



JSA NEWS LETTER

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Editorial

injuria non excusat injuriam

In the recent history of the legal profession of Sri Lanka there have been debates regarding the appointment of a lawyer practicing at the private bar in Batticaloa, as a High Court Judge and the decisions were taken by JSA has attracted most amount of publicity. The power to appoint a High Court Judge is vested with the president in terms of the article III of the constitution. The provisions as to the appointment of and removal of a High Judge have been enacted in the constitution itself under the heading of Independence of the Judiciary. Therefore, it's no doubt that stringent provisions have been made in the constitution itself for appointments of judges in order to guarantee the personal integrity and impartiality which is essential component of judicial independence. The accepted practice in our legal history is that all the judges serving on the High Court are promoted to those positions through the senior ranks of the judicial service or to a lesser extent from the Attorney General's Department. This system of promotion based on seniority and merits is one of the pillars on which the independence of the judiciary. Judges of the minor judiciary who discharge their duties under difficult conditions in the courts of all around the country are waiting for long years to be promoted to the High Court. Therefore, if a member of the private bar is brought into the High Court over the heads of those awaiting promotions, that not only causes an immediate disturbance in the order of promotion but also skews everybody's progression up the ladder for years to come. The most serious allegation against this particular controversial appointment is that the same person had on an earlier occasion been recommended to Minister of Justice by a political party for the same position. Thus, if he is allowed to continue in the office, the message that goes to the general public is what judicial promotions are based on political recommendations. When the faith on the judicial system is lost, nothing of that country will happen in order. In the letter to the President on 23rd of February 2017 JSC has said that the recommendation made for this appointment has no force or avail in law. What this would logically mean is that the appointee has no more right to be holding the position of the High Court judge. Therefore, it is essential to rectify the error already made by the recommending and appointing authorities on misrepresentation of facts and abide by the accepted practice in making judicial appointments so as to safeguard the independence of the judiciary. JSA as a one of main stakeholders of the judicial independence has in a forthright and fearless manner done everything within the framework of its power and capacity to safeguard the independence of the judiciary which people of the country are entitle to enjoy by supreme law.



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Secretary's Message

It's my pleasure and privilege writing this message for the first newsletter of the JSA for the year 2017. I thank the General membership of the JSA for electing me as the Secretary of this prestigious and honorable Association. JSA has developed into a powerful Association which is actively involved in safeguarding the independence of the judiciary and representing the rights of minor Judiciary over the last several years from a position of a mere welfare Association. In every instances we have achieved our objectives within the limitations exist as judicial officers. It is a challenge to achieve the objectives within the said limitations. But our strength was the said limitations we have and it should be the same in future as well. Therefore it is very important to use the past experience we have gathered over last few years in achieving our goals.

We have a very challenging year ahead. We will have to continuously involve in safeguarding the independence of the judiciary. Further we have to sort out the issues relating to salaries and allowances of our membership for dispense justice without any external pressures. We assure the General membership that we will discharge the trust placed on us with utmost care and by maintaining high standards of our profession.

M. M. M. Mihal
Secretary



A reasonable salary structure for Judiciary

- President at AGM of JSASL

Addressing the Annual Conference of JSA at the Pegasus Reef hotel in Wattala on 19.12.2016, the President Mr. Maithripala Sirisena said that the government is working on establishing a reasonable salary structure for the judiciary.

He further said the government would work to support the judiciary to carry on with their duties with impartiality and independence. The President emphasized that the concept of good governance should not be limited to banners and slogans, but that impartiality and the democracy should prevail in all the fields including the judiciary and public service. What the government ought to do was to fulfill its responsibility in ensuring the impartiality and the independence of the judiciary.

He added that priority should be given to experience and talent when giving out appointments and promotions in the Judicial Service Commission.

CJ's speech at AGM 2016

His Excellency the President, Hon. Maithripala Sirisena, Hon. Justice W.P.G. Dep, P.C., Hon. Minister of Justice Dr. Wijeyadasa Rajapakse, P.C., Secretary Judicial Service Commission, Mr. Pradeep Jayatilake, Secretary, Ministry of Justice Mr. P. Jayamana, President and office bearers of the Judicial Service Association, my dear District Judges and Magistrate!

