Viran a/l Nagapan v Deepa a/p Subramaniam (Peguam Negara Malaysia & Anor, intervener)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-02–1004–06 OF 2014
ABDUL AZIZ AB RAHIM, TENGKU MAIMUN AND AHMADI ASNAWI JJCA
30 DECEMBER 2014

Constitutional Law — Jurisdiction — Jurisdiction of courts — Husband and wife married under Law Reform (Marriage and Divorce) Act 1976 — Husband converted to Islam and applied for dissolution of marriage and custody of children to Shariah Court — Whether Shariah Court has jurisdiction to hear and determine matters relating non-Muslim marriage — Whether jurisdiction lied in High Court — Whether decision by Shariah Court could be set aside by High Court

The appellant and the respondent were married in 2003 under the Law Reform (Marriage and Divorce) Act 1976 and had two children, Shamila and Mithran. In 2012, the appellant converted to Islam and he registered his conversion and of the two children. Pursuant to his conversion, the appellant applied for the dissolution of the marriage at the Shariah High Court. In September 2013, the Shariah Court granted custody order to the appellant with visitation right and access to the respondent. In December 2013, the respondent filed a petition for divorce and sough for the custody of the two children at the High Court. The High Court granted the order for the dissolution of the marriage and granted custody of the two children to the respondent. After the High Court judge delivered the decision, the children were immediately surrendered to the respondent at the court premises. The respondent took the children home. Two days later, the appellant took away the youngest child, Mithran from the respondent. The respondent filed an application in the High Court for a recovery order under s 53 of the Child Act 2001 ('the Act'). The recovery order was granted by the High Court. The appellant filed separate appeals to the Court of Appeal against the decision of the High Court granting the custody order and the recovery order. This appeal concerned the recovery order. The Attorney General and the Inspector General of Police ('the IGP') had been added in as parties pursuant to an application to intervene. The appellant submitted that the High Court has no jurisdiction to hear the application under s 53 of the Act; the High Court has no power to disregard or indirectly set aside the Shariah Court order for custody, in contravention of art 121(1A) of the Federal Constitution; based on evidence, the respondent had failed to meet the threshold required under s 53 of the Act. The interveners posed the issues of whether the recovery order was rightly issued by the High Court in the

light of the existence of the custody order given by the Shariah Court; and the jurisdiction of the High Court and the Shariah Court in respect of the custody orders and whether the High Court prevails over the Shariah Court.

Held, dismissing the appeal and affirming the High Court decision:

(1) There is no ambiguity in the definition of the word 'Court' under the Act. It is either the 'Court For Children' as constituted under s 11 or it can be 'any other Court'. Any other court is not a court for children. To construe the words 'any other Court' as to mean a 'Court For Children' would render the words 'any other Court, as the case may require', redundant. And giving the words 'any other Court, as the case require' the plain meaning, it includes the High Court where the parties were already before the High Court for the dissolution of marriage and for custody. It stands to reason that consequent to the custody order made by the High Court, the High Court can and should deal with the application for recovery of the child under s 53 of the Act. Further, under s 24(d) of the Courts of Judicature Act 1964, the High Court is clearly seised with the jurisdiction 'over the person and property of infants'. There were no merits in the first issue raised by the appellant (see para 14).

(2) The custody order granted by the High Court came after the appellant had converted to Islam and after he had obtained custody order from the Shariah Court. And it cannot be denied that the Shariah Court has jurisdiction over the appellant as he now professes the religion of Islam. As provided by art 121(1A) of the Federal Constitution, the Shariah Court and the Civil High Court are courts of coordinate jurisdiction. One court is in no position to over-rule or set aside the decision of another court (see para 17).

(3) It does not matter that the appellant has converted and that he has a custody order from the Shariah Court. The decision of the Federal Court is clear. So long as he contracted a civil marriage and the children are born out of civil marriage, the Shariah Court has no jurisdiction. The issue raised by the learned SFC as to whether the High Court prevails over the Shariah Court did not arise. The High Court which has the jurisdiction had decided in favour of the respondent. It is the respondent who has the lawful custody of the child (see para 18).

