# DAHLIA DHAIMA ABDULLAH

**v.**

# MAJLIS AGAMA ISLAM SELANGOR (MAIS) & ANOTHER APPEAL

Federal Court, Putrajaya
Abang Iskandar Abang Hashim PCA, Mary Lim Thiam Suan, Abu Bakar Jais FCJJ
[Civil Appeal Nos: 01(f)-18-06-2023(B) & 01(f)-19-06-2023(B)]
3 May 2024

***Constitutional Law:*** *Courts — Jurisdiction — Jurisdiction of Syariah Courts and Civil Courts — Appellant's prayer for declaration that she was not a person professing religion of Islam dismissed — Whether appellant's conversion as a minor into Islam valid — Demarcation between categories of one who "never was a Muslim" and one who was "no longer a Muslim" — Whether this was clearly an apostacy or renunciation case where Syariah Courts had jurisdiction*

The present two related appeals were against the majority decision of the Court of Appeal in this case. This court had earlier allowed leave to appeal based on the following questions of law: (1) Was the date of the conversion of a person into Islam the date of his or her actual conversion or the date of issuance of a card confirming the fact of conversion? (2) In determining the legality of the conversion of a minor into Islam, was the legality of such conversion to be tested against the applicable law as it stood at the time of when the conversion occurred? Further to this: (a) Could the said minor be deemed to be Muslim notwithstanding by virtue of provisions akin to the definition of "Muslim" in s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("2003 Enactment")? (b) Was such definition only applicable to the children of persons born into the religion of Islam such that, where the children of persons who converted into Islam after the birth of such children were concerned, such children must convert into Islam for them to be treated in law as such? (3) In any event, did s 74(3) of the Administration of Islamic Law Enactment 1989 (Selangor) ("1989 Enactment") oust the jurisdiction of the High Court to determine the validity of a minor's conversion into Islam? (4) Where an order of the Syariah Court was a nullity, could such order be collaterally attacked in proceedings before the High Court pursuant to the rule enunciated by the Federal Court in *Eu Finance Bhd v. Lim Yoke Foo* and did art 121(1A) of the Federal Constitution ("FC") apply? (5) Whether the Civil Courts had the powers to reverse findings of facts made by the Syariah Court in the determination of matters of Islamic law and doctrine? (6) *Was Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* ("*Rosliza*") limited to have only prospective overruling, based on the principles as enunciated in: (a) *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation*

*Sdn Bhd*; and (b) The decision of the House of Lords in *Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others*.

The appellant was born on 17 November 1986 to a non-Muslim married couple. In 1991, when the appellant was five years old, her parents separated and the appellant's mother took the appellant with her. On 17 May 1991, the mother converted to Islam and so did the appellant, with only the consent of the mother. Although the mother was issued with the certificate of conversion two months later, the certificate of conversion for the appellant was only issued on 28 August 1993. Many years later, in 2013, the appellant, then aged 27, filed a summons at the Kuala Lumpur Syariah High Court ("SHC") seeking a declaration that she was no longer a Muslim. The Syariah High Court dismissed her summons, and the appellant's subsequent appeal against the SHC's decision was also dismissed by the Federal Territory Syariah Court of Appeal ("SCA"). Following that decision, the appellant filed an originating summons against Majlis Agama Islam Selangor and Kerajaan Negeri Selangor (collectively as "the respondents") at the High Court ("HC") in May 2021 seeking a declaration that she was not a person professing the religion of Islam.

The HC granted her application, holding, among others, that the SHC and SCA had no jurisdiction to decide on the case as the appellant was never a Muslim. Instead, the HC had the jurisdiction to decide this case. The appellant also could not be converted because she had not attained the age of puberty and, hence, her purported conversion had contravened s 147 of the Administration of Muslim Law Enactment 1952 ("1952 Enactment"). The respondents appealed and the Court of Appeal ("CA"), by way of majority decision, allowed their appeals on the ground of absence of jurisdiction alone. Hence, the present appeals by the appellant. These appeals essentially concerned the application of the law enunciated in *Rosliza* which demarcated the categories of one who "never was a Muslim" on the one side and one who was "no longer a Muslim" on the other. In the former *ab initio* category, the Civil Courts were held to possess jurisdiction to determine one's religious status. In the latter category, termed as a renunciation case, the jurisdiction remained with the Syariah Courts.

**Held** (dismissing the appeals by way of majority decision):

Per Abu Bakar Jais FCJ (majority):

**(1)** The Civil Courts could not exercise the jurisdiction of the Syariah Courts for apostacy cases as the same was already ruled by *Rosliza* to be within the purview of the Syariah Court's jurisdiction. In the present case, the appellant at the SHC requested a declaration that she was no longer a Muslim. This was, therefore, an apostacy case. The SHC decided that the appellant was still a Muslim and this was confirmed by the SCA. What the HC in turn did was in effect a reversal of the Syariah Courts' decisions. The HC reversed that decision of the Syariah Courts by granting the declaration that the appellant was not a person professing the religion of Islam. Indeed, the HC had substituted the

SHC's decision with its own. Clause 1A of art 121 of the FC was enacted for the avoidance of doubt. It sought to ensure that decisions made within the jurisdiction of the Syariah Courts were not reversed by the Civil Courts. Thus, the HC erred not only when in effect it had reversed the Syariah Courts' decisions, it also erred when it assumed the jurisdiction of the Syariah Courts. (paras 89-92)

**(2)** All of the appellant's submissions, on the facts, were premised on the alleged fact that she was not a Muslim to begin with. While her submissions might have carried weight if she was indeed a non-Muslim, it was glaringly evident, as it was presented that her own request for a specific declaration in the court she freely sought, ie the SHC, unequivocally stated her desire to be declared no longer a Muslim. This unmistakably indicated her status as a Muslim, and the SHC decided that she was still a Muslim She believed justice was in the hands of the Syariah Courts but she was dissatisfied after having received its decisions, and sought another avenue hoping for a different outcome. Therefore, this Court declined to answer Questions 1, 2 and 3 as those Questions did not consider wholly the decisions made by the Syariah Courts, including when the declaration was given, the issue of conversion was taken only as part of the determination the appellant was still a Muslim. With regard to Question 4, the orders of the Syariah Courts were not a nullity. Hence, that Question was irrelevant. Question 5 was answered in the negative, having regard to the different and distinct jurisdictions of the Syariah Courts and Civil Courts. There was no necessity to answer Question 6, in view of the explanation made with regard to the exclusive jurisdiction of the Syariah Courts under the circumstances of this case. (paras 150-154)

**(3)** In conclusion, this was clearly an apostacy or renunciation case where the Syariah Courts had jurisdiction to determine as required by *Rosliza*. It would indeed be inappropriate, unjust to the system of judicial administration and power of the Syariah Courts and wholly unjustified for the same to be supplanted of its jurisdiction and for the jurisdiction instead to be conferred on the Civil Courts, considering the facts and law that should be applicable in this case. Further, in this case the Syariah Courts had pronounced its decisions after being asked to do so none other by the appellant. It must also not be too difficult to appreciate that Syariah Courts operated under different jurisprudence. What might be acceptable commonly in the Civil Courts' jurisprudence could not be imposed on the jurisprudence of Islamic Law involving "hukum syarak" and *vice versa*. After all, the FC did recognise Islamic jurisprudence through the role, function and operation of the Syariah Courts. (paras 155-156)

Per Abang Iskandar Abang Hashim PCA (supporting):

**(4)** In dealing with the Question of the applicable law to test the validity of the appellant's conversion (Question 1), there was no hesitation in concluding that it was the date of the actual conversion on 17 May 1991 as clearly stated in the certificate of conversion, and not the date of the issuance of the certificate of conversion on 28 August 1993, that determined which law was applicable.

As at May 1991, the 1952 Enactment was still in force. That law prohibited, through s 147, the conversion of any person who had not attained the age of puberty to the Muslim religion. (para 191)

**(5)** However, having considered the relevant facts in their entirety, and in context, despite the impugned conversion, the appellant was factually a Muslim since her childhood when she was legally in the care and custody of her mother. Her mother raised her on the basis that she was a Muslim. The evidence at the Syariah Courts confirmed that fact notwithstanding the opposite averments that she subsequently made in the Civil Courts. Therefore, there was no plausible reason why the definition of Muslim in s 2 of the 2003 Enactment could not be applied in ascertaining the meaning of a Muslim (Question 2). The court was well within its jurisdiction to make such finding. (para 206)

**(6)** Thus, the net effect was that, based on the reason that the appellant was once a Muslim, and by applying *Rosliza*, the Syariah Courts were seised with jurisdiction to deal with the "no longer a Muslim" case-category. And hence, until and unless the decisions of the Syariah Courts were set aside, their findings and orders were valid and enforceable. They were not null by reason of want of jurisdiction. In *Viran Nagapan v. Deepa Subramaniam & Other Appeals* ("*Viran*"), despite having found that the Syariah Court had no jurisdiction to deal with the matter before it, the Federal Court decided that the Syariah Court order remained a valid order until it was set aside. Hence, following *Viran*, a collateral attack of a Syariah Court decision and order could not be sustained when its decision and order remained a valid order until it was set aside (Question 4). Any such attack in the Civil Courts could not be made at all, particularly when the subject matter fell exclusively within the Syariah Court's jurisdiction [art 121(1A) of the FC]. (paras 210-212)

**(7)** In respect of Question 3, although s 74(3) of the 1989 Enactment rendered the certificate of conversion conclusive proof as to the facts stated therein, one was not precluded from challenging the correctness and the validity of the process leading to the statement of the facts in the certificate of conversion and/or its issuance. Thus, if it could be shown that the facts stated in the certificate of conversion were incorrectly stated or if the certificate was issued not according to law, that conclusiveness was bound to be reviewed. (para 219)

**(8)** Based on the factual matrix of the case and the circumstances presented before the court and the prayer sought by the appellant, her case did not fall under the category of "never was a Muslim" as defined by this Court in *Rosliza*. Being raised as a Muslim, she had correctly submitted to the jurisdiction of the Syariah Courts in determining whether or not she was "no longer a Muslim". Having dealt with the first four Questions of law above, there was no necessity to answer the remaining Questions 5 and 6 on reversing the findings of fact made by the Syariah Court; and on the retrospective or prospective effect of *Rosliza* as they were framed. It was sufficient to answer the first four Questions which essentially addressed the crux of the case and disposed of both appeals.

In the upshot, the appellant had failed, on the balance of probabilities, to prove that she "never was a Muslim" based on the reasons stated above. The decision of the majority of the Court of Appeal was hereby affirmed and the appellant's prayer for a declaration that she was not a person professing the religion of Islam was correctly dismissed. (paras 222-224)

Per Mary Lim Thiam Suan FCJ (dissenting):

**(9)** With regard to Question 6, the interpretation by the Court of Appeal was correct. There was no express reservation or ruling on the application of the decision, in which case, the decision of *Rosliza* applied retrospectively and was thus available to the appellant. As held in *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd*, the judgments of the Federal Court applied retrospectively unless there was express declaration of its prospective operation. There was no such express reservation in *Rosliza*. This approach was also consistent with that adopted in R*e Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others*. (para 276)

**(10)** Next to be considered were Questions 4 and 5 on the status of the decisions of the SHC and SCA. Putting aside their decisions for a moment, was the appellant entitled to approach the Civil Courts for the reliefs sought, bearing in mind, the appellant was seeking a declaration under s 41 of the Specific Relief Act 1950 as to her religious status, that she was not a person professing the religion of Islam? The answer was clearlyundeniably and resoundingly in the affirmative. Access to justice and equal protection of the law were fundamental liberties guaranteed under the FC to persons such as the appellant. In determining whether the reliefs ought to be granted, the Civil Courts would have to examine the facts and the relevant law. That might include examining and interpreting a law specifically passed by the State Legislature for the administration of Islamic law or Islamic matters within item 1 of the State List. That fact alone did not deprive the Civil Courts from conducting such scrutiny; on the contrary it was the duty of the Civil Courts to carry out such an exercise. It was plain from the Originating Summons that the appellant was seeking declaratory orders pertaining to her status in respect of her conversion. She was not a Muslim by birth; Islam was not her original religion. She was challenging or questioning the unilateral conversion made by her mother all those years ago. Whether or not discretion might be exercised to grant the orders sought was quite separate from want of jurisdiction. The appellant's case clearly was an *ab initio* case, as described in *Rosliza*; that she "was never a Muslim" because of the invalid or illegal conversion. (paras 277-280)

**(11)** Another material aspect in these appeals which appeared to have been overlooked was the fact that the SHC of the Federal Territory of Kuala Lumpur, and for that matter the SCA, had no power, authority or even jurisdiction to determine, let alone hear arguments of the appellant's conversion under any of the Islamic legislation of Selangor, be it the 1952 Enactment or the 1989

Enactment; or for that matter, any others. In matters which fell under the State List, especially item 1, the jurisdiction was territorial in that each State had its own distinct and separate laws on the religion of Islam. Though the laws might be similar or even similarly worded, sometimes taken from some model law enacted in one State, by no means could it be said that the SHC of the Federal Territory of Kuala Lumpur therefore had jurisdiction and power to interpret, determine or even apply the relevant law on the administration of Islam in the State of Selangor. Consequently, the majority of the Court of Appeal had fallen into serious error in holding that the appellant ought to have raised the issue of her conversion at the SHC in the Federal Territory of Kuala Lumpur. (para 284)

**(12)** The approach adopted and applied by the Federal Court in *Viran* in disregarding an order of the Syariah Court due to want of jurisdiction was good law and there was no hesitation in doing the same in these appeals. From the above deliberations, it was not a question of reversing any findings of fact by the SHC as that did not arise and was, in any case, irrelevant. Question 5 need not be answered while Question 4 was answered in the affirmative. (paras 289-290)

**(13)** Questions 1, 2 and 3 pertained to the constitutional identity of the appellant where she was asserting her right to profess and practise her religion under art 11(1) of the FC. As decided in *Rosliza*, the question of whether the appellant was a Muslim or a person "professing the religion of Islam" necessarily related to her constitutional identity. That question concerned and involved constitutional interpretation that the Civil Courts were duty bound under the FC, to determine. The SHC and the SCA in the Federal Territory of Kuala Lumpur were not empowered or authorised under the FC to determine that question. (para 292)

**(14)** Since the appellant was at the material time of her conversion, a minor, a person who had not attained puberty or who was below baligh, the conversion by her mother on 17 May 1991 was clearly invalid, null and of no effect. That being so, the appellant's constitutional identity remained that which she was born with and as construed in law, according to that of her parents, in particular of her father's. As determined in *Rosliza*, any legal presumption as to the appellant's Muslim status could not apply because she was never identified as a "Muslim to begin with". It was a matter of proof that a person affirmatively professed the religion of Islam at the material time. "Absent of such proof, the case may be classified as an *ab initio* case" which must be determined by the Civil Courts for otherwise the appellant as a person of this category would have no legal recourse. With the obvious invalidity of the appellant's conversion done in clear violation of s 147 of the 1952 Enactment and thus her rights under art 11 of the FC, it would be a compromise of the principle of *ubi jus ibi remedium* and the failure of this Court to recognise its own jurisdiction. Given that the appellant was not born a Muslim, a conversion to the religion of Islam was necessarily required. However, where a muallaf or a convert never uttered

the Affirmation of Faith, her conversion was plainly invalid and she would remain in her original religion. No amount of practising, living or being raised as a Muslim could alter the fact that she needed to be validly converted to the religion of Islam before she was a Muslim. (paras 314-315)

**(15)** For all the reasons explained, the date of conversion of the appellant into Islam for the purpose of establishing her constitutional identity, was determined to be the actual date of her conversion, namely on 17 May 1991. The legality of her conversion was tested against the law then applicable, which was the 1952 Enactment. The answers to these Questions were sufficient to deal with her appeals and there was no need to answer the remaining Questions. (para 318)

**Case(s) referred to:**

*Abillah Labo Khan v. PP [2002] 1 MLRA 294 (refd)*

*Abdul Kahar Ahmad v. Kerajaan Negeri Selangor Darul Ehsan; Kerajaan Malaysia & Anor (Interveners) [2008] 1 MLRA 326 (refd)*

*Azmi Mohamad Azam @ Roneey v. Director Of Jabatan Agama Islam Sarawak & Ors [2016] MLRHU 289 (refd)*

*Che Omar Che Soh v. PP & Another Appeal [1988] 1 MLRA 657 (refd)*

*Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Anor [2022] 4 MLRH 194 (refd)*

*Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor [1991] 1 MLRA 301 (refd)*

*Eu Finance Berhad v. Lim Yoke Foo [1982] 1 MLRA 507 (distd)*

*Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers [1982] 1 MLRA 314 (refd)*

*Haji Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal [2014] 3 MLRA 173 (refd)*

*Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 2 MLRA 1 (distd)*

*Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi Dan Rayuan Yang Lain [2002] 1 MLRA 436 (refd)*

*Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi [2004] 1 MLRA 528 (refd)*

*Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2010] 3 MLRA 355 (refd)*

*Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 1 MLRA 847 (refd)*

*Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 1 MLRA 359 (refd)*

*Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd [2017] 3 MLRA 501 (refd)*

*Mohd Habibullah Mahmood v. Faridah Dato Talib [1992] 1 MLRA 539 (refd)Majlis Agama Islam Selangor v. Dahlia Dhaima Abdullah And Another Appeal [2023] 3 MLRA 1 (refd)*

*Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 1 MLRA 283 (refd)*

*Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal [2021] 1 MLRA 286 (refd)*

*Re Mohamed Said Nabi, Deceased [1964] 1 MLRH 202 (refd)*

*Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others [2005] 4 All ER 209 (refd)*

*Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 2 MLRA 70 (folld)*

*Subashini Rajasingam v. Saravanan Thangathoray [2006] 4 MLRH 155 (refd)*

*Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat And Another Case [2017] 4 MLRA 554 (refd)*

*Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLRA 115 (refd)*

*Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals [2007] 3 MLRA 81 (refd)*

*Syarifah Nooraffyzza Wan Hosen v. Director of Jabatan Agama Islam Sarawak & Ors [2017] 2 SSLR 387; [2017] 6 MLRA 345 (refd)*

*Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor [2019] 2 MLRA 171 (refd)*

*Tebin Mostapa v. Hulba-Danyal Balia & Anor [2020] 4 MLRA 394 (refd)*

*Tenaga Nasional Bhd v. Bandar Nusajaya Development Sdn Bhd [2016] 6 MLRA 103 (refd)*

*Viran Nagapan v. Deepa Subramaniam And Other Appeals [2016] 2 MLRA 206 (folld)*

*Wan Johairiza Wan Ab Rahman v. Mahkamah Rayuan Syariah Selangor & Ors [2022] 2 MLRH 569 (refd)*

**Legislation referred to:**

Administration of Islamic Law (Conversion of Minors) Rules 1991, r 4(1), (2)

Administration of Islamic Law (Federal Territories) Act 1993, ss 2(c), (e), 46(2)(b)(x)

Administration of Islamic Law Enactment 1989, ss 1(2), (3), 67, 68, 69, 70, 71, 72, 73(3), 74(3), 78

Administration Muslim Law Enactment 1952, ss 4, 45, 72, 145, 146, 147

Administration of the Religion of Islam (State of Selangor) Enactment 2003, ss 2, 18, 108

Administration of the Religion of Islam (Perak) Enactment 2004, ss 96, 101(2), 106

Federal Constitution, arts 11(1), 12(4), 74(2), 121(1A), Ninth Schedule

Guardianship of Infants Act 1961, ss 5, 11

Islamic Family Law (State of Selangor) Enactment 2003, s 111

Specific Relief Act 1950, s 41

**Others referred to:**

Andrew Harding, *Law, Government And The Constitution In Malaysia*, Malayan Law Journal, 1996, p 137

**Counsel:**

**Civil Appeal No: 01(f)-18-06-2023(B)**

*For the appellant: Malik Imtiaz Sarwar (Surendra Ananth & Wong Ming Yen with him); M/s Surendra Ananth*

*For respondent: Haniff Khatri Abdulla (Majdah Muda with him); M/s Muda*

**Civil Appeal No: 01(f)-19-06-2023(B)**

*For the appellant: Malik Imtiaz Sarwar (Surendra Ananth & Wong Ming Yen with him); M/s Surendra Ananth*

*For the respondent: Salim Soib @ Hamid (Husna Abdul Halim with him); State Legal Advisor's Office*

**JUDGMENT**

**Abu Bakar Jais FCJ (Majority):**

**Introduction**

**[1]** Although the dispute in this case concerns the status of a party, it is also related to the larger sphere where different jurisprudence and jurisdictions of the Syariah Courts and the Civil Courts have come to the fore. Though the Syariah Courts and the Civil Courts are well recognised by our own Federal Constitution, the existence of both at the same time in the administration of justice in this country is not without difficulties.

**[2]** We heard two related appeals against the majority decision of the Court of Appeal in this case. This court had earlier allowed leave to appeal against that majority decision based on the questions of law proposed as follows:

(1) Is the date of the conversion of a person into Islam the date of his or her actual conversion or the date of issuance of a card confirming the fact of conversion?

