

[3] The private caveats were lodged under Presentation Number 42/2020 dated 7-1-2020 (hereinafter referred to as the “private caveats”) over the lands held under issued documents of title PN 10052, PN 10051, HS(D) 702 Mukim Relai and HS (D) 1644, HS (D) 3928, HS (D) 3927 and HS (D) 3926 Mukim Ulu Nenggiri, Jajahan Gua Musang, Negeri Kelantan (hereinafter referred to as “the said Lands”).

40 ***The Transfer Application***

[4] On 11-3-2020, the Defendant took out an application vide Enclosure 5 pursuant to Order 57 of the Rules of Court 2012 and or section 23 of the Courts of Judicature Act 1964 and or the inherent jurisdiction of the Honourable Court for an Order that the action be transferred to the High Court in Malaya at Kota Bahru (hereinafter referred to as “the Transfer Application”). The Plaintiff opposed the Transfer Application.

[5] In dealing with the Transfer Application, references were made to the Originating Summons, the three affidavits affirmed and filed on behalf of the Plaintiff and three affidavits affirmed and filed by the Defendant with exhibits in these affidavits running into more than one thousand pages. The Affidavit in Reply affirmed by the Defendant in Enclosure 11 alone ran into 1189 pages.

Both the Plaintiff and the Defendant each filed two sets of written submissions
55 citing a total of 26 authorities.

Jurisdiction of the High Court in Malaya at Ipoh

[6] Right at the outset, it was admitted by the Defendant and rightly so, that
60 this Court has the jurisdiction over this action bearing in mind the provisions of
Article 121 (1) of the Federal Constitution on the creation of only two High
Courts; one, the High Court in Malaya and the other, the High Court in Sabah
and Sarawak. As was said by Lim Beng Choon J in **Sova Sdn Bhd v Kasih
Sayang Realty Sdn Bhd** [1988] 2 MLJ 268 at 270 para B:-

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*“It is implicit that a High Court located at Penang or at Alor Setar
is but a branch of the High Court in Malaya and each branch of
the High Court in Malaya located in any state has concurrent
jurisdiction to entertain any civil proceedings regardless of where
70 the cause of action arose in another state.”*

Grounds for the Transfer Application

[7] **Order 57 of the Rules of Court 2012** (hereinafter referred to as “O 57”)
75 relied upon by Defendant in support of the Transfer Application provides that;-

1 (1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate **is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court of co-ordinate jurisdiction**, he may on application by any party, order the proceedings to be transferred to the other Court.

1 (4) further goes on to provide that:

Before making any order to transfer any proceedings from –

(a) the High Court to another High Court of co-ordinate jurisdiction;

(b)

(c)

(d)

the High Court Judge or the Judge of the Sessions Court or Magistrate, as the case may be, shall take into consideration whether the High Court or the Subordinate Court which shall hear the case is located at or nearest the place where –

(A) the cause of action arose;

(B) the defendant, or one of several defendants, resides or has his place of business;

(C) the facts on which the proceedings are based exist or are alleged to have occurred;

(D) the land the ownership of which is disputed is situated; or

(E) for other reasons it is desirable in the interests of

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justice that the proceedings should be transferred.

(emphasis was placed by the Defendant on the parts in bold and underlined).

[8] Both the Plaintiff and the Defendant are on common ground that no one
105 single factor will prevail over the other. For this principle, the Defendant relies
upon the authority of ***Gasing Potensi Construction Sdn Bhd v Hyper Act Marketing Sdn Bhd [2019] 1 LNS 407*** a decision of Mohd Radzi Harun JC
(as His Lordship then was). The Plaintiff on the other hand relied upon the
case authority of ***KW Aquatic Supplies Sdn Bhd v MERP Technologies Sdn Bhd [2019] 2 CLJ 403***,
110 a decision of Ahmad Shahrir Mohd Salleh JC and that of ***Megarina Sdn Bhd v Enersafe Sdn Bhd [2002] 5 CLJ 478***, a
decision of Nik Hashim J (as His Lordship then was) for the proposition that
where the law provides for several factors and uses the function word of “or”
to indicate an alternative, they must be construed disjunctively and therefore
115 so long as the Plaintiff can satisfy one of the factors the action can remain in
the Court in which the action was initiated.

