therefore do not affirm the High Court's categorical "no private right" reasoning. Ground 6 succeeds to that limited extent.

The Police Evidence

[54] Against that legal framework, the relevant evidential inquiry concerned the performance of the statutory duty relating to the warrant of committal: whether the IGP commanded its execution as ordered by the Federal Court and whether the police thereafter took reasonable and lawful steps towards its execution. It did not concern compliance with the investigative and monthly reporting requirements contained in the recovery order. At trial, the Appellant testified as PW1. The principal witnesses for the Respondents were Tan Sri Abdul Hamid Bador ("DW1"), the former IGP, and ASP Yap Siew Cheng ("DW2"). DW1 held office from 2019 until May 2021. DW2 assumed responsibility for the efforts to locate and apprehend Patmanathan on 13 November 2020, after the writ had been filed on 28 October 2020.

[55] The High Court was entitled to consider their evidence. The fact that a witness speaks from official briefings or records does not automatically render the evidence worthless. Nor is documentary corroboration invariably required before oral evidence can be accepted. But weight depends upon the witness's means of knowledge, whether the account withstands cross-examination, the availability of contemporaneous records, and whether the documents relied upon actually support the proposition for which they are tendered.

[56] In our judgment, the High Court attributed materially greater weight to the Respondents' evidence than it could safely bear. We identify the principal difficulties below.

The 72 Police Reports And Ops Noda

[57] The Respondents relied upon 72 police reports and related operational material as demonstrating a sustained search for Patmanathan. The Respondents' case concerning Ops Noda was that, although the operation was principally directed at prostitution, vice and unlawful entertainment activities, the officers involved also used the visits to the premises concerned to search for Patmanathan. The police reports recorded inspections at various premises and stated that checks were also conducted to trace a suspect named Patmanathan

a/l Krishnan @ Muhammad Riduan bin Abdullah, but that he was not found. The Respondents relied upon those reports as evidence that searches for him were conducted at various locations in Perak and Kelantan in the course of Ops Noda and Ops Kesan.

[58] The evidence given in cross-examination was less favourable to the Respondents. DW1 accepted the nature of Ops Noda but was unable to say whether the reports were connected with the attempt to apprehend Patmanathan, as they were not his reports and he had no personal knowledge of the operations. DW2 accepted that there was no nexus between prostitution and Patmanathan. She then agreed with counsel's proposition that the approximately 72 police reports relied upon had no connection with him.

[59] The documentary contents of the reports must, however, be distinguished from the concessions made in cross-examination. The reports expressly stated that, while the officers were conducting Ops Noda, checks were also made to trace Patmanathan. They therefore bore a connection with the attempt to locate him. DW2's agreement with counsel's proposition that the reports had no connection with Patmanathan did not alter their contents or deprive them of all evidential weight. The High Court was entitled, in that limited sense, to regard the checks as forming part of the wider search. The difficulty concerns the weight attributed to them. Ops Noda was principally directed at prostitution, vice and unlawful entertainment activities. The reports did not establish that the premises were selected upon intelligence specific to Patmanathan, that the checks formed part of a coordinated plan to execute the warrant, or that any follow-up action resulted. They demonstrated repeated opportunistic checks, but their number alone could not establish a reasonably prompt, continuous and targeted attempt to execute the warrant. To the extent that the High Court treated them as sufficient proof of such an attempt, it attributed greater weight to the reports than they could safely bear.

[60] The High Court also treated DW1's evidence concerning the Special Task Force on Organised Crime ("STAFOC") as demonstrating that the police had deployed a high level of expertise and had taken the matter seriously. That conclusion went beyond the available foundation. No contemporaneous document established what STAFOC was instructed to do, when it acted, or what result followed. The unit's asserted expertise could not, without evidence of the work actually performed, corroborate a continuous and targeted attempt to execute the warrant.

Post-Action Requests And Interpol

[61] Several agency letters relied upon by the Respondents were dated on or after 13 November 2020. The Interpol steps described by DW2 were also taken after the action commenced. They comprised a Blue Notice said to have been issued against Patmanathan on 26 November 2020 and a Yellow Notice said to have been issued concerning Prasana Diksa on 1 December 2020. These matters may show that the police continued or renewed their efforts after the

action had commenced. They could not, however, retrospectively establish the adequacy of the steps taken to comply with the Federal Court's order and execute the warrant of committal between April 2016 and the commencement of the action.