(2) In determining the legality of the conversion of a minor into Islam, is the legality of such conversion to be tested against the applicable law as it stood at the time of when the conversion occurred? Further to this:

(a) Can the said minor be deemed to be Muslim notwithstanding by virtue of provisions akin to the definition of "Muslim" in s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003?

(b) Is such definition only applicable to the children of persons born into the religion of Islam such that, where the children of persons who converted into Islam after the birth of such children are concerned, such children must convert into Islam for them to be treated in law as such?

(3) In any event, does s 74(3) of the Administration of Islamic Law Enactment 1989 (Selangor) oust the jurisdiction of the High Court to determine the validity of a minor's conversion into Islam?

(4) Where an order of the Syariah Court is a nullity, can such order be collaterally attacked in proceedings before the High Court pursuant to the rule enunciated by the Federal Court in *Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 MLRA 507 and does art 121(1A) of the Federal Constitution apply?

(5) Whether the Civil Courts have the powers to reverse findings of facts made by the Syariah Court in the determination of matters of Islamic law and doctrine?

(6) Is *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 2 MLRA 70 limited to have only prospective overruling, based on the principles as enunciated in:

(a) *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd* [2017] 3 MLRA 501; and

(b) The decision of the House of Lords in *Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others* [2005] 4 All ER 209.

**[3]** Having heard the appeal, we had reserved our decision. I would now explain the reasons of my decision having considered both the oral and written submissions of all parties.

**Background Facts**

**[4]** Before us, the parties for the first appeal were Dahlia Dhaima Binti Abdullah as the appellant and Majlis Agama Islam Selangor as the respondent. She was also the appellant for the second appeal, while Kerajaan Negeri Selangor was the respondent.

**[5]** The appeals before us emanated from an originating summons ("OS") filed in 2021 by the appellant at the High Court ("HC") against the respondents. In the OS, the appellant sought a declaration that she is not a person professing

the religion of Islam. Although both the respondents opposed the OS, the HC granted the declaration. The respondents then lodged the appeals against the decision of the HC to the Court of Appeal ("COA"). By a majority, the COA set aside that decision of the HC and allowed the appeals. Hence, the present appeals by the appellant before us.

**[6]** The appellant was born on 17 November 1986 to a non-Muslim married couple. Her late father was of Indian descent and professed the religion of Hinduism. Her mother is of Chinese descent and was born to a Buddhist family. The appellant's parents' marriage was solemnized under the Law Reform (Marriage and Divorce) Act 1976.

**[7]** In 1991, the appellant's parents decided to end their marriage. As they chose separate ways, the appellant's mother took her along. She was about five years old then. Pending a divorce proceeding for the appellant's parents, the appellant's mother embraced Islam at Jabatan Agama Islam Selangor/ PERKIM ("JAIS") intending to marry a Muslim man after her divorce proceeding was completed. Her mother then did marry the Muslim man. The appellant also converted to Islam after her mother claimed she was told that the appellant needed to do the same by the officer of JAIS for her to gain custody. She also said the officer told her the appellant could choose her religion when she turns eighteen. The appellant's mother affirmed the declaration of faith - "Kalimah Syahadah" twice at JAIS to convert to Islam. Not surprisingly the appellant did not do the same having regard to her age. Both were issued the conversion cards. The conversion card issued on 28 August 1993 for the appellant stated that she converted to Islam on 17 May 1991.

**[8]** Decree absolute was granted in the divorce proceeding for the appellant's parents on 18 December 1992. Custody, care and control of the appellant was granted to her mother.

**[9]** In 1996, the appellant's father passed away but her mother affirmed an affidavit to aver he never consented to the appellant's conversion.

**[10]** The appellant first started to challenge her status as a Muslim on 12 December 2013, when she was twenty-seven. She had filed a summons against Majlis Agama Islam Wilayah Persekutuan ("MAIWP") at the Kuala Lumpur Syariah High Court. She exhibited this summons in her affidavit. In that summons ("MAIWP Summons") the appellant requested specific declaration that she was no longer a Muslim. It is important to note that although in the MAIWP Summons she asserted she had never professed Islam and her conversion was because of her mother's action, the relief she requested from the Kuala Lumpur Syariah High Court was unequivocal in that she ought to be declared no longer a Muslim.

**[11]** The appellant contended she never professed Islam as her religion and she instead continued to profess Hinduism, visited her father's family and went to Hindu temples. Her mother and stepfather also allowed her to profess and practise the Hindu religion.

**[12]** On 20 July 2017 the Kuala Lumpur Syariah High Court dismissed the MAIWP Summons. Subsequently, on 12 January 2021 the Kuala Lumpur Syariah Court of Appeal dismissed the appellant's appeal and affirmed the decision of the Kuala Lumpur Syariah High Court.

**[13]** Having failed at the Syariah Courts, the appellant turned to the Civil Courts. First, as earlier mentioned at the HC by filing the OS on 10 May 2021. Then defending the appeals at the COA and finally, lodging the appeals and arguing the same before us at the Federal Court.

**At The Syariah High Court**

**[14]** As mentioned earlier, the appellant first chose to challenge her status as a Muslim in the Syariah High Court. She did that by filing the MAIWP Summons. She also did the same at the age of twenty-seven. She also stated in the Syariah High Court she did not practise Islam. The significance of this will also be explained in a short while, to note whether practising or not practising Islam has the effect of changing the status *per se* of a person professing the religion.

**Decision Of The Syariah High Court**

**[15]** Having highlighted the appellant's relief sought from the Syariah High Court, the decision of the same is as follows.

**[16]** Crucially the Syariah High Court decided the appellant is still a Muslim.

**[17]** In arriving at this decision, the Syariah High Court decided that the appellant is a Muslim not only because of her conversion but by referring and applying s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 that states as follows:

> "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, Muslims;
>
> (c) a person whose upbringing was conducted on the basis that he was a Muslim;
>
> (d) a person who has converted to Islam in accordance with the requirements of s 85;
>
> (e) a person who is commonly reputed to be a Muslim; or
>
> (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written.

**[18]** In particular, the Syariah High Court decided so in reliance of limbs (c) and (e) above.

**[19]** The Syariah High Court acknowledged that she converted to Islam because of her mother but nonetheless found that the process of her conversion was not irregular. Further, she then had been raised by her mother who converted to Islam and her Muslim step-father until she was seventeen. The court also considered that her mother's affidavit in the proceedings before the Syariah High Court acknowledged the appellant herself knew she was a Muslim in primary school as the appellant's teacher had asked the appellant to take the subject "Pendidikan Islam". Besides the appellant testified at the Syariah High Court that all the while she was raised by her mother and step-father, she had performed Islamic practises including fasting, Islamic way of prayers, attending Islamic classes and programmes including "kenduri".

**[20]** The Syariah High Court noted that the appellant said she did not practise Islam but Hinduism until seventeen while staying with her mother and step-father. This is because her mother had given her the freedom to choose her own religion. However, the Syariah Court High Court could not find evidence that she was practising Hinduism while growing-up with them. Her mother even said she never knew when exactly the appellant became a Hindu. In fact, the appellant's paternal cousin who became her witness said he did not know the appellant's life (kehidupan) while staying with her mother. He even said he knew the appellant wanted to leave Islam and embrace Hinduism only in 2012 ie a year before her case was filed at the Syariah High Court.

**[21]** The Syariah High Court found that the appellant had the foundational knowledge as a Muslim. She not only could recite the "Kalimah Syahadah" but could explain the meaning of the same. She still understood the teachings of the religion well.

**[22]** The Syariah High Court found the declaration that she sought could not be granted because whether she practised the Islamic way of life or not is not determinative of one's Islamic status or faith. Not practising the same does not nullify one's faith for the religion of Islam (Syahadah). More so when she was converted by her own biological mother and had learned about Islam at school although not fully practising its teachings. If she is unclear of the precepts of Islam, she should seek more knowledge and deepen her understanding about it and not ask for a declaration that she is no longer a Muslim.

**Decision Of The Syariah Court Of Appeal**

**[23]** The appellant appealed to the Syariah Court of Appeal against the decision of the Syariah High Court.

**[24]** The Syariah Court of Appeal upheld the decision of Syariah High Court and gave its reasons as follows.

**[25]** First it was not wrong for the trial judge at the Syariah High Court to refer and apply the statutory provision in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 indicated earlier in finding the appellant is a Muslim.

**[26]** She was registered formally as a Muslim when she was seven. Her identity card also showed she is a Muslim and her mother remained a Muslim when she was eighteen. The appellant's father did not challenge her conversion in 1991 or when she was registered as a Muslim in 1993.

**[27]** She became a Muslim following her mother's conversion and since she was underage at that time, it is acceptable under Islamic principle that her religion followed her mother's. Further, under art 12(4) of the Federal Constitution, it is permitted that the court could make the presumption that in the event the parents or lawful custodian of a minor are Muslims, the child is also considered a Muslim.

**[28]** There were no sufficient witnesses produced to support her claim on what she did while growing-up until she turned seventeen and thereafter.

**[29]** There was no sufficient documentary evidence to suggest her lifestyle and practice were not consistent with the faith. The pictures showed of her playing with dogs were not cogent to grant her the declaration. Her evidence on her lifestyle and practice does not necessarily mean she is not a Muslim. Her lifestyle and practice are more on sins and rewards considered under the faith (dosa dan pahala). Even the most serious sins cannot equate to not being a Muslim as long as it does not affect one's core belief - creed (aqidah).

**At The HC**

**[30]** As stated, having been unsuccessful at the Syariah High Court and the Syariah Court of Appeal, the appellant sought the HC (Civil Court) for a similar yet unlike the earlier declaration. Both at the Syariah High Court and the Syariah Court of Appeal, as indicated, the request was for a declaration she was no longer a Muslim. At the HC she had changed the relief for a different declaration ie she is not a person professing the religion of Islam. From a position where she acknowledged at some point in time she was a Muslim, she changed her stance that could mean she was never someone who holds that religion. I use the words "...could mean" here because that declaration alone by its words (not a person professing the religion of Islam), could also mean she accepted that she was once a Muslim but is no longer a Muslim. Especially if the background facts narrated earlier is considered, where it has been explained at the Syariah High Court that was precisely the declaration she sought ie a declaration she was no longer a Muslim.

**[31]** As agreed by the appellant and respondents at the HC, there were only two issues that the HC had to determine. First on the issue of jurisdiction and second on the issue of the validity of the appellant's conversion.

**Decision Of The HC**

**[32]** The HC granted the relief requested. The essential reasons given by the HC in allowing the declaration are as follows.

**[33]** The appellant was never a Muslim. She had never at any point in time been a Muslim. The Syariah High Court and Syariah Court of Appeal had no jurisdiction to decide on the case as she was never a Muslim. Instead, the HC had the jurisdiction to decide this case.

**[34]** She also could not be converted because she has not attained the age of puberty and hence her purported conversion had contravened s 147 of the Administration Muslim Law Enactment 1952 ("1952 Enactment").

**[35]** The conversion card issued that she became a Muslim after two years since her impugned conversion could not be valid as she could not be converted in the first place having regard to the fact she was not of puberty age.

**[36]** The appellant did not profess Islam and her conversion was invalid.

**Decision Of The Majority Of The COA**

**[37]** The summary of the reasons given by the majority judgment of the COA is as follows.

**[38]** A decision has to be made by the COA whether this is really a case about one seeking a declaration that she is not a person professing the religion of Islam or that she is no longer a Muslim in order to determine whether the Syariah Court or the HC had the jurisdiction to grant the declaration.

**[39]** The religious status of the appellant has been decided by the Syariah High Court and confirmed by the Syariah Court of Appeal. The Federal Constitution does not allow those decisions by the Syariah Courts to be reviewed and re-litigated by the Civil Courts.

**[40]** The Federal Constitution provides that the Syariah Courts have the exclusive jurisdiction in the administration of Islamic law. Issues concerning conversion out of Islam, whether a person is a Muslim or otherwise or whether a person had renounced the religion before his death, all are within the jurisdiction of the Syariah Courts.

**[41]** The Federal Court had also observed that it would be improper for the Civil Courts to deliberate and decide on the validity of conversion of any person into Islam. The apex court had also decided that apostasy out of Islam is an Islamic law matter where the Syariah Courts should have jurisdiction.

**[42]** In the present case the Syariah High Court had already determined the appellant is a Muslim. The Syariah High Court in this case also decided that the appellant is still a Muslim. Being still a Muslim, must mean she is a Muslim in the first place and not one who was never a Muslim.

**[43]** Civil Courts could not reverse the decisions of the Syariah Courts as this would violate the provision of the Federal Constitution.

**[44]** On jurisdiction alone, the HC erred in holding the decisions of the Syariah Courts had been nullified by *Rosliza* because the Syariah Courts had

no jurisdiction to decide the question of the appellant's assertion that she never did profess the religion of Islam.

**[45]** The appellant did not refer to any decisions of the Civil Courts that would indicate it has the jurisdiction to relitigate and decide on a case already litigated and decided by the Syariah Courts. As the Syariah Courts had decided the appellant is still a Muslim, this is therefore a case of renunciation of Islam where the Syariah Courts would have the jurisdiction to decide on the same.

**[46]** Hence, on the question of jurisdiction alone, the appellant could not succeed.

**[47]** Mere assertion by the appellant that she is not a person professing the religion of Islam or couched in terms of *ab initio* cases does not automatically mean the Syariah Court is without jurisdiction to decide on the matter. The Civil Court ie the HC must evaluate whether this is an *ab initio* or a renunciation case. In this regard, *Rosliza* propounded that a careful examination must be undertaken of the factual matrix of the case to determine this. The factual matrix of this case proves that there was affirmation of Islam by the appellant and hence this is not an *ab initio* case.

**[48]** Section 147 of the 1952 Enactment prohibits the conversion of the appellant who has not reached the age of puberty. Nonetheless, subsequently the Administration of Islamic Law Enactment 1989 ("the 1989 Enactment") came into force. JAIS pursuant to the 1989 Enactment had issued a conversion card to Islam to the appellant upon her being registered as a Muslim. And s 74(3) of the 1989 Enactment stipulates that a certificate of conversion to Islam shall be conclusive proof of the facts stated therein. Hence, the conversion was valid.

**[49]** *Rosliza* observed that so long as one is a Muslim by identification, whether he practises or not, or whether he continues to believe in the faith or not, he is no less legally identified as a "person professing the religion of Islam". *Rosliza* also indicated it is only when one's faith is the main subject matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts. In this regard, there is a significant distinction between "one who no longer professes the religion of Islam" on the one side, and "one who never professes the religion of Islam", on the other.

**[50]** The word "professing" in item 1 of the State List of the Federal Constitution is one concerning constitutional identity, which is to be interpreted by the civil courts whilst the phrase "profess and practice" in art 11 of the same relates to the question of faith which, following art 121(1A) of the supreme law falls within the jurisdiction of the Syariah Courts.

**[51]** The appellant contended this is an *ab initio* case and that she was never a Muslim. The Civil Court must then decide whether this is so and decide whether

she is a Muslim. In this regard, as mentioned earlier, *Rosliza* instructs a careful examination of the factual matrix of a case is necessary. A careful examination of the factual matrix of the instant case is thus essential to determine whether there is proof that the respondent in the case had affirmatively professed the religion of Islam at the material time, which is a constitutional identity issue, not one of practice or faith. In the absence of such proof, the respondent could not be identified as a Muslim, and the case would be that she was never a Muslim - an *ab initio* case.

**[52]** With the issuance of the conversion card to the appellant, it is proven that she has converted into Islam and the conversion is valid, as s 74(3) of the 1989 Enactment states that a certificate of conversion to Islam shall be conclusive proof of the facts stated therein.

**[53]** But for argument's sake, even assuming it was not valid, the question then arises, whether this would be a complete answer to the constitutional identity issue - that she was therefore not one who had ever professed the religion of Islam if the conversion was invalid? The High Court was of the said conclusion. The answer, in our view, is however in the negative. The reason is that as stated in *Rosliza*, the entire factual matrix of the case must be examined for proof of affirmative profession of the religion by the respondent at the material time. And it bears emphasis this does not concern one's faith but instead one's identity under the Federal Constitution. A Muslim by identification would be legally identified as a "person professing the religion of Islam" regardless of whether he or she practises the religion or not.

**Dissenting Judgment Of COA**

**[54]** In essence, the reasons given in the dissenting judgment of the COA are as follows.

**[55]** The critical issue in respect of determining the jurisdiction in this appeal is whether it is an apostasy or renunciation case. The appellant's application and the affidavits, showed there is no element of apostasy or renunciation. The appellant did not apply in the OS to renounce the religion of Islam. It is undisputed that the respondent is not a Muslim by original faith as she is the issue of a non-Muslim marriage contracted under the Law Reform (Marriage and Divorce) Act 1976.

**[56]** It is also undisputed that she was under five years old at the time of her purported conversion and that the consent of her non-Muslim father was not obtained. The HC had therefore correctly assumed jurisdiction to consider the matter on the merits whether to grant declaratory relief in respect of her religious status.

**[57]** The 1989 Enactment could not be used to justify the appellant's conversion as this written law came into effect after the impugned conversion. The decision

of the HC was correct in referring to the 1952 Enactment that prohibits the appellant's conversion when she has not attained the age of puberty.

**[58]** The conversion card issued two years after the impugned conversion, could not be valid, as at the date of the conversion she has not attained the age of puberty as required by the 1952 Enactment.

**[59]** In view of *Indira Gandhi*, the Civil Courts have the jurisdiction to determine the matter as in this case it involved an interpretation of a constitutional provision where it concerned conversion without the consent of the non-consenting parent. Thus, it is not a question of apostacy. As the appellant's father did not give consent to the appellant for her conversion when she was a child, the impugned conversion could not be recognised as it infringed the Federal Constitution.

**[60]** The COA should be slow in disturbing the finding of the HC. The HC found the appellant as not professing the religion of Islam. There was evidence to support the finding of the HC including unrebutted affidavits she had filed. The appellant at the Syariah High Court did not waiver from her stance that she is not a person professing Islam.

**[61]** Although the Syariah Courts, both trial and appellate had pronounced its decision against the appellant before she appeared at the HC, there was no *res judicata* and the appellant still had *locus standi* to pursue her case at the HC ie Civil Court. This is because prior to *Rosliza* the law is unclear between apostasy case and *ab initio* case. Therefore, the appellant rightly went to the Syariah Courts only as a "necessity". Prior cases at the Civil Courts simply rejected similar applications in saying it should be before the Syariah Courts without looking whether it is an apostasy case or an *ab initio* case. Only with *Rosliza* the position is made clear that for *ab initio* cases where the applicant says he or she was never a Muslim in the first place, would the case be decided by the Civil Courts, and when the case is an apostacy case, the Syariah Courts would have the jurisdiction. As such the appellant could not be blamed for seeking the relief at the Syariah Courts before coming to the HC. There was no afterthought by the appellant in this regard when she came before the HC after the Syariah Courts decided against her.

**[62]** The Syariah Courts had no jurisdiction in this case as it involves a fundamental liberty under the Federal Constitution. This is a case of *ab initio* and hence the Syariah Court had no jurisdiction and the decision made by the Syariah Court is not binding on the appellant. The Syariah Courts also cannot be conferred jurisdiction by way of consent, waiver or agreement.

**[63]** *Rosliza* is declaratory of the law and therefore should not be constricted by the doctrine of prospective ruling. Therefore, even if the Syariah Courts had decided the matter, this doctrine should not apply in this case.

**Apellant's Submission**

**[64]** Before us, the salient points of submission by the appellant are as follows.

**[65]** Appellant had never professed the religion of Islam.

**[66]** She could not be converted to Islam as at the material date according to law she had not attained the age of puberty.

**[67]** The HC has the jurisdiction to hear the case as the appellant contended she was never a Muslim. Conversely, the Syariah Court has no jurisdiction to decide on the matter as the appellant maintained she was never a Muslim in the first place.

**[68]** As the appellant never professed the religion of Islam, only the Civil Courts have jurisdiction to grant the relief claimed and not the Syariah Courts.

**[69]** The Appellant is entitled to seek a declaration under s 41 Specific Relief Act 1950 as to her religious status.

**[70]** The right to profess a religion is an absolute right. Article 11 of the Federal Constitution does not permit any derogation.

**[71]** The appellant's impugned conversion is not sanctioned by the 1989 Enactment as this legislation came into force after that conversion. Paragraph 15.5 of the appellant's written submission states that a written law is not to operate retrospectively unless it is provided for. Hence, the applicable law is the 1952 Enactment that states no conversion to Muslim religion for any person who has not attained the age of puberty.

**[72]** The majority of the COA erred in determining that the conversion took place when the conversion card was issued. This is not consistent with s 70 of the 1989 Enactment which states "at the moment of conversion to Islam" of the parent. It is also not in line with s 18 of the 2003 Enactment that states conversion occurs when the affirmation of faith is completely being uttered.

**[73]** The majority of the Court of Appeal ignored art 12(4) of the Federal Constitution, ss 5 and 11 of the Guardianship of Infants Act 1961, which requires the consent of both parents for the conversion of a minor. This has been decided by *Indira Gandhi*. In this case the father of the appellant never gave consent for her impugned consent.

