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The Subashini case: 'It's an abuse of the process'

PUTRAJAYA: Muslim convert T. Saravanan's attempt to obtain a custody order of his elder son from the syariah court amounts to an abuse of the court process, the Federal Court ruled in a dissenting judgment.

Justice Abdul Aziz Mohamad, who handed down the minority judgment yesterday, said the dissolution of the civil marriage, between Saravanan and his Hindu wife R. Subashini, including issues of custody and maintenance were matters not within the syariah court's jurisdiction.

"The (civil) High Court has exclusive jurisdiction," he said.

Justice Abdul Aziz allowed Subashini's appeal for an injunction to stop the conversion of her second son.

He, however, agreed that a converted party could change the religion of the child unilaterally but the other party's objections must be heard.

He added that the actual date of the conversion of Saravanan should be established by the High Court to determine when the three-month period begins. (A person can file for a divorce in the civil court at least three months after the spouse's conversion to Islam.)

Bar Council chairman S. Ambiga, when contacted for comment on the judgment, said there were some positive points that were upheld by the Federal Court.

These included upholding the judicial precedent of the *Tan Sung Mooi vs Too Miew Kim* case in the Supreme Court in 1994, which ruled that conversion to Islam did not allow a person to avoid his legal obligations under his non-Muslim marriage.

She added however, that the judgment also brought with it some troubling aspects.

"For example, it is worrying that only one parent could unilaterally determine the child's religion.

"Other than that, the case was ruled on a legal technicality.

"Overall, I believe the judgment may not have actually resolved the dilemma of people with similar problems," she said.

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