[9] In ***KW Aquatic Supplies Sdn Bhd v MERP Technologies Sdn Bhd*** [2019] 2 CLJ 403 at 414 para 34, Ahmad Shahrir Mohd Salleh JC went further to hold that:-

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*“On the face of equally acceptable grounds for the transfer of proceedingsand for the proceedings to remain..., this court in the interest of justice, has to delve further into the facts and attempt to sieve determinant factors to assist in coming to a decision. In the case of **Low Long Yoong & Anor v Lok Kok Choon & Anor** [2014] 4 CLJ 577, [2014] 2 MLJ 725 HC, His Lordship Nantha Balan JC (then HCJ, at the time of Ahmad Shahrir Mohd Salleh JC’s judgment and now JCA at the time of writing this judgment) was of the view that the most important task is to ascertain which court had the closest nexus in the dispute. In the circumstances of this case, I would readily subscribe to this view.”*

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[10] In seeking to persuade this Court that the Transfer Application ought to be allowed, the Defendant asserts in the Transfer Application that:

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- i) the said Lands are situated in Kelantan;
- ii) as the private caveats were entered at the Land and Mines Office in Kelantan, the cause of action arose in Kelantan;

140 iii) the proceedings in this action will have a bearing on the registered owner of the said Lands namely the Perbadanan Menteri Besar of Kelantan; and

 iv) while the Defendant's residential address is listed in Ipoh, he currently resides in Kuala Terengganu where his business is based and where he spends most of his time.

145 ***Analysis of the Defendant's submissions***

[11] In analyzing the grounds relied upon by the Defendant, I am required by O 57 R 1 (4) (*supra*) to take into consideration the factors set out in sub-paragraphs (A) to (E) of this sub-Rule which I have set out in paragraph [7] above. From here on, references to sub-paragraphs (A) to (E) shall mean 150 references to sub-paragraphs (A), (B), (C), (D) or (E) of O 57 R 1 (4) as the case may be.

[12] From the grounds of the Transfer Application relied upon by the 155 Defendant and from the Affidavits filed by the Defendant, two factors contained in sub-paragraphs (A) and (C) were said to be in the Defendant's favour namely that because the private caveats had been entered in the Land and Mines Office in Kelantan the cause of action arose in Kelantan and

160 closely related to this is that the act of lodgment of these private caveats in Kelantan would be part of the existence of facts on which the proceedings are based and are alleged to have occurred in Kelantan. Needless to say, the High Court at Kota Bahru is in the state of Kelantan.

165 [13] The Defendant submitted that he currently resides in Kuala Terengganu in the state of Terengganu and by reason thereto the requirement for the factor in sub-paragraph (B) is not met. More will be said on this later.

170 [14] That the Defendant has no dispute over who owns the interest in the said Lands meant that the factor in sub-paragraph (D) was not relevant to the Transfer Application.

175 [15] The Defendant submitted that the proceedings in this action will have a bearing on the registered owner of the said Lands namely the Perbadanan Menteri Besar of Kelantan. However, the action herein is for the removal of private caveats over the said Lands. With the Perbadanan Menteri Besar being not a party to this action, the latter will not be bound by any order made:
Dr Lourdes Dava Raj A/L Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor [2020] MLJU 1144.

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[16] The Defendant went on to submit that the Transfer Application was not a delaying tactic and although he had filed another suit against the Plaintiff and two others in Ipoh High Court Originating Summons No. AA-24NCC-3-02/2020, he did so because the Ipoh High Court was the *forum conveniens* for that matter. That such a submission is made, would suggest that the Defendant was very much aware that in the event the Transfer Application were to be allowed, the proceedings in this action will be delayed with its attendant increase in costs as the matter will take some time to be transferred to the High Court at Kota Bharu and for the matter to be re-scheduled into the High Court's list at Kota Bharu. This does not augur well for the underlying need for the just, expeditious and economical disposal of the action.

[17] In considering the factors in sub-paragraph (A) and (C) on where the cause of action arose and the facts on which proceedings were based exist or were alleged to have occurred, the Defendant helpfully referred to the case of ***RHB Bank Bhd (previously known as United Malayan Banking Corp Bhd and then as Sime Bank Bhd) v Wong Kok Leong (as executor and trustee of the estate of Wong Kwong Wah, deceased) & Ors [2017] 4 MLJ 281*** where the Federal Court cited with approval the case of ***Tenaga Nasional Bhd v Kamarstone Sdn Bhd [2014] 2 MLJ 749*** which had

reviewed a number of authorities and adopted with approval the definition of cause of action as:-

(a) “a factual situation the existence of which entitled one person to
205 obtain from the court a remedy against another.....”;

(b) “the entire set of facts that gives rise to an enforceable claim, the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.....”; and

(c) “that which makes the action possible.....”