**[74]** The majority of the Court of Appeal also erred in referring and accepting limbs (c) and (e) in the definition of Muslim under s 2 of the Administration of Islamic Law (Federal Territories) Act 1993. The effect of this finding is that a non-Muslim can at any time be legally regarded as a Muslim without any conversion if that person's "upbringing was conducted on the basis that he was a Muslim" or if that is person is "commonly reputed to be a Muslim". This is a dangerous proposition that strikes at the heart of art 11(1) of the Federal Constitution. In short, a non-Muslim person can at any time be legally regarded as a Muslim without his consent.

**Decision**

**[75]** I shall begin in explaining the reasons for my decision as follows.

**[76]** First, the appellant referred substantially to *Rosliza* and *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 2 MLRA 1 to support her case. It should be explained these cases are different in one material aspect from the appellant's case. These cases do not involve decisions already pronounced by the Syariah Courts as in our present case. This is significant as it involved two separate jurisdictions of the Syariah Courts and Civil Courts.

**[77]** *Rosliza* decided that if one is never a Muslim in the first place then the challenge to establish the same should be heard before the Civil Courts. This is termed as an *ab initio* case. On the other hand, if someone is already a Muslim but wanted to leave that position, then only the Syariah Courts will have the jurisdiction to determine the case. This is called an apostacy case.

**[78]** *Indira Ghandi* is not in substance about conversion of the children in that case as Muslim but about the legality of the administrative action taken by the Registrar of Muallaf in the exercise of his statutory powers. In *Indira Ghandi* too, the mother challenged the children's conversion as she never consented to the same. There was no such challenge by the appellant's father while he was still alive against the appellant's conversion in our case.

**[79]** It is accepted by all parties that the appellant went to the Syariah Courts (both the Kuala Lumpur Syariah High Court and the Kuala Lumpur Syariah Court of Appeal) before going to the Civil Courts (HC and COA). At the Syariah Courts she pursued for a declaration that she is no longer a Muslim. Also important is the fact that she went to the Syariah Courts at the age of twenty-seven. The significance of the Syariah High Court and its decision are relevant in several ways.

**[80]** Utmost is the fact that the appellant agreed without restrain the Syariah High Court had the requisite jurisdiction to make the finding and to come to a decision in respect of her challenge with regard to her status. She had willingly entrusted the Syariah Courts to determine the truth of her case. By filing her case at the Syariah High Court, she had conscientiously and with full capacity, considering her age at that time, accepted the jurisdiction of the same and submitted herself to that court.

**[81]** Second, for this court to note what actually did the appellant request for at the Syariah High Court and what was the decision of the same. The grounds of judgment of the Syariah High Court is an exhibit in the appellant's OS which we had the liberty to examine. However, it ought to be made clear, I am not attempting to review the decision of the Syariah High Court in any manner as I am fully aware I am not seised with the jurisdiction to do that. Having said that, I am also aware there are expressed views that say Syariah Courts are inferior courts, thus making it possible at least by deduction to review its decisions. I

respectfully depart from those opinions as I would show in due course other case law authorities that do not find Syariah Courts as being inferior.

**[82]** I would merely state what was requested by the appellant at the Syariah High Court and the decision of the same. This in turn would assist in understanding that decision having regard to the recognition of that court under our Federal Constitution. It could not be disputed and should always be acknowledged that the Syariah High Court is a competent court under our own Federal Constitution, the supreme law in the country. Its decision commands the greatest respect and should accordingly be binding against all parties rightly coming under its jurisdiction. In this regard, art 74(2) of the Federal Constitution, reads as follows:

> Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

**[83]** The State List mentioned above in turn provides that the States have the power to establish Syariah Courts which shall have jurisdiction over persons professing the religion of Islam on matters enumerated.

**[84]** It is also crucial to note there is also no authority to say that when a Syariah Court has heard the case, considered the submissions made and pronounced its decision, a Civil Court can subsequently hear, consider and come to a decision different from the Syariah Court. The case could not be relitigated by the Civil Courts, in this instance by the HC and COA. The majority at the COA says the decision of a Syariah Court in the context of this case could not be unravel. In this regard art 121(1A) of the Federal Constitution reads:

> The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

**[85]** Clause (1) above refers to Civil Courts. It should also be obvious the Syariah Courts have jurisdiction to determine the very issue brought by the appellant there ie she is no longer a Muslim. In addition, *Rosliza* pointed out the Syariah Courts have the jurisdiction for apostacy cases. The appellant's case before the Syariah Courts was indeed also an apostacy case as the appellant wanted to be declared no longer a Muslim.

**[86]** Reading art 121(1A) above with the State List in the Ninth Schedule of Federal Constitution, the Syariah courts have jurisdiction over persons professing the religion of Islam in respect of any matters stipulated therein and include Islamic law and personal and family law of persons professing the religion of Islam.

**[87]** In the Syariah High Court, as indicated earlier the appellant requested from that court a declaration that she was no longer a Muslim.

**[88]** I also accept *Indira Gandhi* is quite explicit in explaining the jurisdiction of the Syariah Court *vis-à-vis* art 121(1A) of the Federal Constitution when it approvingly quoted Andrew Harding. This is said as follows:

> [86] Thus the amendment inserting cl (1A) in art 121 does not oust the jurisdiction of the civil courts nor does it confer judicial power on the Syariah courts. More importantly, Parliament does not have the power to make any constitutional amendment to give such an effect; it would be invalid, if not downright repugnant, to the notion of judicial power inherent in the basic structure of the Constitution. The purport and effect of art 121(1A) is eloquently explained by *Harding (supra)* as follows:
>
> > The amendment does not purport to oust the jurisdiction of the High Court to review decisions of the Syariah Courts. **It merely says, in effect, that the ordinary courts cannot exercise the Syariah Court's jurisdiction, a position which it should be noted, applies to any inferior jurisdiction; it is indeed a cardinal principle of judicial review that the court cannot substitute its decision for that of the inferior jurisdiction whose decision is reviewed.** It does not therefore seem possible that the Syariah Courts, by this small amendment, have been converted into a totally separate legal system... As things stand the civil courts exercise the power of judicial review and this is of course part of the judicial power. Nothing in cl 1A attempts to interfere with this proposition ... **For these reasons it seems that cl 1A was enacted for the avoidance of doubt. It seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the civil courts. The qualification 'made within jurisdiction' is important; the ordinary courts can still decide whether a given decision is within jurisdiction, just as they can with any inferior court. In this sense the primacy of the civil courts has not been disturbed.**
>
> [Emphasis Added]

**[89]** The words in bold are important. First, in the context of the operation of art 121(1A) of the Federal Constitution and following *Indira Gandhi* as above, as pointed out, Civil Courts could not exercise a Syariah Court's jurisdiction. In the context of our case, Civil Courts could not exercise jurisdiction of the Syariah Courts for apostacy cases as the same is already ruled by *Rosliza* to be within the purview of the Syariah Court's jurisdiction. As explained, in our present case, at the Syariah High Court the appellant requested a declaration she is no longer a Muslim. This is therefore an apostacy case.

**[90]** Second, the words in bold indicate, a Civil Court could not substitute its own decision in replacement of a Syariah Court's decision. In our case the Syariah High Court had decided the appellant is still a Muslim and confirmed by the Syariah Court of Appeal. What the HC in turn did was in effect a reversal of the Syariah Courts' decisions. The HC as mentioned reversed that decision of the Syariah Courts by granting the declaration the appellant is not a person professing the religion of Islam. Indeed, the HC had substituted the Syariah High Court's decision with its own decision.

**[91]** Third, the words in bold above indicate that cl 1A of art 121 of the Federal Constitution was enacted for the avoidance of doubt. As stated, it seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the Civil Courts.

**[92]** Thus, the HC erred not only when in effect it had reversed the Syariah Courts' decisions, both Syariah High Court and Syariah Court of Appeal, with respect it also erred when it assumed the jurisdiction of the Syariah Courts.

**[93]** It is also relevant to note that the appellant in her pleadings at the Syariah High Court did not at all raise the issue that her conversion to Islam was invalid. In fact, in para 11 of statement of claim, she stated that she became a Muslim even though she was allowed by her mother to practise the Hindu religion and had visited her father's family who were Hindus. In para 19.1 of the same, she clearly requested a declaration she was no longer a Muslim, not that she was never a Muslim.

**[94]** By that request for such declaration, it should be obvious she accepted that she is a Muslim, the very least until the time that declaration is granted, if it is ever allowed. By her own stance too, it proves that she acknowledged that she is a Muslim, only wanting to be declared she is no longer the same, subsequent to being one. It is material to note this because it will be explained in due course that this is actually related to the issue of jurisdiction - whether the Syariah Courts or the Civil Courts have the jurisdiction to grant or deny such declaration.

**[95]** The HC found that the appellant in the OS asserted that she did not profess the religion of Islam. Meaning the OS filed at the HC involved the issue whether she was never a Muslim from the very beginning and not a case where she had in one point in time became a Muslim and now wants to leave the religion ie apostacy case. In this regard this was what was stated by the HC:

> The mere fact that she had practised fasting, praying, or had attended religious classes in school, or had attended Islamic religious ceremonials while staying with her Muslim-convert mother and stepfather, those experiences or exposures to the Islam religion could not equate to the plaintiff having professed and practised the religion of Islam.

**[96]** First, asserting is one thing but the truth is another. One may assert but the assertion might not be true. In the context of the present case, that assertion needs to be evaluated against the findings already made by the Syariah Courts. After all, the appellant sought the Syariah Courts first, as arbitrator to decide the merits of her case and in the course to also determine the truth of all the assertions supporting her case.

**[97]** More important than this is what was stated in *Rosliza* and this I consider is one of the salient directions given in that case by the Federal Court which is binding on the HC. *Rosliza* found:

> [108] Whether it is an *ab initio* case or a renunciation case will require a careful examination of the factual matrix of the case.

**[98]** With respect, the HC erred in not fully grasping the effect of the above stated requirement in *Rosliza* as the HC basically took the assertion of the appellant that she did not profess the religion of Islam. This is done without really scrutinising the whole facts of the case. The HC erred in not appreciating the declaration requested by the appellant at the Syariah High Court that she is no longer a Muslim, well ahead before going to the Civil Courts. There is also no real appreciation as to the reasons why the Syariah Courts found the appellant is still a Muslim. The grounds of judgment of the HC also does not indicate that the HC had addressed the competency of the Syariah Courts in giving its decisions and the recognition of the same in our Federal Constitution.

**[99]** The above finding by the HC is also in direct contrast to what was found by the Syariah Courts. Her experiences and exposures as noted by the HC above, were instead found by the Syariah Courts as evidence she accepted the faith and practice of Islam, indicating she is still a Muslim as opposed to the declaration she requested at the Syariah High Court that she no longer holds that faith. It is not without significance this was decided by the Syariah High Court after full trial with witnesses called.

**[100]** Again, I should not determine the correctness of the reasons for the Syariah Courts in arriving at the conclusion she is still a Muslim. How the merits of the case were assessed and evaluated and how the Syariah Courts decided the case is entirely in the hands of that courts. In this regard, in view of the recognition of the Syariah Courts in our Federal Constitution, how the judges at the Syariah Courts came to their conclusions is entirely their prerogative having regard to different jurisprudence between Islamic law and Civil law in the administration and systems of the two courts. After all, as decided by the Supreme Court in *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* [1991] 1 MLRA 301 whether a person had renounced Islam as the religion before his death was to be decided by the Syariah Court. In other words, this case apart from *Rosliza* had decided for apostacy cases, the jurisdiction lies in the Syariah Court.

**[101]** It should always be appreciated that the Syariah Courts had denied the appellant the declaration she is no longer a Muslim well before the HC pronounced and gave the declaration that she is not a person professing the religion of Islam.

**[102]** The HC also found that the OS filed by the appellant did not infringe on the principle of *res judicata* as what were decided at the Syariah Courts (both the Syariah High Court and Syariah Court of Appeal) had been nullified by *Rosliza* as the Syariah Courts could not decide on what is referred to as "*ab initio*" cases. What this amounts to fundamentally as seen from that finding of the HC is that it would not matter that the Syariah Courts had decided the case first. The Civil Courts could always come subsequently to override or

nullify decisions by the Syariah Courts. Although there can be no doubt that the Federal Court case of *Rosliza* is an important decision, with respect, I could not agree that simply with the advent of *Rosliza*, that decisions of the Syariah Courts could be nullified (the word used by the HC), overturned or just in any manner not having effect, considering the factual matrix of this case.

**[103]** First, my reason for saying this is that decisions of the Syariah Courts must be recognised and respected consistent with our own Federal Constitution that do recognise the hierarchy, role and function of the Syariah Courts. In fact, the Civil Courts have long acknowledged this. This is illustrated by the cases decided by the former Federal Court Justice Mohd Zawawi Salleh and former Chief Justice of Malaysia Abdul Hamid Mohamed when they were at the Court of Appeal. The first case is *Syarifah Nooraffyzza Wan Hosen v. Director of Jabatan Agama Islam Sarawak & Ors* [2017] 2 SSLR 387; [2017] 6 MLRA 345 where it is said:

> [25] We are of the view that Syariah courts and civil courts form two separate legal system. We agree with the view expressed by Salbiah Ahmed in her article entitled: "*Islam in Malaysia: Constitutional and Human Rights Perspectives*", Muslim World Journal of Human Rights 2, No 1 (2005), when she asserts that:
>
> > State Syariah Courts are not Courts inferior to the Federal Courts as the term "inferior court" is understood in terms of appeal and judicial review by superior courts over inferior courts. The State Syariah Courts are in a separate hierarchy to that of the federal civil courts. There is no right of appeal from the State Syariah courts to the federal civil courts. There is no power of judicial review by the federal high court over the State Syariah Courts.

**[104]** The second case is *Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi Dan Rayuan Yang Lain* [2002] 1 MLRA 436 where it is explained as follows:

> ... bukanlah dalam bidang kuasa Mahkamah ini untuk mengkaji semula keputusan-keputusan mahkamah syariah yang terletak dalam sistem berlainan itu. Mahkamah ini mesti menerima Mahkamah Tinggi Syariah itu telahpun membuat keputusan fakta itu, mengikut hukum syarak dan mahkamah ini tidak berkuasa campur tangan dalam keputusan itu dan menggubahnya, membatalkannya, mengisytiharkan ia tidak sah atau tidak menghiraukan dan membebaskan perayu-perayu ...

**[105]** Although this case was appealed to the Federal Court, the same had affirmed the decision of the Court of Appeal. (Federal Court - *Kamariah Ali & Yang Lain lwn. Kerajaan Negeri Kelantan & Satu Lagi* [2004] 1 MLRA 528).

**[106]** Further, another Federal Court case to note with regard to the standing of the Syariah Courts is the case of *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals* [2007] 3 MLRA 81 where the following is said:

> [23] Both civil and Syariah courts are creatures of statutes such as the FC, the Acts of Parliament and the State Enactments. **These two courts are administered separately and they are independent of each other. Although the Syariah courts are state courts they are not lower in status than the civil courts. I would say, they are of equal standing under the FC.** This recognition of the Syariah courts was largely due to Art 121(1A) of the FC which excludes the jurisdiction of the civil courts on any matter within the jurisdiction of the Syariah courts.
>
> [Emphasis Added]

**[107]** In the present case before us, it could not be disputed that the Syariah Courts pronounced its decisions well before the HC, not to mention the COA. And the Syariah Courts had the jurisdiction to determine the matter in view of *Rosliza* as this, is an apostacy case. It must be an apostacy case as the appellant requested a declaration she is no longer a Muslim at the Syariah Courts.

**[108]** Second, the Syariah Courts decided that the appellant is still a Muslim before she filed her OS at the HC that granted the declaration that she is not a person professing the religion of Islam. And in this regard, was the HC in a position to grant the declaration? I have explained earlier the position of the HC and the Syariah Courts in relation to their respective jurisdictions and how the former should not encroach on the turf of the latter, so to speak. But there is another added reason why I am of the view the HC should not or is not in a position to grant the declaration. And this relates to the different facts in *Indira Gandhi* which is relied by the appellant herself. *Indira Gandhi* could not be much assistance to the appellant. First because *Indira Gandhi* does not involve decisions already pronounced by the Syariah Courts, both at the trial stage and the appellate level. Equally important is that the subject matter of judicial review is the issuance of certificates of conversions by the Registrar of Muallafs under the Administration of the Religion of Islam (Perak). In *Indira Gandhi* the wife received certificates of conversion showing that the Registrar of Muallaf ('the registrar') had registered the children as Muslims The wife then filed an application for judicial review challenging the decision of the registrar on the grounds that the registrar had acted in breach of the procedure set out in ss 96 and 106 of the Administration of the Religion of Islam (Perak) Enactment 2004 ('the Perak Enactment') and that the certificates issues were void. The wife sought, *inter alia*, an order of *certiorari* to quash the certificates and alternatively a declaration that the certificates were null and void. Thus, the crux of the matter in *Indira Gandhi*, concerns application for judicial review and for an order of *certiorari* against the issuance of the certificates. It is stated in Indira Gandhi, the issue in it concerned the validity of the certificates of conversion issued by the registrar in respect of the children's conversion to Islam. In *Indira Gandhi* it was not disputed that the Registrar of Muallafs was exercising a statutory function as a public authority under the Perak Enactment in issuing the said certificates. The jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Federal Constitution, would according to *Indira Gandhi* lie squarely

within the jurisdiction of the Civil Courts. *Indira Gandhi* found this jurisdiction could not be excluded from the civil courts and conferred upon the Syariah Courts by virtue of art 121(1A) of the FC. Thus, that is how art 121(1A) of the Federal Constitution in *Indira Gandhi* found the jurisdiction of the Civil Courts. It certainly could not be applicable in our case.

**[109]** In fact, in *Indira Gandhi* it is stated that the determination of the appeals in that case did not involve the interpretation of any Islamic personal law or principles. This is different with the decisions of the Syariah Courts in our case. In our case the Syariah Courts had used Islamic law (Hukum Syarak) and Islamic principles to determine she is still a Muslim. Under that circumstance, I certainly could not ignore this fact as the appellant herself has alluded to the reasons of those courts in her affidavit. Besides, by alluding to the same, there could not be a dispute that the Syariah Courts deliberated and made its findings before pronouncing its decisions.

**[110]** To add to the above, the ensuing is also relevant. This would also show the marked difference between *Indira Gandhi* and our case. It is stated in *Indira Gandhi* that the subject matter of the wife's application was not concerned with the status of her children as Muslim converts or with the questions of Islamic personal law and practice but rather with the more basic questions of the legality and constitutionality of administrative action taken by the Registrar in the exercise of his statutory powers. In *Indira Gandhi* it was found this is the pith of the question at hand and it was also clear that cl (1A) of art 121 of Federal Constitution did not prevent civil courts from continuing to exercise jurisdiction in determining matters under federal law, notwithstanding the conversion of a party to Islam.

**[111]** This is of course different from our present case where the appellant requested a declaration from the Syariah Courts that she is no longer a Muslim and as pointed out, this is the jurisdiction of the Syariah Courts.

**[112]** Further, in fact, in *Indira Gandhi*, the Federal Court mentioned and acknowledged the relevant provision in that case conferred jurisdiction to the Syariah Courts to issue a declaration that a person is "no longer a Muslim", a matter directly in point with our present case. The Federal Court went further to state that in cases such as this where a declaration is requested that a person is no longer a Muslim, this is where a person renounced his Islamic faith and hence the Syariah Courts have jurisdiction. This is also directly in point with our present case as the Syariah Courts should have the jurisdiction to decide on renunciation cases as I had explained earlier. After all, this has also been decided by *Rosliza*. To reinforce the point, *Indira Gandhi* also clearly explained that because of marked differences in the establishment and constitution of the Civil and Syariah Courts, the two courts operate on a different footing altogether.

**[113]** Thus, there can be no cogent argument that the Syariah Courts without justification applied Islamic principles involving "hukum syarak" in advance of the Civil Courts in deciding the matter.

**[114]** Third, she went to the Syariah Courts first before coming to the HC and as explained she acknowledged her Muslim status at the Syariah Courts, only wanting to be declared no longer a Muslim after becoming one. After all, that was precisely the declaration she requested at the Syariah High Court.

**[115]** I should also state, with respect, I could not agree that solely because *Rosliza* is now decided as it is, it would then be reason enough to displace the decisions of the two Syariah Courts in this case. However, I should make it clear that I am not at all suggesting that the principles established by *Rosliza* do not apply. Apart from other declarations requested in *Rosliza* which are not in point with our case, *Rosliza* also involved a prayer which is similar to the case before us ie a declaration that a person is not professing the religion of Islam. In fact, I am saying that *Rosliza* is also applicable here in our case as this is a renunciation case (apostacy case) looking at the factual matrix of the present case. Thus, the Syariah Courts have the jurisdiction to determine on the issue whether she is still a Muslim or not.

**[116]** Was there an attempt by the appellant to escape the clutch of jurisdiction of the Syariah Courts when she argued her case before us? There was. She said when she went to the Syariah Courts, *Rosliza* had not been decided. She submitted if there was no decision then for apostacy case one needs to go to the Syariah Court and for *ab initio* case one can seek the Civil Court. Had she known that, she would have gone to the Civil Court. With the greatest respect, I find this submission a bit feeble.