[62] The documents tendered were principally requests for information addressed to domestic agencies. As regards Interpol, DW2 stated that on 26 November 2020 she applied for a Blue Notice against Patmanathan and that it was issued on the same day with his status recorded as "Wanted". She further stated that on 1 December 2020 she applied for a Yellow Notice concerning Prasana and that it too was issued on the same day. Neither application nor either notice was produced. When asked in cross-examination to show the application to Interpol and copies of the two notices, DW2 accepted that they were not before the Court.

[63] DW1's evidence took the matter no further. He had not personally contacted Interpol and accepted that his evidence was based on a briefing by the Criminal Investigation Department. He did not know the details of the steps taken by the investigating team in relation to Interpol and was unable to identify any document supporting his oral evidence. There was also an unexplained discrepancy: DW1 referred to requests for Red and Blue Notices, whereas DW2 said Blue and Yellow Notices had been issued.

[64] In the absence of the applications, the notices and any related communications, the Court could not ascertain the information supplied to Interpol, the terms or status of the requests, or whether the warrant of committal was supplied to Interpol or otherwise brought to its attention. Nor could the Court ascertain what action foreign law-enforcement authorities were asked to take, how long the notices remained operative, or whether any information or other assistance was received in response. DW2 ultimately said that the checks with Immigration and Interpol had produced no positive information about Patmanathan's whereabouts. The evidence therefore established only that, according to DW2, Interpol assistance had been sought after the action had commenced. It did not permit the scope or practical effect of those measures to be evaluated. The High Court attributed greater weight to this evidence than it could safely bear.

DW1's Means of Knowledge

[65] DW1 did not hold the office of IGP during the critical period immediately following the Federal Court's order. On numerous matters, he spoke about what he had been briefed on, what he believed, and what he was sure must have occurred. His explanations in re-examination concerning intelligence and confidential operations were, in material respects, general and retrospective.

[66] That evidence was relevant to DW1's own period in office and to the information officially conveyed to him. It was not first-hand proof of what

the officers responsible in 2016, 2017 or 2018 had done. Nor could it fill the evidential gap left by the absence of contemporaneous records for those years.

Missing Contemporaneous Records

[67] Important contemporaneous records concerning the steps said to have been taken to execute the warrant of committal were not produced. These included: any command or direction issued by the IGP within the period stipulated in the Federal Court's order; the documentary foundation for the separate warrant of arrest said to have been issued on 11 May 2016 and for the asserted inclusion of Patmanathan's name in the Senarai Pekeliling Khas 'A' ("SPKA"); the applications, notices and related communications said to evidence the Interpol measures; the responses from the agencies approached; and the material said to concern southern Thailand. The Respondents invoked confidentiality in relation to parts of the investigation. However, they did not adduce sufficient evidence to enable the Court to evaluate that claim or the nature and significance of the material withheld.

[68] We do not hold that the non-production of the material automatically attracted an adverse inference under s 114(g) of the Evidence Act 1950. Whether such an inference may be drawn requires careful consideration of, among other matters, the availability of the material and the circumstances of its non-production. Nevertheless, the absence of contemporaneous records materially affected the weight which could safely be placed upon the Respondents' oral evidence. It left important aspects of that evidence without documentary support and required greater caution than the High Court applied.

The Admitted Delays

[69] The Respondents' own evidence disclosed material delay. The nationwide directive was issued on 4 December 2016, more than seven months after the Federal Court's order. DW1 accepted in cross-examination that the police response was slow, indeed very slow. The public media appeal in January 2018 and the entry into the police wanted-person system in February 2018 followed almost two years after the Federal Court's decision. A request to Immigration was not made until 9 August 2019.