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[18] It follows that just because the private caveats were entered at the Land and Mines Office in Kelantan it does not necessarily mean that the cause of action arose in Kelantan. As settled by the Federal Court in the case of **RHB Bank Bhd (previously known as United Malayan Banking Corp Bhd and
215 then as Sime Bank Bhd) v Wong Kok Leong (as executor and trustee of the estate of Wong Kwong Wah, deceased) & Ors (supra)** the entire set of facts has to be taken into account. and the entry of the caveats is but only one of the facts to be taken into account because it cannot be denied that an entry *simpliciter* does not *ipso facto* means it is unlawful: **Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 3 CLJ 520.**
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[19] The grounds relied upon for the lodgment of the private caveats are also facts which make up the cause of action.

225 [20] A perusal of the forms and accompanying statutory declarations filed for the entry of the private caveats and exhibited in Enclosure 2 show that the grounds were settled in **Kuala Lumpur** with the Defendant declaring that his address is at No. 2, Laluan Bercham Selatan 3/3, Taman Boulevard Timur, 31400 **Ipoh**, Perak claiming that he is entering the private caveats as a
230 beneficiary shareholder of the Plaintiff with its registered address at No. 81, Tingkat 1, Jalan Market, **Ipoh**, 31400 Perak and a business address at No. 27A Jalan Perajurit Ipoh Garden East **Ipoh**, 31400 Perak. It is, therefore, arguable where the cause of action arose and where the facts on which the proceedings are based exist or alleged to have occurred but as will be seen
235 later in this Judgment, in my opinion, these factors in sub-paragraph (A) and (C) do not have a determinative effect on whether the Transfer Application ought to be allowed.

[21] Before I leave the analysis of the Defendant's submissions, it would be
240 fair to the Defendant to mention that in both his written submissions, the Defendant underscored the points that the cause of action did not arise in Ipoh but in Kelantan and he does not reside or have his place of business in

Ipoh and although he concedes that there was never any dispute that this Honourable Court has jurisdiction over the action, it is not the *forum*
245 *coveniens*. Reliance is placed by the Defendant on the authority of **Malacca Securities Sdn Bhd v Loke Yu [1999] 6 MLJ 112** a decision of His Lordship Augustine Paul J (as he then was) for the principle that:

250 *“the critical issue for determination is whether this court is the forum conveniens to hear the dispute notwithstanding the fact that it has jurisdiction to do so.”*

[22] It is appropriate to observe that in the case of **Malacca Securities Sdn Bhd**, His Lordship Augustine Paul J was then deciding on a transfer
255 application premised not upon the provisions of O 57 R 1 but upon the provisions of section 23 (1) of the Courts of Judicature Act 1964 (hereinafter referred to as “CJA”) which are as follows:

260 Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where –

- (a) the cause of action arose; or
- (b) the defendant or one of several defendants resides or has his place of business; or

265 (c) the facts on which the proceedings are based exist or alleged to have occurred; or

(d) any land the ownership of which is disputed is situated, within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

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[23] The question then arises whether the added factor in sub-paragraph (E) “for other reasons it is desirable in the interest of justice” is ultra-vires section 23 (1) CJA and need not be considered. In my opinion, it is not because it cannot be gainsaid that the High Court was set up by the Federal Constitution to do justice and underlying its duty to do so, it should always have in the forefront of its mind, the interest of justice. In **Malacca Securities Sdn Bhd (supra)** itself at pages 119 -120, Augustine Paul J said :-

280 *“The result is that a plaintiff is entitled to file an action in any branch of the High Court in Malaya regardless of whether the cause of action arose in another state.....(at page 119 second paragraph)*

In declining to exercise jurisdiction a court does so not on grounds of convenience but of the suitability or appropriateness of another

285 *tribunal in the interests of all parties and for the **ends of***
***justice**.....(at page 119 last paragraph followed through to page*
120 first paragraph) (emphasis added)

[24] Thus, what is set out in sub-paragraph (E) of O 57 R 1 (4) is only to
290 express what is undeniably implicit in the Court’s duty to do take into account
what is desirable to meet the interest or ends of justice.

***Factor of “for other reasons it is desirable in the interest of justice” in
O 57 R 1.***

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[25] The factor in sub-paragraph (E) requires the Judge to be satisfied that
the proceedings in this Court can be conveniently or fairly tried in some other
Court and one of the factors that has to be considered is whether it is
desirable in the interests of justice to have the proceedings transferred to the
300 other Court.

