

Has COVID-19 ended Inter-state Case Transfer?

Technology reduces needs for transfer, encourages remote trials

In *Muhammad Hafidz bin Mohd Dusuki v Hassan bin Zulkifli*¹, the defendant in a copyright infringement claim applied to transfer the case from Kuala Lumpur to Kota Bharu, on the following grounds:

- (1) alleged infringement in Tumpat, Kelantan;
- (2) defendant's place of business and residence are both in Tumpat, Kelantan;
- (3) the cause of action and alleged facts all arose in Kelantan;
- (4) the defendant's witnesses including the defendant's father is 75 years old and residing in Kelantan. Due to COVID-19, travel is ill-advised.

After giving consideration to the circumstances and weighing all the factors under O.57 r. 1 Rules of Court 2012, the Court dismissed the application. The defendant's appeal was not allowed.

The Court ruled that the pandemic and difficulty travelling cannot form a basis to warrant a case transfer, as the Court may dispense attendance and resort to technology for evidence-taking. The fact that the place of business and witnesses are from Kelantan is not a sufficient ground.

Further, the Court acknowledged that the Judiciary's move towards the establishment of specialised High Courts dealing with intellectual property (including in Kuala Lumpur) encourages expeditious, consistent and efficient disposals of intellectual property cases and contribute positively towards the development of Malaysian jurisprudence on intellectual property law.

Consistent with the Judiciary's positive move towards encouraging remote trials, this decision balances the interest of justice of both parties with the pandemic in mind.

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