**[117]** This is because of the answer that can be given to the following question. What was her case in the Syariah Courts before she approached the Civil Courts? Her case in the Syariah Courts was that she was no longer a Muslim. That was precisely the declaration she requested there. Her case was that she was a Muslim before but should now be declared no longer a Muslim. That is now better known as apostacy case and as pointed out by *Rosliza*, that is under the jurisdiction of the Syariah Courts.

**[118]** Further, crucially at the Syariah High Court the appellant also did not ask for a declaration she was never a Muslim or she is not a person professing the religion of Islam. And she could have done so because as she herself submitted, *Rosliza* had not been decided when she went to the Syariah Courts. Meaning she was not in a position then to know that for apostacy case the filing should be at the Syariah Court and for *ab initio* case it should be at the Civil Court. However, despite not knowing, she did not apply at the Syariah Courts for a declaration she was never a Muslim or she is not a person professing the religion of Islam.

**[119]** And what did the Syariah Courts decide? The Syariah Courts decided she was still a Muslim. Can the Syariah Courts decide so? Yes, it can as the Syariah Courts are competent courts under our own Federal Constitution and it gave its reasons as explained earlier in this judgment.

**[120]** It must also be stressed, she was not acting alone either in the Syariah Courts or the Civil Courts. She was ably assisted by counsel at all courts and levels who must be presumed to know what they were doing.

**[121]** I am of the view and I agree with the majority at the COA that the issue on jurisdiction alone without further elaboration on other issues would mean the appeals by the appellant before us must be dismissed.

**[122]** However, for completeness other issues raised by the appellant would be addressed in this judgment. First is the issue of the certificate of conversion being invalid according to the appellant. This is so as the certificate was issued pursuant to the 1989 Enactment but this written law which concerned conversion to Islam in Part VIII only came into force on 1 September 1991 (*via* Sel. P.U. 58/1991). This was plainly a date which was subsequent to the conversion date of the appellant on 17 May 1991. The applicable law governing conversion at the material time was in fact the 1952 Enactment, referred to earlier and s 146 stipulates as follows:

> No person shall be converted to the Muslim religion otherwise than in accordance with the provisions of this enactment or any rules made thereunder.

**[123]** Section 147 of the 1952 Enactment in turn reads as follows:

> No person who has not attained the age of puberty shall be converted to the Muslim religion.

**[124]** Looking and confining oneself to the provisions of the written law shown above, as the certificate was issued pursuant to a written law which has not come into force at the date of conversion, that certificate could not be valid and as the relevant written law applicable then prohibits the conversion of a person not attaining the age of puberty, the conversion of the appellant when she was below five also could not be upheld. On both accounts, the appellant's conversion when she was less than five seems untenable.

**[125]** However, I am of the view as required by *Rosliza* and explained earlier, there is a need for a careful examination of the factual matrix of the case. First, a careful examination of the matrix of the case would mean noting the life of the appellant at least from the age of puberty until she was twenty-seven when she went to the Syariah High Court and what the same court decided on her religious status. As stated she was found to be still a Muslim for several reasons as follows.

**[126]** The Syariah High Court decided that the appellant is a Muslim as earlier stated, not only because of her conversion but by referring and applying s 2 of

the Administration of Islamic Law (Federal Territories) Act 1993 that includes the facts that the appellant's upbringing was conducted on the basis that she was a Muslim (as stipulated in limb (c) of that provision) and she is a person who is commonly reputed to be a Muslim (as stipulated in limb (e) of the same provision). (Please see the whole provision as narrated earlier).

**[127]** Thus, that certificate of conversion and the fact she converted to Islam before the age of puberty were not matters that should be taken in isolation, devoid of appreciation of her life in general and her upbringing in particular, including the time she attained puberty. That provision of the written law of Administration of Islamic Law (Federal Territories) Act 1993 as stated above goes beyond the issue of the certificate of conversion and the issue of attaining the age of puberty. Thus, this renders the appellant's argument that the definition of a "Muslim" in that statutory provision could not apply to a non-Muslim person who did not validly convert into Islam otiose. In any event the appellant could not be said to be a non-Muslim person as her own declaration she requested at the Syariah High Court proves otherwise and the determination had been made she is still a Muslim.

**[128]** The Syariah High Court also acknowledged she converted to Islam because of her mother but nonetheless found that the process of her conversion was not irregular.

**[129]** Further, she then had been raised by her mother who converted to Islam and her Muslim step-father until she was seventeen. The court also considered that her mother's affidavit in the proceedings before the Syariah High Court acknowledged the appellant herself knew she was a Muslim in primary school as the appellant's teacher had asked the appellant to take the subject "Pendidikan Islam". Besides the appellant testified at the Syariah High Court that all the while she was raised by her mother and step-father, she had performed Islamic practises including fasting, Islamic way of prayers, attending Islamic classes and programmes including "kenduri".

**[130]** The Syariah High Court also noted that the appellant said she did not practise Islam but Hinduism until seventeen while staying with her mother and step-father. This is because her mother had given her the freedom to choose her own religion. However, the Syariah Court High Court could not find evidence that she was practising Hinduism while growing-up with them. Her mother even said she never knew when exactly the appellant became a Hindu. In fact, the appellant's paternal cousin who became her witness said he did not know the appellant's life (kehidupan) while staying with her mother. He even said he knew the appellant wanted to leave Islam and embrace Hinduism only in 2012 ie a year before her case was filed at the Syariah High Court.

**[131]** The Syariah High Court also found that the appellant had the foundational knowledge as a Muslim. She not only could recite the "Kalimah Syahadah" but could explain the meaning of the same. She still understood the teachings of the religion well.

**[132]** The Syariah High Court further found the declaration she sought could not be granted because whether she practised the Islamic way of life or not is not determinative of one's Islamic status or faith. Not practising the same does not nullify one's faith for the religion of Islam (Syahadah). More so when she was converted by her own biological mother and had learned Islam at school although not fully practising its teachings.

**[133]** In turn, the Syariah Court of Appeal as indicated earlier, found the appellant's lifestyle and practice are more on sins and rewards considered under the faith (dosa dan pahala). Even the most serious sins cannot equate to not being a Muslim as long as it does not affect one's core belief - creed (aqidah).

**[134]** All these are proof that the status of someone being considered a Muslim goes beyond the certificate of conversion and the issue of attaining the age of puberty before conversion. What had happened after attaining puberty, looking and considering the life of that person is also a factor to determine the status of that person (in this case the appellant) as a Muslim. And there can be no dispute (in fact, there is none in this case) that the Syariah High Court and the Syariah Court of Appeal considered these based on the application of Islamic law, a different jurisprudence which I have already stated that I am in no position to review.

**[135]** The appellant also argued the finding of the Syariah Court is also a dangerous proposition that strikes at the heart of art 11(1) of the Federal Constitution, in respect of freedom of religion. In short, a non- Muslim person can at anytime be legally regarded as a Muslim without her consent.

**[136]** First, when the appellant went to the Syariah High Court, she admitted she was a Muslim. That is proven by the declaration she requested - to be declared no longer a Muslim. Therefore, at the outset there is no issue she was a non-Muslim solely regarded as a Muslim.

**[137]** Second, there is also no issue she was denied her freedom of religion. She chose Islam as seen by her declaration and as found by the Syariah Court, she is still a Muslim. Third, with respect, the above submission of the appellant trivialises the role, function and duty of the Syariah Courts. The Syariah Courts can indeed determine her status as a Muslim and has already done so.

**[138]** Further, the appellant submitted the majority of the COA ignored art 12(4) of the Federal Constitution and ss 5 and 11 of the Guardianship of Infants Act 1961, which requires the consent of both parents for the conversion of a minor. This is said by the appellant has been settled by the Federal Court in *Indira Gandhi*.

**[139]** That may be true in the case of a conversion perse of a minor, pure and simple. But again, as required by *Rosliza*, the whole factual matrix of this case needs scrutiny. And as pointed out earlier, the issue of conversion alone without

appreciating and ignoring her own requested declaration at the Syariah Courts to be declared no longer a Muslim, her upbringing as a Muslim as found by the Syariah High Court and her lifestyles determined by that court indicating she is still a Muslim must all be taken holistically to say this is an apostacy case where the jurisdiction of the Syariah Court is to be invoked as propounded by *Rosliza*. Further, *Indira Gandhi* which was cited by the appellant above, as pointed out earlier, differs fundamentally with our present case as *Indira Gandhi* does not involve a determination already made by two Syariah Courts - Syariah High Court and Syariah Court of Appeal.

**[140]** Should the deliberations and decisions of the Syariah Courts be ignored or set aside, especially considering the declaration requested by the appellant herself - she is no longer a Muslim? In the minds of the Syariah Courts even when the case was filed by the appellant at the ripe-age of twenty-seven, she is a Muslim as seen from the declaration she requested. The Syariah Courts, having heard the case, as explained, were quite elaborate in the grounds given why she was considered still a Muslim. I am reminded of *Rosliza* that dictates in a case of apostacy or renunciation of Islam, the matter should be decided by the Syariah Courts.

**[141]** Further, the appellant submitted that the definition of "Muslim" in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 must be read in a manner consistent with the Federal Constitution, in particular para 1, List II (State List), Ninth Schedule, which limits the power of the State Legislatures to make Islamic laws only over persons professing the religion of Islam.

**[142]** On this submission, I have already explained, the appellant is found to be still a Muslim by the Syariah Courts. This is found with reasons, as highlighted by the Syariah Courts, no less by the assertion of the appellant herself who wanted a declaration she is no longer a Muslim. Therefore, in relation to the appellant, the definition of "Muslim" in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 is indeed consistent with the Federal Constitution, in particular para 1, List II (State List), Ninth Schedule, which limits the power of the State Legislatures to make Islamic laws only over persons professing the religion of Islam.

**[143]** The appellant also referred to the cases *Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 1 MLRA 847, *Azmi Mohamad Azam @ Roneey v. Director of Jabatan Agama Islam Sarawak & Ors* [2016] MLRHU 289 and *Re Mohamed Said Nabi, Deceased* [1964] 1 MLRH 202 in support of her appeals before us. It should never be forgotten that in all these cases there is one big difference with our present case. These cases do no involve Syariah Courts declaring a person still a Muslim after deliberation and considering the whole facts of the case as seen in the present case before us.

**[144]** The appellant further submitted that limbs (c) and (e) of s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 as adopted by the Syariah High Court could not apply to a non-Muslim as a non-Muslim

can only be legally regarded as a Muslim if the said person validly converts into Islam. Again, this submission ignores the fact that the appellant admitted she was a Muslim by the declaration she requested at the Syariah Courts. This submission also side-stepped the fact that the Syariah Courts gave elaborate reasons why she must be considered still a Muslim. The appellant with respect also read more words than required in that statutory provision. The provision simply states who is a Muslim without mentioning anything about conversion when it comes to limbs (c) and (e) (Please see the whole provision as narrated earlier). And as explained earlier, when the Syariah High Court decided the case, conversion was only part of the considerations. Also deliberated were the statutory provision above, the declaration she requested and the upbringing and lifestyles of the appellant for so many years after she gained puberty. In this regard it should be recalled what Tengku Maimun Tuan Mat CJ said in *Rosliza* as follows:

> It is only in renunciation cases where one already professes or proclaims to profess the religion of Islam (**irrespective of whether they actually practise the faith**) with the subsequent decision to change what they profess, that the matter is removed to the jurisdiction of the Syariah Court.
>
> [Emphasis Added]

**[145]** The appellant also in referring to *Indira Gandhi* submitted that despite the appellant initiating proceeding at the Syariah Courts, jurisdiction could not be conferred by agreement if none exists in the first place. Essentially this submission means the appellant admitted she went to the Syariah Courts but it does not matter that the Syariah Courts heard, deliberated and decided her case as those courts should not have done all that because it has no jurisdiction for *ab initio* cases. First, this is not an *ab initio* case because the appellant admitted she was a Muslim by the declaration she requested at the Syariah Courts. Second, the Syariah Courts went through the facts of her case and evaluated the evidence of witnesses to conclude she is still a Muslim. As a consequence, this is not an *ab initio* case but a renunciation or apostacy case following *Rosliza*. Therefore, the Syariah Courts had the jurisdiction to decide. The Syariah Courts, both Syariah High Court and Syariah Court of Appeal did not enlarge its jurisdiction to hear, deliberate and decide the case of the appellant. The Syariah Courts also did not act beyond limited jurisdiction as the appellant requested a declaration "she is no longer a Muslim". That certainly is an apostacy case and not an *ab initio* case, thus providing jurisdiction for the Syariah Courts.

**[146]** The appellant also submitted that the Syariah High Court's decision can be attacked in collateral proceeding as it was rendered without jurisdiction. The appellant referred to *Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 MLRA 507, where Abdoolcader J said:

> The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings; it can be disregarded and impeached in any

> proceedings, before any court or tribunal and whenever it is relied upon – in other words, it is subject to collateral attack. In collateral proceedings the court may declare an act that purports to bind to be non-existent.

**[147]** Regarding the above, I have already explained why the decisions of the Syariah Courts could not be considered a nullity. They were made within jurisdiction. Hence, I respectfully do not think the above case could be much of assistance to the appellant.

**[148]** Further, in support of her case, the appellant submitted that the Syariah Courts are akin to inferior tribunals and cannot be compared with the Civil courts and she referred to the following words of *Indira Gandhi*:

> As has been illustrated, civil and syariah courts are distinct in nature and status: the former are established under the Federal Constitution and vested with inherent judicial powers; whereas the latter are creatures of state legislation under the State List, and akin to inferior tribunals."

**[149]** On the above submission, I have already expressed my view earlier that I disagree that Syariah Courts are inferior courts and I have already referred to case law authorities supporting my view. Both Syariah Courts and Civil Courts are recognised under our Federal Constitution. After all, each state in the country make up the Federation and stand tall in the formation of Malaysia. Their institutions should not come secondary to the ones established under the central administration.

**[150]** I find that the thrust of all of the submissions of the appellant is premised on the alleged fact that she is not a Muslim to begin with. I accept her submissions carry cogent weight if she is indeed a non-Muslim. But glaring as it is, her own request for a specific declaration in the court she freely sought ie Syariah High Court, without doubt states she wanted to be declared no longer a Muslim. That clearly showed she was a Muslim and the Syariah High Court decided that she is still a Muslim. She believed justice lies in the hands of the Syariah Courts but having received its decisions she became unhappy and was unable to accept the same and sought another avenue with the hope she will get what she wants.

**[151]** Therefore, based on all the explanations I have given I would decline to answer Questions 1, 2 and 3 as those Questions did not consider the whole decisions made by the Syariah Courts including when the declaration was given, the issue of conversion was taken only as part of the determination the appellant was still a Muslim.

**[152]** With regard to Question 4, I have explained that the order of the Syariah Court is not a nullity. Hence, that Question with respect is irrelevant.

**[153]** With regard to Question 5, I would answer that in the negative having regard to the different and distinct jurisdictions of the Syariah Courts and Civil Courts.

**[154]** There is no necessity to answer Question 6, in view of the explanation I have made with regard to the exclusive jurisdiction of the Syariah Courts under the circumstances of this case.

**[155]** In conclusion, I would say that this is clearly an apostacy or renunciation case where the Syariah Courts have jurisdiction to determine as required by *Rosliza*. It would indeed be inappropriate, unjust to the system of judicial administration and power of the Syariah Courts and wholly unjustified for the same to be supplanted of its jurisdiction and for the jurisdiction instead to be conferred on the Civil Courts, considering the facts and law that should be applicable in this case.

**[156]** Further, in this case the Syariah Courts had pronounced its decisions after being asked to do so none other by the appellant. It must also not be too difficult to appreciate that Syariah Courts operate under different jurisprudence. What may not be acceptable commonly in the Civil Courts' jurisprudence could not be imposed on Islamic Law jurisprudence involving "hukum syarak" and *vice versa*. After all, as pointed out, our own Federal Constitution does recognise Islamic jurisprudence through the role, function and operation of the Syariah Courts.

**[157]** Therefore, based on all the reasons given, I would respectfully dismiss the appeals and affirm the majority decision of the COA but as this is considered a public interest case, I shall make no order as to costs.

**Abang Iskandar Abang Hashim PCA (Supporting):**

**Questions Of Law**

**[158]** There are 6 Questions of law (QOL) as granted at the leave stage for our determination. They read:

i. Is the date of the conversion of a person into Islam the date of his or her actual conversion or the date of issuance of a card confirming the fact of conversion?

ii. In determining the legality of the conversion of a minor into Islam, is the legality of such conversion to be tested against the applicable law as it stood at the time of when the conversion occurred? Further to this:

   a. Can the said minor be deemed to be Muslim notwithstanding by virtue of provisions akin to the definition of "Muslim" in s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003?

   b. Is such definition only applicable to the children of persons born into the religion of Islam such that, where the children of persons who converted into Islam after the birth of such

children are concerned, such children must convert into Islam for them to be treated in law as such?

iii. In any event, does s 74(3) of the Administration of Islamic Law Enactment 1989 (Selangor) oust the jurisdiction of the High Court to determine the validity of a minor's conversion into Islam?'

iv. Where an order of the Syariah Court is a nullity, can such order be collaterally attacked in proceedings before the High Court pursuant to the rule enunciated by the Federal Court in *Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 MLRA 507 and does art 121(1A) of the Federal Constitution apply?

v. Whether the Civil Courts have the powers to reverse findings of facts made by the Syariah Court in the determination of matters of Islamic law and doctrine?

vi. Is *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 2 MLRA 70 limited to have only prospective overruling, based on the principles as enunciated in:

a. *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd* [2017] 3 MLRA 501; and

b. The decision of the House of Lords in *Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others* [2005] 4 All ER 209.

**Introduction**

**[159]** This case deals essentially with the application of the law enunciated in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 2 MLRA 70 ("*Rosliza*"), a landmark decision of this Court which demarcates between the categories of one who "never was a Muslim" on the one side and one who was "no longer a Muslim" on the other. In the former *ab initio* category, the civil court was held to possess jurisdiction to determine one's religious status. In the latter category which is termed as a renunciation case, the jurisdiction remains with the Syariah Court.

**[160]** According to *Rosliza*, a determination of whether it is an *ab initio* case or a renunciation case requires a careful examination of the factual matrix of the case; the circumstances presented before the Court; and the declaration that is being sought for. The question is, to what extent the facts and circumstances of a particular case are to be examined and considered in a claim of "never was a Muslim" in the context of the present appeal, by applying *Rosliza*?

**[161]** According to Dahlia, the point of entry into Islam, ie her conversion is the determining point of evaluating her claim of "never was a Muslim".

Crucially she said that the validity of her conversion determines whether she never was a Muslim or not. The Respondents on the other hand argued that an approach of focusing only on the conversion point is incorrect because according to *Rosliza*, the entire factual matrix of the case must be examined, and that must necessarily include an examination of subsequent events post her conversion, irrespective of the validity or invalidity of conversion. I will delve more into these differing approaches later in this judgment.

**Facts And Antecedent Proceedings**

**[162]** Dahlia Dhaima binti Abdullah ("Dahlia") was born on 17 November 1986 to non-Muslim parents. Her father was a Hindu and her mother was a Buddhist. In 1991, when Dahlia was about 5 years of age, her parents decided to separate, and Dahlia stayed with the mother.

**[163]** On 17 May 1991, the mother converted to Islam. And so did Dahlia, with the consent of the mother only. The mother was issued with the certificate of conversion 2 months after her conversion. As for Dahlia however, the certificate of conversion was issued on 28 August 1993 when she was aged 7 years old.

**[164]** On the parents' divorce, the Kuala Lumpur High Court granted the *Decree Nisi* on 7 August 1992 wherein Dahlia was placed in the care and custody of the mother. The said decree was made absolute on 18 December 1992. The mother subsequently married a Muslim man in 1993. On 22 March 1996, her father died in a motor-vehicle accident.

**[165]** It was Dahlia's case that throughout her life since her parents' separation until she reached 17, ie when she was boarded at Kolej Tunku Abdul Rahman, in the main she had been living with her Muslim convert mother and Muslim stepfather. Subsequently after her graduation in 2010, she stayed with her aunt in Bangsar, and in 2015, she lived by herself in Subang Jaya.

**[166]** In 2013, Dahlia filed a summons at the Kuala Lumpur Syariah High Court ("KLSyHct") for a declaration that she is no longer a Muslim. Reproducing *in verbatim* her prayer as follows:

> "...memohon kepada Mahkamah Yang Mulia ini Perintah seperti berikut:
>
> 19.1 Mahkamah dengan kuasa sedia adanya yang dinyatakan di dalam s 46(2)(b)(x) Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993, mengisytiharkan Plaintif bukan lagi seorang Islam;"

**[167]** On 20 July 2017, the KLSyHct dismissed her summons. The KLSyHct decided as follows:

> "(1) Mahkamah MENOLAK permohonan Plaintif untuk mengisytiharkan Plaintif bukan lagi seorang Islam."