[26] In my opinion, the added factor of “for other reasons it is desirable in the
interest of justice” was expressly set out in O 57 R 1 (4) because the ROC
2012 has brought in a new regime in the disposal of cases whereby the
305 progress of the case was no longer left in the hands of the litigants but with
the Court in the driver’s seat: see ***Hong Leong Finance Bhd v Low Thiam***

Hoe & Another Appeal [2016] 1 MLJ 301 Federal Court at para [18] as per Zulkifli CJ Malaya (as his Lordship then was). Although, this was decided in the context of an application to amend a defence, the underlying
310 jurisprudence of the new regime for the need to secure the just, expeditious and economical disposal of the action is of general application. In the context of this Transfer Application under O 57 R 1, this underlying jurisprudence should be borne in mind.

315 [27] The Defendant had very helpfully collated in his Bundle of Authorities in Enclosure 27 several authorities on the construction and application of O 57 R 1. On these authorities in my opinion:-

320 (i) the additional factor in sub-paragraph (E) was not discussed and applied in the cases of ***Gasing Potensi Construction Sdn Bhd v Hyper Act Marketing Sdn Bhd [2019] 1 LNS 407*** and ***Low Long Yoong & Anor v Low Kok Choon & Anor [2014] 2 MLJ 725***;

325 (ii) the case of ***Raja Thangiah v Baldev Singh Bhar [2001] 7 CLJ 130*** HC was decided before the introduction of O 57 R 1; and

(iii) the Federal Court authority of ***Hap Seng Plantations (River Estates) Sdn Bhd v Excess Interpoint Sdn Bhd & Anor***

330 **[2016] 3 MLJ 553** in dealing with the power to transfer any
proceeding to any other Court held that paragraph 12 of the
Schedule to the CJA has to be read in the light of section 3 of
the CJA and O 57 R 1 and the FC went on to hold that the High
Court in Malaya does not have the jurisdiction to transfer any
proceeding in the High Court in Malaya to the High Court in
335 Sabah & Sarawak because local jurisdiction is defined to mean
the territory comprised in the states of Malaya and a transfer of
proceedings in the context of O 57 R 1 (4) ROC can only mean
the power to transfer within the territorial jurisdiction of either
the High Court in Malaya or High Court in Sabah & Sarawak.

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[28] None of the cases referred to above by the Defendant dealt with the
factor in sub-paragraph (E) of “for other reasons it is desirable in the interest
of justice” which gives the Court the discretion to take into account other
reasons in the interest of justice which the Court strives to serve. Whether it
345 would be in the interest of justice to allow the transfer would be dependent
upon the facts of each case.

[29] The Defendant cited two other cases where the transfer applications
were allowed; ***Dalam Harta Pusaka Tasir Guntat, Yusoff Che Hat v Salbiah***

350 ***Khamis & Anor [2014] 1 LNS 1254*** and ***Lim Guan Eng v FZ Sdn Bhd &***
Anor [2015] 8 MLJ 469. The first case was an administration of estate case
and the other a defamation case, both of which have to be tried with
witnesses and where in the former, the mobility of one of the witnesses in
attending Court weighed heavily in the mind of the learned Judge. As will be
355 seen later, the importance of the mobility of witnesses attending Court is now
of much less importance. However, it is to be observed that in ***Dalam Harta***
Pusaka Tasir Guntat, Yusoff Che Hat, Wong Teck Meng JC (as His
Lordship then was) at paragraph 46 of his judgment in dealing with the
transfer application made pursuant to O 57 R 1 (4) grounded his decision on
360 the “*in the interest of justice*” provision and eloquently said the Court is the
“...*protector of justice.....*”

***Application of sub-paragraph (E) – “for other reasons it is desirable in
the interest of justice”***

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[30] I now turn to consider the facts and in particular the underlying premise
of this action.

[31] The action is for the removal of the private caveats lodged by the
370 Defendant over the said Lands.

[32] It is not disputed by the parties that the Plaintiff has an interest in the said Lands in the form of a lease of the said Lands for 66 years.

[33] Both the learned counsel for the Plaintiff and the Defendant agreed
375 when asked during the hearing of the Transfer Application on 3-9-2020 that the critical issue in the main action is whether the Defendant who lodged the private caveats has any registrable interest in or a right to claim title to the said Lands.