(4) Although s 52(2) of the Act provides that a person has lawful custody of a child if he has been conferred custody of the child by a Shariah Court, in the light of the decision in *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147, that provision must be read in the proper context, namely that the Shariah Court order must necessarily relate to the custody order granted over children of a Muslim marriage. The appellant could avail himself of an application to vary the

custody order should there be a change in the circumstance, which the appellant had failed to do (see paras 23 & 28).

(5) There was no appealable error on the part of the judge as to warrant appellate intervention. The judge had correctly appreciated the law and the facts. There was no reason for to disturb the recovery order made by the judge which was consequent upon the custody order, upheld. The recovery order was not flawed despite the Government of Malaysia and the Polis Diraja Malaysia not being made parties to the proceedings in the High Court before the grant of the said order (see paras 29–30).

[Bahasa Malaysia summary

Perayu dan responden telah berkahwin pada tahun 2003 di bawah Akta Pembaharuan Undang-Undang (Perkahwinan dan Perceraian) 1976 dan mempunyai dua orang anak, Shamila dan Mithran. Pada tahun 2012, perayu telah memeluk agama Islam dan dia telah mendaftarkan penukarannya dan dua orang anak tersebut. Berikutan penukarannya, perayu memohon pembubaran perkahwinan di Mahkamah Tinggi Syariah. Pada September 2013, Mahkamah Syariah telah memberikan perintah hak penjagaan kepada perayu dengan hak lawatan dan akses kepada responden. Pada Disember 2013, responden telah memfailkan petisyen perceraian dan memohon hak penjagaan kedua-dua kanak-kanak itu di Mahkamah Tinggi. Mahkamah Tinggi memberikan perintah untuk pembubaran perkahwinan itu dan memberikan hak penjagaan kedua-dua kanak-kanak itu kepada responden. Selepas hakim Mahkamah Tinggi menyampaikan keputusan, anak-anak itu dengan segera diserahkan kepada responden di premis mahkamah. Responden telah membawa anak-anak itu pulang. Dua hari kemudian, perayu telah mengambil anak yang kecil, Mithran daripada responden. Responden telah memfailkan permohonan di Mahkamah Tinggi untuk perintah pengembalian di bawah s 53 Akta Kanak-Kanak 2001 ('Akta tersebut'). Perintah pengembalian itu telah diberikan oleh Mahkamah Tinggi. Perayu telah memfailkan rayuan berasingan kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi memberikan hak penjagaan dan perintah pengembalian itu. Rayuan ini adalah berkenaan perintah pengembalian. Peguam Negara dan Ketua Polis Negara ('KPN') telah dimasukkan sebagai pihak-pihak menurut permohonan untuk mencelah. Perayu telah berhujah bahawa Mahkamah Tinggi tiada bidang kuasa untuk mendengar permohonan di bawah s 53 Akta tersebut; Mahkamah Tinggi tiada kuasa untuk tidak mengambil kira atau mengetepikan secara tidak langsung perintah Mahkamah Syariah untuk hak penjagaan, yang bertentangan perkara 121(1A) Perlembagaan Persekutuan; berdasarkan keterangan, responden telah gagal memenuhi nilai ambang yang dikehendaki di bawah s 53 Akta tersebut. Pencelah-pencelah menimbulkan isu-isu sama ada perintah pengembalian telah dikeluarkan sewajarnya oleh Mahkamah Tinggi berdasarkan kewujudan perintah hak penjagaan yang telah diberikan oleh Mahkamah Syariah; dan bidang kuasa Mahkamah Tinggi dan Mahkamah

Syariah berkaitan perintah hak penjagaan dan sama ada Mahkamah Tinggi mengatasi Mahkamah Syariah. A

