Lina Joy v Majlis Agama Islam Wilayah & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R2–24–30 OF 2000

FAIZA TAMBY CHIK J

18 APRIL 2001

Constitutional Law — Fundamental liberties — Right to religious freedom — Converting out of Islam — Extent of religious freedom to profess a religion of choice — Article 11(1) of Federal Constitution — Whether art 11(1) takes precedence over art 3(1) — Whether a Muslim bound by the Syariah laws on issues relating to conversion out of Islam

Constitutional Law — Fundamental liberties — Right to religious freedom — Extent of religious freedom to profess a religion of choice — Article 11(1) of Federal Constitution — Whether to be read in isolation — Whether principle of harmonious construction applicable

Islamic Law — Syariah Court — Jurisdiction — Apostasy — Whether Syariah Court seized with jurisdiction to hear on renunciation of Islam — Whether right to affirm or declare faith in another religion subject to Syariah laws

Words and Phrases — 'Malay' – Definition of — Article 160(2) of Federal Constitution

The plaintiff was born as a Muslim, she was brought up as a Muslim or her upbringing was conducted on the basis that she was a Muslim, she lived as a Muslim with her family and is commonly reputed to be a Muslim. The plaintiff's parents are both Malays. She had applied to the National Registration Department (NRD) to change her name from Azlina bte Jailani to Lina Lelani and in support stated, inter alia, that she intends to marry a person who is Christian. The application was however, rejected. By an originating summons, the plaintiff had applied to the High Court for various declaratory orders, namely, her rights to religious freedom under art 11(1) of the Federal Constitution ('the FC'); that s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 ('the 1993 Act') and other related State Enactments were null and void as they were inconsistent with art 11(1) of the FC; that Syariah Criminal Offences (Federal Territories) Act 1997 ('the 1997 Act') and other related State Enactments were not applicable to the plaintiff who had (purportedly) professed the religion of Christianity; that any laws, whether State or Federal legislation, which forbid or imposed restrictions on conversion out of Islam, were null and void, being inconsistent with art11(1) of the FC; and that the defendants enter the plaintiff's name in the registry book as having converted out of Islam. In her affidavit, the plaintiff averred that she has now purportedly converted into Christianity and was baptized in a church. The first and the second defendants applied to strike out the plaintiff's application under O 18 r 19 of the Rules of the High Court 1980 on the following grounds, namely: (i) that it disclosed no reasonable cause of action; (ii) it is scandalous, frivolous or vexatious; and (iii) it is otherwise an abuse of the process of the court. The application was based on the facts that the plaintiff was still a Muslim and therefore the issue of her conversion out of Islam was within the exclusive jurisdiction of the Syariah Court.

Held, dismissing the application:

(1) Article 11 of the FC speaks of freedom of religion but this did not mean that the plaintiff was to be given the freedom of choice to profess and practice the religion of her choice. The application of the first part of art 11(1) which provides that every person has the right to profess and practice his religion, is subject to the second part of art 11(1), and also to art 11(4) and art 11(5) of the FC because the issue of change of a person's religion is directly connected to the rights and obligations of that person as a Muslim and this is an affair of Muslim falling under the first defendant's jurisdiction provided by art 11(3)(a) of the FC read with s 7(1) of the 1993 Act (see paras7, 10).

(2) Article 11(1) should not be read in isolation. It must be construed harmoniously with the other relevant provisions on Islam, namely, art 3(1), 12(2), 74(2), 121(1A) and 160 (where a Malay is defined as a person who professes the religion of Islam). The declaration in art 3(1) has the consequence of qualifying a Muslim's absolute right to murtad in art 11(1) by requiring the compliance to the relevant syariah laws on apostasy enacted pursuant to art 74 List II (see paras 20, 27).

(3) The plaintiff cannot hide behind the provision of art 11(1) of the FC without first settling the issue of renunciation of her religion (Islam) with the religious authority which has the right to manage its own religious affairs under art 11(3)(a) of the FC. Since the plaintiff was still a Muslim, art 121(1A) provides that the finality of her decision to convert out of Islam was within the competency of a Syariah Court, and not the civil courts (see paras 10–11).

(4) There was no inconsistency between art 11(1) and s 2 of the 1993 Act, which provides the definition of a Muslim. Section 2 of the 1993 Act was enacted pursuant to art 74(2) of the FC. The enabling article 74(2) confers wide jurisdiction to the Federal Government to enact Syariah laws to the same extent as provided in item 1 in the State list (see para 6(e) list 1, Ninth Schedule). Section 2 of the 1993 Act is directly designed for the purpose of implementing Syariah laws on the Muslim and it is not in any way designed to curtail the freedom of religion under art 11(1). From the definition in s 2 of the 1993 Act, the plaintiff is still a Muslim until there is a declaration to the contrary by the Syariah Court (see paras 46–47, 49).

(5) The plaintiff's prayers for other declaratory orders to nullify certain State laws pertaining to the Syariah criminal laws and Syariah laws which restricts apostasy was struck out for being frivolous, vexatious and an abuse of the process of the court because they relate to hypothetical matters and there is no identification of specific provisions which are said to have infringed the rights of the plaintiff (see paras 50, 55).

[Bahasa Malaysia summary

Plaintif dilahirkan seorang Muslim, beliau dibesarkan sebagai seorang Muslim atau asuhan beliau dikendalikan berasaskan bahawa beliau seorang Muslim, beliau hidup sebagai seorang Muslim bersama keluarga beliau dan seringkali sikenali sebagai seorang Muslim. Ibubapa plaintif berbangsa Melayu. Beliau

telah memohon kepada Jabatan Pendaftaran Negara (JPN) untuk menukar nama beliau daripada Azlina bte Jailani kepada Lina Lelani dan sebagai sokongan menyatakan, antara lain, bahawa beliau berhasrat untuk berkahwin seorang Kristian. Permohonan tersebut bagaimanapun, telah ditolak. Melalui saman pemula, plaintif telah memohon kepada Mahkamah Tinggi untuk pelbagai perintah-perintah deklarasi, terutamanya, hak-hak beliau berhubung kebebasan beragam di bawah perkara 11(1) Perlembagaan Persekutuan ('PP'); bahawa s2 Akta Pentadbiran Undang-Undang Islam (Wilayah Persekutuan) 1993 ('Akta 1993') dan Enakmen-Enakmen Negeri adalah terbatal dan tidak sah kerana adalah tidak konsisiten dengan perkara 11(1) PP; bahawa Akta Kesalahan Jenayah Syariah (Wilayah Persekutuan) 1997 ('Akta 1997') dan Enakmen-Enakmen Negeri lain yang berkaitan yang tidak terpakai ke atas plaintif yang telah (dikatakan) menganut agama Kristian; bahawa apa-apa undang-undang, sama ada perundangan Negeri atau Persekutuan, yang menghalang atau mengenakan larangan berhubung pertukaran agama daripada Islam, adalah terbatal dan tidak sah, adalah konsisten dengan perkara 11(1) PP; dan bahawa defendan-defendan telah memasukkan nama plaintif ke dalam buku pendaftaran sebagai seorang yang telah keluar daripada Islam. Dalam afidavit beliau, plaintif telah menegaskan bahawa beliau sekarang dikatakan telah bertukar kepada agama Kristian dan dibaptiskan di sebuah gereja. Defendan-defendan pertama dan kedua telah memohon untuk membatalkan permohonan plaintif di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 berdasarkan alasan-alasan berikut, terutamanya: (i) bahawa ia tiadak mengemukakan apa-apa kausa tindakan yang munasabah; (ii) ia adalah berniat jahat, remeh atau menyusahkan; dan (iii) ia adalah sebaliknya satu penyalahgunaan proses mahkamah. Permohonan tersebut berdasarkan fakta bahawa plaintif masih seorang Muslim dan oleh itu pertukaaran agama beliau daripada Islam adalah dalam bidang kuasa eksklusif Mahkamah Syariah.

Diputuskan, menolak permohonan tersebut:

(1) Perkara 11 PP membicarakan tentang kebebasan beragama tetapi ini tidak bermaksud bahawa plaintif patut diberikan kebebasan memilih untuk menganut dan mengamal agama pilihan beliau. Permohonan pada bahagian pertama perkara 11(1) yang memperuntukkan bahawa setiap orang mempunyai hak untuk menganut dan mengamal agama beliau, tertakluk kepada bahagian kedua perkara 11(1), dan juga kepada perkara 11(4) dan perkara 11(5) PP kerana persoalan tentang pertukaran agama seseorang itu adalah secara langsung berkaitan dengan hak-hak dan tanggungjawab seseorang itu sebagai seorang Muslim dan ini adalah satu urusan seorang Muslim yang jatuh di bawah bidang kuasa defendan yang diperuntukkan oleh perkara 11(3)(a) PP dibaca bersama s 7(1) Akta tersebut (lihat perenggan).