[70] Those delays were not peripheral to the question of performance. Promptness is plainly important when executing a warrant against a person who may evade apprehension while withholding a child from her custodial parent. Delay is capable of diminishing the prospects of apprehension. The High Court should have addressed the delays directly rather than subsuming them within a general conclusion that sufficient effort had been made. This criticism concerns the sufficiency and weight of the evidence of performance. It does not, without more, establish that any delay probably caused or prolonged the loss claimed.

The "Happy Ending" And Southern Thailand

[71] The Appellant relied heavily upon DW1's public reference to a "happy ending" in his media statement. Read in context, the expression did not establish that he had decided to substitute negotiation for the execution of the warrant or to refuse to execute it. DW1 explained that he meant a resolution in which the child would be located and the matter handled lawfully. The expression was ill-chosen, but it did not establish that the IGP had decided not to perform the duty.

[72] DW1 also spoke of a general belief, said to be based on intelligence, that Patmanathan was in southern Thailand. No precise location, underlying intelligence record, surveillance material or request to the Thai authorities was produced. At its highest, the evidence disclosed a general intelligence lead. It did not establish that any request was made or operational step taken to apprehend Patmanathan in Thailand. Nor did it establish his actual location.

Public Prosecutor v. Mohamed Ali

[73] The High Court relied on *PP v. Mohamed Ali* [1962] 1 MLRH 79, for the proposition that police evidence which is not inherently improbable and is neither contradicted by other evidence nor shaken in cross-examination should not be rejected merely because it is uncorroborated. We accept that principle. It applies to the evidence of any witness and does not render police evidence inherently suspect. Equally, it does not relieve the Court of its duty to evaluate the witness's means of knowledge, the effect of cross-examination and the weight the evidence can properly bear.

[74] The difficulty lies in applying that principle. The evidence in the present case was materially qualified in cross-examination. Its relevance was weakened, its chronology exposed, and its foundation shown in important respects to be second-hand or undocumented. This was not a case in which an unimpeached police witness gave evidence of a simple fact within his direct knowledge. The absence of contemporaneous records was material not because corroboration was invariably required, but because the principal witnesses lacked first-hand knowledge of important parts of the relevant period and the records constituted the best available evidence of what had actually been done. Reliance upon *Mohamed Ali* did not answer the deficiencies.

[75] The High Court also relied upon *Hill v. Chief Constable of West Yorkshire* [1988] 2 All ER 238 as recognising the wide operational discretion available to the police. *Hill* concerned the existence of a duty of care to an individual member of the public in the context of the general investigation and suppression of crime. In that context, the House of Lords recognised the discretion of a chief officer of police to deploy resources and to determine the lines of inquiry to be pursued. The present case before us is materially different. It concerns the statutory duty under s 20(3)(f) of the Police Act 1967, a specific warrant of

committal and an extant order of *mandamus* requiring the IGP to command its execution.

[76] The police retained operational discretion as to the reasonable and lawful means by which the warrant of committal was to be executed. They had no discretion, however, to refrain from executing it. *Hill* does not answer the separate evidential question whether the evidence established that the IGP commanded the execution of the warrant and that the police thereafter took reasonable and lawful steps towards its execution. Our conclusion prescribes no particular investigative or operational tactic. It concerns the sufficiency and weight of the evidence as to the performance of the particular statutory duty in this case.

Evaluation Of The Police Evidence

[77] Measured against s 20(3)(f) of the Police Act 1967, the Federal Court's order and the terms of the warrant, the High Court's unqualified conclusion that the police had sufficiently and fully performed their duty cannot stand. For the purpose of evaluating performance, the relevant inquiry was not whether the warrant of committal remained formally in force or whether police activity could be demonstrated in the abstract. It was whether the evidence established that the IGP had commanded its execution within the seven-day period stipulated by the Federal Court and that the police thereafter took reasonable and lawful steps to apprehend Patmanathan under the warrant.

[78] The evidence before the High Court nevertheless disclosed a number of activities said to have been directed towards the execution of the warrant. Before the action was filed, these included a media statement on 29 April 2016; the nationwide directive of 4 December 2016; searches or checks in Perak and Kelantan; the media appeal of 29 January 2018; the SPKA entry of 6 February 2018; and the Immigration request of 9 August 2019. The Respondents also pleaded that a separate warrant of arrest had been issued on 11 May 2016, although its complete documentary foundation was not produced. Those matters cannot simply be disregarded. Some constituted evidence of activity directed towards locating Patmanathan. They did not, whether considered individually or cumulatively, establish that the IGP complied with the requirement to command execution within seven days of the Federal Court's order or that the subsequent activities resulted from such a command.