Diputuskan, menolak rayuan dan mengekalkan keputusan Mahkamah Tinggi: B

(1) Tiada ketaksaan dalam definisi perkataan 'Court' di bawah Akta tersebut. Ia adalah 'Court For Children' sebagaimana termaktub di bawah s 11 atau ia boleh merupakan 'any other Court'. Mana-mana mahkamah lain bukan mahkamah untuk kanak-kanak. Untuk mentafsirkan perkataan 'any other Court' untuk memberi maksud 'Court For Children' akan C menyebabkan perkataan-perkataan 'any other Court, as the case may require', menjadi lewah. Juga dengan memberikan perkataan-perkataan 'any other Court, as the case require' maksud biasa, ia termasuklah Mahkamah Tinggi yang mana pihak-pihak telah pun di hadapan Mahkamah Tinggi untuk pembubaran perkahwinan dan untuk hak D penjagaan. Dengan alasan berikutan perintah hak penjagaan yang dibuat oleh Mahkamah Tinggi, Mahkamah Tinggi boleh dan patut mengendalikan permohonan untuk pengembalian anak di bawah s 53 Akta tersebut. Selanjutnya, di bawah s 24(d) Akta Mahkamah Kehakiman 1964, Mahkamah Tinggi dengan jelas mempunyai bidang E kuasa 'over the person and property of infants'. Tiada merit dalam isu pertama yang ditimbulkan oleh perayu (lihat perenggan 14).

(2) Perintah hak penjagaan yang diberikan oleh Mahkamah Tinggi wujud selepas perayu menukar kepada agama Islam dan selepas dia memperoleh F perintah hak penjagaan daripada Mahkamah Syariah. Dan ia tidak dinafikan bahawa Mahkamah Syariah mempunyai bidang kuasa ke atas perayu tentang bagaimana dia kini menganut agama Islam. Sebagaimana diperuntukkan oleh perkara 121(1A) Perlembagaan Persekutuan, Mahkamah Syariah dan Mahkamah Tinggi Sivil adalah G mahkamah-mahkamah yang mempunyai bidang kuasa yang selaras. Satu mahkamah sama sekali tidak mempunyai kedudukan untuk membatalkan atau mengetepikan keputusan mahkamah lain (lihat perenggan 17).

(3) Tidak kira jika perayu telah menukar agama dan bahawa dia mempunyai H perintah hak penjagaan daripada Mahkamah Syariah. Keputusan Mahkamah Persekutuan adalah jelas. Selagi dia telah memasuki kontrak perkahwinan sivil dan anak-anak tersebut dilahirkan daripada perkahwinan sivil itu, Mahkamah Syariah tidak mempunyai bidang I kuasa. Isu yang ditimbulkan oleh peguam kanan persekutuan yang bijaksana tentang sama ada Mahkamah Tinggi mengatasi Mahkamah Syariah tidak timbul. Mahkamah Tinggi yang mempunyai bidang kuasa telah memutuskan menyebelahi responden. Oleh itu responden yang mempunyai hak penjagaan sah anak itu (lihat perenggan 18).

(4) Walaupun s 52(2) Akta tersebut memperuntukan bahawa seseorang mempunyai hak penjagaan sah ke atas seorang anak jika dia telah diberikan hak penjagaan anak itu oleh Mahkamah Syariah, berdasarkan keputusan dalam kes *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147, peruntukan tersebut hendaklah dibaca dalam konteks yang betul, iaitu bahawa perintah Mahkamah Syariah perlu berkaitan dengan perintah hak penjagaan yang diberikan ke atas kanak-kanak dalam perkahwinan Islam. Perayu boleh membela dirinya dengan permohonan untuk mengubah perintah hak penjagaan jika terdapat perubahan dalam keadaan itu, yang mana perayu telah gagal untuk berbuat demikian (lihat perengan 23 & 28).

(5) Tiada kesilapan yang boleh dirayu di pihak hakim untuk mewajarkan campur tangan rayuan. Hakim dengan wajar telah memahami undang-undang dan fakta. Tiada sebab untuk mengganggu perintah pengembalian yang dibuat oleh hakim itu yang mana berikutan perintah hak penjagaan itu, telah dikekalkan. Perintah pengembalian itu tidak cacat meskipun Kerajaan Malaysia dan Polis Diraja Malaysia tidak dijadikan pihak-pihak kepada prosiding di Mahkamah Tinggi sebelum perintah tersebut diberikan (lihat perenggan 29–30).]