(2) Perkara 11(1) tidak sepatutnya dibaca secara berasingan. Ia hendaklah ditafsir bersama dengan peruntukan-peruntukan relevan lain berhubung Islam, terutamanya, perkara-perkara 3(1), 12(2), 74(2), 121(1A) dan 160 (di mana seorang bangsa Melayu ditafsirkan sebagai seorang yang menganut agama Islam). Deklarasi dalam perkara 3(1) mempunyai kesan yang melayakkan hak mutlak seorang Muslim untuk murtad dalam perkara 11(1) dengan menghendaki pematuhan undang-undang

syariah yang berkaitan dengan kemurtadan yang digubal menurut perkara 74 Senarai II (lihat perenggan).

(3) Plaintif tidak boleh bersembunyi di belakang peruntukan perkara 11(1) PP tanpa terlebih dahulu menyelesaikan persoalan tentang beliau yang keluar daripada agama beliau (Islam) dengan pihak berkuasa agama yang mempunyai hak untuk mengendalikan urusan agama mereka sendiri di bawah perkara 11(3)(a) PP. Memandangkan plaintif masih seorang Muslim, perkara 121(1A) memperuntukkan bahawa kemuktamadan keputusan beliau untuk keluar daripada agama Islam adalah dalam bidang kuasa Mahkamah Syariah, dan bukan mahkamah sivil (lihat perenggan).

(4) Tidak terdapat ketidakkonsistenan antara perkara 11(1) dan s 2 Akta 1993, yang memperuntukkan definisi seorang Muslim. Seksyen 2 Akta 1993 telah digubak menurut perkara 74(2) PP. Perkara 74(2) memberikan bidang kuasa luas kepada Kerajaan Persekutuan untuk menggubal undang-undang Syariah setakat mana yang sama diperuntukkan dalam butir 1 dalam Senarai Negeri (lihat perenggan 6(e) Senarai 1, Jadual Kesembilan). Seksyen 2 Akta 1993 secara langsung direka bagi tujuan melaksanakan undang-undang Syariah ke atas seseorang Muslim dan ia ia bukan dalam apa cara sekalipun direka untuk mengurangkan kebebasan beragama di bawah perkara 11(1). Berdasarkan definisi dalam s 2 Akta 1993, plaintif masih seorang Muslim sehingga terdapat satu deklarasi sebaliknya oleh Mahkamah Syariah (lihat perenggan).

(5) Permohonan-permohonan plaintif untuk perintah-perintah deklarasi lain untuk membatalkan undang-undang Negeri berkaitan undang-undang jenayah Syariah dan undang-undang Syariah yang menghalang kemurtadan telah dibatalkan kerana remeh, menyusahkan dan satu penyalahgunaan proses mahkamah kerana ia berkaitan perkara-perkara hipotesis dan tiada pengenalan peruntukan-peruntukan khusus yang dikatakan telah melanggar hak plaintif (lihat perenggan).

Notes

For cases on right to religious freedom, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1907–1909.

For cases on jurisdiction of Syariah Courts, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 615–619.

For jurisdiction of Syariah Courts, see 14 *Halsbury's Laws of Malaysia* paras [250.022] – [250.026].

Cases referred to

Che Omar bin Che Soh v PP [1988] 2 MLJ 55 (refd)

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1 (refd)

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697 (refd)

Hjh Halimatusaadiah bte Hj Kamaruddin v Public Services Commisssion, Malaysia & Anor [1994] 3 MLJ 61 (refd)

Imperial Tabacoo Ltd & Anor v Attorney General [1980] 1 All ER 866 (refd)
Jeyaretnam JB v Attorney General [1990] 3 MLJ 211 (refd)
Karpal Singh v Sultan of Selangor [1988] 1 MLJ 64 (refd)
Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang & Anor [1996] 3 CLJ 231 (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187 (refd)
London Passengers Transport Board v Moscrop (1942) AC 332 (refd)
Majlis Agama Islam Negeri Sembilan lwn Hun Mun Meng [1992] 2 MLJ 676 (refd)
Majumder v Attorney General of Sarawak [1967] MLJ 101 (refd)
Mamat bin Daud & Ors v Government of Malaysia [1988] 1 MLJ 199 (refd)
Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur [1998] 1 MLJ 681 (refd)
Meor Atiqulrahman bin Ishak dan lain-lain lwn Fatimah bte Sihi dan lain-lain [2000] 5 MLJ 375 (refd)
Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793 (refd)
Mohamed Said Nabi, Re, decd [1965] MLJ 21 (refd)
Odhams Press Limited v London and Provincial Sporting News Agency (1929) Ltd (1936) Ch 357 (refd)
Phang Chin Hock v PP [1980] 1 MLJ 70 (refd)
PP v Pung Chen Choon [1994] 1 MLJ 566 (refd)
Ramah bte Ta'at v Laton bte Malini Sultan (1927) 6 FMSLR 128 (refd)
Soon Singh v Pertubuhan Kebajikan Malaysia (PERKIM) Kedah & Anor [1994] 1 MLJ 690 (refd)
Sukma Dermawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor [1999] 2 MLJ 241 (refd)
Tengku Jaffar bin Tengku Ahmad v Karpal Singh [1993] 3 MLJ 156 (refd)
Teoh Eng Huat v Kadhi, Pasir Mas & Anor [1990] 2 MLJ 300 (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 ss 2, 7(1), 46(2)(b)(x)
Court of Judicature Act 1964 s 23
Evidence Act 1950 s 45
Federal Constitution arts 3(1), (4), 11(1), (3)(a), (4), (5), 12(2), 74(2), 77, 121(1A), 160(2), Second List of the Ninth Schedule
Government Proceeding Act 1956 s 22
Indian Constitution arts 11(1)–25
Islamic Family Law (Federal Territory) Act 1984 s 5
Penal Code s 298A
Rules of the High Court 1980 O 18 r 19
Specific Relief Act 1950 s 42, Chapter VI
Syariah Criminal Offences (Federal Territories) Act 1997

Benjamin Dawson (Yapp Hock Swee with him) (Nik Hussain & Partners) for the plaintiff.
Haji Sulaiman Abdull (Halimahtunsa'adiah with him) (Zain & Co) for the first respondent.
Dato' Azahar bin Mohamed (Azizah bte Hj Nawawi with him) (Attorney General's Chambers) for the second respondent.

Faiza Tamby Chik J:

[1] By an originating summons dated 15 May 2000 (encl 1), the plaintiff is applying for various declaratory orders, namely:

(1) her rights to religious freedom under art 11(1) of the Federal Constitution ('the FC') (prayers 1, 2 and 3);

(2) that s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 ('the 1993 Act') and other related State Enactments are null and void being inconsistent with art 11(1) of the FC (prayer 4);

(3) that the 1993 Act, Syariah Criminal Offences (Federal Territories) Act 1997 and other related State Enactments are not applicable to the plaintiff, who has (purportedly) professed the religion of Christianity (prayer 5);

(4) that any laws, whether State or Federal legislations, which forbid or impose restrictions on conversion out of Islam, are null and void, being inconsistent with art 11(1) of the FC (prayers 6–8);

(5) that the defendants entered the plaintiff's name in the Registry Book as having converted out of Islam (prayer 9).

[2] In her supporting affidavit affirmed on 2 June 2000, the plaintiff disclosed in para 6 that she was born a Muslim and having both parents as Muslims. In para 6(c), she averred that she has now purportedly converted into Christianity and was baptized in a church (see exh 'A'). However, it is to be noted that she had not applied to the Syariah Court to convert out of Islam.

[3] Briefly, the undisputed facts are as follows. The plaintiff was born as a Muslim bearing the name Azlina bte Jailani. The plaintiff was born to Muslim parents. The plaintiff's natural father, Jailani bin Shariff is a Malay. The plaintiff's father, without break, in his lifetime practised the religion of Islam. The plaintiff's natural mother, Kalthum bte Omar is a Malay. The plaintiff's mother, without break, in her lifetime practised the religion of Islam. The plaintiff was brought up in an Islamic family and environment. In 1990, the plaintiff was 26 years old. The plaintiff is commonly reputed to be a Muslim (paras 10, 12, 13 and 14 of the plaintiff's affidavit affirmed on 8 May 2000 has reference). On 21 February 1997, the plaintiff applied to the National Registration Department ('NRD') to change her name from Azlina bte Jailani to Lina Lelani. The plaintiff stated in her 'Surat Akuan' (exh 'C' of the plaintiff's affidavit) to support the above application that, inter alia, the plaintiff intends to marry a person who is Christian. The said application was rejected on 15 March 1999. The plaintiff applied again to NRD to change her name from Azlina bte Jailani to Lina Joy. The plaintiff made another application to NRD to remove the word 'Islam' from the plaintiff's new identity card.

[4] By a summons in chambers dated 21 July 2000 (encl 4), the second defendant is applying to strike out the plaintiffs application under O 18 r 19 of the Rules of the High Court 1980 ('the RHC') and/or under the inherent jurisdiction of the court on two grounds, namely:

(i) that it discloses no reasonable cause of action.

(ii) It is otherwise an abuse of the process of the court.

