

**PRESS SUMMARY  
IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO: 01(i)-34-10/2019(W)**

**Majority Decision**

**[1]** The issue before us is fairly straightforward. It is whether an illegitimate child born outside Malaysia, to a Malaysian biological father and a Filipino mother is entitled to become a citizen by operation of law pursuant to Article 14 of the Federal Constitution (FC).

**[2]** The parents legally registered their marriage in Malaysia pursuant to the Law Reform (Marriage and Divorce) Act 1976, five months after his birth. The Child was correctly presumed to be a citizen of the Philippines by the Court of Appeal on the basis that he travelled on a passport issued by the Government of the Philippines.

**[3]** All decided and reported cases on this issue are decisions of the High Court and the Court of Appeal. These decisions are in chorus (except for one decision of the COA in **Madhuvita**) in deciding that legitimisation of a Child after his birth precludes him from being a citizen by operation of law under Article 14 of the FC. This is because the provisions of the FC are clear that citizenship by operation of law must be determined at his

birth, not after that. Section 17 clearly states that for an illegitimate Child, he is to follow the citizenship of his mother which was presumed he had obtained because he was travelling on the passport issued by the Government of the Philippines and in this case that of the Philippines. It is not the function of the Court to change that clear terms of the FC because the power to amend the FC lies in the Parliament, pursuant to Art 159 of the FC and in adherence to the doctrine of separation of powers.

**[4]** Under the FC this Child may be qualified to be considered for a citizenship by registration under Article 15(2), which he may have to apply to the Government first.

**[5]** Before us the learned counsel, Dr. Cyrus Das, advocated a proposition that we should ignore the provision in the Constitution which states that the citizenship of an illegitimate Child must follow his mother as found in Section 17. With respect, I have serious difficulties doing so because Article 14 is clearly stated to be read subject to amongst others, section 17. It is wrong for this Court to entertain that fanciful suggestion since the provisions of the FC is clear. It is the duty of the Court to uphold and give effect to the clear provisions of the Constitution however much it may dislike the result. Hence to bridge authorised discrimination or to

avoid the FC to be dead and remained locked and fossilised are not the principles of interpretation that this Court must entertain.

[6] Another aspect of the counsel argument brought to the fore is the discriminatory aspect of this issue. Given that the Article 14 discriminates between legitimate and illegitimate Child as well as it is also gender biased against the mother. I, for one, am not in favour of such discrimination but it is beyond the jurisdiction of this Court to bridge the discrimination, which the FC allows and in consonant with the clear text of Article 8. Article 8 permits constitutional discrimination because Article 8 says **unless it is authorised by the FC** then no discrimination is allowed. The function of the Court is always to uphold and interpret the clear wordings of the FC or the law no matter how much it dislikes or how unpopular the result may be. Courts, unlike the politicians, do not have the business of seeking popularity by making popular decision.

[7] Learned counsel despite canvassing and agitating discrimination, failed to address that his construction of the FC is not only erroneous but ensues another form of the discrimination. That applying Legitimacy Act will lead to discrimination which the FC does not authorised but in fact prohibited, which is this. Applying Legitimacy Act discriminates between a

Muslim and a non-Muslim because Legitimacy Act or Adoption Act both do not apply to Muslims.

**[8]** In conclusion, I find no merits in the arguments raised before us by the Appellants. I am in full agreement with both the High Court and the Court of Appeal that the Child does not meet the requisite criteria stipulated pursuant to Article 14(1) (b) of the FC read together with Section 1(b) of Part II of the Second Schedule and Section 17 of Part III of the Second Schedule to be declared a citizen by operation of law, properly construed. Since Section 17 of Part III of the Second Schedule defines the word “father” as referring to “mother” in a case of an illegitimate child, the Child’s citizenship cannot follow that of his father.

**[9]** I, however, agree with the learned Appellants’ view that the Court of Appeal erred in ruling that the Child is deprived of a Malaysian citizenship by virtue of Article 24. Article 24 is a citizenship-deprivation provision which could only apply to a person who is already a citizen of Malaysia. There could not be a deprivation of citizenship until citizenship has first been conferred on the Child. In the present appeal, the Child’s acquisition of a Philippines passport is not a disqualifying factor under the law for him to be given consideration for citizenship under Article 15 of the FC. This issue has no bearing on this appeal before us.

**[10]** The appeal of the appellants is dismissed and the decisions by both courts below are affirmed.

**ROHANA YUSUF**  
President of the Court of Appeal

**Dated: 28 May 2021**