

## Re Everest Moorthy

A summary of the case and related events of *Kaliammal Sinnasamy v Islamic Religious Affairs Council of the Federal Territory, Director Kuala Lumpur General Hospital & Government of Malaysia*.  
(Decided: 28<sup>th</sup> December 2005, K. L. High Court Originating Summons No. R1-24-102-2005)

By  
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(watching brief for MCCBCHS)

Moorthy Maniam is a national hero. He had been a member of the Malaysian team that had climbed Mount Everest. The plaintiff, Kaliammal, had been married to Moorthy since 25<sup>th</sup> November 1995. They had one child, now aged about 9. Moorthy became paralysed from the waist down in 1998 as a result of an accident in the Sungai Udang Military Camp. On 11<sup>th</sup> November 2005, Moorthy fell from his wheelchair, injured his head and went into a coma. He did not recover and passed away on 20<sup>th</sup> December 2005.

Kaliammal was suddenly informed on 1<sup>st</sup> December 2005, for the very first time, by one Major Shukri that Moorthy had converted to Islam and that his body would be given an Islamic burial. When Moorthy died, the Islamic Religious Affairs Council came to collect the body. However, because Kaliammal objected the Hospital director, Dr. Azmi bin Shapie, said he would not release the body until he received a court order certifying the status of Moorthy's religion.

On 21<sup>st</sup> December 2005, Kaliammal filed the above case in the Kuala Lumpur High Court asking for declaratory and injunctive relief related to her claim that Moorthy professed Hinduism as his religion and that his body should be released to her to be cremated in accordance with Hindu rites. Amongst the facts she relied on in support of her application were the following, none of which was denied by adducing evidence to the contrary:-

- i) Moorthy had never told Kaliammal or any of his family members, relatives or close friends that he had converted to Islam.
- ii) Throughout his life, Moorthy professed himself a Hindu and practised a Hindu way of life.
- iii) There had been no announcement at the army camp where he stayed that Moorthy had converted, and his military identity card had never been changed to show his new Muslim name or his change of religion.
- iv) Moorthy frequented temples and applied the Hindu holy ash ('Thiruniru') on his forehead.
- v) In January 2005, Moorthy took part in the Thaipusam festival in Batu Caves by carrying a 'paal kudam' (or milk pot) and shaving his hair. He was apparently carried up the 256 steps of the Sri Subramaniam Temple at Batu Caves in his wheelchair by RELA volunteers.
- vi) Just 11 days before he fell into a coma, Moorthy and the rest of his family had appeared on a TV3 Buletin Utama programme on 31<sup>st</sup> October 2005 which broadcast an interview with Moorthy done that same day on how he was celebrating the Hindu festival of Deepavali.
- vii) From the affidavits, it is seen that Moorthy ate pork, drank alcohol, had not circumcised himself and had to the knowledge of his wife, sister and close friends never participated in any Islamic religious course.

Kaliammal also said that if at all Moorthy had converted, it was not of his own free will. In support of this it was stated on affidavit that since 1998 when he became paralysed, Moorthy was always

ill and had lost his powers of concentration. An example was given of how at one point in 2004, Moorthy was unable to find his way home and had to telephone to ask someone to fetch him to take him home. He was said to be suffering from emotional disturbances and frequently forgot what he was doing.

Since it was an urgent application during the Court vacation, a hearing date was fixed on Thursday, 29<sup>th</sup> December 2005.

However, the Kuala Lumpur Syariah High Court in Civil Case (*Kes Mal*) No. 14100-099-0090-2005 on 22<sup>nd</sup> December 2005 made an order that Moorthy had embraced Islam and that his body must be buried in accordance with Islamic rites. The Syariah Court directed the parties having custody of the body to deliver it to the 1<sup>st</sup> defendant and the police to assist to ensure this was done. This order was made on the application of the Islamic Religious Affairs Council without reference to the wife of the deceased.

Kaliammal was not named as a party to the suit in the Syariah Court (as a Hindu, she would have not been able to be a party in any event) and no notice was given to her of the proceedings in the Syariah Court. The application and supporting documents, if any, to prove that Moorthy actually converted to Islam has to date not been given to Kaliammal or her lawyers.

Bernama (the Malaysian National News Agency) reports on December 22, 2005, “Syariah Court Rules Everest Climber Moorthy a Muslim”, that the application in the Syariah Court the application was filed at 2 p.m. and heard an hour later at 3 p.m.. They report further that Moorthy “embraced Islam on October 11, 2004 based on information on embracing Islam from the Malaysian armed forces dated March 8, 2005.” This registration was apparently done in May 2005. This cannot be confirmed as these documents have not been sighted.

This Syariah Court order was served on the Hospital. However, the Hospital Director says he did not release the body on the advice of the legal adviser in the Ministry of Health because there was a dispute and the situation in the Hospital was tense.

The hearing of the case in the High Court was brought forward and heard on 27<sup>th</sup> December 2005 from 11.30 a.m. to 2.30 p.m. based on affidavit evidence before Yang Arif Justice Dato’ Raus Sharif.

Whilst Kaliammal’s counsel argued that the defendants ought to show evidence to prove Moorthy had converted, counsel for the Islamic Religious Affairs Council and the Government argued that this was not necessary as the High Court could not question the decision of the Syariah Court. Although the plaintiff had no remedy in the Syariah Court, senior federal counsel for the government submitted that this was the position at law and the plaintiff had no legal remedy through the courts.

Decision was reserved to 28<sup>th</sup> December 2005, when at about 10.00 a.m. the learned Judge proceeded to read out his judgment. In summary, the learned Judge dismissed Kaliammal’s suit stating that the civil High Court had no jurisdiction to review, nullify or ignore the order of the Syariah Court. After a brief hearing, the Court then dismissed an application for a stay of execution or an Erinford injunction preventing the Hospital releasing the body until the disposal of an appeal to the Court of Appeal. Senior Federal Counsel objected to a stay. Court was adjourned at about 11.00 a.m.

It is learnt that by about 3.00 p.m. the body had already been buried by the Islamic authorities.

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*Kaliammal was represented by M. Manoharan, A. Sivanesan, R. Kenghadharan, Mohan Ghandi, P.W. Moorthy and M. Kulasegaran. MAIWP was represented by Fakhrol Azman Abu Bakar and Zainul Rijal Abu Bakar. The Director of Hospital Besar Kuala Lumpur and the Government of Malaysia were represented by senior federal counsel Mohamad Naser Disa, Suzana Atan, Dr Hassan Abdul Rahman and Arik Sanusi Yeop Johari. Watching briefs were held by Haris Mohamed Ibrahim for the Malaysian Bar Council, A.Kanesalingam and K.Shanmuga for the Malaysian Consultative Council of Buddhism, Christianity, Hinduism & Sikhism, Edmund Bon for HAKAM and Haji Muhamad Burok for Malaysian Syarie Lawyers Association.*