**[168]** Dahlia appealed. On 12 January 2021, the Federal Territory Syariah Court of Appeal ("FTSyCoa") dismissed her appeal and affirmed the findings and decision of the KLSyHct.

**[169]** Following that decision, Dahlia filed an Originating Summons against Majlis Agama Islam Selangor and Kerajaan Negeri Selangor (collectively as "the Respondents") at the Shah Alam High Court in May 2021, seeking for "A declaration that the Plaintiff is not a person professing the religion of Islam;". That was her one and only prayer.

**[170]** The High Court granted her application and declared that she is not a person professing the religion of Islam. The judgment of the High Court is reported in *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Anor* [2022] 4 MLRH 194. In essence, the High Court was of the view that as her conversion was found to be invalid, Dahlia was never a Muslim. Being a non-Muslim *ab initio*, the Syariah Courts did not have jurisdiction over her and as such, the proceeding at the Syariah Courts was a nullity.

**[171]** Dissatisfied, each of the Respondents filed separate appeals. The appeals were heard together. By a majority decision of 2:1, the Court of Appeal allowed the appeals and set aside the decision and order of the High Court. The primary finding of the majority was that *Dahlia*'s case was in fact a renunciation case and not one which fell under the category of "never was a Muslim". It found that the conversion was valid as, by the date of the issuance of the certificate of conversion in 1993, the Administration of Islamic Law Enactment 1989 ("the 1989 Enactment") became applicable and thus, by virtue of s 74(3) of the 1989 Enactment, "a certificate of Conversion to Islam shall be conclusive proof of the facts stated therein". Notwithstanding the validity of the conversion or otherwise, the majority found Dahlia a Muslim as she was raised and brought up as a Muslim or reputed to be a Muslim - a situation that befits the definition of Muslim referred in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 ("FT Act 1993"), which definition is akin to that in s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("the 2003 Enactment"). Therefore, the majority was of the firm view that the Syariah Courts had the jurisdiction over Dahlia and that their decisions stood valid and enforceable. The judgment of the Court of Appeal can be found in *Majlis Agama Islam Selangor v. Dahlia Dhaima Abdullah & Another Appeal* [2023] 3 MLRA 1.

**Relevant Statutory Provisions On Conversion Of Minor**

**[172]** The law relating to conversion of minor in the State of Selangor has developed in three stages, based on what was presented before us.

**[173]** The first statute is the Administration of Muslim Law Enactment 1952 ("the 1952 Enactment"). This 1952 Enactment was repealed by the 1989 Enactment which came into force on 1 September 1991 (it was about 3 or

4 months after Dahlia's conversion). The 1989 Enactment was subsequently repealed by the 2003 Enactment effective on 1 September 2003.

**[174]** It was brought to our attention that the law on conversion of a minor in the 1952 Enactment differs from that contained in the 1989 Enactment. In the former, "no person who has not attained the age of puberty shall be converted to the Muslim religion." This is provided in s 147 of the 1952 Enactment.

**[175]** In the 1989 Enactment however, "if, at the moment of conversion to Islam, a muallaf whether male or female, has any natural child who has not attained the age of majority according to Hukum Syara' (baligh), the child becomes converted to Islam at the same moment." This is found in s 70.

**[176]** Regardless, it was pointed to us that this intended change never took place legally because, when the 1989 Enactment came into force on 1 September 1991, this s 70, together with s 73(3) which concerns the registration of a muallaf"s child, were excluded from its operation. This is clearly provided in the State of Selangor Gazette Sel. P.U. 58 that states "In exercise of the powers conferred by s 1(2) of the Administration of Islamic Law Enactment 1989, His Royal Highness the Sultan appoints the 1st of September, 1991 as the date of the coming into force of the Administration of Islamic Law Enactment 1989 except s 70 and s 73(3) of the Enactment."

**[177]** It was also shown to us that even if the 1989 Enactment was to be applied, r 4(1) of the Administration of Islamic Law (Conversion of Minors) Rules 1991 ("Rules 1991") requires that "subject to subrules (2) and (4), if the minor has a father, he shall obtain the written consent of his father before he may convert to Islam." For completeness, subrule (2) provides that "if the mother of the minor has been appointed to be his guardian he shall obtain the written consent of the guardian (instead of the father) before he may convert to Islam." The 1989 Enactment and its Rules were however argued to be inapplicable by virtue of the date of Dahlia's conversion that took place prior to the coming into operation of the said laws.

**[178]** Thus, considering the date of Dahlia's conversion on 17 May 1991, it would appear that the applicable law at that material time is the 1952 Enactment. This is the heart of the contention by Dahlia that her conversion was invalid because of the prohibition in s 147 which inevitably means that she never was a Muslim, thereby bringing her case being one of *ab initio* case, over which the Syariah Court has no jurisdiction to determine.

**[179]** She was nevertheless found both by the Syariah Courts and the majority of the Court of Appeal to be a Muslim because she was raised and brought up on the basis that she was a Muslim. Reliance was placed on the definition of Muslim contained in s 2 of the FT Act 1993.

**[180]** Based on what was presented to us, I noticed that two matters are conspicuously not provided for in the 1952 Enactment, namely the definition

of "Muslim" and the conclusiveness of the certificate of conversion. They are however provided both in the 1989 Enactment and the 2003 Enactment.

**[181]** In so far as this case is concerned, s 74(3) of the 1989 Enactment was cited as that provision forms part of the basis of the findings by the majority on the Muslim status of Dahlia. This section states that "a certificate of conversion to Islam shall be conclusive proof of the facts stated therein."

**[182]** On the definition of "Muslim", s 2 of the 2003 Enactment defines "Muslim" to mean:

> "(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 s 108; or
>
> (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be oral or written;"

**[183]** Those are the relevant statutory provisions that are in issue in this appeal. Out of the six Questions of law ("QOL") posed for our determination, three QOLs relate to the statutory provisions mentioned above in respect of:

(i) the applicable conversion law on minor - the 1952 Enactment or the 1989 Enactment?

(ii) the application of the definition of Muslim in s 2 to converted minor; and

(iii) the conclusiveness of the certificate of conversion in s 74(3) in respect of the power of the civil court to determine the validity of a minor's conversion.

**[184]** The other three QOLs concern:

(iv) the collateral attack of a null Syariah Court order in the civil court;

(v) reversing the findings of facts made by the Syariah Court; and

(vi) the prospectivity of *Rosliza*.

**The Differing Approaches**

**[185]** In determining that she "never was a Muslim", Dahlia argued that the Court must look at the point of conversion and decide, if it was a valid conversion. If the conversion was invalid, that person must necessarily be a non-Muslim *ab initio*, and the civil court has the jurisdiction to deal with the matter. In making such determination according to Dahlia, other considerations should not trouble the court in respect of determining her religious status, including the fact that there were prior Syariah Courts proceedings.

**[186]** In this case specifically, *Dahlia*'s case rests on the prohibition in s 147 of the 1952 Enactment. Therefore, taking into consideration the date of conversion on 17 May 1991 as stated on the certificate of conversion, Dahlia contended that her conversion following her mother's conversion was invalid. She also asserted that her conversion was invalid because her father's consent was never obtained. Reliance was placed on the decision of this Court in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 2 MLRA 1 ("*Indira Gandhi*"). As such, Dahlia argued that she was never a Muslim from the very beginning of her life and was therefore entitled to apply to the civil court and to be declared as a person not professing the religion of Islam.

**[187]** Importantly according to Dahlia, since the conversion was invalid, and that she was never a Muslim, her prior submission to the jurisdiction of the Syariah Court ought not to be regarded because the Syariah Court had no jurisdiction over her *ipso facto* and any determination by the Syariah courts have no legal consequence for it being a nullity. *Viran Nagapan v. Deepa Subramaniam & Other Appeals* [2016] 2 MLRA 206 ("*Viran*") was cited as the supporting authority. Thus, when her conversion is a nullity, everything else falls and becomes immaterial, and that being so, the Syariah Court decisions can be attacked in collateral proceedings (*Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 MLRA 507).

**[188]** The Respondents on the other hand took a different approach to the determination of the "never was a Muslim" situation. According to them, the Court must not stop evaluating at the point of conversion alone. This is because according to *Rosliza*, the entire factual matrix of the case must be examined. This means, subsequent events post the conversion date must also be assessed. The Respondents emphasised two things - (i) the fact that there was never a challenge against the validity of her conversion, either by Dahlia or her late father; and (ii) Dahlia's averments in her own pleadings and evidence in court during the Syariah Court proceedings.

**[189]** On the point of the validity of her conversion, the Respondents highlighted that Dahlia had never raised this issue during the Syariah Court proceedings, and even in her claim in the civil High Court, she did not pray for a declaration concerning the validity of her conversion. There was also

no record of any challenge against her conversion filed by her or by her late father.

**[190]** As regards her pleadings and evidence in the KLSyHct, the Respondents insisted that this Court examine and consider her own pleadings and evidence which show that she was a Muslim at any one point of her life after the alleged invalid conversion, taken together ought to be determined as a question of fact, following *Rosliza*.

**Determining Whether Dahlia "Never Was A Muslim"**

**[191]** In dealing with the question of the applicable law to test the validity of Dahlia's conversion, I have no hesitation in concluding that it is the date of the actual conversion on 17 May 1991 as clearly stated in the certificate of conversion, and not the date of the issuance of the certificate of conversion on 28 August 1993, that determines which law is applicable. As at May 1991, the 1952 Enactment was still in force. That law prohibited, through s 147, the conversion of any person who had not attained the age of puberty to the Muslim religion. (QOL 1)

**[192]** At this juncture, in so determining, two questions emerge, namely, (i) Do I stop at the stage when I have determined that Dahlia's conversion at the age of 5 years was legally invalid? (ii) Would such a legally invalid conversion necessarily mean that she was factually never a Muslim?

**[193]** In this case, the Respondents insisted that we consider Dahlia's averments and evidence in the Syariah Court. They argued that Dahlia has not been consistent in stating her case. In the Syariah Court, her case was a "no longer a Muslim" category, while in the civil court, she prayed to be declared as a person who is not professing the religion of Islam because she "never was a Muslim".

**[194]** It was shown to us, specifically, in para 11 of her own Statement of Claim in the KLSyHct that stated:

> "Plaintif mengatakan bahawa walaupun Plaintif telah beragama Islam, Plaintif diberikan kebebasan mengamalkan ajaran Hindu oleh ibu beliau dan sering melawat keluarga sebelah bapa Plaintif yang beragama Hindu"

**[195]** Further, in her own prayer at para 19.1, she sought for a declaration that "Mahkamah dengan kuasa sedia adanya yang dinyatakan di dalam s 46(2)(b)(x) Administration of Islamic Law (Federal Territories) Act 1993, mengisytiharkan Plaintif bukan lagi seorang Islam".

**[196]** The Respondents also referred to certain findings of fact by the KLSyHct as similarly considered by the majority of the Court of Appeal, that despite having stated that she did not practice Islamic teachings, Dahlia however agreed during cross-examination that she did fast, pray and attend religious classes although not on regular basis. She also had attended religious activities

or programs during her stay with the mother and stepfather. Dahlia was also found to be able to utter the two clauses of the Affirmation of Faith in court. In short, the Respondents submitted that the evidence in the Syariah Court has affirmatively shown that Dahlia was once a Muslim. She was indeed raised and brought up by her mother on the basis that she was a Muslim. Thus, it was argued that her case was in essence a renunciation case, which was correctly and legally dealt with by the Syariah Court. Her failure to challenge the validity of her conversion further confirms her belief at the material time before *Rosliza* that she was a Muslim and not "never was a Muslim". The Respondents viewed Dahlia as taking advantage of *Rosliza* to make a different stance and case in the civil court, and that it smacked of an afterthought.

**[197]** Dahlia responded that she has always been consistent and firm in stating her case that she never professed or practised the religion of Islam. She maintained that her averment in para 11 must be understood in the context of the other paragraphs relating to her impugned conversion. Moreover, she had to submit to the jurisdiction of the Syariah Court at that point of time as she understood the law to be such, that only the Syariah Court has the jurisdiction to deal with the question of determining her religion, based on the decision of the Federal Court in *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 1 MLRA 359.

**[198]** Further, it is incorrect to say that she did not challenge the validity of her conversion as her case now before the civil court rested primarily on the validity of her conversion in 1991.

**[199]** I have considered both parties' contentions, and by applying *Rosliza*, the facts and circumstances of the case must be carefully scrutinised and examined when dealing with a claim of "never was a Muslim". In the words of Tengku Maimun, CJ, Her Ladyship stated that:

> "[98] What can be distilled from *Lina Joy* and like cases on the one side, and *Azmi* and like cases on the other, is that it is a matter of proof that the person affirmatively professed the religion of Islam at the material time. Absent such proof, the case may be classified as an *ab initio* case.
>
> ...
>
> [108]...Whether it is an *ab initio* case or a renunciation case will require a careful examination of the factual matrix of the case.

**[200]** In delivering his concurring judgment, Azahar Mohamed, CJ (Malaya) added that the circumstances presented before the court and the declaration that is being sought for must also be taken into consideration. His Lordship said:

> "[144] ... In my opinion, where the subject matter requires a determination of whether a person is or is not a Muslim under the law, the Civil High Court has the jurisdiction to hear and decide whether the case is properly brought before the civil courts by evaluating the factual matrix and circumstances presented before it and also the declaration that is being sought for."

**[201]** It must be recalled that first and foremost, the one and only prayer sought for by Dahlia in the High Court was a declaration that she "is not a person professing the religion of Islam." She did not of course pray for a declaration that her conversion was invalid. However, I take note and consider that in bringing her case within the "never was a Muslim" category, she contested the validity of her conversion that took place in 1991 following her mother's conversion. As I have stated earlier, by virtue of s 147 of the 1952 Enactment, her conversion was clearly a breach of that law.

**[202]** That said however, I have my reservation on Dahlia's contention that the consent of the mother alone was invalid based on *Indira Gandhi*. This is because her conversion took place in 1991, long before *Indira Gandhi* was decided in 2018 and which decision was expressly declared to have a prospective effect only. Thus, both parents' consent is only relevant to be considered on the conversion post *Indira Gandhi*'s decision.

**[203]** Thus, notwithstanding the legal status of Dahlia's conversion, I am in agreement with the Respondents on the correct approach to apply when determining whether a case falls within the "never was a Muslim" case-category. In doing so, it is incumbent upon us to examine the entire factual matrix and circumstances of the case as was decided by this Court in *Rosliza*.

**[204]** It needs to be emphasised that we recognised early that the task of the assessment as required by *Rosliza* in ascertaining whether it is a "never was a Muslim" case-category or "no longer a Muslim" type, is no easy task. The duty that is placed upon us is something that must not to be taken lightly. The very nature of the ultimate objective of this exercise suggests to us that it touches upon a very delicate issue affecting one's religious faith and identity.

**[205]** In this regard therefore, I am of the considered view that subsequent events following the impugned conversion must be evaluated with a consideration of the following facts:

(i) Dahlia was legally placed in the care and custody of her Muslim convert mother. In her situation as such, surely a child aged 5 years would be legally incapable of taking the Affirmation of Faith or the Syahadah as required under the law. It is this peculiar set of circumstances surrounding her upbringing that presented an important aspect that, to my mind, needed to be evaluated, as envisaged by *Rosliza*.

(ii) She was in the sole legal custody of the mother even after the passing of her father in 1996 when she was aged 9 or 10 years. The importance of this fact to my mind is that, if we consider the question of the status of her conversion as invalid because of the absence of a written consent of the father following r 4(1) of the 1991 Rules as was highlighted to us, subrule (2) however allows the conversion of a minor "if the mother of the minor has

been appointed to be his guardian he shall obtain the written consent of the guardian (instead of the father)...“; and “if the father of the minor has died, the written consent of the mother shall be obtained (subrule 3). Thus, up until this point of time in Dahlia’s life, mother’s consent could still be legally valid if I take into consideration the fact that post 1996, Dahlia was in the sole guardianship of the surviving parent. Notwithstanding, I take note that in this case, there was no further and separate conversion exercise taken pre or post 1996 when the 1989 Enactment and Rules 1991 were already in place.

(iii) Her pleading in the Syariah Court states a “no longer a Muslim” case-category. Thus, by applying the ordinary and literal rule of construction to the words and phrases employed by Dahlia, her pleading cannot be understood any differently other than to mean that she was “no longer a Muslim”. Inherently and clearly patent in that phrase must be the supposition that she was once already a Muslim, who now wishes to exit the Muslim religion. It is incapable of any other meaning.

(iv) There were contradictions in both Dahlia and her mother’s averments and evidence in the Syariah Court and in their affidavits in the High Court as regard her religious profession and upbringing.

(v) The KLSyHct made a finding after a full trial of the matter that Dahlia was/is still a Muslim and was raised on that basis, despite her allegation of not practicing the religion.

(vi) There was no challenge of the validity of her conversion or of the validity of the issuance of her certificate of conversion.

**[206]** Thus, having considered these facts in their entirety, and in context, I find that despite the impugned conversion, Dahlia was factually a Muslim since her childhood when she was legally in the care and custody of her mother. Her mother raised her on the basis that she was a Muslim. The evidence at the Syariah Court confirms that fact notwithstanding the opposite averments that she subsequently made in the civil court. Therefore, I see no plausible reason why the definition of Muslim in s 2 of the 2003 Enactment cannot be applied in ascertaining the meaning of a Muslim (QOL 2). The court is well within its jurisdiction to make such finding.

**[207]** Dahlia asserted that defining a Muslim by reliance on one’s upbringing or reputation as a Muslim in subsections (c) and (e) of the FT Act 1993 which equivalent is in subsections (c) and (d) of the 2003 Enactment is dangerous as a non-Muslim can at any time be legally regarded as a Muslim without his consent.

**[208]** In my view, with respect, this assertion is without basis. The definition of Muslim in s 2 of the 2003 Enactment is framed in a disjunctive fashion to provide for a variety of categories of facts and circumstances of a case where the Muslim status of a person is an issue, which determination must always be dependent on proof of evidence. As was held by *Rosliza*, "absent such proof, the case may be classified as an *ab initio* case...".

**[209]** Secondly, to confine the application of the said definition only to categories of "children of persons born into the religion of Islam and not to children of persons who converted into Islam after the birth of such children" would amount to reading into a provision what is not there. Indeed, it is not the province of the court to read into the clear provision of law what is not there or to interpret beyond the clear meaning as intended by the legislature. To restrict the application of the definition of Muslim as was contended by Dahlia would go against the clear and express provision of s 2. In *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 4 MLRA 394, the Federal Court summarises the rule of construction of statutes in the following words:

> "[30] In our opinion, the rules governing statutory interpretation may be summarised as follows. First, in construing a statute effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed...

**[210]** Thus, the net effect is that, based on the reason that Dahlia was once a Muslim, and by applying *Rosliza*, the Syariah Court was seised with jurisdiction to deal with the "no longer a Muslim" case-category. And hence, until and unless the decision of the Syariah Court is set aside, its findings and order are valid and enforceable. They are not null by reason of want of jurisdiction.

**[211]** It is worthy of note in this regard that in *Viran*, despite having found that the Syariah Court had no jurisdiction to deal with the matter before it, the Federal Court however decided that the Syariah Court order remained a valid order until it is set aside. It held as follows:

> "[31] We adopt the same view. Thus, on the facts of this case, the Syariah High Court has no jurisdiction to dissolve the civil marriage between the ex-

husband and the ex-wife and to make an order granting custody of the two children out of the marriage to the ex husband. The jurisdiction to do that is with the civil court. In consequence, the Syariah Court's order in dissolving the marriage between the ex-husband and the ex-wife and granting custody of the children to the ex-husband is of no effect due to want of jurisdiction.

...

[55]... We acknowledge that by our decision in relation to Question 1 above, the Syariah Courts have no jurisdiction in this case to make the custody order. However, Syariah Court order remained a valid order until it is set aside. Thus, with respect, the High Court judge, cannot direct the IGP or his officers to execute the High Court judgment, irrespective of the Syariah High Court order.

**[212]** Hence, following *Viran*, a collateral attack of a Syariah Court decision and order as asserted by Dahlia cannot be sustained when its decision and order remained a valid order until it is set aside (QOL 4). Any such attack in the civil court cannot be made at all particularly when the subject matter falls exclusively within the Syariah Court jurisdiction [Article 121(1A)]. This Court's approach on this issue has been consistent through the years (*Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 1 MLRA 847; *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLRA 115; *Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors* [2003] 1 MLRA 283 among others).

**[213]** Nevertheless, if the matter concerns constitutional or statutory interpretation or that involving judicial review of public authorities' actions, the jurisdiction remains in the civil court, regardless of the effect of the civil court's decision to the Syariah Court's finding (*Indira Gandhi*).

**[214]** Lest it be misunderstood, I need to emphasise that the present appeals do not concern any question of constitutional or statutory interpretation as was present in *Indira Gandhi* and *Rosliza*. Rather, these appeals are an illustration of the application of *Rosliza*, whose approach requires an assessment of the facts and circumstances that are presented before us in our determination of whether Dahlia falls under the category of "never was a Muslim" as opposed to "no longer a Muslim".