Cases referred to

Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals [2008] 2 MLJ 147; [2008] 2 CLJ 1, FC (folld)

Legislation referred to

Child Act 2001 ss 2, 11, 17(2), 52, 52(2), (3), 52(3)(b), 53, 53(2)
Courts of Judicature Act 1964 s 24(d)
Federal Constitution art 121(1A)
Law Reform (Marriage and Divorce) Act 1976

Appeal from: Divorce Petition No 33–57–12 of 2013 (High Court, Seremban)

Haniff Khatri (Muhammad Faiz bin Fadzil, Kamarul Arifin Wafa and Mohd Irzan Iswatt bin Mohd Noor with him) (Kamarul Arifin Wafa & Assoc) for the appellant.
Aston Paiva (Joanne Leong with him) (Yh Teh & Quek) for the respondent.
Suzana bt Atan (Shamsul Bolhassan with her) (Senior Federal Counsel, Attorney General's Chambers) for the intervener.
Andrew Khoo Chin Hock (watching brief for the Bar Council).
Goh Siu Lin (watching brief for Woman's Aid Organisation (WAO), Association of Women Lawyers (AWL), All Women's Actio Society, Perak Women For Women Society, Persatuan Kesedaran Komuniti Selangor (Empower), Persatuan Sahabat Wanita Selangor, Sabah Women's Action-Resource Group (SAWO),

Sisters In Islam (SIS), Tenaganita, Women's Centre For Change (WCC Penang) and Philip Koh Tong Ngee (MCCBCHST)).

Tengku Maimun JCA (delivering judgment of the court):

[1] This is an appeal by the appellant husband against the order of the High Court at Seremban in granting a recovery order to the respondent wife.

BACKGROUND FACTS

[2] The appellant and the respondent were married in 2003 under the Law Reform (Marriage and Divorce) Act 1976 and they have two children, Shamila d/o Viran and Mithran s/o Viran.

[3] In 2012, the appellant converted to Islam and he registered his conversion and of the two children at the Pusat Dakwah Islamiah, Seremban. Pursuant to his conversion, the appellant applied for the dissolution of the marriage at the Seremban Shariah High Court ('the Shariah Court'). In September 2013, the Shariah Court granted custody order to the appellant with visitation right and access to the respondent.

[4] In December 2013, the respondent filed a petition for divorce and sought for the custody of the two children at the Seremban High Court. The High Court granted the order for the dissolution of the marriage and granted custody of the two children to the respondent.

[5] After the learned High Court judge delivered the decision on 7 April 2014, the children were immediately surrendered to the respondent at the court premises. The respondent took the children home. Two days later, the appellant took away the youngest child, Mithran from the respondent.

[6] Consequent to the custody order, the respondent filed an application in the High Court for a recovery order under s 53 of the Child Act 2001 ('the Act'). The recovery order was granted by the High Court.

[7] The appellant filed separate appeals to the Court of Appeal against the decision of the High Court granting the custody order and the recovery order.

[8] In the appeal against the custody order, which we had unanimously dismissed, the challenge by the appellant was primarily on the issue of jurisdiction, ie whether the High Court or the Shariah Court has the jurisdiction to grant the custody order. The basis of our judgment was the Federal Court decision in the case of *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147; [2008] 2 CLJ 1 (which we

A are bound to follow) where the Federal Court had ruled that '... by contracting the civil marriage, the husband and wife were bound by the Law Reform Act in respect to divorce and custody of the children of the marriage, and thus, the civil court continues to have jurisdiction over him, notwithstanding his conversion to Islam.'

B

[9] As mentioned above, this appeal concerns the recovery order, where the honourable Attorney General and the Inspector General of Police ('the IGP') had been added in as parties pursuant to an application to intervene.

C THE APPEAL

[10] In challenging the recovery order, learned counsel for the appellant argued that:

D (a) the High Court has no jurisdiction to hear the application under s 53 of the Act;

(b) the High Court has no power to disregard or indirectly set aside the Shariah Court order for custody, in contravention of art 121(1A) of the
E Federal Constitution; and

(c) on the available affidavit evidence, the respondent has failed to meet the threshold required under s 53 of the Act.

F **[11]** For the interveners, the learned senior federal counsel ('the SFC') submitted on the following issues:

(a) whether the recovery order was rightly issued by the High Court in the light of the existence of the custody order given by the Shariah Court; and
G

(b) the jurisdiction of the High Court and the Shariah Court in respect of the custody orders and whether the High Court prevails over the Shariah Court.

H WHETHER THE HIGH COURT HAD JURISDICTION TO HEAR THE APPLICATION FOR RECOVERY ORDER UNDER S 53 OF THE ACT

[12] Section 53 provides:

I (1) If it appears to the Court that there is reason to believe that a child had been taken or sent away without the consent of the person who has lawful custody of the child as described in section 52, the Court may make a recovery order.