[5] The grounds of the application as affirmed by Dato' Azahar bin Mohamed on 20 July 2000 is that since the plaintiff is still a Muslim, the issue of her conversion out of Islam is within the exclusive jurisdiction of the Syariah Court. By a summons in chamber dated 28 September 2000 (encl 10), the first defendant is applying to strike out the plaintiff's application under O 18 r 19 of the RHC, and/or under the inherent jurisdiction of the court on the following grounds:

(1) it discloses no reasonable cause of action;

(2) it is scandalous, frivolous or vexations;

(3) it is otherwise an abuse of the process of the court.

[6] The ground of the application is that this High Court has no jurisdiction to hear this action because the jurisdiction lies in the Syariah Courts as the plaintiff is still a Muslim.

[7] In prayers 1, 2 and 3 of the plaintiff's application, her contention is that she has a freedom to profess a religion of her choice under art 11(1) of the FC, which supersedes any other Federal or State laws and that her freedom to profess is a matter of personal choice and not to be dictated by any party. It is observed that the plaintiff is so obsessed with the first part of art 11(1) of the FC and had given it an interpretation to the effect that the said first part of art 11(1) gives her the right to profess and practise the religion of her choice. I think art 11 of the FC actually speaks of freedom of religion and not freedom of choice which are distinct. Looking at the wording of the first part of art 11(1), it is clear that 'every person has the right to profess and practise his religion'. This means, that there is no restriction on the right of any person to profess and practise his religion which is guaranteed by art 11 of the FC. Hence, if a Muslim wishes to renounce/leave his original religion for another, therefore the application of the first part of art 11(1) is subject to the second part of art 11(1) and also to art 11(4) and art 11(5) of the FC because the issue of change of a person's religion is directly connected to the rights and obligations of that person as a Muslim. Clauses (1), (4) and (5) of art 11 of the FC provide as follows:

Article 11

(1) Every person has the right to profess and practise his religion and, subject to cl (4), to propagate it.

(4) State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, Federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

(5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

[8] Professor Ahmad Ibrahim in his article entitled *The Position of Islam in the Constitution of Malaysia* in the book entitled the *Constitution of Malaysia: Its Development: 1957–1977* edited by Tun Mohamed Suffian, HP Lee, FA Trindade, at p 51 said:

Article 11 of the Federal Constitution provides that every person has the right to profess and practise his religion and subject to Clause (4) to propagate it. Clause (4) provides that State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion. No person shall be compelled to pay any tax, the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own. Every religious group has the right to manage its own affairs, to establish and maintain institutions for religious or charitable purposes and to acquire and own property and hold and administer it in accordance with law.

[9] The case of *Hjh Halimatusaadiah bte Hj Kamaruddin v Public Services Commisssion, Malaysia & Anor* [1994] 3 MLJ 61 involved a discussion of both cll (1) and (5) of art 11 of the FC:

It is trite Article 11(1) of the Constitution guarantees the freedom of religion, where every person has the right to profess and practise his religion. However, such right is not absolute as Article 11(5) provides that this article does not authorize any act contrary to any general law relating to public order, public health or morality.

[10] It is clear that cll (4) and (5) above preserve and protect the harmony and preserve the affairs and interests of Muslims and non-Muslims in this country whereby the rights of the various races and religions are also protected. When a Muslim wishes to renounce/leave the religion of Islam, his other rights and obligations as a Muslim will also be jeopardized and this is an affair of Muslim falling under the first defendant's jurisdiction as provided by art 11(3)(a) of the FC read with s 7(1) of the 1993 Act. Article 11(3)(a) clearly states that every religious group has the right to manage its own religious affairs whereas the 1993 Act was created to provide for the Federal Territories a law concerning the enforcement and administration of Islamic Law, the constitution and organization of the Syariah Court, and related matters as stated in the preamble of the 1993 Act. Even though the first part 1 art 11(1) of the FC provides that every person has the right to profess and practise his religion, this does not mean that the plaintiff can hide behind this provision without first settling the issue of renunciation of her religion (Islam) with the religious authority which has the right to manage its own religious affairs under art 11(3)(a) of the FC If the plaintiff is allowed to do so, this will create chaos and confusion with the administrative authority which manages the affairs of Islam and the Muslim community and consequently the non-Muslim community as a whole. I am of the opinion that this threaten public order and this cannot have been the intention of the legislature when drafting the FC and the 1993 Act.

[11] In the instant case, the applicant prays for a specific declaration, that she has the absolute religious freedom under art 11(1) to profess the religion of her choice and that such constitutional right supersedes any Federal or State laws. The terms 'profess' is not defined by the Constitution. In *Re Mohamed Said Nabi, decd* [1965] MLJ 21, Chua J adopted the term 'profess' from the *Shorter English Dictionary* to mean '... to affirm, or declare one's faith or allegiance to (a religion, principle, God or Saint, etc).' In the context of the instant case, since the Plaintiff is still a Muslim and she wanted to convert out of Islam, the issue then is whether her rights to affirm or declare

her faith in Christianity is subject to the relevant syariah laws on apostasy, declared by *Soon Singh v Pertubuhan Kebajikan Malaysia (PERKIM) Kedah & Anor* [1994] 1 MLJ 690 to be within the jurisdiction of the Syariah Courts. In short, whether the plaintiff's rights to convert out of Islam under art 11(1) is subject to the syariah laws. In order to appreciate this issue, it would be appropriate to recall what Barwick CJ said on constitutional interpretation in *Attorney General of Commonwealth, ex-relation Me Kinley v. Commonwealth of Australia* (975) 135 CCRI as adopted by Abdul Hamid Omar, LP in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697, at p 709:

> The only true guide and the only course which can produce stability in constitutional law is to read the language of the constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning.

[12] I am of the view by looking at the constitution as a whole, it is the general tenor of the constitution that Islam is given a special position and status, with art 3 declaring Islam to be the religion of the Federation. Tun Mohamed Suffian in his book, *An Introduction to the Legal System of Malaysia* second edition at p 10, said that this provision constitute one of the basic features of the Malayan Constitution. Article 3(1) reads:

> Islam is the religion of the Federation, but other religions may be practised in peace and harmony in any part of the Federation.

[13] In *Teoh Eng Huat v Kadhi, Pasir Mas & Anor* [1990] 2 MLJ 300, Abdul Hamid LP adopted the opinion of Lord Denning on constitutional interpretation '... to ascertain for ourselves what purpose the founding fathers of our constitution had in mind when our constitutional laws were drafted ...'. The starting point would be the Reid Commission which makes a finding after negotiations, discussions and consensus between the British Government, the Malay Rulers and the Alliance party representing various racial and religious groups. Paragraph 169 of the Reid Report is on religion, where the report is based on the unanimous recommendation of the Alliance party stated (at pp301–302):

> The religion of Malaysia shall be Islam. The observance of this principles shall not impose any disability on non-Muslim nationals professing and practising their own religion and shall not imply that the state is not a secular state.

[14] From the Reid Report is the Federation of Malaya Constitutional Proposal 1957 (The White Paper). The recommendation on religion in the White Paper is in para 57 which states:

> There has been included in the proposed Federation Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a Secular state, and every person will have the right to profess and practice his own religion, though this last right is subject to any restriction imposed by state law relating to the propagation of any religious doctrine or belief among persons professing the religion of Islam (see Tan, Yew and Lee' *Constitutional Law in Malaysia and Singapore* (2nd Ed) at p 994).

[15] It is pertinent to note that Tun Mohamed Suffian in his book *AnIntroduction to the Constitution of Malaysia* (2nd Ed) at p 45 said:

Islam had long been established in the country before the conquest of Malacca by the Portuguese in 1511. It was left undisturbed by the British in the century or so they controlled the country. It is not therefore surprising when the constitution by Article 3(1) provides that Islam is the religion of the Federation. As has already been seen, the constitution at the same time guarantees the freedom of everybody to practice in peace and harmony his own religion.

[16] Therefore from the inception of the FC, the religion of Islam has been given the special status of being the main and dominant religion of the Federation. Dr Mohammad Imam in his article *Freedom of Religion Under Federal Constitution of Malaysia — A Reappraisal* [1994] 2 CLJ lvii has adopted the purposive interpretation to art 3(1) to the extent that art 3(1) '... cast upon the 'Federation' a positive obligation to protect, defend and promote the religion of Islam ...'.

[17] In *Meor Atiqulrahman bin Ishak dan lain-lain lwn Fatimah bte Sihi dan lain-lain* [2000] 5 MLJ 375, Mohd Noor Abdullah J gave several meanings to the term Islam in art 3, namely:

(i) Islam is the religion of Malaysia, comprising of Malays who are Muslim, Chinese, Indian and others practising Buddhism, Hinduism, Christianity and others.

(ii) Malaysia is a secular state.

(iii) The country could implement Syariah laws that was not inconsistent with the constitution on Muslims.

(iv) That the country could not impose Syariah laws on non-Muslims.