[79] There were material deficiencies in the evidence of performance. No contemporaneous command or direction issued by the IGP within the stipulated seven-day period was produced. The nationwide directive followed more than seven months after the Federal Court's order. The public appeal and the asserted SPKA entry followed almost two years after it. The Ops Noda reports recorded opportunistic checks for Patmanathan during operations whose principal purpose was the enforcement of laws concerning vice and unlawful entertainment. They carried limited weight as proof of a sustained and focused effort directed towards executing the warrant. Important

contemporaneous records and agency responses were not produced, and the evidential foundation for the intelligence concerning southern Thailand was not established. The later agency requests and the Interpol steps described by DW2 could not retrospectively establish the adequacy of the steps taken before the present action was commenced.

[80] We therefore do not affirm the High Court's broad conclusion that the police had sufficiently and fully performed their duty. The evidence was weaker than the High Court appreciated. It disclosed material delay, the absence of important contemporaneous records, limited first-hand knowledge on the part of the principal witnesses, and activities carrying limited probative weight as proof of a sustained effort to execute the warrant. These matters concerned the objective chronology, the documentary foundation of the Respondents' case, the witnesses' means of knowledge and material concessions made in cross-examination. They justified appellate re-evaluation. The burden of proving the pleaded claim nevertheless remained upon the Appellant. Weaknesses in the evidence relied upon by the Respondents as demonstrating adequate performance were not affirmative proof that no command was issued or that no steps were taken. Nor did those deficiencies establish the Appellant's wider allegation that the entire investigation was false or a sham.

[81] On the approach most favourable to the Appellant, we assume, without deciding, that the admitted delays and evidential deficiencies were capable of amounting to actionable non-performance. We do not treat the gaps in the documentary evidence as themselves constituting a breach. Even on that assumption, the Appellant was required to establish, on the balance of probabilities, that, but for the assumed non-performance, Patmanathan would probably have been apprehended, Prasana Diksa recovered, or an identifiable part of the loss claimed avoided. That is the remaining and decisive question.

[82] Ground 2 succeeds because malice and bad faith were not additional ingredients of the pleaded claim founded upon wrongful neglect or non-performance. Ground 8 is also made out to the limited extent that the High Court's evaluation of the reasonableness and sufficiency of the police response cannot stand without substantial qualification. Ground 7 does not succeed: the evidential deficiencies did not establish that the investigation was false or a sham. Ground 5 cannot be resolved in the Appellant's favour by those evidential errors alone. It ultimately turns on causation.

Causation And Damage

[83] Causation is the decisive difficulty. The Appellant pleaded that the Respondents' conduct directly or indirectly caused or prolonged the separation and enabled Patmanathan to evade apprehension. The Respondents denied that causal connection. Ground 5 challenges the ultimate finding that the pleaded tort was not proved and therefore places in issue whether each essential ingredient of the claim was established. The absence of a separate causation analysis in the High Court's judgment did not relieve the Appellant

of her burden. Even on the assumptions most favourable to her as to duty and breach, she was required to establish, on the balance of probabilities, that an actionable omission was an effective cause of the whole or an identifiable part of the loss claimed. Put another way, she had to show that, but for an identified omission, Patmanathan would probably have been apprehended, Prasana Diksa recovered, or an identifiable part of the loss avoided. Private-law damages compensate for loss caused by an actionable wrong. They are not awarded merely to mark judicial disapproval of unsatisfactory administrative performance.

[84] Prasana Diksa was taken and the separation of mother and child began, years before the committal and recovery orders of 30 May 2014 and the Federal Court's order of 29 April 2016. The Respondents did not cause the original taking or the initial separation. The Appellant's case therefore depended upon proof that an actionable omission by the Respondents prolonged that separation or caused some distinct loss. The Immigration records produced at trial showed that Patmanathan's last recorded official departure from Malaysia was on 19 March 2014, before those orders. It remained possible that he returned by an unrecorded route or was later present in Malaysia, but no admissible evidence established when or where that occurred. That possibility alone could not satisfy the balance of probabilities.

