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Appeals court grants woman leave to commence judicial review over bid to correct religion listed in MyKad

KUCHING: A woman who had failed to get the National Registration Department (JPN) to change the religion listed on her identity card from Islam to Christian after the High Court rejected her judicial review application in 2024 will get another chance to have the matter heard under a different judge.

A three-member Court of Appeal panel comprising Justices Dato Dr Alwi Abdul Wahab, Datuk Ismail Brahim and Muniandy Kannyapa on Thursday granted Khartini Mohammd Arbi leave to commence the judicial review, and ordered the matter be remitted back to the High Court before a different judge to have the merits of the case argued and decided.

The applicant had named the JPN, its director-general, and the Malaysian government as respondents.

On Nov 8, 2024, High Court judge Faridz Gohim Abdullah dismissed Khartini's leave for a judicial review application, citing that the court did not have jurisdiction to hear the case as it involved renunciation.

She subsequently filed an appeal against the High Court decision to the Court of Appeal.

According to the facts of the case, Khartini was born on Jan 1, 1994, at Lau King Howe Hospital in Sibu to a Melanau father and Iban mother.

Her father, now deceased, and her mother were Muslims, and this was stated as such in her birth certificate.

Khartini, however, was given to and raised by her maternal grandmother as an Anglican Christian as intended by her mother and agreed to by the father.

She was baptised in church and never professed Islam or practised the religion since birth.

On Jan 8, 2024, she attempted to correct the information on her MyKad but was rejected on the basis that the application had to be accompanied by a court order.

The High Court had decided that it had no jurisdiction because the case involved the matter of renunciation and should have been heard before the Syariah Court.

In Thursday's ruling, the appellate court determined that the High Court at the leave stage was only supposed to determine whether Khartini had sufficient grounds to proceed with a judicial review.

As the threshold for the judicial review was low, the panel said the High Court should have granted leave to Khartini, allowing the substantive arguments to be heard and decided later.

The arguments revolve around the application of the definition of 'Muslim' under Section 2(b) of the Majlis Islam Sarawak Ordinance 2001.

The applicant had argued that the jurisdiction of the Syariah Court ought to only apply to persons 'professing the religion of Islam' as provided by the Constitution, which is a separate and distinct definition of 'Muslim' under the Majlis Islam Sarawak Ordinance 2001.

In arguing for leave, counsel Joshua Baru impressed on the Court of Appeal panel that there was a constitutional law angle, namely the operation of Article 12(4) of the Federal Constitution.

Joshua also argued that Khartini's parents had made the explicit decision for her to be raised as a Christian from birth.

"To define that she is a 'person professing the religion of Islam' might be seen as a derogation of parental rights under Article 12(4) of the Federal Constitution, and this ought to be clarified at the merits stage of the judicial review application," he said.