It gives me great pleasure to have this opportunity to address you all once again at the annual judges conference. It was only last morning I believe some of you returned after an intensive and interesting training program at the Chandigarh Judicial Academy. This year alone approximately 175 judges were sent overseas for training. This includes 90 judicial officers and 85 High Court Judges. This year our judges were sent for specialized training programs, to the National Judicial Academy in Bhopal, Judicial Academies in Delhi and Chandigarh, and also to attend conferences in Singapore, South Africa, Germany and France. Last year the Judicial Service Commission recommended 183 judges for overseas training. In addition, last year all Labour Tribunal Presidents were sent overseas for training for the very first time. This year too the Commission recommended training for all LT presidents at the Judicial Academy in Malaysia and due to unavailability of suitable dates this program is now confirmed to be held during court vacation in April 2017.

I wish to reiterate that this is the very first time in the history of our judiciary that all judges confirmed in service had been sent overseas for training by the Judicial Service Commission and the Commission considers this a great achievement. We all know that few years ago this would have been unimaginable. This was possible due to the unstinted cooperation extended to us by the Ministry of Justice. An exorbitant amount of funds have been allocated by the government for the development and reform of the justice sector in the new budget and therefore the Commission will be able to continue its investments in these initiatives in the new year.



The Board members of Sri Lanka Judges Institute, who are also as you know members of the Judicial Service Commission, have been critically analyzing the Judges curriculum, and identifying important areas and developing special training modules, with the objective of equipping our judges to cope with the demands of the future. There is absolutely no doubt that the quality of justice will finally depend on the quality of performance by us judges. The core elements of the judicial task point to the competencies which judges must have. This mainly includes, an understanding of the nature of the judicial role in the constitutional setting in which it is to be discharged and the relationship of the judiciary to the other branches of government, the knowledge of the law and the techniques for identifying legal rules and standards, and competencies relevant to fact finding. What we need today is penetrating minds, creative ideals and a burning conscience.

When persons access the courts, they are not merely seeking a resolution of their disputes. They are in pursuit of a broader notion of “justice”, which is located in some general societal consensus about what is fair, right or morally acceptable. To the extent that individual perceptions about rightness differ, our challenge is to demonstrate some standard of legitimacy that is grounded in something more substantial and credible than the caprice of the individual Judge hearing a case, and that attracts public trust and confidence. The objective of any judicial training therefore should be to locate, articulate, communicate and ultimately to apply those principles of rectitude to which our personal preferences, desires and emotions must be subordinated.

Today, the crisis of confidence in human institutions has come to the forefront. The deficiency of every institution in tackling the growing and complicated social problems has become a common feature. It is a challenge for every institution. Every democratic institution needs to meet this challenge. The viability of judicial institutions depends upon their acceptability by the people. When the viability of the system gets into disrepute and ultimately the system becomes less and less useful to the community, the challenge lies in rejuvenating the system by restoring its credibility and people's faith in it. Thus, the foremost challenge to the Judiciary today is viability of the system. Citizens approach the Court only when there is confidence in the system and faith in the wisdom of the Judges. This is where the Public Trust doctrine comes in. The Judiciary as an Institution stands on public trust.

The efficiency with which we perform our work is now under scrutiny as never before. The scrutiny comes from different sources and people involved in litigation. One source of scrutiny is from the government which hopes to get increased “outputs” for the public funds. There is no reasonable basis to resist this kind of scrutiny I believe.

Henry Miller, President of New York State Bar Association once said, “The legal system is often a mystery, and we, its priests, preside over rituals baffling to everyday citizens”. Studies show that the phenomenon of laws delays and ever-mounting arrears in law courts can be attributed broadly to a few causes such as: (i) the increasing faith of people in the justice delivery system in spite of the delays involved; (ii) lack of human resources and infrastructure; and (iii) lack of innovation and modernization in the field of court management.