[18] In the instant case, the plaintiff has made a fundamental error in constitutional interpretation when she asserts that art 3(4) reaffirms the primacy and precedence of art 11(1). There is nothing in the FC to even suggest that art 11(1) takes precedence over art 3(1). The term 'derogates' in art 3(4) simply means that art 3 'does not reduce' other provisions in the constitution (see *Legal Thesaurus* by Williams C Burton). Article 3(4) does not have the effect of reinforcing the status of the Federation as a secular state as suggested by the plaintiff. In *Freedom of Religion in Malaysia* by Lee Choon Min, the writer is of the opinion that Malaysia is not purely a secular state like India or Singapore but is a hybrid between the secular state and the theocratic state. The constitution of this hybrid model accord official or preferential status to Islam but does not create a theocratic state like Saudi Arabia or Iran. Contrary to the plaintiff's assertion, the subject and purpose of art 3(1) is not merely 'to fix' the official religion of a nation. The case of *Che Omar bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55 did not decide on art 3(1), that is, the meaning of Islam as the Religion of the Federation (see Sheridan — *The Religion of the Federation* [1988] 2 MLJ xiii. Article 3(1) has a far wider and meaningful purpose than a mere fixation of the official religion. One of the natural consequences from the fact that Islam is the religion of the Federation is the limitation imposed on the propagation among persons professing the religion of Islam in art 11(4). Other consequences which emanate from the pronouncement of Islam in art 3(1) is the establishment of Islamic institution for the furtherance of the religion of Islam with funds to be expended for the advancement of the Islamic religion (see Tun Salleh

Abas on *Constitution, Law and Judiciary* at pp 45–46 and Mohammad Hasim Kamali — *Islamic Law in Malaysia, Issues and Development* at p 34). The plaintiff's interpretation of art 11(1) is by reading it in a limited and isolated manner, without due regard to the other provisions in the FC. This restrictive interpretation advocated by the plaintiff would result in absurdities not intended by the framers of the FC, namely, how would one reconcile the restrictive interpretation of art 11(1) with the relevant provisions on the Islamic religion in the FC itself, such as arts 3(1), 12(2), 74 and 121(1 A). 'The Constitution is a living piece of legislation and that should be interpreted with less rigidity and more generosity than other acts' (see Raja Azlan Shah FCJ (as DYMM then was) at p 32 in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29). To avoid such absurdities resulting from a restrictive approach would be to apply the principle of harmonious construction. MP Jain in *Indian Constitutional Law* explains the purpose of harmonious construction at p 853:

> The Constitution should be so interpreted as to give effect to all its parts. The presumption is that no conflict or repugnancy was intended by the framers between the various provisions of the Constitution. Accordingly, it had been laid down that if certain provisions in the Constitution appear to be conflict with each other, these provisions should be interpreted so as to give effect a reconciliation between them so that, if possible, effect could be given to all. This is, what is known as, the rule of harmonious construction … . The principle of harmonious construction has been applied to interpret the entries in the various legislative list. The fundamental rights and the legislative privileges have also been reconciled … . The principle of harmonious construction has been applied to the fundamental rights and directive principles so as to give effect to both as far as possible.

[19] Applying the principle of harmonious construction is to read article 11(1) together with arts 3(1), 12(2), 74, 121(1A) and 160 so as to give effect to the intention of the framers of our constitution. When read together art 11(1) must necessarily be qualified by provisions on Islamic law on apostasy enacted pursuant to art 74 List II in respect of the plaintiff's intention to convert out of the Islamic religion. Her purported renunciation of Islam can only be determined by the Syariah Courts and not the Civil Courts pursuant to art 121(1A).

[20] There is also a clear nexus between arts 3(1) and 11(1) as both articles dealt with the issue of religion. Article 11(4) is the consequence of the declaration that Islam is the religion of the Federation. The declaration in art 3(1) has the consequence of qualifying a Muslim's absolute right to murtad in art 11(1) by requiring that compliance to the relevant syariah laws on apostasy is a condition precedent. Another fundamental error in the plaintiff's case is her assertion that the principle of freedom of conscience is housed in art 11(1). Here, the plaintiff sought to equate arts 11(1) to 25 of the Indian Constitution, which reads:

> 25 Freedom of conscience and free profession, practice and propagation.
>
> (1) Subject to public order morality and health and to the other provisions of this Part all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.

[21] The most obvious distinction between arts 11(1) and 25 of the Indian Constitution is the conspicuous absence of the words 'freedom of conscience' and 'free profession ...' in art 11(1). 'The freedom of conscience is the absolute inner freedom of the citizen to mould his own relation with God in whatever manner he pleases ... .' The plaintiff's conclusion that her right to murtad is not circumscribed in any manner except in her own choice would be correct if read in the context of freedom of conscience in art 25 of the Indian Constitution. But in the absence of such 'freedom of conscience' in art 11(1), the plaintiff cannot assert that art 11(1) gives her the absolute and unqualified right to convert out of the Islamic religion. The same is to be determined by the Syariah Courts. The plaintiff's extensive reference to the Indian Constitution in her submission is clearly misplaced. The Forty Second Amendment of 1976 has declared India to be a secular state. There is no such pronouncement in the FC. There is also no equivalent provision to arts 3(1), 12, 121(1A) and 160 in the Indian Constitution. Raja Azlan Shah FCJ (as DYMM then was) in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 at pp 188–189 said:

> Whatever may be said of other Constitution, they are ultimately of little assistance to us because our Constitution now stand on its own right and it is in the end the wording of our Constitution itself that is to be interpreted and applied, and this wording 'can never be overridden by the extraneous principles of other Constitution' — see *Adegbenro v Akintola & Anor* [1963] 3 All ER 544. Each country frames its constitution according to its genius and for the good of its own society.

[22] Therefore, the position of Islam in art 3(1) is that Islam is the main and dominant religion in the Federation. Being the main and dominant religion, the Federation has a duty to protect, defend and promote the religion of Islam. This proposition is reinforced by the Fourth Schedule where it states that in his oath of office, The Yang di-Pertuan Agong among other things solemnly and truly declares that he shall at all time protect the religion of Islam and to hold the rule of law and order of the country. As such, the country could impose syariah laws on Muslim which are not inconsistent with the Constitution. Thus, in the context of the instant case, since the Applicant is still a Muslim, the finality of her decision to convert out of Islam is within the competency of a Syariah Court (see *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681 (HC).

[23] Article 3(1) of the FC declare that 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation'. The very fact that people professing religion other than Islam are constitutionally guaranteed the right to practise their faith in peace and harmony, must necessarily mean that Muslims are also similarly guaranteed the right to practise Islam in a like manner. Being the religion of the Federation, Islam has a special position in Malaysia. The Ruler of a State of the Federation is the head of the religion of Islam in his State and the Yang di-Pertuan Agong is head of the religion of Islam in the Federal Territories of Kuala Lumpur and Labuan in addition of being so in his own state and in the States of Malacca, Penang, Sabah and Sarawak (see *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793). Article 74(2) of the FC provides 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.

[24] Article 74(2) read with the Second List of the Ninth Schedule, confers the power to make law on the State legislatures, and on Parliament in respect of the Federal Territories of Kuala Lumpur and Labuan on the subject of 'Islamic Law and personal and family law of persons professing the religion of Islam ...'. This includes, inter alia, the Islamic law relating to betrothal, marriage, divorce, dowry and maintenance, the constitution, organization and procedure of Syariah Courts which shall have jurisdiction only over persons professing the religion of Islam. In *Md Hakim Lee*, Abdul Kadir Sulaiman J (as he then was) referred to art 74 of the FC:

This matter of the plaintiff which involves the determination of his status upon his purported renunciation of the Islamic faith by the deed poll and the statutory declaration is outside the jurisdiction of this court to determine, on account of the ouster of the jurisdiction by art 121(1A) of the Federal Constitution. By virtue of para 1 in List II of the Ninth Schedule to the Federal Constitution, the jurisdiction lies with the Syariah Court on its wider jurisdiction over a person professing the religion of Islam even if no express provisions are provided in the Administration of Islamic Law (Federal Territories) Act 1993 ('the Act') because under art 74 of the Constitution, it is within the competency of the legislature to legislate on the matter. Its absence from the express provision in the Act would not confer the jurisdiction in the civil court. The fact that the plaintiff may not have his remedy in the Syariah Court would not make the jurisdiction exercisable by the civil court.

[25] In *Md Hakim Lee*, Abdul Kadir Sulaiman J (as he then was) had made a ruling that the jurisdiction given by para 1 of the List II to the Ninth Schedule to the Constitution is the jurisdiction inherent in the Syariah Court and thereby disagreed with *Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang & Anor* [1996] 3 CLJ 231 which had construed para 1 of II — Ninth Schedule narrowly. At p 689 in *Md Hakim Lee*, Abdul Kadir Sulaiman J (as he then was) said:

As for the decisions so far given by the courts of coordinate jurisdiction on the interpretation of art 121(1A) of the Federal Constitution as cited in the arguments, with respect, I would agree with the decision given in *Soon Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1994] 1 MLJ 690 that the civil court had no jurisdiction to make a declaration of the nature sought by the plaintiff in this application. So is the decision given in *Hajjah Mahani bt Sulaiman & Ors v Majlis Agama Islam & Adat Melayu Terengganu* [1996] 3 AMR 2898.