**[215]** Having read and considered the judgments of the courts below; the judgments of the Syariah Courts; the documents and exhibits that were placed and shown to us, I am of the considered view that the majority of the Court of Appeal had undertaken the correct approach in determining which category *Dahlia*'s case should fall into.

**[216]** However, it needs to be stated that the majority was nevertheless in error on one issue, namely, when applying the date of the issuance of the certificate of conversion when deciding the question of the applicable law to test the validity of conversion. That having been said, such error was not fatal in the circumstances of this case.

**[217]** Other than that, I found that the majority had rigorously analysed the facts and circumstances of the case as required by *Rosliza* in determining whether Dahlia was "never a Muslim" or "no longer a Muslim". In this regard, it would be pertinent to recall, as it was correctly found by the majority of the Court of Appeal in that, for as long as one professes the religion of Islam, one is legally identified as a Muslim irrespective of one's degree of faith and practice of the Islamic teachings. With respect, I agree. Paragraph 112 of the majority judgment is worth reproducing, like so;

> "[112]...As stated earlier, *Rosliza* established that a Muslim by identification would be legally identified as a "person professing the religion of Islam" regardless of whether she practises or not, or whether she continues to believe in the faith or otherwise. Section 2(c) of the Administration of Islamic Law (Federal Territories) Act 1993 is an example which provides for an interpretation of a Muslim by identification, thus becoming a "person professing the religion of Islam" notwithstanding it concerns less with one's religious practice and degree of faith but more on considerations on one's background and upbringing."

**The Certificate Of Conversion**

**[218]** As regards the conclusiveness of the certificate of conversion in respect of the facts stated therein contained in s 74(3) of the 1989 Enactment, I find support of the decision of the Federal Court in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 2 MLRA 1 which has held on the same point of conclusiveness of the certificate of conversion in s 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004. It held that:

> "[133] In any case, the language of s 101(2) itself does not purport to oust judicial review. The section merely states that a certificate of conversion to the religion of Islam shall be conclusive proof of the facts stated therein. The facts stated in the certificate are that the persons named have been converted to the religion of Islam and that their names have been registered in the Registrar of Muallafs. In the instant appeals, the fact of the conversion or the registration of the appellant's children are not challenged. What is challenged is the legality of the conversion and registration."

**[219]** Thus, in respect of QOL 3, although s 74(3) renders the certificate of conversion conclusive proof as to the facts stated therein, one is not precluded from challenging the correctness and the validity of the process leading to the statement of the facts in the certificate of conversion and/or its issuance. Thus, if it can be shown that the facts stated in the certificate of conversion was incorrectly stated; or if the certificate was issued not according to law, that conclusiveness is bound to be reviewed.

**Conclusion**

**[220]** An invalid legal status of conversion of a minor who is legally in the care and custody of a Muslim-convert mother does not by itself determine

that the minor is factually "never a Muslim". An assessment of the facts and circumstances of a particular case as ruled by *Rosliza* is not to be restricted only to the point of conversion without evaluating the whole facts revolving around the life of a minor since his/her childhood right until the filing of the suit.

**[221]** The prior Syariah Court decision which remains valid is an important distinguishing factor that this court must consider, as such factum was never present to be considered in *Rosliza*. Importantly as well, the evidence of contradictory stance and averments in both the Syariah and Civil Court proceedings is not to be ignored or disregarded. The failure to raise the issue of the validity of her conversion when she initiated the Syariah Court proceeding prior to *Rosliza* must be taken to indicate Dahlia's belief at that point of time of her Muslim status.

**[222]** Based on the factual matrix of the case and the circumstances presented before the court and the prayer sought by Dahlia, I am of the considered view that *Dahlia*'s case does not fall under the category of "never was a Muslim" as defined by this Court in *Rosliza*. Being raised as a Muslim, she had correctly submitted to the jurisdiction of the Syariah Court in determining whether or not she was "no longer a Muslim".

**[223]** Having dealt with the 4 Questions of law above, I do not find it necessary for me to answer the remaining Questions 5 and 6 on reversing the findings of facts made by the Syariah Court; and on the retrospective or prospective effect of *Rosliza* as they are framed. It is sufficient that I answer the first four Questions that essentially touch the crux of the case which disposes of both the appeals.

**[224]** In the upshot, I found that Dahlia had failed, on the balance of probabilities, to prove that she "never was a Muslim" based on the reasons stated above. I find that the decision of the majority of the Court of Appeal is not plainly wrong. Their decision is hereby affirmed and Dahlia's prayer for a declaration that she is not a person professing the religion of Islam is correctly dismissed. I make no order as to costs.

**Mary Lim Thiam Suan FCJ (Dissenting):**

**[225]** These two appeals epitomise the essence of jurisdiction. Too often, the true meaning of jurisdiction, as understood under the Federal Constitution is not appreciated or worse, misinterpreted. The fact that this Nation has a written constitution is of immense value and impact as the written promises within the Federal Constitution must be carefully and responsibly discerned and honoured. Otherwise, the words used will have no meaning or value, even less than of the paper written on.

**[226]** Central in these appeals is the question of to which Court is the appellant to turn to if she is seeking a declaration that "she is not a person professing the religion of Islam". Who has the jurisdiction to determine the question? Is

the answer to that question unqualified, or is it conditioned or subject to the course of conduct thus far undertaken by the appellant and responses, if any, given? The answer surely must lie in the meaning of what jurisdiction means and entails.

**Background Facts**

**[227]** These are the unrefuted facts. For the purpose of these appeals, I shall refer to the respondent in the two separate appeals collectively as "the respondents" given that their submissions are substantially common, save where I have expressly stated otherwise.

**[228]** The appellant was born a Hindu on 17 November 1986 to a non-Muslim couple. Her late father was of Indian descent and he professed the religion of Hinduism. Her mother is of Chinese descent and she was born to a Buddhist family. The marriage of the appellant's parents was solemnised under the Law Reform (Marriage and Divorce) Act 1976 [Act 164]. In 1991, when the appellant was five years old, her parents separated. The appellant's mother took the appellant with her and they both stayed in Selayang Baru, Selangor.

**[229]** Because she was planning to marry a Muslim man, the appellant's mother converted to the Islamic faith. On 17 May 1991, the appellant's mother went to the Jabatan Agama Islam Selangor [JAIS] and took the affirmation of faith [Kalimah Syahadah] and took the name "Farah Hor binti Abdulah". At the same time, the appellant was converted by her mother, taking the name, "Dahlia Dhaima binti Abdullah". The mother was issued a conversion card the same day she was converted but the appellant was only issued a card on 28 August 1993, when the appellant was seven years of age.

**[230]** The parents divorced under Act 164 and the divorce absolute was decreed by the High Court of Malaya on 18 December 1992. In that same decree, the mother was granted full custody, care and control of the appellant. The appellant continued to stay with her mother after the divorce. On 10 April 1993, the mother married Zafri bin Manap and the appellant lived with her mother and step-father.

**[231]** At 17 years of age, the appellant went to a residential school and upon graduation in 2010, she stayed with her aunt in Kuala Lumpur. In 2015, the appellant decided to stay by herself.

**[232]** In her affidavit in support of the appellant's application for the declaration mentioned at the outset, the appellant's mother averred that she did not inform the appellant's father that she had converted the appellant back in 1991. She also averred that the appellant's late father never gave his approval or consent to the appellant's conversion, even until the day of his demise on 22 March 1996. The appellant's mother further averred that the appellant did not take the affirmation of faith [Kalimah Syahadah] at the time when the mother

converted the appellant; that the appellant did not understand or know what was happening at the material time. Also, she averred that the appellant had not professed and had not practised the Islamic faith from the time the appellant stayed with her at the age of five, till to date. Instead, the appellant had professed and practised the religion of Hinduism at all times.

**[233]** The appellant, herself, averred that she had always professed and practised the religion of Hinduism, that she frequented Hindu temples with her paternal relatives and celebrated Hindu festivals. She categorically stated that she never attended any Mosque, prayed according to the Islamic faith and that her mother and step-father had allowed her to profess and practise her chosen faith of Hinduism.

**[234]** On 12 December 2013, the appellant filed a summons against the Majlis Agama Islam Wilayah Persekutuan [MAIWP] at the Kuala Lumpur Syariah High Court for, *inter alia* a declaration that she was no longer a Muslim [Summons 043]. On 20 July 2017, her application was dismissed. On 12 January 2021, the Syariah Court of Appeal dismissed the appellant's appeal.

**[235]** In May 2021, the appellant filed an Originating Summons at the High Court seeking a declaration under s 41 of the Specific Relief Act 1950 as to her religious status, that she is not a person professing the religion of Islam [Originating Summons]. She cited Majlis Agama Islam Selangor and Kerajaan Negeri Selangor as the respondents. The appellant claimed that her purported conversion on 17 May 1991 was a nullity as it contravened s 147 of the Administration of Muslim Law Enactment 1952 [1952 Enactment] which prohibited the conversion of a person who has not attained the age of puberty. The appellant was five years old at the time of the purported unilateral conversion by her mother.

**[236]** Her application was opposed by the respondents. Both respondents' principal argument was that the High Court of Malaya had no jurisdiction to entertain the application; that the matter was within the exclusive jurisdiction of the Syariah Court as provided under art 121(1A) of the Federal Constitution. The respondents also maintained that the applicable law relating to the appellant's conversion was the Administration of Islamic Law Enactment 1989 [1989 Enactment], in particular ss 70 and 74(3); and not the Administration of Muslim Law Enactment 1952 [1952 Enactment]. Section 70 provided for the conversion of a natural child who has not attained the age of majority to be converted to Islam "at the same moment" the mother converted. Section 74(3) further provided that the certificate of conversion to Islam shall be conclusive proof of the conversion. Since the certificate was dated 28 August 1993, the respondents argued that the appellant was in fact converted on this date and not two years earlier, on 17 May 1991, in which case the 1989 Enactment applied.

**Decision Of The High Court**

**[237]** The appellant's application was allowed. Relying on *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 2 MLRA 70 [*Rosliza*] and *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 2 MLRA 1 (*Indira Gandhi*), the High Court held that it had jurisdiction to entertain the application. The learned Judge further held that on the facts and law, the appellant's purported conversion to Islam by her mother on 17 May 1991 "was against the State law of conversion at that material time", that the purported conversion contravened s 147 of the 1952 Enactment. The High Court added that even if the 1989 Enactment was applicable, which the High Court found that it did not, s 70 was still not available to assist the respondents since that section had yet to come into force on the date of conversion on 17 May 1991. Section 70 only came into force on 1 September 1991 (*vide* Sel. P.U. 58/1991), after the date of the purported conversion.

**Decision Of The Court Of Appeal**

**[237]** The Court of Appeal allowed the respondents' appeals by majority. These are the main reasons for the respective decisions of the majority and dissent.

**[238]** The majority held that in accordance with the doctrine *stare decisis*, it will follow the decisions of the Federal Court in *Rosliza* and *Indira Gandhi*, describing the earlier "is not a case of conversion unlike presently, the latter too, not like the present, concerns a challenge of administrative decision in the issuance of the certificate of conversion". The majority nevertheless recognised that these two cases had established important principles relevant to the issues for determination; those issues being "whether the case is about one seeking a declaration she is a Muslim or that she is no longer a Muslim which determines the Court having jurisdiction on the matter, and perhaps less so, whether both parents had given consent to the conversion to make it constitutionally valid".

**[239]** On the pivotal matter of jurisdiction, the Court of Appeal identified that "the critical question to be determined is whether the application is an *ab initio* or a renunciation case". Here, the Court of Appeal held that the decision in *Rosliza* "does not only apply prospectively, in light of the rule that if the verdict on fresh interpretation of the law did not come with any declaration as to whether the ruling should apply prospectively, then the general rule that all judgments of the Courts apply retrospectively, takes effect (see the decision of this Court in *Abillah Labo Khan v. PP* [2002] 1 MLRA 294]".

**[240]** In this issue, the majority was most persuaded by the fact that the "religious status of the respondent has in fact been determined by the Syariah High Court" and even affirmed on appeal by the Syariah Court of Appeal of the Federal Territory of Kuala Lumpur. Because of this determination, the majority rationalised that "The law, as enshrined in the Federal Constitution no less, does not, we emphasise, countenance any review or appeal, let alone re-litigation or unravelling by the Civil Court of a decision which is within the

exclusive jurisdiction of the Syariah Court". The majority added that art 74(2) read with item 1 of List II - State List to the Ninth Schedule "clearly provides that all matters on Islamic affairs are under the jurisdiction of the States".

**[241]** Citing a number of decisions of high authority from the High Court, Court of Appeal and the Federal Court the majority concluded that the present case was "necessarily a renunciation case which should rightly fall under the Syariah jurisdiction within the context of the distinction formulated in *Rosliza*" as follows:

> [43] As such, in light of these authorities, in our view this must mean that in cases where the Syariah Court has already made the determination that an applicant is a Muslim, like the instant case, the distinction drawn in *Rosliza* must necessarily be construed and answered as a renunciation case. It is irrelevant whether the application filed at the Syariah Court is stated as one never was a Muslim or one no longer is a Muslim precisely because the judicial determination has already been made by the Syariah Court, in that one is a Muslim or is **still** a Muslim. A judicial determination by the Syariah Court that a person is **still** a Muslim, like presently, must necessarily mean he is a Muslim, and not one who was never a Muslim. This therefore already answers the question on the distinction posed in *Rosliza*.
>
> [Emphasis On Original]

**[242]** The decisions cited were *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLRA 115 [FC], *Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2010] 3 MLRA 355 [COA], *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* [1991] 1 MLRA 301 [Supreme Court], *Haji Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal* [2014] 3 MLRA 173 [FC], *Syarifah Nooraffyzza Wan Hosen v. Director of Jabatan Agama Islam Sarawak & Ors* [2017] 6 MLRA 345; [2017] 2 SSLR 387 [COA]; *Wan Johairiza Wan Ab Rahman v. Mahkamah Rayuan Syariah Selangor & Ors* [2022] 2 MLRH 569 [HC].

**[243]** On the ground of absence of jurisdiction alone, the majority held that the two appeals must be allowed.

**[244]** For completeness, the majority nevertheless proceeded to determine whether the case was "an *ab initio* or renunciation case". According to the Court of Appeal, the "mere assertion that an application is an *ab initio* case does not automatically oust the jurisdiction of the Syariah Court. Just because an application is made to the Civil High Court and drafted in terms of an *ab initio* case, it cannot mean that the Civil Court is immediately seised of jurisdiction to consider the declaration sought. What the Civil Court must do in such situation is to determine whether the case is one of *ab initio* or renunciation in nature". The majority held that the appellant's case "must be construed as a renunciation case in light of art 121(1 A) of the Federal Constitution" for the following reasons:

i. Conversion and applicable law governing the conversion, whether it was the 1952 Enactment or the 1989 Enactment - it was held that the applicable law was the 1989 Enactment in view of the conversion card "issued to the respondent upon the registration of her conversion". Consistent with *Rosliza* and applying s 74(2) of the 1989 Enactment, the "conversion was valid" since the certificate of conversion to Islam "shall be conclusive proof of the facts stated therein".

ii. Wide definition of "Muslim" in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 - the decision of the Syariah High Court that the appellant is a Muslim.

iii. Validity of conversion not determinative - even if assuming the appellant's conversion when she was a minor "at barely five" is a nullity, "it does not necessarily mean that the person is not a Muslim if evidence shows that he in fact still professes the religion based on applicable legal interpretation despite any conversion which could turn out to be legally flawed.

iv. Conversion validity never raised in the Syariah proceedings - that the present challenge is an afterthought due to the appellant's failure to specifically complain about the validity of her conversion in the proceedings before the Syariah Courts (she could have raised it there but did not); absence of proof of any challenge of her conversion including the custody order granted to her mother; no application by her to nullify the proceedings of the Syariah High Court or to challenge the authority's power in issuing the conversion card as a Muslim.

v. Appellant's pleadings fashioned on renunciation - granted that the appellant's pleadings in the MAIWP Summons were "pre-*Rosliza*", those pleadings are a judicial admission which operated to prevent or stop the appellant from taking a different stance as there was nothing preventing her from asserting in the MAIWP Summons that she was never a Muslim; that it was easy for her to argue to such effect, attack the validity of the conversion and ask for a declaration that she was not a Muslim.

vi. Appellant's averments in the OS contradict earlier Syariah judicial findings - that the grounds of judgment exhibited in the OS provided a different picture of her religious status, that the Syariah High Court and Syariah Court of Appeal had concluded that the appellant "was still a Muslim".

vii. Other issues - that the appellant had chosen to submit to the jurisdiction of the Syariah High Court of the Federal Territory of Kuala Lumpur, that she was represented by counsel in the

proceedings. The OS was also *res judicata* and potentially an abuse of Court process with the appellant having no *locus standi* to re-litigate a similar application by way of the OS.

**[245]** The minority view was thus. Recognising too, the significant question of jurisdiction, P Ravinthran JCA first reminded himself of what had been exhorted in *Indira Gandhi*, that Civil Courts are not to lightly decline jurisdiction under art 121(1A) of the Federal Constitution without scrutinising the nature of the matter before it; that "if it involves constitutional issues, it should not decline to hear merely on the basis of jurisdiction" (paras (103)-(105)).

**[246]** His Lordship noted that in *Indira Gandhi*, the Federal Court had clarified that while the new cl 1A of art 121 of the Federal Constitution took away the jurisdiction of the Civil Courts in respect of matters within the Syariah Courts, that same clause ousts the jurisdiction of the Civil Courts to interpret any written laws of the States enacted for the administration of Muslim law. In short, the Civil Courts are duty bound to interpret the law, particularly matters under the Federal Constitution and in the case of the appellant, the adjudication of the validity of her conversion of religion without the consent of her non-converting father. That adjudication is not on a matter of faith or apostacy but on a matter of interpretation of a constitutional provision within the jurisdiction of the Civil Courts.

**[247]** Applying these principles and the decision in *Rosliza*, His Lordship opined that "the critical and determinative question in respect of jurisdiction is whether the instant case is an apostasy or renunciation case in the first place". On the face of the OS and the supporting affidavits, His Lordship found no element of apostasy or renunciation and that the High Court had correctly assumed jurisdiction to consider the merits of the OS:

> "...It is undisputed that the respondent is not a Muslim by original faith as she is the issue of a non-Muslim marriage contracted under the Law Reform (Marriage and Divorce) Act 1976. It is also undisputed that she was under five years old at the time of her purported conversion and that the consent of her non-Muslim father was not obtained".

**[248]** His Lordship was unequivocal in holding the 1952 Enactment as the prevailing law applicable on the date of conversion on 17 May 1991. Since ss 146 and 147 prohibited the conversion of a person who had not attained the age of puberty, the conversion on 17 May 1991 "clearly transgressed the written prevailing law". As for the conversion card issued in 1993, it only proved the fact of formal conversion two years earlier.

**[249]** P Ravinthran JCA further found as a matter of law, the conversion to be invalid for want of the father's consent required under the Federal Constitution as decided in *Indira Gandhi*. According to His Lordship, even if the 1989 Enactment applied, which His Lordship found it did not, the conversion violated r 4(1) of the Administration of Islamic Law (Conversion of Minors)

Rules 1991 which required the written consent of the father. His Lordship also accepted the findings of fact by the High Court, that the appellant was not a person professing the religion of Islam from the outset.

**[250]** As for the admissions of fact in the Syariah Court, His Lordship agreed with the reasoning of the High Court as expressed in para [33]; that the appellant never resiled from her basic contention in the Syariah Court proceedings or in the OS that she was not a person professing the religion of Islam. His Lordship accepted that the admissions of fact in the Syariah Court proceedings related to incidents of a childhood spent with a Muslim step-father and Muslim convert mother, that the appellant was exposed to Islamic practices at an early age. His Lordship added:

> "However, her narration of her childhood exposure to the religion of Islam cannot detract from the first-hand affidavit evidence of her mother who said that the respondent did not practise the religion of Islam and was permitted to continue in her original faith".

**[251]** Finally, on the issues of *locus standi* and *res judicata*, P Ravinthran JCA agreed with the High Court that the cases preceding *Rosliza* did not make any distinction between apostasy and *ab initio* cases where the plea is either that the conversion was unlawful or that the applicant was never a Muslim *ab initio*. Given the predicament and state of the law at the material time, the appellant could not be faulted from taking a course of conduct "out of necessity". *Rosliza* opened a new judicial pathway for applicants similarly circumstanced and that the appellant should not be prevented from pursuing her right to determine her religious status, her constitutional and legal identity, in the Civil Courts. The fact that the appellant sought relief from the Syariah Court did not *ipso facto* deprive the Civil Court of jurisdiction, that jurisdiction cannot be conferred by consent or agreement if there is no jurisdiction in the first place; see *Indira Gandhi* para [74]. Further, jurisdiction cannot be vested in the Syariah Courts if it had no jurisdiction in the subject matter to start with. Since the appellant's case is an *ab initio* case, the decisions of the Syariah Courts are not binding, and that the doctrine of *res judicata* did not apply.

