

## 'Better remedies for non-Muslim wife in syariah court'

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PUTRAJAYA: A non-Muslim wife will get equal, if not better, remedies in the syariah court than the civil court in matrimonial and custodial disputes, a lawyer said. Mohamed Haniff Khatri Abdulla said a wife could receive up to 25 per cent of matrimonial assets without the need for proof.

In the event of proof being available, the percentage could increase accordingly.

However, he said the couple's underage children would automatically become Muslims if one of them converted but the non-Muslim spouse could be granted custodial rights under special circumstances.

He said a Muslim husband had the responsibility of providing for the child until the age of majority.

"It is submitted that the concern as to the non-availability of remedies for non-Muslims in the syariah court is erroneous and must be rejected," he told the Federal Court yesterday.

Haniff was responding to arguments raised by Malik Intiaz Sarawar, counsel for R. Subashini, who is appealing against the decision of the Court of Appeal that ordered her to go to the syariah court to fight for her matrimonial rights and custody of her children.

Judges Datuk Nik Hashim Nik Abdul Rahman, Datuk Abdul Aziz Mohamad and Datuk Azmel Maamor are hearing the appeal.

Subashini, 28, has been embroiled in a legal tussle with businessman T. Saravanan, whose Muslim name is

Muhammad Shafi Abdullah.

The couple, married in 2001 after registering their union under civil law, has two sons Dharvin Joshua, 4, and Sharvind, 1.

On May 19 last year, Shafi, 31, embraced Islam and converted Dharvin.

He then filed an application at the Kuala Lumpur syariah court to dissolve their civil marriage and obtain custody of the children.

Upon hearing Shafi's pending application at the syariah court, Subashini filed a petition at the Kuala Lumpur High Court on Aug 7 to dissolve their marriage and to obtain custody of the children and maintenance.

In September last year, the High Court dismissed Subashini's application to stop Shafi from obtaining relief at the syariah court.

The Court of Appeal on March 13, in a majority judgment, upheld the High Court's decision that the injunction sought by Subashini was unconstitutional as it would have prevented the syariah court from carrying out its duties.

Two weeks later, the same panel, in a majority ruling, granted an injunction to prevent Shafi from continuing with any proceedings in the syariah court.

On May 16, Subashini was granted leave by the Federal Court to appeal against the decision of the Court of Appeal.

Haniff said that Article 121 (1A) of the Federal Constitution placed the jurisdiction of the subject matter of this appeal in the syariah court.

He said the jurisdiction of civil courts on Islamic law were excluded when the amendment to Article 121 (1A) came into effect on June 10, 1988.

Haniff said section 51 of the Law Reform (Marriage and Divorce) Act 1976 was unconstitutional because Shafi could not go to the High Court to file a petition for divorce.

Hearing continues on Monday.

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