(2) A recovery order may be made by the Court on application being made by or on behalf of any person who has the lawful custody of the child.

[13] It was the argument of learned counsel for the appellant that the High Court has no jurisdiction to grant the recovery order. The basis for the argument is ss 2 and 11 of the Act. Section 2 of the Act defines 'Court' as 'Court For Children or any other Court, as the case may require; and 'Court For Children' means The Court For Children constituted under s 11'. Under s 11, the Court For Children consists of a magistrate and two advisers. The word 'any other Court' in s 2, submitted learned counsel, is to overcome the logistical problem, where there is no separate structure or building to house a Court For Children, but the existing structure or building may be utilised as Court For Children. Any other court, submitted learned counsel, must consist a magistrate and two advisers.

[14] We are not persuaded by the argument of learned counsel. There is no ambiguity in the definition of the word 'Court'. It is either the 'Court For Children' as constituted under s 11 or it can be 'any other Court'. Any other court is not a Court For Children. To construe the words 'any other Court' as to mean a 'Court For Children' would render the words 'any other Court, as the case may require', redundant. And giving the words 'any other Court, as the case require' the plain meaning, it includes the High Court where the parties were already before the High Court for the dissolution of marriage and for custody. It stands to reason that consequent to the custody order made by the High Court, the High Court can and should deal with the application for recovery of the child under s 53 of the Act. Further, under s 24(d) of the Courts of Judicature Act 1964, the High Court is clearly seised with the jurisdiction 'over the person and property of infants'. We therefore find no merits in the first issue raised by the appellant.

WHETHER THE HIGH COURT HAS THE POWER TO DISREGARD OR INDIRECTLY SET ASIDE THE SHARIAH COURT ORDER FOR CUSTODY

[15] Learned counsel submitted that in hearing an application for a recovery order, the court must first determine whether the applicant has a lawful custody of the child and secondly whether the person alleged to have taken away the child has any available defences to the said application.

[16] Learned counsel further submitted that whilst the respondent relied on the custody order granted by the High Court, the appellant is claiming lawful custody of the child pursuant to the Shariah Court order. We will take this point together with the issue raised by the learned SFC, namely whether the recovery order was rightly issued by the High Court in the light of the existence of the custody order given by the Shariah Court.

[17] We accept that the custody order granted by the High Court came after the appellant had converted to Islam and after he had obtained custody order from the Shariah Court. And it cannot be denied that the Shariah Court has jurisdiction over the appellant as he now professes the religion of Islam. As provided by art 121(1A) of the Federal Constitution, the Shariah Court and the Civil High Court are courts of coordinate jurisdiction. One court is in no position to over-rule or set aside the decision of another court.

[18] In our judgment though, the issue is not whether the High Court can disregard or set aside the Shariah Court order. The issue before us concerns which court has jurisdiction over parties who had contracted civil marriage and over children begotten out of civil marriage. And this issue has been settled by the Federal Court in *Subashini* where the Federal Court held that the High Court has the exclusive jurisdiction in matters relating to divorce and custody of children of a civil marriage. It does not matter that the appellant has converted and that he has a custody order from the Shariah Court. The decision of the Federal Court is clear. So long as he contracted a civil marriage and the children are born out of civil marriage, the Shariah Court has no jurisdiction. The issue raised by the learned SFC as to whether the High Court prevails over the Shariah Court does not arise. The High Court which has the jurisdiction had decided in favour of the respondent. It is the respondent who has the lawful custody of the child. The second issue raised by the appellant cannot therefore be sustained.

WHETHER THE RESPONDENT HAS MET THE THRESHOLD UNDER S 53 OF THE ACT

[19] Learned counsel submitted that the respondent has failed to meet the threshold required under s 53 of the Act. In support of the submission, learned counsel relied on s 52 of the Act which provides:

> (2) A person has lawful custody of a child under this section if he has been conferred custody of the child by virtue of any written law or by an order of a Court, including a Syariah Court.
>
> (3) It shall be a defence under this section if a parent or guardian takes or sends a child away without the consent of the person having the lawful custody of the child if —
>
> (a) the parent or guardian —
>
> (i) does it in the belief that the other person consented, or would have consented, if he was aware of all the relevant circumstances; or
>
> (ii) has taken all reasonable steps to communicate with the other person but has been unable to communicate with him;

(b) the parent or guardian has reasonable grounds to believe that the child is being abused, neglected, abandoned, or exposed in manner likely to cause the child physically or emotional injury; or

(c) the other person has unreasonably refused to consent although he was aware of all the relevant circumstances.