**The Six Questions Of Law**

**[252]** On 22 May 2023, the Federal Court allowed leave on the following Questions of law:

i. Is the date of the conversion of a person into Islam the date of his or her actual conversion or the date of issuance of a card confirming the fact of conversion?

ii. In determining the legality of the conversion of a minor into Islam, is the legality of such conversion to be tested against the applicable law as it stood at the time of when the conversion occurred? Further to this:

a. Can the said minor be deemed to be Muslim notwithstanding by virtue of provisions akin to the definition of "Muslim" in s 2 of the 2003 Enactment?

b. Is such definition only applicable to the children of persons born into the religion of Islam such that, where the children of persons who converted into Islam after the birth of such children are concerned, such children must convert into Islam for them to be treated in law as such?

iii. In any event, does s 74(3) of the 1989 Enactment oust the jurisdiction of the High Court to determine the validity of a minor's conversion into Islam?

iv. Where an order of the Syariah Court is a nullity, can such order be collaterally attacked in proceedings before the High Court pursuant to the rule enunciated by the Federal Court in *Eu Finance Bhd v. Lim Yoke Foo* [1982] 1 MLRA 507 and does art 121(1A) of the Federal Constitution apply?

v. Whether the Civil Courts have the powers to reverse findings of facts made by the Syariah Court in the determination of matters of Islamic law and doctrine?

vi. Is *Rosliza* limited to have only prospective overruling based on the principles as enunciated in:

a. *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd* [2017] 3 MLRA 501; and

b. *Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others* [2005] 4 All ER 209.

**[253]** I understand some of these Questions were in fact posed by the respondents.

**Analysis And Determination**

**[254]** The opening words of Zainun Ali FCJ in *Indira Gandhi* reverberates till this day, that the principles laid down so clearly in that decision and several others since, still require clarification of this Court:

> [7] The often misunderstood concept of Islamisation surrounding the issue of religious conversion of young children into the Islamic faith makes articulation of this issue important.

**[255]** Her Ladyship painstakingly explained the whole issue and laid down the principles to guide and to apply. It would be of great benefit to set out or recap those principles, expressed in the context of an administrative challenge but no less important or relevant in and to these appeals.

**[256]** First, with the basic structure and inherent in the foundational principles of the Federal Constitution, the Judiciary assumes the constitutional role as ultimate arbiter of the lawfulness of any State action and interpreter of statutes. That judicial power is "a natural and necessary corollary of the rule of law", "a feature intrinsic to and inherent in the constitutional order itself" where the Federal Constitution is supreme. It is not in the least, "judicial supremacy".

**[257]** As explained in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 4 MLRA 554, "judicial power is vested exclusively in the High Courts by virtue of art 121(1)... The inherent judicial power of the civil courts under art 121(1) is inextricably intertwined with their constitutional role as a check and balance mechanism". Two significant features thus arise: first, this judicial power cannot be removed from the Civil Courts; second, this power cannot be conferred on any other body whose members do not enjoy the same level of constitutional protection as Civil Court judges do to ensure their independence. 'Parliament cannot just declare formally that a new court is a superior court or shares the rank of being at the apex of the judicial hierarchy; the test is substantive, requiring an examination of the composition and powers of the new court'. Should judicial functions be conferred on bodies other than courts, it is "an incursion into the judicial power of the federation".

**[258]** With these fundamental principles clearly set out, Zainun Ali FCJ went on to discuss and determine the status of Syariah courts, the Syariah judges and the limits on their jurisdiction. On the status of the Syariah courts, Her Ladyship opined:

> [59] By way of comparison, in as much as the civil courts are ensconced within the constitutional framework, Syariah Courts are as yet non-existent, until such time when the State Legislature makes law to establish them, pursuant to the powers given it under Item 1 of List II (State List) in the Ninth Schedule of the Constitution. In other words, the status of the Syariah Courts is dependent on the State Legislature. As the Federal Court expressed in *Latifah Mat Zain v. Rosmawati Sharibun & Anor* [2007] 1 MLRA 847 (at paras [32] - [33]):
>
> > ... The Legislature of a State may make law to set up or constitute the Syariah Courts in the State. Until such law is made such courts do not exist. The position is different from the case of the Civil High Courts, the Court of Appeal and the Federal Court. In the case of those civil courts, there is a whole Part in the Constitution (Part IX) with the title 'the Judiciary'.
>
> So the civil High Courts, the Court of Appeal and the Federal Court are established by the Constitution itself. But, that is not the case with the Syariah Courts. A Syariah Court in a state is established or comes into being only when the Legislature of the State makes law to establish it, pursuant to the powers given to it by item 1 of the State List. **In fact the position of the Syariah Courts, in this respect, is similar to the Sessions Courts and the Magistrates' Courts**. In respect of the last two mentioned courts, which the Constitution call inferior courts', art 121(1) merely says, omitting the irrelevant parts:

> 121(1) There shall be... such inferior courts as may be provided by federal law...
>
> [Emphasis On Original]

**[259]** Not only the existence but also the jurisdiction of the Syariah Courts has to be expressly conferred by the State legislations. The relevant State Legislature has to "claim ownership over the subject matters that fall within the jurisdiction of the Syariah courts by providing for it expressly in its legislation; because otherwise, the Syariah courts could be excluded from deciding on a subject matter which falls within Item 1 of List II (State List) in the Ninth Schedule to the Federal Constitution". In short, the Syariah Courts do not have automatic jurisdiction - see *Latifah Mat Zain* para [43].

**[260]** At para [73], Her Ladyship explained the limits of the Syariah Courts:

> [73] The jurisdiction of the Syariah Court is limited by the following:
>
> (a) it may not exercise the inherent judicial powers of the civil courts including the power of judicial review;
>
> (b) it is confined to the persons and subject matters listed in the State List; and
>
> (c) it must be provided for under the relevant state legislation.

**[261]** Her Ladyship added that "... it is not open to the Syariah Courts to enlarge their own jurisdiction by agreements: 'it is a fundamental principle that no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction' (*Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers* [1982] 1 MLRA 314)". Furthermore, the Syariah Courts only have jurisdiction over Muslims; even then, it is only in respect of subject matters within its exclusive jurisdiction. Non-Muslims have no *locus* to appear before the Syariah Courts and these Courts have no jurisdiction over non-Muslims. The "jurisdiction of the Syariah Courts in so far as the operation of Islamic law is concerned, is confined to the private aspect and does not extend to its public one. Ultimately, the subject matter is one of personal rather than constitutional law as 'constitutional law requires that the jurisdiction of the ordinary courts to rule finally on matters of legality should be preserved' (see *A Harding, Law, Government and the Constitution in Malaysia* (Kuala Lumpur: Malayan Law Journal [1996] at 137)".

**[262]** As for the Syariah judges themselves, once again, like the legislations that have to be passed to confer powers on them, the Syariah judges too, have to be appointed under the laws passed as they are not constituted under the Federal Constitution but by laws passed by the relevant State Legislature. Hence, the observation by Zainun Ali FCJ:

> [70] It is evident from the marked differences in the establishment and constitution of the civil and Syariah Courts that the two courts operate on a different footing

altogether (as was described in *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals* [2007] 3 MLRA 81 (at para [23]). **Thus, the perception that both courts (Civil Courts and Syariah Courts) should exercise a mutually reciprocal policy of non-interference** (see *Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara, Malaysia & Anor* [1999] 1 MLRA 175 at p 178) **may be somewhat misconceived and premised on an erroneous understanding of the constitutional framework in Malaysia.**

[Emphasis Added]

**[263]** While the Civil Courts and the Syariah Courts co-exist in their respective spheres, their jurisdictions and conferment of powers are not only "clearly drawn" but entirely distinct. The Federal Court emphasised that "if the relief sought by a plaintiff is in the nature of the inherent powers of the civil court (for example judicial review) of if it involves constitutional issues or interpretation of the law then the civil courts would be seised of jurisdiction to determine the issue, regardless of its subject matter and especially if it comes within the scope and ambit of judicial powers as outlined above".

**[264]** The Federal Court in *Indira Gandhi* reminded that art 121(1A) "should not be dismembered and then interpreted literally and in isolation of but construed together with, art 121(1), for a construction consistent with the smooth working of the system... The amendment inserting cl (1A) in art 121 does not oust the jurisdiction of the civil courts nor does it confer judicial power on the Syariah Courts".

**[265]** In other words, the Syariah Courts do not have power to interpret the Federal Constitution. "That is for this Court; not the Syariah Court", per Abdul Hamid FCJ in *Latifah Mat Zin*. This remains so even where the determination of Islamic law is required for the purpose of such interpretation - see *Abdul Kahar Ahmad v. Kerajaan Negeri Selangor Darul Ehsan; Kerajaan Malaysia & Anor (Interveners)* [2008] 1 MLRA 326. See also *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor (supra)* where interpretation of legislation enacted for the administration of Muslim law is involved; and *Viran Nagapan v. Deepa Subramaniam & Other Appeals* [2016] 2 MLRA 206 where the Civil Courts continue to exercise jurisdiction in determining matters under the Federal List, notwithstanding the conversion of party to Islam. The Federal Court concluded that the view holding otherwise as pronounced in *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals* [2007] 3 MLRA 81, and *Mohd Habibullah Mahmood v. Faridah Dato Talib* [1992] 1 MLRA 539, "is flawed" (see para [97]).

**[266]** A final point made by the Federal Court in *Indira Gandhi* which is relevant to these appeals is that in previous decisions, the Federal Court had held that questions of conversion and the determination of whether a person is a Muslim or not, falls within the exclusive jurisdiction of the Syariah Court. See for example *Soon Singh (supra)*, *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 1 MLRA 359, *Haji Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal (supra)*. This approach was

said to be "unduly simplistic" as it ignored the broader constitutional context in which art 121(1A) is framed. Before the Civil Courts decline jurisdiction, "it should first examine or scrutinise the nature of the matter before it. If it involves constitutional issues, it should not decline to hear merely on the basis of jurisdiction". The Civil Courts should decline where the determination requires the interpretation of any Islamic personal law or principles.

**[267]** The next decision that requires careful understanding is *Rosliza*. Two questions of law were posed for determination by the Federal Court; one of which reads as follows:

> Where the subject matter of a cause or matter requires a determination of "whether a person is or is not a Muslim under the law" rather than "whether a person is no longer a Muslim" whether the High Court has the exclusive jurisdiction to hear and determine the said subject matter on a proper interpretation of art 121 and item 1 of the State List of the Federal Constitution ("FC").

**[268]** According to Tengku Maimun Tuan Mat CJ, art 121(1A) must be construed in light of item 1 of the State List; that the Syariah Courts:

> "... may **only exercise jurisdiction** over a person or persons on **two conditions. Firstly**, the person shall profess the religion of Islam. This can generally be classified as **jurisdiction *ratione personae*** - where the jurisdiction of the tribunal or court is contingent on the litigant's legal persona. The phrase is most commonly used in disputes where one party is a sovereign, a foreign State, or one who enjoys diplomatic immunity and privileges cloaking him with immunity from legal process.
>
> [79] **Secondly**, even if Syariah Courts may exercise jurisdiction *ratione personae*, they must still ensure that they have jurisdiction over the subject matter as expressly enumerated in the said item 1. This may be classified as **jurisdiction *ratione materiae*** - or subject matter jurisdiction."
>
> [Emphasis Added]

**[269]** Both conditions must be mandatorily met before the Syariah Courts are seised of jurisdiction because of these Courts are established. Syariah Courts "are creatures of statute (specifically State Enactments) and accordingly their jurisdiction is strictly circumscribed by the laws which establish them. "Absent jurisdictions *ratione personae* and *ratione materiae* over a person, Syariah Courts are not empowered by the FC to exercise any power over that person and if exercised, would be *ultra vires* the FC". The Federal Court added that "the design was deemed necessary to allow for the continued application of Islamic law exclusively to Muslims and only to a certain degree. In all other instances, the FC vests all judicial jurisdiction and judicial power in the civil courts which interpret laws passed by secular institutions such as Parliament or the State Legislatures within their powers prescribed by the Ninth Schedule (see generally for example *Che Omar Che Soh v. PP & Another Appeal* [1988] 1 MLRA 657). This includes the interpretation of State Enactments promulgated to

address issues of Islamic law but only insofar as they relate to secular matters, for example, constitutional issues. The earlier interpretation and application of s 111 of the IFLE 2003 in respect of whether the plaintiff is in the first place a Muslim by virtue of the fact that Ibrahim is a Muslim, is an example of this".

**[270]** In view of art 11(1) of the Federal Constitution which guarantees the right to profess and practise one's religion, the Federal Court further explained that the question of whether a person is a Muslim or a person "professing the religion of Islam" necessarily relates to the person's constitutional identity. That is a question of constitutional interpretation that the Syariah Courts are in no position to determine. That interpretation falls squarely within the duty of the Civil Courts to adjudicate as it is one "which only the superior Courts have the right to address. It is only when one's faith is the main subject matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts. In this regard, there is a significant difference between "one who no longer professes the religion of Islam" on the one side, and 'one who never professes the religion of Islam' on the other". The former type of cases was referred to as the "renunciation cases" which fall within the jurisdiction of the Syariah Courts because there is present, both *ratione personae* and *ratione materiae* whereas the latter, is loosely described as the "*ab initio*" cases which "cannot, on a coherent application of the law, fall within the jurisdiction of the Syariah Courts".

**[271]** *"Ab initio"* cases are explained by the Federal Court as "unique and peculiar where the person claims never to have been a Muslim in the first place but for some reason or another he or she is designated as a person who "professes the religion of Islam". Logically, any legal presumption as to their Muslim status cannot apply because they were never identified as Muslims to begin with". It is a matter of proof that a person affirmatively professed the religion of Islam at the material time. "Absent of such proof, the case may be classified as an *ab initio* case". Such cases are determined by the Civil Courts for otherwise there will be no legal recourse for persons of this category - see para [99]. See also *Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal* [2021] 1 MLRA 286.

**[272]** The Federal Court in *Rosliza* then examined the factual matrix to determine whether the plaintiff is, on the evidence, a Muslim to begin with. If the plaintiff was a Muslim of original faith, then the matter will befall on the Syariah Courts as the Civil Courts will have no jurisdiction to grant the reliefs sought as they would relate to renunciation, to some extent. Having examined the factual matrix, the Federal Court concluded that the plaintiff was not a Muslim and accordingly, granted the declaration sought, namely that she is not a person professing the religion of Islam.

**[273]** These two landmark decisions thus have determined that the Civil Courts of which this Court forms the apex Court have always had jurisdiction over all persons, regardless of their religion. The Syariah Courts, on the other hand, only have jurisdiction over Muslims; even then two requisite pre-conditions

must present before the Syariah Courts may assume jurisdiction, the existence of both *ratione personae* and *ratione materiae*. In these appeals, the Syariah Courts in fact have neither. I will explain why.

**[274]** I do not propose to answer the Questions in the order set out earlier. Instead, the Questions will be dealt in the following order.

**[275]** First, Question 6 which concerns the application of the decision of *Rosliza*, whether it is necessarily prospective only. Before I proceed to deal with this Question, I must express my concern with Questions 5 and 6 which are Questions posed by the respondents. The respondents should be defending the decision of the Court of Appeal or relevant part of the decision of the majority in the Court of Appeal. The respondents have no right to complain on the decision as they are not appellants at all, and have not filed any appeal.

**[276]** Be that as it may, on this last Question, it is my view that the interpretation by the Court of Appeal is correct. There is no express reservation or ruling on the application of the decision in which case, the decision of *Rosliza* applies retrospectively and is thus available to the appellant. As held in *Letchumanan Chettiar Alagappan @ L Allagappan & Anor v. Secure Plantation Sdn Bhd (supra)*, the judgments of the Federal Court apply retrospectively unless there is express declaration of its prospective operation. There was no such express reservation in *Rosliza*. This approach is also consistent with that adopted in *Re Spectrum Plus Ltd; National Westminster Bank PLC v. Spectrum Plus Ltd And Others (supra)*.

**[277]** Dealing next with Questions 4 and 5 on the status of the decisions of the Syariah High Court and Syariah Court of Appeal.

**[278]** Putting aside the decision(s) of the Syariah High Court and Syariah Court of Appeal of the Federal Territory for a moment, is the appellant entitled to approach the Civil Court for the reliefs sought? Bearing in mind, the appellant was seeking a declaration under s 41 of the Specific Relief Act 1950 as to her religious status, that she is not a person professing the religion of Islam.

**[279]** The answer is clearly, unequivocally and resoundingly in the affirmative. Access to justice and equal protection of the law are fundamental liberties guaranteed under the Federal Constitution to persons such as the appellant. In determining whether the reliefs ought to be granted, the Civil Courts will have to examine the facts and the relevant law. As already explained earlier, that may include examining and interpreting a law specifically passed by the State Legislature for the administration of Islamic law or Islamic matters within item 1 of the State List. That fact alone does not deprive the Civil Court from conducting such scrutiny; on the contrary it is the duty of the Civil Courts to carry out such an exercise.

**[280]** Second, it is plain from the Originating Summons that the appellant is seeking declaratory orders pertaining to her status from the respect of her conversion. She is not a Muslim by birth; Islam is not her original religion. She

is challenging or questioning the unilateral conversion made by her mother all those years ago. Whether or not discretion may be exercised to grant the orders sought is quite separate from want of jurisdiction. In my view, the appellant's case clearly is an *ab initio* case, as described in *Rosliza*; that she "is never a Muslim" because of the invalid or illegal conversion.

**[281]** The fact that she had approached the Syariah High Court in the Federal Territory of Kuala Lumpur for an order of renunciation, arguably because she was not a practising Muslim, is but an option available to her. The appellant had explained that she had taken that course of action because that was the prevailing law, following *Lina Joy* and similar cases.

**[282]** In my view, taking that course of action for the reasons genuinely and honestly articulated by the appellant cannot be held against her. Her reasons are fair and reasonable, what another individual similarly circumstanced would have done, with the prevailing jurisprudence. To hold the reasons against her would amount to deprivation of her only recourse and access to justice. This is also not a case of approbating and reprobating. Up until the decisions in *Indira Gandhi*, *Rosliza* and several other cases, the law on the jurisdiction of the Court in respect of apostasy and the issue of constitutional identity was unclear. As expressed earlier, many Courts reacted by treating almost every case which would require an interpretation of legislation on Islamic law or of constitutional identity as within the exclusive jurisdiction of the Syariah Courts. That has since changed with *Indira Gandhi*, *Rosliza* and *Viran* laying down the principle that the Civil Courts must not abdicate their constitutional function as ultimate arbiters of the law; that there is a distinction between *ab initio* cases from renunciation cases; and the Civil Courts must first make that determination. The Syariah Courts are in no position to do that; more significantly, those Courts do not have the requisite jurisdiction to do so.

**[283]** With the fundamental difference in jurisdictional framework, establishment and powers between the Syariah Courts and the Civil Courts (including the views established in Latifah and *Indira Gandhi* that the Syariah Courts are akin to inferior tribunals and cannot be compared with the Civil Courts), the principle of *res judicata* and abuse of process actually do not arise in the sense understood under the secular system of law. With that difference, the principles of *res judicata* are not engaged as the issue of renunciation cannot be raised here inasmuch as the issue of constitutional identity or the *ab initio* cases can never be raised before the Syariah Courts. The Syariah Courts have no jurisdiction whatsoever to pronounce that a person is not a Muslim; it can only refuse or dismiss an application to leave the religion of Islam.

**[284]** Another material aspect in these appeals which appears to have been overlooked is the fact that the Syariah High Court of the Federal Territory of Kuala Lumpur, and for that matter, the Syariah Court of Appeal, has no power, authority or even jurisdiction to determine, let alone hear arguments of the appellant's conversion under any of the Islamic legislation of Selangor, be

it the 1952 Enactment or the 1989 Enactment; or for that matter, any others. In matters which fall under the State List, especially item 1, the jurisdiction is territorial in that each State has its own distinct and separate laws on the religion of Islam. Though the laws may be similar or even similarly worded, sometimes taken from some model law enacted in one State, by no means may it be said that the Syariah High Court of the Federal territory of Kuala Lumpur therefore has jurisdiction and power to interpret, determine or even apply the relevant law on the administration of Islam in the State of Selangor. Consequently, the majority of the Court of Appeal had fallen into serious error in holding that the appellant ought to have raised the issue of her conversion at the Syariah High Court in the Federal Territory of Kuala Lumpur.

**[285]** The decisions of the Syariah High Court in the Federal Territory of Kuala Lumpur and consequently the Syariah Court of Appeal are also decisions rendered absent of jurisdiction. The respondents argued and the majority in the Court of Appeal have found that the appellant ought to have raised the matter of the validity of her conversion at that time of application of renunciation, then really the whole matter of determining the appellant's application can only be brought at the Syariah Courts situated in the State of Selangor and not anywhere else since her conversion was in that State. The Syariah High Court in the Federal Territory of Kuala Lumpur has no jurisdiction to adjudicate on any of the laws of the State of Selangor, where the appellant was "converted" in 1991. The decisions of the Syariah High Court and Court of Appeal are thus null by reason of absence of jurisdiction.