[26] Apart from art 3, other provisions in the constitution enforces the special position of Islam as the main and dominant religion of the Federation. The propagation of any religious doctrine or belief among persons professing the religion of Islam may be controlled or restricted by law (art 11(4)). The purpose of this restriction is to provide the States with the power to pass a law to protect the religion of Islam from being exposed to the influences of the tenets, precepts and practices of other religions or even of certain schools of thoughts and opinion within the Islamic religion itself (see *Mamat bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ 199). The FC further provides that it shall be lawful for the Federation or State to establish or

maintain or assist in establishing or maintaining Islamic institutions or providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purposes (art 12(2)). Article 74(2) grants the Federal/State powers to legislate on syariah matters as specified in para 12, List 11, Ninth Schedule, FC. The religion of Islam is also given royal patronage with the Rulers in the State as the Head of the religion of Islam and the Yang di-Pertuan Agong is the head of the religion of Islam in Sabah, Sarawak, Penang and Malacca and the Federal Territories. One of the most significant development pertaining to the position and status of Islam is the introduction of art 121(1A) which came into force on 10 August 1988. Article 121 specially demarcates the jurisdiction between the Syariah and the civil courts, to the extent that Civil Court has no jurisdiction over syariah matters. In this regard Harun Hashim SCJ in *Mohamed Habibullah bin Mahmood* at pp 803–804 said:

> Taking an objective view of the Constitution, it is obvious from the very beginning that the makers of the Constitution clearly intended that the Muslim of this country shall be governed by Islamic family law as evident from the Ninth Schedule to the Constitution ... Indeed, Muslims in this country are governed by Islamic personal and family laws which have been in existence since the coming of Islam to this country in the 15th century. Such laws have been administered not only by the Syariah Courts but also by the civil courts. What art 121(1A) has done is to grant exclusive jurisdiction to the Syariah Courts in the administration of such Islamic Laws. In other words art 121(1A) is a provision to prevent conflicting jurisdictions between the civil courts and the Syariah Courts.

[27] In order to ascertain the extent of religious freedom to profess under art 11(1) is to adopt the rule of harmonious construction which requires the court to give effect to the relevant articles conjunctively and disjunctively (see *Phang Chin Hock v Public Prosecutor* [1980] 1 MLJ 70). In the case of *Sukma Dermawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor* [1999] 2 MLJ 241, the Federal Court held that cl (1A) of art 121 should not be read in isolation or given literal interpretation '... Because literal interpretation would give rise to consequences which the legislatures could not possibly have intended ...'. The court then proceeded to construe both cll (A) and (1A) of art 121 together '... And choose a construction which will be consistent with the smooth workings of the system which the article purports to regulate and reject interpretation that will lead to uncertainty and confusion into the workings of the systems ...' It is therefore important that art 11(1) should not be read in isolation. Article 11(1) must be construed harmoniously with the other relevant provisions on Islam, namely arts 3(1), 74(2), 121(1A), 12(2) and 160 (where a Malay is defined as a person who professes the religion of Islam). When construed harmoniously, the inevitable conclusion is that the freedom to convert out of Islam in respect of a Muslim is subject to qualifications, namely the Syariah laws on those matters. Only such construction would support the 'smooth workings of the system', namely the implementation of the Syariah law on the Muslims as provided by the constitution. To grant Muslims the rights to convert out of Islam without final determination by the Syariah Courts would '... lead to uncertainty and confusion ...' and would contradict the enabling syariah laws on apostasy '... since the question of whether a person was a Muslim or had renounced the

faith of Islam transgressed into the realism of the Syariah law which needs serious consideration and proper interpretation of such law ...' (per Mohamed Yusoff J in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1 (SC).

[28] I am of the opinion that the issue of apostasy is an issue coming under the category of religious affairs as provided under art 11(3)(a) of the FC and also comes under 'related matters' as provided by the 1993 Act and therefore it is an issue not only under the FC but also under the 1993 Act and therefore it ought to be determined by eminent jurists who are properly qualified in the field of Islamic jurisprudence and definitely not by the civil court. The question as to who is properly qualified in the filed of Islamic jurisprudence has been addressed in the case of *Dalip Kaur* which held that the only forum qualified to do so is the Syariah Court. To determine whether the Syariah Court has jurisdiction to hear this issue, one need only to refer to s 46(2)(b) of the 1993 Act. I think such jurisdiction is provided under s 46(2)(b)(x) read with art 11(3)(a) and Ninth Schedule List 11 — State List of the FC and the Preamble title and s 7(1) of the 1993 Act.

Section 46(2) A Syariah High Court shall —

(a) ...

(b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to —

'(x) other matters in respect of which jurisdiction is conferred by any written law.'

Preamble

'An Act to provide for the Federal Territories a law concerning the enforcement and administration of Islamic Law, the constitution and organisation of the Syariah Courts, and related matters.'

[29] In actual fact, art 11(1) read with cll (3), (4) and (5) of the FC is created for the harmony and well-being of the multi-racial and multi-religious communities of this country. Furthermore, there is a specific statute which provides for the law concerning the enforcement and administration of Islamic law, the constitution and organization of the Syariah Court and related matters in respect of the Muslim community. When a person wishes to renounce/leave his original religion, he/she has first to resolve the issue of renunciation of religion with the body/authority which protects and preserves the well-being of people professing that religion based on the laws or provisions relating to that religion. This is in accordance with art 11(3) of the FC. Therefore in the instant case, based on the facts stated herein, it is clear that the plaintiff as a Muslim at all material times who purportedly wished to leave/renounce the religion of Islam must resolve the issue of renunciation of Islam with the authorities which protect and preserve the affairs and interests of Muslims first and foremost before raising the issue of constitution with this court. It must be noted importantly in the instant case that there are numerous matters related to the status of the plaintiff as a Muslim which must be resolved first and these matters can only be considered by eminent jurists who are properly qualified in the field of Islamic jurisprudence that is the Syariah Court. The power of the Syariah Court under s 46(2)(b)(x) of the 1993 Act is linked to

art 11(3) and Ninth Schedule List 11 — State List of the FC. I think the plaintiff cannot seek relief from the Civil Court especially when she has yet to exhaust her remedy(s) under the jurisdiction of the Syariah Court. It is difficult to imagine how the administration of justice can be served if the plaintiff is allowed to abuse the process of the court by hopping from one jurisdiction to another over the same subject matter. I think that in actual fact there is no conflict or inconsistency between the first part of art 11(1) of the FC and the provisions in the 1993 Act particularly s 2 of the 1993 Act as alleged by the plaintiff. The first part of the art 11(1) is actually a general provision and to protect the affairs and preserve the interests of each religion and its followers as is provided under art 11(3) of the FC. In the case of the Islamic religion for the purpose of art 11(3)(a), the 1993 Act was created to smoothen the administration of Islam amongst the Muslim community so that the harmony and well-being of the Muslim community in particular (including the plaintiff) and the Malaysian community in general will be protected and preserved. The above stated provisions in the 1993 Act are not unconstitutional and are not violative of the fundamental right of freedom of religion under art 11 of the FC. The restrictions imposed by the provisions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right. The provisions strike the correct balance between individual fundamental rights and the interest of public order. As I stated earlier that in interpreting an enactment, the court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to redress. The principle of interpretation of statutes demands that a general provision cannot override a specific one, and as such the High Court cannot invoke its general civil jurisdiction under s 23 of the Court of Judicature Act 1964 ('the CJA') to revive any specific jurisdiction under the CJA which has been excluded by the Constitution by virtue of art 121(1A) (see *Mohamed Habibullah bin Mahmood*).

[30] The fundamental teaching of Islam pertaining to the freedom of religion is expressed clearly in the Holy Quran. We read in the Holy Quran to the effect: 'Let there be no compulsion in religion' (Surah Al-Baqarah 2:256). This is endorsed in a number of other places in the Quran.

Surah Al-Kafirun: 109: 1-6

1 Say: O ye that reject Faith!

2 I worship not that which ye worship,

3 Nor will ye worship that which I worship.

4 And I will not worship that which ye have been wont to worship,

5 Nor will ye worship that which I worship.

6 To you be your Way, and to me mine.

Surah Al'Ankabut: 29:46

46 And dispute ye not with the People of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury): but say, "We believe in the Revelation which has come down to us and in that which came down to you; our God and your God is One; and it is to Him we bow (in Islam).

Surah Al Baqarah: 2:62

62 Those who believe (in the Qu'ran) and those who follow the Jewish (scriptures), and the Christian and the Sabians, — any who believe in God and the Last Day, and work righteousness, shall have their reward with their Lord, on them shall be no fear, nor shall they grieve.

Surah AINisa': 4:137

137 Those who believe, then reject faith, then believe (again) and (again) reject faith, and go on increasing in unbelief,— God will not forgive them nor guide them on the way.