[20] On this issue, the submission of learned counsel is two fold. First, it was contended that the appellant is also a person having lawful custody pursuant to s 52(2) which recognises custody order of the Shariah Court and second, the appellant was justified in taking away the child from the respondent to save the child's faith and this provides the appellant a defence under para (b) of s 52(3) of the Act.

[21] In granting the recovery order, the learned High Court judge had considered the following questions:

(a) Whether the Petitioner/Wife has lawful custody of the child thus entitling her to make the present application pursuant to section 53(2) of the Child Act 2001.

(b) Whether the Respondent/Husband has a valid defence when he took the child away from the Petitioner/Wife, reason being that he was trying to 'save the faith' of the child.

[22] On the first question, by reason that the Shariah Court has no jurisdiction to grant custody of the children of a civil marriage, the learned High Court judge found that the respondent is the person having custody of the child pursuant to ss 52(2) and 53(2) of the Act.

[23] We find that the learned High Court judge has not erred in so deciding. Although s 52(2) of the Act provides that a person has lawful custody of a child if he has been conferred custody of the child by a Shariah Court, in the light of the decision in *Subashini*, that provision must be read in the proper context, namely that the Shariah Court order must necessarily relate to the custody order granted over children of a Muslim marriage.

[24] On the second question, the learned judge made the following findings:

> The religion (sic) upbringing of the child was never a term imposed by this court, when granting the order for the decree nisi and the custodial rights to the petitioner/wife. It was never a term in the order that the child is to be sent to religious classes. The matters that were stated in the affidavit of the respondent 'Afidavit Penjelasan Tingkah Laku pengambilan Anak Pada 9.4.2014' dated 11 April 2014, are things or matters that happened outside the court which was not

within the court orders dated 7 April 2014. Hence there is no change shown in circumstances in the facts of the case from the time when the order dated 7 April 2014 was granted until now.

The respondent/husband stated that he will only return the child if the decree nisi is varied. The court does not grant orders when it is put at ransom nor does it act upon threats by anyone. If the decree nisi needs to be varied due to change in circumstances, a proper formal application must be filed with affidavit in support. As far as this case is concerned, there was no proper application with affidavit in support filed by the respondent/husband for the order of the decree nisi to be varied.

[25] The learned judge proceeded to examine the defence under s 52(3)(b) of the Act and Her Ladyship concluded that none of the defences provided therein were applicable to the current case. We agree with the learned judge. Again, applying the decision in *Subashini*, the existence of the Shariah Court order does not provide any defence to the appellant.

[26] As for the appellant's averment that he was trying to save the faith of the child, the learned judge states:

Even if the respondent/husband is to apply para (b), in stating that the child was not being sent to religious classes, that, by itself does not amount to proof that 'the child is being abused, neglected, abandoned, or exposed in manner likely to cause the child physically or emotional injury.'

[27] We agree with the learned judge. Section 17(2) of the Act explains the physical and emotional injury to a child as follows:

(a) physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, haemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

(b) emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development.

[28] In any event, as observed by the learned High Court judge, the appellant could avail himself of an application to vary the custody order should there be a change in the circumstance, which the appellant had failed to do.

[29] In the final analysis, we find no appealable error on the part of the learned judge as to warrant appellate intervention. The learned judge had correctly appreciated the law and the facts. There is no reason for us to disturb

the recovery order made by the learned judge which was consequent upon the custody order, which we had earlier on, upheld.

[30] For completeness, we find that the recovery order is not flawed despite the Government of Malaysia and the Polis Diraja Malaysia not being made parties to the proceedings in the High Court before the grant of the said order.

[31] We unanimously dismiss the appeal and we affirm the decision of the High Court.

Appeal dismissed and the High Court decision affirmed.

Reported by Afiq Mohamad Noor