**[286]** Where the Court has no jurisdiction, it just has no jurisdiction. Fundamental and basic jurisdiction cannot be conferred by consent or even by conduct. As held in *Indira Gandhi* and discussed earlier, as well as trite law, no consent, acquiescence, be it by conduct, implication or overt act can jurisdiction ever be conferred "on a court or tribunal with limited statutory jurisdiction" any power to act beyond that jurisdiction'. See also *Viran Nagapan (supra)*; *Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor* [2019] 2 MLRA 171 and *Tenaga Nasional Bhd v. Bandar Nusajaya Development Sdn Bhd* [2016] 6 MLRA 103.

**[287]** As decisions rendered without jurisdiction, these decisions may be addressed or "attacked" in these proceedings. See *Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 MLRA 507:

> Where a decision is null by reason of want of jurisdiction, it cannot be cured in any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal 'but he is not bound to (do so), because he is at liberty to treat the act as void".

**[288]** This Court had in fact proceeded to disregard a decision of the Syariah Court rendered without jurisdiction in *Viran*. There, the Syariah Court had dissolved a marriage contracted under the Law Reform (Marriage & Divorce) Act 1976 [Act 164]. This is what the Federal Court said:

> "[31] We adopt the same view. Thus, on the facts of this case, the Syariah High Court has no jurisdiction to dissolve the civil marriage between the ex-husband and the ex-wife and to make an order granting custody of the two children out of the marriage to the ex-husband. The jurisdiction to do that is with the civil court. In consequence, the Syariah Court's order in dissolving the marriage between the ex-husband and the ex-wife and granting custody of the children to the ex-husband **is of no effect due to want of jurisdiction**".
>
> [Emphasis Added]

**[289]** The Federal Court, however, recognised a custody order given by the Syariah Court because that was made within jurisdiction. The approach adopted and applied by the Federal Court in *Viran* in disregarding an order of the Syariah Court due to want of jurisdiction is good law and I have no hesitation in doing the same in these appeals.

**[290]** From the above deliberations, it is not a question of reversing any findings of fact by the Syariah High Court as that does not arise and is in any case, irrelevant. I will decline to answer Question 5 while the answer to Question 4 is in the affirmative.

**[291]** I move finally to the real questions in these appeals, namely Questions 1 to 3, concerning the conversion of the appellant. These Questions really concern the respondent, Majlis Agama Islam Selangor as its counsel had asserted that the right legislation is the 1989 Enactment and not the 1952 Enactment. The State Government took no argument in this respect; its sole concern was the issue of jurisdiction which I have already addressed.

**[292]** These three Questions, namely Questions 1, 2 and 3, pertain to the constitutional identity of the appellant where she is asserting her right to profess and practise her religion under art 11(1) of the Federal Constitution. As decided in *Rosliza*, the question of whether the appellant is a Muslim or a person "professing the religion of Islam" necessarily relates to her constitutional identity. That question concerns and involves constitutional interpretation that the Civil Courts are duty bound under the Federal Constitution, to determine. The Syariah High Court and the Syariah Court of Appeal in the Federal Territory of Kuala Lumpur are not empowered or authorised under the Federal Constitution to determine that question. Hence, my earlier observation that these Courts have no jurisdictions *ratione personae* and *ratione materiae* over the appellant. This is clearly an *ab initio* case, as evident from the substance of the pleas and averments in the Originating Summons and from the factual matrix of the case.

**[293]** The appellant is a child born of Hindu parents. She is not a child born of Muslim parents. Her original faith was Hinduism; hence the mother's act of converting the appellant.

**[294]** However, the single undisputed fact which is of huge significance is that the conversion of the appellant was done entirely by her mother. It was a unilateral conversion done without the knowledge or consent of her father. According to her mother, the appellant, five years of age on 17 May 1991, did not utter or take the Affirmation of Faith [Kalimah Syahadah] at the material time; that the appellant did not understand or know what was happening at that material time.

**[295]** Two material issues need to be resolved here; the first is the question of which is the applicable law; the other, the determination of the appellant's constitutional identity.

**[296]** On the first issue which requires an appreciation of the fact that a person is treated as converted to the religion of Islam and becomes a Muslim as soon as the person finished uttering the two clauses of the Affirmation of Faith. This is a consistent mandatory requirement regardless of the applicable written law. Such a person is referred to as a "muallaf". While the 1952 Enactment does not spell out that process just described in great detail, ss 67, 68, 69, 70, 71, 72, 73 and 74 of the 1989 Enactment do.

**[297]** From the facts given and which stand uncontroverted, the whole exercise of converting the appellant to the religion of Islam took place on 17 May 1991. That being so, the relevant and applicable law regulating the administration of the religion of Islam is necessarily and unequivocally the 1952 Enactment. The respondents have argued that the applicable law must be the 1989 Enactment. This is entirely incorrect in law for several reasons.

**[298]** First, the 1989 Enactment did not come into force until 3 September 1991, although the Enactment was passed on 28 September 1989. Pursuant to s 1 of the 1989 Enactment, the date of coming into force or operation of this Enactment was "to be appointed by His Royal Highness the Sultan by notification in the Gazette"; and His Royal Highness had so appointed 3 September 1991. On this date, the appellant's mother who had herself, been converted on 17 May 1991, had already unilaterally converted the appellant at the same time.

**[299]** At the time of coming into force of the 1989 Enactment on 3 September 1991, ss 70 and 73(3) were expressly excluded from coming into force, pursuant to s 1(3) which provides for the coming into operation, different parts of the Enactment:

> "In exercise of the powers conferred by s 1(2) of the Administration of Islamic Law Enactment 1989, His Royal Highness the Sultan **appoints the 1st of September 1991 as the date of coming into force** of the Administration of Islamic Law Enactment 1989 **except** s 70 and **s 73(3)** of the Enactment".
>
> [Emphasis Added]

**[300]** I understand, to date, ss 70 and 73(3) have yet to come into force. These sections read as follows:

> 70. Consequential conversion of children
>
> If, at the moment of conversion to Islam, a muallaf whether male or female, has any natural child who has not attained the age of majority according to Hukum Syara' (baligh), the child becomes converted to Islam at the same moment.
>
> 73. Registration of Conversion
>
> (1) A person who has converted to Islam...
>
> (2) If the Registrar of Muallaf is satisfied that the requirements...
>
> (3) If the Registrar of Muallaf is satisfied that the muallaf has any child who, at the moment of conversion was below baligh, according to Hukum Syara' the Registrar of Muallaf shall likewise register the conversion of every child in the Register of Muallaf.

**[301]** Pursuant to s 78 of the 1989 Enactment, the Administration of Islamic Law (Conversion of Minors) Rules 1991 were specifically enacted. These Rules came into force on 9 September 1991. Rule 4(2) of these Rules state:

> Subject to subrules (2) and (4), if the minor has a father, he shall obtain the written consent of his father before he may convert to Islam.

**[302]** The consent of the appellant's father was never obtained. Under the clear principles laid down in *Indira Gandhi*, this would render any conversion of the appellant who was then a minor, a person who had not attained puberty or who was below baligh, invalid.

**[303]** Thus, the respondents' reliance on the 1989 Enactment is wholly misplaced. In any case, even if s 70 was applicable, which in law, it does not, it does not alter the plain fact that the appellant's mother was herself converted on 17 May 1991. Even if for a moment the date is the issuance of the certificate of conversion, a point which will be elaborated shortly, that is, "17 July 1991", this still does not help the respondents' argument as at this date, the entire 1989 Enactment had yet to come into force.

**[304]** Returning to the issue of determining the appellant's constitutional identity under art 11 of the Federal Constitution, s 145 of the 1952 Enactment requires the fact of conversion to be recorded in a register known as a "Register of Converts":

> 145. Register of converts.
>
> The Majlis shall maintain a register of the names of all persons converted to the Muslim religion within the State, together with such particulars in respect of their conversion as may be prescribed by rule.

**[305]** Under the 1989 Enactment, a similar register is maintained but it is known as a "Register of Conversion":

> 72. Register of Conversion.
>
> The Registrar of Muallaf shall be appointed by the Majlis and shall maintain a Register of Conversions in the prescribed form.

**[306]** Upon registration in the register, the muallaf is next issued a certificate of conversion. The 1952 Enactment does not contain any provision on the issuance of such a certificate unlike s 74(3) of the 1989 Enactment:

> 74. Certificate of Conversion
>
> (1) The Registrar of Muallaf shall furnish every person whose conversion to Islam has been registered in the Registrar of Muallaf a certificate of conversion to Islam in the prescribed form.
>
> (2) The Certificate of Conversion to Islam of a child converted to Islam shall be given to the parent who has converted to Islam or, where both parents have converted to Islam the certificate shall be handed to the father.
>
> (3) A certificate of Conversion to Islam **shall be conclusive proof of the facts stated therein.**
>
> [Emphasis Added]

**[307]** In these appeals, the appellant was issued a certificate of conversion and which forms the bane of contention of the respondents, states the following:

> Reg. Number - 253/93
>
> ii. Previous Name - Dahlia Dhaima a/p C Parameswaran
>
> iii. Muslim Name - Dahlia Dhaima binti Abdullah
>
> iv. Sex, race, age, date of birth - ...
>
> v. Date conversion to Muslim - 17 May 1991
>
> vi. Date of issue - 28 August 1993

**[308]** The appellant's mother was similarly issued such a certificate. It is noted that the "Date conversion to Muslim" in respect of her mother states that date to be "17 May 1991" whereas the date of issue is "17 July 1991". Learned counsel for the appellant contended that the material and relevant fact stated in this certificate is that the appellant was converted to Muslim on 17 May 1991 whereas the respondents argued that it should be 28 August 1991. In my view, the respondents' argument is of no merit having regard to the principle

that the conversion occurs the moment of utterance of the Affirmation of Faith together with its attendant appreciation of understanding, the certificate plainly and clearly states that the date of conversion was on 17 May 1991. See also s 108 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003, which is not applicable in these appeals, but referred to only for better appreciation and support of this aspect.

**[309]** In my view, the effect of this certificate is to form conclusive proof of two critical facts: firstly, that the date of conversion to Islam ("Muslim" as stated in the certificate) is 17 May 1991; and secondly, that the date of issue, and that necessarily and logically refers to the issue of the certificate and no other, is 28 August 1993. The two dates are not capable of any other meaning.

**[310]** The respondents' contention that the latter date refers to the date of conversion is untenable and illogical as such an interpretation and construction contradicts the clear terms of s 74(3) aside from denying the conclusiveness of the very facts stated in the certificate itself. The certificate only serves to record the fact of conversion which must have already occurred at an earlier date, time or moment as the conversion needs to be registered in the register of converts (see s 72 of the 1952 Enactment). Contrary to the conclusions of the majority at the Court of Appeal, the certificate and thereby the date of issuance of the certificate cannot be the date of the conversion.

**[311]** Furthermore, such an interpretation offends s 146 of the 1952 Enactment:

> Section 146. Control of conversions.
>
> No person shall be converted to the Muslim religion otherwise than in accordance with the provisions of this Enactment or any rules made thereunder.

**[312]** Consequently, the date of conversion of a person into Islam cannot be any other date but the date of actual conversion. That date of actual conversion is 17 May 1991. The certificate or card merely confirms the fact of conversion that had already happened in 1991.

**[313]** On that date, the applicable law is the 1952 Enactment. Section 147 of the 1952 Enactment clearly prohibits the conversion of the appellant who was then aged five:

> **Section 147. No conversion of children.**
>
> **No person who has not attained the age of puberty shall be converted** to the Muslim religion.
>
> [Emphasis Added]

**[314]** As pointed out earlier, since the appellant was at the material time, a minor, a person who had not attained puberty or who was below baligh, the

conversion by her mother on 17 May 1991 is clearly invalid, null and of no effect. That being so, the appellant's constitutional identity remains as that which she was born with and as construed by law, according to that of her parents, in particular her father's.

**[315]** As determined in *Rosliza*, any legal presumption as to the appellant's Muslim status cannot apply because she was never identified as a "Muslim to begin with". It is a matter of proof that a person affirmatively professed the religion of Islam at the material time. "Absent of such proof, the case may be classified as an *ab initio* case" which must be determined by the Civil Courts for otherwise there, the appellant as a person of this category will have no legal recourse - see para [99] in *Rosliza*. With the obvious invalidity of the appellant's conversion done in clear violation of s 147 of the 1952 Enactment and thus her rights under art 11 of the Federal Constitution, it would be a compromise of the principle of *ubi jus ibi remedium* and the failure of this Court to recognise its own jurisdiction. Given that the appellant was not born a Muslim, a conversion to the religion of Islam is necessarily required. However, where a muallaf or a convert never uttered the Affirmation of Faith, her conversion is plainly invalid and she will remain in her original religion. No amount of practising, living or being raised as a Muslim can alter the fact that she needs to be validly converted to the religion of Islam before she is a Muslim.

**[316]** Interestingly, ss 4 and 45 of the 1952 Enactment state as follows:

> Section 4. Saving of civil and religious liberties.
>
> (1) Save as expressly provided in this Enactment nothing contained herein shall derogate from or affect the rights and powers of the Civil Courts.
>
> (2) Nothing in this Enactment contained shall derogate from or affect the rights declared and set forth in the proviso to Article V of the first part of the Laws of the Constitution of Selangor.
>
> Section 45. Local limits and extent of jurisdiction.
>
> (1) The Court of the Kathi Besar shall have jurisdiction throughout the State and shall be presided over by the Kathi Besar.
>
> (2) Subject as in this Enactment otherwise provided a Court of a Kathi shall have jurisdiction in respect of any civil or criminal matter of the nature hereinafter specified arising within the local limits of jurisdiction prescribed for it under the preceding section, or, if no local limits are so prescribed, within the State, and shall be presided over by the Kathi appointed thereto.
>
> (3) The Court of the Kathi Besar shall:
>
> (a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under this Enactment, and may impose any punishment therefor provided;

(b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties profess the Muslim religion and which relate to:

(i) betrothal, marriage, divorce, nullity of marriage, or judicial separation,

(ii) any disposition of, or claim to, property arising out of any of the matters set out in subparagraph (i) of this paragraph,

(iii) maintenance of dependants, legitimacy, guardianship or custody of Infants,

(iv) division of, or claims to, sapencharian property,

(v) determination of the persons entitled to share in the estate of a deceased person who professed the Muslim religion, or of the shares to which such persons are respectively entitled,

(vi) wills or death-bed gifts of a deceased person who professed the Muslim religion,

(vii) gifts *inter vivos*, or settlements made without consideration in money or money's worth by a person professing the Muslim religion,

(viii) *wakaf or nazr*, or

(ix) other matter in respect of which jurisdiction is conferred by any written law:

Provided that it shall not ordinarily try any offence or hear or determine any action or proceeding in respect of which any Court of a Kathi has jurisdiction.

(6) Nothing in this Enactment contained shall affect the jurisdiction of any Civil Court and, in the event of any difference or conflict arising between the decision of a Court of the Kathi Besar or a Kathi and the decision of a Civil Court acting within its jurisdiction, the decision of the Civil Court shall prevail.

**[317]** There are no provisions conferring jurisdiction to deal with the subject matter of whether a person is a Muslim; reinforcing thus the views held in this judgment, and as pronounced in *Indira Gandhi*, *Viran*, and *Rosliza*; that the jurisdiction to deal with the subject matter of the appellant's constitutional identity to practise the religion of her choosing under art 11 of the Federal Constitution is entirely within the jurisdiction of the Civil Courts.

**[318]** For all the reasons explained, the date of conversion of the appellant into Islam for the purpose of identifying her constitutional identity is the date of her actual conversion, that is on 17 May 1991. The legality of her conversion

is tested against the law then applicable, that is, the 1952 Enactment. The answers to these Questions are sufficient to deal with her appeals and there is no need to answer the remaining Questions.

**Conclusion**

**[319]** The appeals are thus allowed and the orders sought in the Originating Summons are thus granted.

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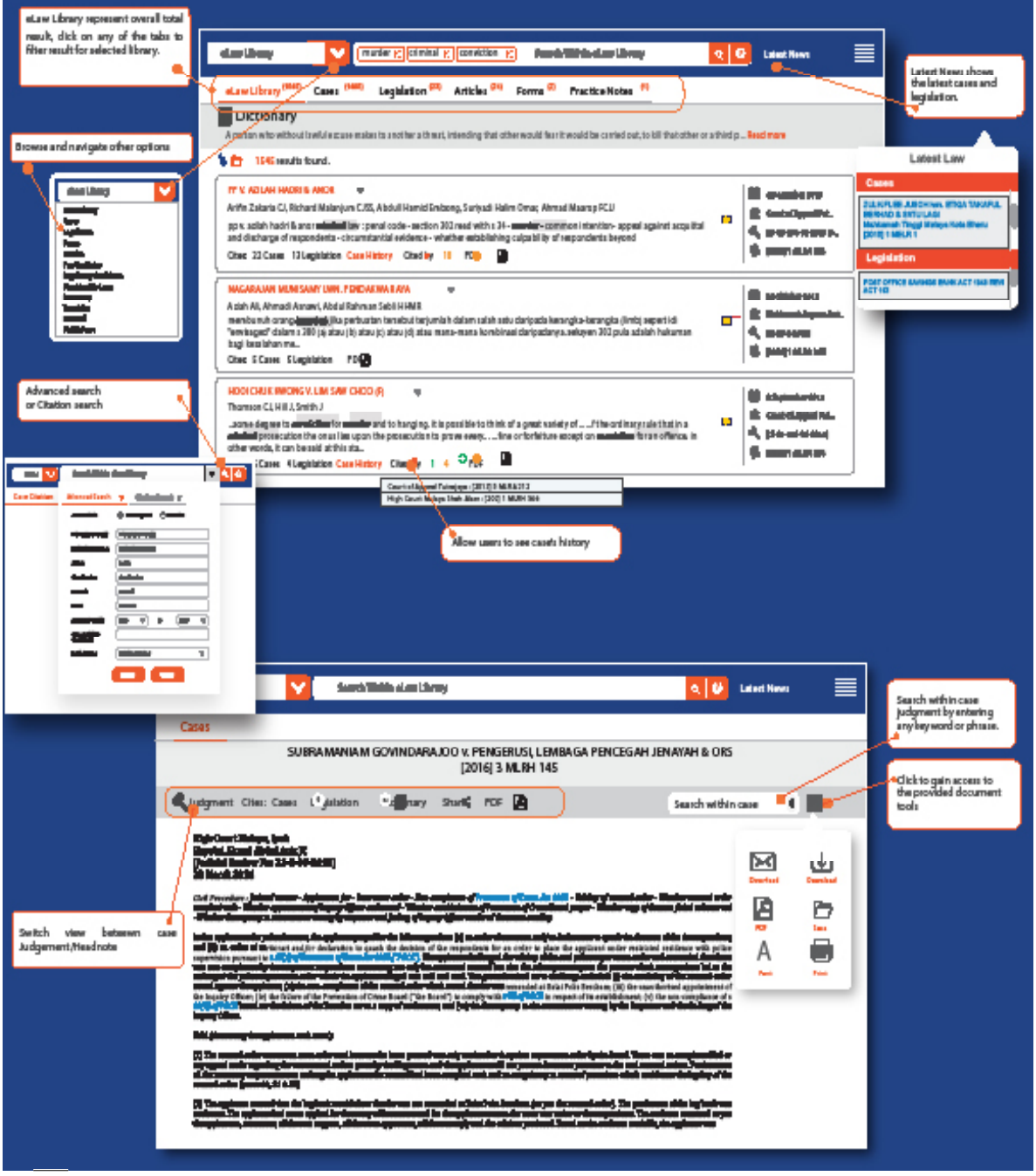

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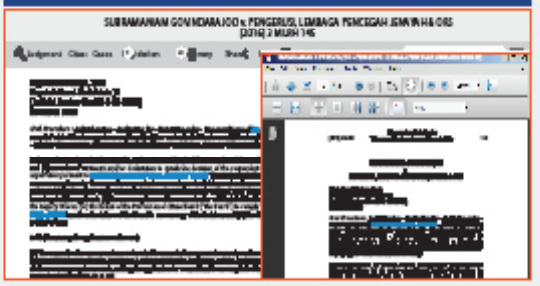

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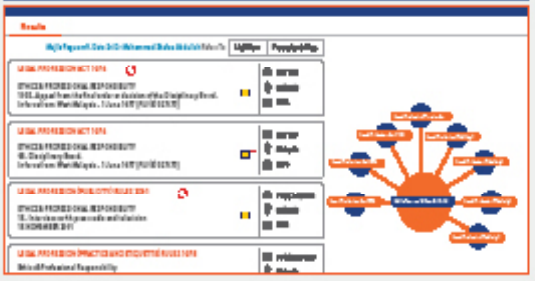

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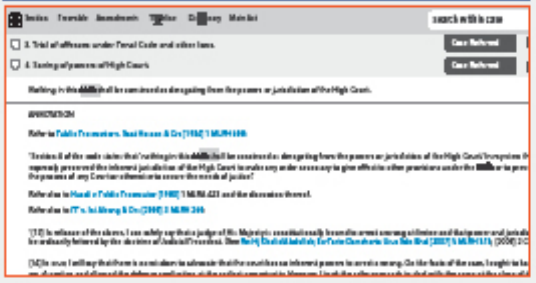

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