Surah AlKahf: 18:29

29 Say, 'The Truth is from your Lord': Let him who will believe, and let him who will, reject (it): for the wrong-doers We have prepared a Fire whose (smoke and flames), like the walls and roof of a tent, will hem them in; if they implore relief they will be granted water like melted brass, that will scald their faces, how dreadful the drink! How uncomfortable a couch to recline on!

Surah Yunus: 10:99

99 If it had been thy Lord's Will, they would all have believed, — all who are on earth! wilt thou then compel mankind against their will, to believe!

Surah Al Tawbah: 9:6

6 If one amongst the Pagans ask thee for asylum, grant it to him, so that he may hear the Word of God, and then escort him to where he can be secure. That is because they are men without knowledge.

[31] The Holy Quran therefore declares the freedom of the individual to profess the religion of his or her choice without compulsion. According to Islam, if a man whose religion is Islam makes a declaration by deed poll that he renounces the religion of Islam, he removes himself from the religion of Islam and is a murtad. However, in order to decide whether he is a murtad or not, he must be found by a Syariah Court and there must be a decision of the Syariah Court that he is a murtad, if it is not found or decided by Syariah Court that he is a murtad then the person remains a Muslim (see *Dalip Kaur*). The religion of Islam depends on faith. Islam itself means submission to the will of Allah; and the willing submission of oneself to the will of Allah must be attained through conviction and reasons. And so when a Plaintiff who is a Muslim wishes to repudiate his submission to the will of Allah it is only imperative that the determination of such a serious issue is carried out by Syariah Court judges who are properly qualified in the field of Islamic jurisprudence. In this connection, we must not overlook that article 11(1) also applies to Muslim in that they are not to be compelled or be put under undue influence so as to become apostates. Conversion out of Islam is not just a personal or private matter: it is capable of serious consequences such as on matters relating to marriage and inheritance. At p 9, Mohamed Yusof SCJ in *Dalip Kaur* added:

> Without proper authority to support his contention, it is not sufficient to say whether there is or there is not a condition precedent for a person to become a Muslim; or that if the deceased were proved to have had said his prayers at a Sikh temple, he was definitely an apostate. The present question, in my view cannot be determined by a simple application of facts as has been found by the learned judicial commissioner on the basis of veracity and relevancy of evidence according

to civil law. Such a serious issue would, to my mind, need consideration by eminent jurist who are properly qualified in the field of Islamic jurisprudence. On this view it is imperative that the determination of the question in issue requires substantial consideration of the Islamic law by relevant jurist to do so. The only forum qualified to do so is the Syariah Courts.

[32] The above statement found support in the Supreme Court decision of *Mohamed Habibullah bin Mahmood* where Mohamed Azmi SCJ is of the opinion that the issue of renunciation of Islam is under the jurisdiction of the Syariah Court for determination under s 5 of the Islamic Family Law (Federal Territory) Act 1984. Gunn Chit Tuan SCJ (as he then was) also adopted the above statement of Mohamed Yusof SCJ and stated that '... In determining whether a Muslim has renounced Islam, the only forum qualified to answer that question is the Syariah Court ...' (see p 822).

[33] In *Soon Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1994] 1 MLJ 690, the High Court held that it is clear from the fatwa that a Muslim who renounced the Islamic faith by a deed poll or who went through a baptism ceremony to reconvert to Sikhism continue to remain in Islam until a declaration has been made in a Syariah Court that he is a 'murtad'. Therefore, in accordance with the fatwa, the plaintiff is still a Muslim. He should go to the Syariah Court for the declaration. Whether or not his conversion is invalid is also a matter for the Syariah Court to determine in accordance with hukum syarak and the civil courts have no jurisdiction. Mohamed Dzaiddin FCJ (as he then was) delivering the Federal Court judgment in *Soon Singh* said (at p 502):

... it is logical that matters concerning conversion out of Islam (apostasy) could be read as necessarily implied in and falling within the jurisdiction of the Syariah Courts. One reason we can think of is that the determination of a Muslim convert's conversion out of Islam involves inquiring into the validity of his purported renunciation of Islam under Islamic law in accordance with hukum syarak (*Dalip Kaur*). As in the case of conversion to Islam, certain requirements must be complied with under hukum syarak for a conversion out of Islam to be valid, which only the Syariah Courts are the experts and and appropriate to adjudicate. In short, it seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication, conversion out of Islam should also fall under the jurisdiction of the Syariah Courts.

[34] Therefore, it can be concluded that the validity of a person's renunciation of Islam can only be determined by the Syariah Courts based on hukum syarak. To conclude, art 11(1) gives a person the freedom to profess a religion of his choice, but on the issue of conversion out of Islam, a Muslim is bound by the syariah law on the matter.

[35] Section 2 of the 1993 Act provides a Muslim to mean:

(1) person who profess the religion of Islam;

(2) a person either or both of whose parents were, at the time of the persons birth, Muslim;

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

(4) a person who has converted to Islam in accordance with the requirements of s 85;

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

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

[36] The plaintiff was born a Muslim, she was brought up as a Muslim or her upbringing was conducted on the basis that she was a Muslim, she lived as a Muslim with her family and is commonly reputed to be a Muslim. All this is strong evidence of her being a person who professes the religion of Islam. Therefore, the plaintiff is a Muslim at all material times, within the meaning of 'Muslim' in the 1993 Act. Hence, her well-being as a Muslim is the duty and care of the first defendant in accordance with art 11(3) of the FC and s 7(1) of the 1993 Act which were enacted in accordance with Islamic Law.

[37] Article 11(3)(a) of the FC provides:

> Every religious group has the right:
>
> (a) … to manage its own religious affairs …

[38] Section 7(1) of the 1993 Act states:

> It shall be the duty of the Majlis to promote, stimulate, facilitate and undertake the economic and social development and well-being of the Muslim community in the Federal Territories consistent with Islamic law,

[39] The meaning of the word 'profess' was at issue in the Singapore case of *Re Mohamed Said Nabi, decd* [1965] MLJ 121 whereby Chua J referred to the *Shorter Oxford English Dictionary* which defines 'profess' as follows:

> to affirm, or declare one's faith in allegiance to (a religion, principle, God or Saint, etc.)

[40] The meaning of Islamic law is clearly stated in s 2 of the 1993 Act as 'Islamic Law according to any recognized Mazhab'. The issue regarding the application of Islamic Law to the Muslim community has long been considered as in *Ramah bte Ta'at v Laton bte Malini Sultan* (1927) 6 FMSLR 128, whereby Thorne J held that Islamic law is not a foreign law but a local law and addressed his opinion to the then colonial government in these words:

> It is perhaps not out of place for me to remark that the time has now arrived when the attention of the executive might well be drawn to the existing state of the law as affecting Mohamedans in the Federated Malay States. Mohamedan Law is varied in the different States in the Federation, and in some instances in different districts of the same State, by local customs having the force of law, and it would not be practicable therefore to pass a Federal Enactment dealing with all the States of the Federation.
>
> It seems to me, however, that State Enactments might well be passed dealing with the questions of the rights of parties upon divorce, and upon succession to the estate of deceased interstates, which more commonly arise, and giving power to the courts to take evidence in more involved cases not covered by the provisions of the enactment as to the law of the matter in debate. Although I have held that the Supreme Court has jurisdiction to deal with such cases as the present, the further

question emerges as to whether or not the Supreme Court is the proper tribunal for dealing with these cases, and whether it would not be more consonant with the views of those professing the Mohamedan religion that His Highness the Sultan in Council in each State should establish special courts for dealing with these cases with an appeal to His Highness the Sultan in Council in each case; of course the jurisdiction of the Supreme Court and of the Court of Appeal would properly be excluded by such enactment.

[41] It is observed that the exclusion of the jurisdiction of the Civil Courts in Islamic law as envisaged by the Supreme Court in 1927, is now a reality with the coming into force of cl (1A) of art 121 of the FC with effect from 10 June 1988.

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

[42] It is to be noted that this court is one of the courts referred to in cl (1). In *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697, the Supreme Court held that in testing the validity of the State action with regard to fundamental rights, what the court must consider is whether it directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise ineffective an illusory. But before the court could look into the effect of the State law vis-a-vis fundamental rights, the court must first identify the alleged inconsistency between the State law and the Federal constitution (per Abdul Hamid Omar LP at p 715). On the same page, Abdul Hamid Omar LP states:

We recognize that as regards that part of the plaintiffs' case which alleged inconsistency between art XXXIA of the Kelantan State Constitution nad art 10(1)(c) of the FC, the alleged inconsistency must, first of all, be identified.

[43] According to Lane on the Australian Federal Systems (2nd Ed) p 882:

Etymologically, inconsistency arises between two things 'when they cannot stand together at the same time'. *Clyde Engineering Co Ltd v. Cowburn* (1926) 37 CLR 466 at p 503. 'Inconsistency' derives from 'in' (privative) and 'con' (together) and 'sistere' (stand). Judicially, however, the meaning of inconsistency has not been restricted to this narrow connotation. 'Inconsistent' for the High Court comprises four different relations (including the one just given): (1) Impossible to obey both laws and direct collision; (2) Commonwealth permits or confers: State prohibits or deprives; (3) Commonwealth confers or imposes: State modifies; (4) Commonwealth covers the field: State enters the field.