We cannot prevent the influx of cases; nor should we. But we can certainly enhance the speed of case outflows. Considering this the Commission recently issued circulars 391 and 392. To facilitate and support you all in achieving your targets and to also reinforce public confidence in the judiciary by reducing delays, the Commission had recruited 45 Magistrates and 5 Labour Tribunal Presidents over the last two years. In addition 11 Grade I and 37 Grade II Registrars were promoted this year. 47 typists were newly recruited last year. Interviews to recruit 326 clerks and 195 Stenographers are currently underway.



The Commission has already commenced process to recruit binders, another 200 clerks, 100 interpreters and 100 Grade III registrars. The Commission hopes to fill all the vacancies in the schedule public service cadre by March 2017. New court houses were opened in Syambalanduwa, Anamaduwa and Udugama. A additional magistrate was appointed to Jaffna and Point Pedro. Discussions are also underway to improve infrastructure in court houses and build official bungalows for judges serving in remote and lagging districts. 14 High Court Judges were appointed last year and 8 High Court Judges this year, including the 5 new High Court Judges who are due to take oaths before me on Wednesday. Out of the total of 22 High Court Judges appointed over the last two years 21 judges are career judges. In addition 3 Judges were appointed to the Court of Appeal and one judge to the Supreme Court.

The Judicial Service Commission has also been regularly evaluating the performance of judicial officers and granting promotions without undue delays. Since February last year 25 Judicial Officers have been promoted to Special Grade and to Class I Grade I and another 32 Judicial Officers were promoted to Class I Grade II. In addition the Ministry of Justice has committed funding for court automation in the western province and now a committee headed by Justice Dep is in the process of carefully planning and developing an appropriate and suitable system for us. Further, two separate committees headed by Justice Dep and Justice Aluwihare are studying the proposed reforms to the Civil and Criminal Procedure Codes. The Ministry of Justice continues to extend its fullest cooperation in all these initiatives.

I must say that sometimes public comment on judicial conduct has been influenced by false notion of judicial accountability which fails to recognize that a judge is primarily accountable to the law; which he or she must administer, in accordance with the terms of the judicial oath without fear, favour, affection or ill will. Dear Judges! Before I conclude let me once again remind you a few important attributes of a judge.

There should be independence in discharging your duties. As a judge you should keep in mind that the principle of independence extends well beyond traditional concept of separation of powers. Upon assuming judicial office as a judge you are required to be independent of all sources of power or influence in society including media and commercial interest. As judges you should at all times be alert to subtle attempts to influence you or carry favour. The independence of the judiciary and of the individual judge will be served by relevance on personal integrity and the dictates of the conscience.

As a judge do not allow anybody to influence you on deciding matters, but this does not preclude you as a judge from seeking clarification of certain questions of law from your seniors or colleagues. But let me repeat that it is important for you as a judge to maintain a standard of behaviour in court that is consistent with the status of judicial officer and that it does not diminish the confidence of litigants in particular and public in general regarding the ability, the integrity and independence of you as a judge. The Judicial Service Commission was compelled to interdict few judicial officers this year due to misconduct and inquiries are underway against few others.

As we all know, judicial function is no more a traditional job. The role of judge is changing. The perception of justice itself is changing. Judging is becoming more complex in view of the changing society. There is lack of sufficient inter disciplinary approach and analysis. Ideas of human rights and democratic accountability are putting new parameters to judicial function. Privileges and immunities of judges are being re-examined. There is persistent demand for transparency and accountability and influence of media and other organizations are increasing. The judicial functioning is under close public scrutiny requiring the judges to be more sensitive towards the cause of justice.