380 [34] Without deciding on the merits of the action, my view is that this critical issue is a question of law which can be tried without the necessity of calling witnesses as the facts of lodgment of the private caveats, why and where they were lodged have been set out in the Affidavits filed in this action and are undisputed. It only remains to be decided whether as a matter of law, the
385 lodgments were lawful.

[35] In *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 3 CLJ 520*, the Court of Appeal said that:

390 ***“In considering an application for the removal of a caveat, the procedure to be adopted should be a simple and summary***

*one with the first stage being to examine the grounds expressed in the application for the caveat and once the Court is satisfied that the caveator's claim amounts **in law** to a caveatable interest, it must then go on to consider whether the claim discloses a serious question meriting a trial. After these two stages have been crossed, the Court must decide where the balance of convenience lies. “ (emphasis added)*

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400 [36] Based upon the authority of ***Luggage Distributors (M) Sdn Bhd***, the factors of where the cause of action arose and where the facts on which the proceedings are based exist or are alleged to have occurred would not be determinative of the Transfer Application by reason of the procedure that is to be adopted for the purposes of the hearing of this action. Pursuant to this
405 procedure, the action can just as conveniently and fairly be tried in this Court.

[37] More importantly, with the proceedings in this action having reached an advanced stage of being ready for hearing it would not be in the interest of justice to have the action transferred to another Court as a transfer would not
410 secure the just, expeditious and economical disposal of the action.

[38] In the prescribed forms for the lodgment of the private caveats viz., Form 19B and the statutory declarations affirmed by the Defendant accompanying the prescribed forms which were exhibited in the affidavit in support of the main action (Enclosure 2) and also referred to by the Defendant in his Transfer Application, the Defendant had affirmed that his address is at No. 2, Laluan Bercham Selatan 3/3, Taman Boulevard Timur, 31400 **Ipoh**, Perak. This amply supports the Plaintiff's submission that the factor in subparagraph (B) has been complied with and the action should remain in this branch of the High Court in Malaya.

[39] On top of that, a perusal of the affidavits filed by the Defendant in support of the Transfer Application in Enclosures 6 and 20 show that he had affirmed that his place of residence is that of No. 2, Laluan Bercham Selatan 3/3, Taman Boulevard Timur, 31400 **Ipoh**, Perak. O 41 R 1 (4) ROC mandates that every affidavit shall *inter alia* state the place of residence of the deponent. Having affirmed statutory declarations and affidavits that he resides in **Ipoh**, it does not lie in the mouth of the Defendant to say otherwise.

[40] It follows that for purposes of this Transfer Application, this Court should give little weight to the Defendant's averment that he currently resides in Kuala Terengganu. In any event, his residing in Kuala Terengganu does not in

any way aid his Transfer Application to have the action transferred to the High Court in Malaya at Kota Bahru for purposes of compliance with the factor in sub-paragraph (B). It would be absurd if any one defendant can seek a transfer of proceedings just by relocating to another local jurisdiction in the course of proceedings and inviting the Court to play catch-up.

[41] The Defendant also submitted during oral submissions on 3-9-2020 that in the event an Order is granted for the private caveats to be removed, witnesses from all over including witnesses from Kota Bharu including the defendant who is now in Gua Musang will have to be called for the assessment of damages.

[42] However, with all due respect to the Defendant, this is a bare averment or more commonly known as making a submission from the Bar without any supporting materials to support the same and the Court will not take it into consideration. It is also premature at this stage as it is yet to be determined whether the Plaintiff's action would be allowed and whether there would be any assessment of damages, if at all, and if so by who, when and where.

[43] In any event, with the experience gained in using remote communication technology in dealing with the Movement Control Order,

Conditional Movement Control Order and the Recovery Movement Control
455 Order that is extant and which were necessitated by the COVID-19 pandemic,
the physical location of any one litigant or witness and the issue of having to
physically travel to any Court has become very much less important.¹

[44] The need for counsel, litigants and witnesses to physically travel to the
460 Court for the hearing of their matters is getting less and less. Hearings and
meetings can now be done and are, by reason of the COVID-19 pandemic,
encouraged to be done electronically via a variety of internet platforms² such
as “Zoom” or “Skype” not to mention that there are other platforms as well
such as “Google Duo”, “Google Hangouts”, “MS Teams” and “Adobe
465 *Connect*.”³

[45] In fact, with the aid of video conferencing and given the restrictions in air
travel caused by the COVID-19 pandemic, you can, for example, have a Court
sitting in the British Virgin Islands (“BVI”) conducting a trial with participation
470 by counsel from the United Kingdom, solicitors from Singapore and Hong