[44] It appears to us that of the four different relations mentioned above, the one relevant to the issue which arises for decision in the present case is the situation under para (2).

[45] At p 886, in commenting on para (2), the learned author says this: 'A Commonwealth law may simply permit X subject to certain prerequisites, and, by contract, a state law may prohibit X absolutely or permit X conditionally upon its prerequisites being fulfilled.' And further down, on the same page, he says this by way of explanation:

One statute is inconsistent with another when it takes away a right conferred by that other ... or, if one enactment makes or acts upon as lawful that which the other makes unlawful ... the two are to that extent inconsistent. *(Clyde Engineering Co, Ltd*

v Cowburn (2926) 37 CLR 466 at pp 478, 490).

[46] Applying the above principle to our instant case, I am of the opinion that there is no inconsistency between art 11(1) and s 2 of the 1993 Act. Article 11(1) is on the freedom of religion whereas s 2 of the 1993 Act is on the definition of a Muslim. There is nothing in s 2 that can be said to expressly forbids, restricts or curtail religious freedom under art 11(1). In *Public Prosecutor v Pung Chen Choon* [1994] 1 MLJ 566, the Supreme Court's approach on statutory interpretation on whether a particular Act is ultra vires the FC is by ascertaining '... whether the impugned legislation is directly designed to restrict the rights guaranteed therein ...' (per Edgar Joseph Jr at p 574H–l). His Lordship added:

> It is therefore not necessary that legislation which incidentally restricts those Rights must be justified as falling within the permissible restrictions contemplated by cll (2)–(4) in art 10. So, for example, any law providing for imprisonment by way of punishment for the commission of a particular act or any law providing for preventive detention, of necessity results in the eclipse or a restriction of all or most of the Rights enunciated in article 10(1), but that does not entitle a person against whom such a law is enforced to contend that his Rights under Article 10(1) have been restricted for some purpose outside the permissible restrictions contemplated by ell 2–4 in Article 10, if the restriction is incidental. He may only so contend if the penal law or the preventive detention law concerned is aimed at directly restricting any one or more of his Rights guaranteed under article 10(1).

[47] I am of the view that s 2 of the 1993 Act is enacted pursuant to art 74(2) of the FC. The enabling art 74(2) confers wide jurisdiction to the Federal Government to enact syariah laws to the same extent as provided in item 1 in the State list (see para 6(e) list 1, Ninth Schedule). Section 2 of the 1993 Act is directly designed for the purpose of implementing syariah laws on the Muslim and it is not in any way designed to curtail the freedom of religion under art 11(1). Mohamed Azmi SCJ has stated in *Mamat bin Daud* that '... the subject of Islamic religion is both general and specific, conferred by item (1) is all embracing ...' (see p 123E–F). Further at p 125I, Salleh Abas LP added, '... surely, the subject matter of whether a person or group of persons has ceased to profess his or their religion is a purely religious matter, and to create an offence for making such an imputation concerning such subject matter is well within the legislative competence of the State legislature ...'.

[48] In *Mamat bin Daud*, the Supreme Court adopted the test 'in pith and substance' to ascertain whether s 298A of the Penal Code is ultra vires arts 74 and 77 of the FC. In order to ascertain the pith and substance of a particular legislation, the court must look into the object, purpose and design of the impugned section. In this case, the court held that s 298A is a colourable legislation in that it pretends to be a legislation on public order when in pith and substance it is a law on the subject of religion with respect to which only the State have power to legislate under arts 74 and 77 of the FC. Therefore by adopting the 'pith and substance test', s 2 of the 1993 Act cannot be said to be ultra vires art 11(1) of the FC. The purpose of s 2 of the 1993 Act is merely to define a Muslim since the FC did not provide any definition. This is important because syariah laws are applicable only to Muslim. Without a definition provision, there would be confusion in relation to the application of the syariah laws. Without a definition section (s 2 of the 1993 Act), only then

could the 1993 Act be said to be ultra vires art 11(1) since it imposes syariah law on everyone regardless of religion. Therefore, s 2 of the 1993 Act complements art 11(1) by limiting the application of the syariah law to Muslims only.

[49] From the definition in s 2 of the 1993 Act, the plaintiff, is still a Muslim until there is a declaration to the contrary by the Syariah Court. In *Dalip Kaur* it was held that a bare declaration that a person has renounced Islam is not enough. At p 692 of the report, Mohd Yusof SCJ held that '... According to the Fatwa, a Muslim who renounced the Islamic faith continue to remain a Muslim until a Syariah Court make a declaration that he has become murtad ...'. In *Soon Singh*, the Federal Court held that for a conversion out of Islam to be valid, certain requirement must be complied with under hukum syarak, which only the Syariah Courts are the experts and appropriate to adjudicate. In the case of *Majlis Agama Islam Negeri Sembilan lwn Hun Mun Meng* [1992] 2 MLJ 676, I held that Nurul's decision to leave the religion of Islam cannot be regarded as final until she herself declare her intention to the Majlis Agama Islam and her decision is registered. As such, Nurul remained a Muslim. I therefore held that unless and until the Syariah Court makes a declaration that the plaintiff has become murtad, she remains a Muslim. As a Muslim she is therefore subject to the relevant syariah laws including the 1993 Act and the 1997 Act.

[50] In prayer 6, the plaintiff apply to declare that any provision of the 1993 Act (if any) which grants jurisdiction to the Syariah Courts to determine whether the plaintiff has renounced Islam or require the Plaintiff to apply to the Syariah Courts for such declaration, is null and void being inconsistent with art 11(1). In prayer 7, the application is to declare that any law which purportedly forbids, curtails or imposes conditions on the plaintiffs absolute rights to profess Christianity is unconstitutional art 11(1). Consequential from prayers 1 to 7, prayer 8 seek to declare that pursuant to art 11(1), the first and second defendant have no right to impose any conditions or pre conditions before the plaintiff can be considered to be a murtad (apostate). It must be noted that prayers 6 to 8 are specific prayers which are mere repetitions of prayer 1 to 3. There is also no identification of specific provisions which are said to have infringed the rights of the plaintiff. Without identifying the impugned provisions the court is merely asked to make a declaration on hypothetical matters. In *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64, the court held that since the Summons '... does not relate to specific facts or events or if it does, these facts or events are hypothetical ...' is therefore frivolous or vexatious and an abuse of the powers of the courts. Hence in the instant application, I conclude that prayers 6 to 8 are struck out as they relate to hypothetical matters and are therefore frivolous, vexatious and an abuse of the process of the court.

[51] The new cl (1A) of art 121 of the FC effective from 10 June 1988 has taken way the jurisdiction of the Civil Courts in respect of matters within the jurisdiction of the Syariah Courts ...' (per Hashim Yeop Sani CJ (Malaya) at p 7 in *Dalip Kaur*). I am of the view that in the instant application, the root of the plaintiff's complaint and the practical effect of the declaratory orders is to enable her to convert out of Islam, an issue within the exclusive jurisdiction of the Syariah Courts. In the case of *Imperial Tabacoo Ltd & Anor v*

Attorney General [1980] 1 All ER 866, the House of Lords held that where criminal proceedings were properly instituted against a person, it was not a proper exercise of judicial discretion for a judge in a civil court to grant that person a declaration that the facts alleged by the prosecution did not in law prove the offence charged, because to make such a declaration would usurp the function of the criminal court. In the case of *Tengku Jaffar bin Tengku Ahmad v Karpal Singh* [1993] 3 MLJ 156, the trial judge held that:

> (3) Issues which relate to alleged criminality do not come within the preview of a civil court as otherwise the civil courts might be accused of intruding into the domain of the criminal courts.

[52] In Singapore, the Civil High Court has refused to grant declaratory order in respect of matters involving criminal jurisdiction. The learned judicial commissioner held in *Jeyaretnam JB v Attorney General* [1990] 3 MLJ 211, that the civil courts will not usurp a jurisdiction it does not possesses. Therefore, the civil courts should be reluctant to grant declarations on matters which are within the jurisdiction of the criminal courts. In the instant case, where the FC has clearly demarcated the jurisdiction of the Syariah Courts and the civil courts through the inclusion of art 121(1A), the civil courts should not intrude into the domain of the Syariah Courts. By granting the present application, this court would not only create confusion but would also be declaring something which is contrary to art 121(1A).

[53] Prayers 4, 5, 6 and 7 of the plaintiff's application sought to nullify certain State laws pertaining to the definition of a Muslim, syariah criminal laws and syariah laws which restricts apostasy. The said State laws are enacted pursuant to art 74(2) of the constitution following para 1, State List of the Ninth Schedule. However, it is to be noted here that the respective State Governments have not been made parties to this action. In the case of *London Passengers Transport Board v Moscrop* [1942] AC 332, the House of Lords held that:

> The declaration should not be granted to the respondent in an action which the persons really interested, the name trade union, had not been joined as parties.