[85] The evidence did not provide a factual basis for the Court to infer that the timely and proper measures directed towards the execution of the warrant of committal would probably have led to Patmanathan's apprehension or to Prasana Diksa's recovery. It identified no proved address at which Patmanathan would probably have been found, no identified border crossing at which a timely alert would probably have resulted in his interception, and no particular request to a domestic or foreign authority which, if made earlier, would probably have secured his apprehension or return. A more prompt nationwide directive, an earlier media appeal or an earlier Interpol step might have improved the prospects of success. The evidence did not show, however, that any such measure would probably have secured Patmanathan's apprehension or Prasana Diksa's recovery or shortened the separation by an identifiable period.

[86] In relation to the present issue, the assistance derived from *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2008] 2 MLRA 735, FC, lies in its treatment of causation. The Federal Court held that the losses in that case were caused by the JE or Nipah virus, rather than by the alleged delay or inefficiency of the public authorities, and would have occurred in any event. Read in context, the decision does not establish a general rule that delay or inefficient performance by a public authority can never be actionable. Here, the taking of Prasana Diksa and the separation preceded the omissions relied upon. The Appellant nevertheless had to establish that an identified omission of the 1st respondent probably prolonged the separation or caused some distinct loss. The evidence did not establish any identifiable period of separation, distress or other loss which, but for such an omission, would probably have been avoided.

[87] We do not doubt the reality of the Appellant's pain, anxiety and continuing sense of injustice. The requirement of causation does not diminish that suffering. It identifies the loss for which the law may hold a defendant responsible as the consequence of an actionable wrong. That connection was not proved on the balance of probabilities.

[88] The failure to prove causation defeats the claim even on the assumption of duty and breach favourable to the Appellant. Ground 5 therefore fails. In the absence of liability for the substantive claim, the claims for aggravated and exemplary damages necessarily fall with the substantive claim.

The Second To Fourth Respondents

[89] The claims against the 2nd and 3rd respondents add no independent basis of liability. The Royal Malaysia Police is the Force constituted under the Police Act 1967 and is placed under the command of the IGP. The Ministry of Home Affairs is a government ministry. Neither is a body corporate or a separate legal person upon which vicarious liability under s 5 of the Government Proceedings Act 1956 may be imposed independently. Subject to the provisions of that Act, the Government of Malaysia, the 4th respondent, is the governmental defendant to whom any derivative liability under s 5 of the Government Proceedings Act 1956 would fall.

[90] The Government's liability under s 5 is derivative rather than primary. In *Lay Kee Tee (supra)*, the Federal Court held that the public officer responsible for the alleged tort must be joined and that his liability must be established before the Government can be made vicariously liable. The 1st respondent was joined in the present action. The claim against him nevertheless fails because the Appellant did not establish causation. In the absence of personal liability on his part, no derivative liability arises against the 4th respondent. The 2nd and 3rd respondents provide no alternative route to such liability.

[91] The Respondents reproduced s 6(3) of the Government Proceedings Act 1956 but did not develop its application to the circumstances of this case. Given our conclusion that the primary claim fails for want of causation, it is unnecessary to determine whether s 6(3) would provide any additional answer to the claim against the Government. We express no concluded view upon that question.

[92] Nothing in these grounds should be understood as conferring a general immunity upon the police or as suggesting that a failure to obey and execute lawful orders and warrants of the courts is legally inconsequential. Our conclusion is confined to the private-law claim as pleaded and to the evidence adduced in this appeal. It does not diminish the continuing statutory duty of the police to execute the warrant of committal. Grounds 9 and 10 therefore fail.

Conclusion

[93] We first record our conclusion on encl 25. On 20 April 2026, we unanimously dismissed encl 25 because the proposed evidence concerned events in 2025, long after the pleadings, the trial, the High Court's decision and the hearing of the main appeal. It could not have had a determining influence upon the decision under appeal. It did not establish Patmanathan's whereabouts during the period material to the pleaded omissions, identify any earlier step that would probably have resulted in his apprehension, or undermine the issue of causation. That material therefore forms no part of our determination of the merits.