Remember that as Judges' you should listen more than talk. I have got complaints that there are some judges who talk from the time they get on the bench till the court adjourns. Some judges like to hit the headline news papers by making comments. It is not necessary for a judge to demonstrate mastery of the issues by making of informal comment on the running of the case. The hearing is for the purpose of informing the judicial mind about the material required for the judgment not for the purpose of staging a debate or providing a privilege platform. That is not to say that judicial silence should mask the issues on which the judgment might turn, it is to say that exchange should have some point and silence is the appropriate alternative if they do not. I also request you to follow the JSC circular and commence court sittings at 9.30 a.m. and be on the bench until 3.30 p.m. You may be aware that the Supreme Court on most of the days sits beyond 3.30 p.m., and we therefore, cannot accept High Court Judges, District Judges and Magistrates adjourning court by 12.30 or 1 p.m.

You are also required to deliver judgments within a reasonable time. I have received letters from litigants that some judgments are postponed over 10 times. What is the point in giving a judgment like that after two years. There are some High Court judges who are still to deliver their DC judgments. In a case all the parties wait for the judgment. As judges we cannot satisfy all parties. Naturally the party who wins the case will be happy. The others will grumble but as long as you give good reasons for the judgment a person looking at the judgment objectively will say it is the correct and fair judgment. We must not forget how important our decisions are for the people affected by the decision and for that reason our decisions deserve all the care and skill that we can muster as a judge. It is central to our work as judges and how well we do it in the broadest sense is of vital importance.

As a judge you should also bear in mind consistently that judges' are not umpiring a competition. A judge administers justice and whatever some may say, right to justice is also one of most fundamental of human rights. Today's society is more questioning of the judiciary and less induced to accept authority. The judicial system is founded on public confidence in the judiciary's integrity and efficiency.

Dear Judges! Public has high hopes and expectations from our judiciary. We have to equip and update ourselves to respond. The whole world is marching ahead with a beat of drum in this millennium. Let us not lag behind. We should keep pace with the tune of the times and be prepared to accept a new outfit. Our incoming generation will inherit the system which we shall be passing on to them. Let us realize our obligation towards them.

Wish you all the very best for the new year! Thank you.

K. Sripavan,
Chief Justice.
19. 12. 2016



New Chief Justice takes oaths



Justice Priyasad Dep took oaths as the new Chief Justice of Sri Lanka in the presence of President Maithripala Sirisena on 02.03.2017. He is the senior-most judge of the Supreme Court and has acted in the post of Chief Justice in numerous occasions. He was sworn in as the 45th Chief Justice of Sri Lanka following the retirement of K. Sripavan on the 28th of February.

Priyasad Dep is the son of Former DIG Arthur C. Dep.

He is an old boy of St. Joseph's College, Colombo and he completed his primary degree at the University of Colombo. He won a scholarship by the Dutch Government that enabled him to acquire a Post-Graduate Diploma in International Law at the International Institute of Social Studies in Hague.

He enrolled as an Attorney-at-Law in October 1976 and joined the AG's Department as a State Counsel in January 1978. He was promoted to the post of Senior State Counsel in February 1989, made a Deputy Solicitor General in February 1996, Additional Solicitor General in October 1999 and a President's Counsel in April 2000. He was appointed as the Solicitor General in April 2007 and functioned in that capacity until his elevation to the Supreme Court in June 2011. He has served the Attorney General's Department for more than 33 years and had the distinction of being the Head of both Civil and Criminal Divisions, and was also the acting Attorney General in several occasions.

The new Chief Justice is a life member of the Bar Association of Sri Lanka and Medico-Legal Society. He is a member of the International Association of Prosecutors and Commonwealth Magistrates and Judges Association. He also holds membership in the board of management of the Sri Lanka Judges Institute and Incorporated Council of Legal Education.

We wish his lordship all the success to safeguard the independence of the Judiciary.

About Former Chief Justice.....



Chief Justice Kanagasasabapathy Sripavan was retired with effect from 28.02.2017 at his age 65.

Justice Sripavan was born in 29th February 1952 and educated in Jaffna Hindu College. He enrolled as an Attorney at Law of the Supreme Court of Sri Lanka in 1976. He has honored a diploma in Industrial Law from University of Colombo and master of Laws from University of London.