[54] At p 345 of the report, Viscount Maugham held that, 'It is true that in their absence they were not strictly bound by the declaration, but the courts have always recognized that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their right is made'.

[55] The said House of Lords' decision was adopted by our court in the case of *Majumder v Attorney General of Sarawak* [1967] MLJ 101, where the Court of Appeal held prayers for declarations should not be granted on matters concerning persons interested but not joined as parties. In the instant case, since the FC has provided that Syariah matters are within the exclusive jurisdiction of the State, only they (ie the State authorities) would be in the position to defend their interest. Section 22 of the Government Proceeding Act 1956 also enable the State Government to be made parties

on matters affecting them. Therefore applying the above principles I conclude that all the relevant prayers affecting the State Government be struck out, since the relevant State Governments have not been made parties in this action. Moreover, s 42 of Chapter VI of the Specific Relief Act 1950 clearly provides that 'A declaration made under this chapter is binding only on the parties to the suit, person claiming through them respectively ...'. Since the State Government, having exclusive jurisdiction over Syariah matters have not been made parties to defend their interest, the said prayers are hereby struck out as the same will not be binding on them. In respect of the prayers against the State Governments it is noted that there were also no identification of the impugned State provision alleged to have infringed the rights of the plaintiff under art 11(1). In *Odhams Press Limited v London and Provincial Sporting News Agency (1929) Ltd* (1936) Ch 357, the Court of Appeal held that '... in as much as no specific document was named in which copyright was claimed and no evidence of any specific infringement had been given, the case was not one in which the court would exercise its discretionary power under O xxv r 5 by making the declaratory under asked for'. Failure to identify the impugned State provisions also meant that the court are asked to make declarations on hypothetical matters. (see *Karpal Singh v Sultan of Selangor*). Thus, where no specific infringement has been adduced in this case, the prayers against the State Government are struck out as being frivolous, vexatious and an abuse of the process of the court.

[56] This case raises an issue of constitutional importance. It concerns the religious position of a person born a Malay as defined in art 160 of the FC. On 2 February 1994, in the case of *Soon Singh*, Wan Adnan Ismail J (as he then was) dismissed the application brought by the plaintiff who converted to Islam and changed his name on 14 March 1988 but reconverted to Sikhism on 16 July 1992 and executed a deed poll to renounce the religion of Islam on the 27 July 1992 to revert to his original Sikh faith and to use his original Sikh name. In that case, Wan Adnan Ismail (as he then was) held:

> It is clear from the fatwa that a Muslim who renounced the Islamic faith by a deed poll or who went through a baptism ceremony to reconvert to Sikhism continues to remain in Islam until a declaration has been made in a Syariah Court that he is a 'murtad'. Therefore, in accordance with the fatwa, the plaintiff is still a Muslim. He should go to a Syariah Court for the declaration. Whether or not his conversion is invalid is also a matter for the Syariah Court to determine in accordance with hukum syarak and the civil courts have no jurisdiction.

[57] It is noted that as from 10 June 1988 by virtue of cl 1A of art 121 of the FC, the civil courts have no jurisdiction in respect of matters within the jurisdiction of the Syariah Courts. It must also be noted that the civil courts are for general application; their jurisdiction is general, it is applicable to both Muslims and non-Muslims throughout the country, whereas the Syariah Courts are established by the various State Enactments and are of limited application in the sense that the jurisdiction covers Muslims only if they commit any Syariah offences in those States. And they have jurisdiction only on matters which the various State Legislatures have enacted as conferring jurisdiction on them. In other words those matters although listed in List II as State List but no laws have been enacted yet, the Syariah Courts have no jurisdiction over them because the Syariah Courts have no inherent

jurisdiction whereas the civil courts have inherent jurisdiction. Consequently, once a decision is made that the civil court has jurisdiction to hear a Syariah matter, the court can decide the matter or issue which arises. As to whether the civil judge is competent to hear and decide the said matter has nothing to do with the jurisdiction of the court. This I think can be approached in two stages. If the civil judge is simultaneously also appointed by the Ruler of a State to be an appeal judge in the Syariah Appeal Court in that State or has obtained a Syariah qualification recognized by the State Syariah Court I am of the view that he is competent to hear and decide the said matter. Otherwise he can refer the matter to a Muslim jurist in order to assist him to make a decision. This is provided by s 45 of the Evidence Act 1950 on opinion of experts. In the instant case, although I am qualified to hear the matter at hand if my abovementioned view is accepted and is correct, I am not going to decide this case based on my Syariah qualification because I am more comfortable to leave it to the Syariah Court to make a decision on the matter of faith or belief of a Muslim person. Instead I am going to decide this case as a civil matter in accordance with the FC.

[58] The FC has clarified the religious position of a Malay art 160 of the FC is the interpretation article. The definition of a 'Malay' in cl (2) is inclusionary in nature. It is an anthropological classification rather than based on race. This means that if a Javanese was before Merdeka Day born in Malaysia or Singapore or born of parents one of whom was born in Malaysia or in Singapore and the said Javanese professes the religion of Islam, habitually speaks the Malay language and conforms to Malay custom, he/she is a Malay by definition under art 160(2) of the FC. This is in conformity with art 3 of the FC which by cl (1) states that Islam is the religion of the Federation but other religions may be practised in peace and harmony in any part of the Federation. This means Islam is the main and dominant religion in Malaysia. Islam has a special position in Malaysia. Therefore on freedom of religion by art 11(4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putra Jaya, federal law may control or restrict the propagation of any religious belief among persons professing the religion of Islam. It defines a 'Malay' as a person who professes the religion of Islam, (substituted for Muslim religion by Act A354 s 45 in force from 27 August 1976) habitually speaks the Malay language, conforms to Malay custom and (a) was before Merdeka Day born in the Federation or in Singapore (inserted by Act 26/1963, s 70 in force from 16 September 1963) or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person. Therefore a person as long as he/she is a Malay and by definition under art 160 cl (2) is a Malay, the said person cannot renounce his/her religion at all. A Malay under art 160(2) remains in the Islamic faith until his or her dying days. The said Malay cannot renounce his or her religion through a deed poll and sought a declaration by virtue of art 11 of the FC on freedom of religion and art 11 in this instant 1 rule is not freedom of choice of religion. Even if one is a non-Malay and embrace Islam and becomes a Muslim convert (mualaf) and later decides to leave the Islamic faith he or she is still required to report and see the relevant State Islamic authority who will decide on her renunciation of Islam (see *Majlis Agama Islam Negeri Sembilan lwn Hun Mun Meng* [1992] 2 MLJ 676).

[59] In her affidavit affirmed on 8 May 2000, the plaintiff stated that her father is a Malay. His name is Jailani bin Shariff. All his life, the father has been professing and practising the Islamic religion. So is the mother. Her name is Kalthum bte Omar, a Malay. Both of the parents are still professing and practising the Islamic religion. And being Malays they habitually speaks the Malay language and conform to Malay custom. The plaintiff also stated that she is raised, and grew up in a household of Islamic belief although her belief in Islam is shallow. In exh C, she stated that her original name is Azlina bte Jailani as is stated in her I/C No 7220456. I therefore conclude that the plaintiff is a Malay. By art 160 of the FC, the plaintiff is a Malay and therefore as along as she is a Malay by that definition she cannot renounce her Islamic religion at all. As a Malay, the plaintiff remains in the Islamic faith until her dying days. For the purposes of clarification, I must state here that I have not made any decision or touch on the plaintiffs decision to leave the Islamic faith at all as I have stated earlier that I leave this to the Syariah Court to deal with the matter. My decision is based purely on the interpretation on art 160 of a Malay under the FC.

[60] Article 11(1) of the FC grants every person the freedom to profess and practice his religion. However in respect of an act of conversion out of Islam, the same must be subject to the relevant Syariah laws to be determined by the Syariah Courts. Freedom of religion under art 11(1) must be read with art 3(1) which places Islam in a special position as the main and dominant religion of the Federation, with the Federation duty bound to protect, defend and promote Islam. The special position of Islam in art 3(1) is further reinforced by art 74(2) which enable the Federal and State Government to enact syariah laws to be implemented by a separate judicial system, namely the Syariah Courts under art 121(1A). Grants for Islamic development is also from the Federation (art 12(2)). Therefore, the FC allows Syariah laws on matters relating to conversion out of Islam to be determined by the Syariah Court. To conclude, art 11(1) gives a person the freedom to profess a religion of his choice, but on the issue of conversion out of Islam of a Muslim, only the Syariah Court is competent to determine the matter.

[61] For these reasons, the originating summons dated 15 May 2000 in encl (1) by the plaintiff is hereby dismissed with costs. The summons in chambers dated 21 July 2000 in encl (4A) and dated 28 September 2000 in encl (10) by the second defendant and by the first defendant respectively are therefore academic and are struck out.

Application dismissed.

Reported by Ashgar Ali Ali Mohamed