[94] As to the merits, the Federal Court did not, in the formal terms of its order, set aside the recovery order. Ground 4 succeeds to that limited formal extent. The Federal Court nevertheless declined to compel the IGP to execute the recovery order. The *mandamus* ordered by the Federal Court required the IGP to command his officers to execute the warrant of committal. Ground 3 therefore fails. The investigative and monthly reporting requirements contained in the recovery order formed no part of that *mandamus* and cannot support the present claim concerning the execution of the warrant.

[95] Secondly, the High Court erred in treating the public-law character of committal as extinguishing the Appellant's direct and personal interest or, by itself, precluding liability in private law. The public interest in obedience to court orders and the Appellant's personal interest in the execution of the warrant can coexist. However, that personal interest, without more, does not establish an entitlement to damages. Ground 6 succeeds to that limited extent.

[96] Thirdly, malice and bad faith were not additional ingredients of the pleaded claim founded upon wrongful neglect or non-performance. Ground 2 succeeds to that limited extent. It is unnecessary to determine the full contours of an independent tort of non-feasance. We have assumed in the Appellant's favour that the 1st respondent owed her an actionable duty and that the delays and shortcomings disclosed by the evidence were capable of amounting to breach. Those assumptions did not relieve her of the burden of proving causation and damage.

[97] Fourthly, the police evidence was weaker than the High Court appreciated. The limited weight of the Ops Noda reports as proof of a coordinated and targeted execution of the warrant, the post-action agency and Interpol steps, DW1's limited first-hand knowledge, the absence of important contemporaneous records, the admitted delays and the uncertain evidence concerning southern Thailand required substantially greater caution. Those errors justified appellate re-evaluation. We do not affirm the High Court's broad conclusion that the police had sufficiently and fully performed their duty. Ground 8 succeeds to that limited extent. Weaknesses in the Respondents' proof of adequate performance did not, however, establish that the entire investigation was false or a sham. Ground 7 therefore fails.

[98] Finally, causation was not proved on the balance of probabilities. The evidence did not establish that, but for an identified omission, Patmanathan would probably have been apprehended, Prasana Diksa recovered, or an identifiable part of the loss claimed avoided. It did not establish that any omission probably prolonged the separation for an identifiable period or caused some other distinct loss. Ground 5 therefore fails and, with it, the omnibus challenge in Ground 1. That failure is fatal even upon assumptions made in the Appellant's favour on duty and breach.

[99] In the absence of personal liability on the part of the 1st respondent, no derivative liability arises against the Government of Malaysia under s 5 of the Government Proceedings Act 1956. The Royal Malaysia Police and the Ministry of Home Affairs provide no independent basis for liability. Grounds 9 and 10 therefore fail.

[100] The appeal therefore fails on a narrow but essential ground: the causal connection required for an award of private-law damages was not proved on the balance of probabilities. It does not fail because the police response was shown to be satisfactory, because the Appellant lacked a direct and personal interest in the execution of the warrant, or because delay in the performance of a statutory duty is legally immaterial. None of those propositions forms any part of our decision.

[101] The warrant of committal remains unexecuted. The passage of time has not diminished its authority. Nor has it relieved the police of their continuing statutory duty to execute it.

Decision

[102] For completeness, we record that our order of 20 April 2026 dismissing encl 25, with no order as to costs, stands.

[103] As to the appeal, notwithstanding the Appellant's success on Grounds 2, 4, 6 and 8, she has not displaced the ultimate dismissal of her claim. Grounds 1, 3, 5, 7, 9 and 10 fail.

[104] The appeal is accordingly dismissed.

[105] The order of the High Court dated 28 June 2024 dismissing the action is affirmed, but only for the reasons stated in this judgment and not upon those aspects of the High Court's reasoning with which we have been unable to agree.

[106] Given the public importance of the issues, the Appellant's limited success on Grounds 2, 4, 6 and 8, and the material deficiencies in the Respondents' evidence, we make no order as to costs. The High Court's order of no costs remains.