He has practiced at the Unofficial Bar up to 1978. Then he Joined the Attorney General's Department as State Counsel in February 1978. He was promoted to the post of Senior State Counsel in 1989 and to the post of Deputy Solicitor General in 1996.

While functioning as the head of the Court of Appeal unit in the Department he handled a large volume of work including Bills and Fundamental Rights Applications.

On the recommendation of the Constitutional Council, he appointed as a Judge of the Court of Appeal in May 2002. He was elevated to the post of President Court of Appeal in March 2007 and to the Supreme Court Bench in March 2008. In a crucial moment, he was appointed as the Chief Justice of Democratic Socialist Republic of Sri Lanka on 30th January 2015. Since then he did an appreciable duty to regain the public confidence on local judicial system.

JSA, as at the bids farewell wishes Justice Sri Pavan good luck in his future endeavors and all his family members for happier, healthy and prosperous years to come.



High Court Judges appointed



Five senior judicial officers were appointed as High Court Judges by the president on recommendations were made by the Judicial service commission. Mr. M.U. Gunawardane (DJ, Colombo), Mr. K.A. Peiris (Judicial officer in Supra Grade & Additional Secretary to Ministry of Justice), Mr. M.Y.M. Irshadeen (ADJ, Colombo), Miss P.I. Ranasinghe (ADJ, Colombo), Mr. Pradeep Jayathilake (Secretary to JSC) took oaths before His lordship the Chief Justice on 21.12.2016.

After few weeks Mr. D.L.A. Manaff (DJ, Vavunia) was also appointed to the High Court with effect from 07.03.2017.

JSA wishes respective members all the success in this new term of office.

Justice Salam for a new commission

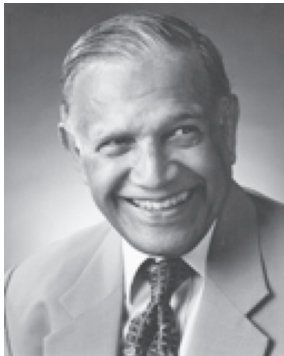


Justice A.W.A. Salam, former Judge of the Court of Appeal & the former secretary to the Judicial services commission was appointed to newly established Right to Information Commission in terms of the act no.12 of 2016 with effect from 22.12.2016.

JSA take this opportunity to express its sincere gratitude for his invaluable guidance, caused to protect Judicial independence in difficult moments.



Demise of a Luminary



Justice Christopher Gregory Weeramantry is well known both nationally and internationally hence the Judicial Service Association does not expect to dwell on writing an introduction. Nonetheless, as there are many things aspiring judges and lawyers can learn from His Lordship's meteoric rise to fame, the JSA decided to highlight selected important landmarks of his illustrious career.

His Lordship was born on 17th November 1926 as a son of Gregory and Lilian Weeramantry. The unity and togetherness of this family was remarkable and is perhaps what made him the true Sri Lankan icon he was. At his alma mater, Royal College he won many class and school prizes in addition to being Senior Prefect. He was called to the Bar as an Advocate of the Supreme Court of Ceylon in 1948. He married Ms. Rosemary de Sampayo in 1959 while working as a busy legal practitioner. They had five children, two sons and three daughters and they are now also blessed with eleven grandchildren.

Justice Weeramantry as the counsel in "Thenuwara Testamentary case" brilliantly prevented Mrs. Thenuwara inheriting under her husband's last will on the basis that a wrongdoer could not benefit from the will.

Marking the end of an illustrious legal career in the private bar he was appointed as a Judge of the Supreme Court of Ceylon in 1967. Justice Weeramantry, to the surprise of many, resigned in 1972 from the Supreme Court to teach law at Monash University. He had twenty more years to serve and only two other Supreme Court judges were above him in seniority. Thus, he could have been Chief Justice soon and for very long period of time.