¹ <http://www.kehakiman.gov.my/sites/default/files/2020-04/Press%20Release%2017%20April%202020.pdf>

² <http://www.kehakiman.gov.my/sites/default/files/Kenyataan%20Media%20PKPMP%2012%20Jun%202020%20-%20Perbicaraan%20Kes%20Secara%20Sidang%20Video%20Bagi%20Mahkamah%20Persekutuan%20dan%20Mahkamah%20Rayuan%20di%20Sabah%20dan%20Sarawak.pdf>

³ <http://www.kehakiman.gov.my/sites/default/files/2020-03/KENYATAAN%20MEDIA%20PKPMP%2026.3.2020%20-%20PEMAKLUMAN%20PENDENGARAN%20KES%20SECARA%20DALAM%20TALIAN%20SEMASA%20TEMPOH%20PERINTAH%20KAWALAN%20PERGERAKAN.pdf>

Kong and witnesses from Hong Kong, Australia and Malaysia all from the comfort of their respective offices or homes without having to fly out to the Court in the BVI.⁴ If this can be done across countries, what more is to be said about the importance and necessity, if any, of litigants and witnesses
475 residing in Malaysia having to be physically present in a particular branch of the High Court in Malaya.

[46] The Malaysian Courts have kept up with the march of technology. Case management of cases by way of e-reviews⁵ is widely used and paperless
480 hearings with the aid of technology in the Federal Court has commenced this year.⁶

[47] The first virtual hearing with the parties being not physically present in Court was conducted by the Court of Appeal via tele-conferencing on 23-4-
485 2020 and live-streamed to the public with the three learned Judges comprising the panel of the Court of Appeal hearing the matter seated separately in each

⁴ <https://maples.com/en/Knowledge-Centre/Analysis-and-Insights/2020/07/Maples-Group-Acts-in-BVI-Commercial-Courts-First-Remote-Trial>

⁵ <https://intranet.kehakiman.gov.my/EAA/arahanamalan/73491-2020-EAA.pdf>

⁶ http://www.kehakiman.gov.my/sites/default/files/Kenyataan%20Media%20PKPMP%205.6.2020%20-%20Persidangan%20Kes%20Mahkamah%20Persekutuan%20Malaysia%20Menggunakan%20Sistem%20e-Appellate%20pada%209%20Jun%202020_0.pdf

of their chambers/homes and the learned counsel for the parties seated in their own respective office/home.⁷

490 [48] Recently, in **SS Precast Sdn Bhd v Serba Dinamik Group Bhd & 9 Others [2020] MLJU 400**, Wong Kian Kheong J conducted three applications through “Skype” and decided that even if the Plaintiff had objected to the use of video conferencing (“VC”), in view of the fundamental right of the defendants:

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“to have access to justice as guaranteed under Article 5 (1) FC, the court would nevertheless exercise its discretion to proceed with the VC in the interest of justice under O 32 rr 10 and 11 (1) read with O 1A and O 2 R 1(2) RC.”

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Conclusion

[49] In my view, in the circumstances of this case and given the increasing
505 acceptance of remote communication technology, it would not be in the interest of justice to allow the Transfer Application. It would not secure the just, expeditious and economical disposal of the action. Accordingly, I had

⁷ <http://www.kehakiman.gov.my/sites/default/files/2020-04/Press%20Release%20-%20Tayangan%20Langsung%20%28Live%20Streaming%29%20Pendengaran%20Kes%20Secara%20Dalam%20Talian%20%28Online%20Hearing%29.docx.pdf>

after hearing counsel for the Plaintiff and Defendant on 3-9-2020, dismissed
the Transfer Application in Enclosure 5 with costs of RM20,000 subject to the
510 payment of allocator bearing in mind the application was heard pursuant to a
Certificate of Urgency, the seniority of counsel involved and the amount of
materials, submissions and authorities that have to be considered.

[50] I end by thanking counsel for both the Plaintiff and the Defendant for
515 the submissions they have made which made it easier for me to put up this
judgment and I mean no discourtesy to counsel, if I did not make mention of
any of the other authorities they have cited as it was not necessary to do so
for the reasons I have expressed in coming to the decision I have made.

520 Dated : 7 September 2020

525 **(SU TIANG JOO)**
Judicial Commissioner
High Court of Malaya
Ipoh, Perak

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Parties:

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