Justice Weeramantry's book "Law of Contract" is the utmost authority on that subject in Sri Lanka, as well as in several other jurisdictions. The University of London awarded him LL.D (honorary causa), in recognition of his outstanding work. He was the first Sri Lankan to be so honored. It is a fact that Justice Weeramantry bears no prejudices, racial, religious or cultural. He was so humble human being who never lost the touch of common man. He recalled in one of his books, "Memoirs Towards One World" as to why he gave up his dream of becoming a Doctor, in so humble manner. "My ambition of becoming a doctor was rendered unreal by the fact that I was seriously colour blind. I thought to myself that there might indeed be occasions when I might not be able to distinguish blood from some other dark fluid and I realized that this just would not do for a doctor. Imagine a doctor who could not spot blood when he saw it. This might have dire consequences for some poor patient." Justice Weeramantry excelled first as a law lecturer, then as practicing lawyer, a Supreme Court Judge, Law Professor at Monash University and finally as a member and later the Vice President of the International Court of Justice (ICJ) at Hague. He was the founder of the Weeramantry International Centre for Peace, Education and Research. Justice Weeramanthri was not a person who used to meddle in petty local affairs. Nevertheless, breaking his customary silence, he issued a message regarding the state of rule of law in the country, soon after the impeachment of the 43rd Chief Justice Her Ladyship Shirani Bandaranaike. Justice Weeramantry began his message by saying: "It is a judiciary which has been a great pride to the country and has been highly esteemed both domestically and internationally". His Lordship was concerned on independence and security of the tenure of judges, and further expressed the need to protect the independence of the judiciary for the preservation of rule of law and democracy. He reached to a pinnacle of success where no Sri Lankan has ever risen, making all Sri Lankans filled with pride. Justice Weeramantry thus brought honour and fame to Sri Lanka as no other Sri Lankan has ever done to date. JSA wishes to place its highest respect and gratitude to Justice Weeramantry for his unprecedented service to his motherland.

Requiescat in Pace Great Sir!



Judicial appointments are still questionable?

- On 31st of January 2017 Exco of JSA became aware that a High Court Judge had been appointed from the Batticaloa Bar.
- Then Exco requested an appointment with then Chief Justice K. Sripavan and the meeting took place on 1st of February 2017. At this meeting, JSA was informed that Mr. Ramanathan Kannan had been appointed as a High Court Judge upon a request made by the President due to representations made to him by BASL.
- On hearing about the involvement of BASL with this matter, an emergency Exco meeting was called on 3rd of February 2017. In the meantime, it came to light that neither the Bar Council nor the Executive Committee of BASL had made any such recommendation. Thus JSA came to the conclusion that someone had misled the President and JSC into believing that BASL had wanted Mr. Kannan appointed to the High Court.
- According to the decision taken at the emergency meeting, on 6th of February 2017 JSA wrote three letters to JSC, BASL and the President of Sri Lanka.

In the letter to JSC, JSA stated that since JSC had been misled into believing that the BASL had made a recommendation to appoint Mr. Kannan to the High Court, JSC has to retract the recommendation and make a recommendation in terms of Article 111(2)(b) of the Constitution to remove Mr. Kannan. The letter was as follows:-

6th of February 2017,

To His Lordship the Chief Justice and other honorable members of the Judicial Service Commission.

Through the proper channels,

Hon. Secretary, Judicial Service Commission,

Colombo 12.

Regarding The Appointment of Mr. Ramanathan Kannan as a High Court Judge From Unofficial Bar.

Your Lordships,

On 31st of January 2017, Several Judicial officers around the country has made queries from the Judicial Service Association regarding the rumor circulated around the judicial circles about the appointment of a lawyer from unofficial bar directly as a High Court Judge. They have requested the Association to verify the said news and to take immediate step to safeguard the interests of the judicial officers of minor judiciary since such unprecedented appointment would affect the minor judiciary.

Since the power of appointing judges to the high court is vested with the President on the recommendation of the Judicial Service Commission with consultation with the Honorable Attorney General, according to article 111(2) (a) of the Constitution Executive committee members of Judicial Service Association met His Lordship the Chief Justice on the Morning of 1st of February, 2017, to verify the said news and the inform the concerns of the judicial officers of minor judiciary.

At the said meeting His Lordship the Chief Justice informed us that said appointment was made on a request made by His Excellency the President due to an urge by the unofficial bar. We were further informed by his Lordship the Chief Justice has recommended the name of Mr. Ramanathan Kannan for the appointment as a Judge of the High Court.

On learning the involvement of the Bar Association and the events which led to appoint Mr. Ramanathan Kannan as High Court Judge, as transpired at the meeting with the His Lordship the Chief Justice, several Executive members of the Judicial Service Association has requested to convene an emergency Executive Committee Meeting urgently. As requested by Members Exco meeting of Judicial Service Association was held on 3rd of February 2017.



On the said meeting, the executive committee came to aware that neither the Bar council nor the Executive Committee of the Sri Lanka Bar Association has taken decision in this regard. Judicial Service Association has verified the said information from Sri Lanka Bar Association and it was confirmed that Sri Lanka Bar Association has never taken such decision.

It was clear from the information received, that some elements have in the pretext of Sri Lanka Bar Association has misled His Excellency the President and thereby His Lordship the chief justice in this instance.

Since it was disclosed that the name of the Sri Lanka Bar Association has been misused in this instance by some elements, Executive Committee of the Judicial Service Association has decided to inform its displeasure and disapproval to Sri Lanka Bar Association in this regard and the request Sri Lanka Bar Association to inform its stance in this regard and to take necessary steps to rectify the situation created by the said appointment. Further the Judicial Service Association has decided to refrain from functioning as the presiding officers in upcoming election of Sri Lanka Bar Association in the event of failing to take necessary steps.

Since it is transpired that the recommendations were obtained by some elements by misleading and by misrepresenting facts to your Lordship the Chief Justice, in this regard Executive Committee of the Judicial Service Association has decided to request you Lordship the Chief Justice and other Honourable members of the Judicial Service Commission to reconsider the above recommendation to appoint Mr. Ramanathan Kannan as High Court Judge. Further Judicial Service Association requests your lordship to recommend the removal of the said officer to His Excellency the President in virtue of Article III(2) (b) of the Constitution, since the said appointment was made on the misrepresentation of the facts.

M. M. M. Mihal
Secretary
JSA.

In the letter to BASL, JSA stated that even though we had been told by the Chief Justice that JSC had recommended the appointment of Mr. Kannan as a High Court Judge due to representations made by BASL, we were aware that neither the Bar Council nor the Executive Committee of BASL had made any such recommendation. Therefore JSA wanted BASL to prove their bona fides by

- a) confirming formally in writing that BASL did not make any recommendation to appoint a High Court judge
- b) if someone had used the name of BASL to make this recommendation, inform the President and JSC of that fact and
- c) making a formal request for the reversal of this decision and the removal of Mr. Kannan from the High Court.

The third letter written to President Mr. Maithipala Sirisena informing him that we had been surprised when they heard of the appointment of a member of the private bar to the High Court. Because the President had himself promised JSA that he would not make such appointments in his office. Then JSA went on to state that even though the Chief Justice was under the impression that BASL had recommended Mr. Kannan, BASL Secretary had assured us that no such recommendation had been made by BASL. Further informed the President that Minister of Justice Mr. Wijedasa Rajapakshe had told that the name of Mr. Kannan had been recommended as a High Court Judge few months ago by a political party and this indicates that he was recommended on political considerations. JSA further explained the President that Mr. Kannan had been appointed over the heads of many senior members of the minor judiciary and that if the need was to appoint a Tamil speaking judge, the most suitable candidate was Mr. D.L.A. Manaf, then District Judge of Vavuniya. JSA emphasize the president that followed procedure for this appointment was seriously affected with the independence of the judiciary and requested the President to rectify the error already done in proper manner.

- The president, the vice president and the secretary to JSA had been summoned by the Chief Justice to his chamber on 14th February 2017. Considering on going developments Exco called its 2nd emergency meeting on 13th February 2017. On 15th of February 2017 JSC permitted JSA in writing to take any appropriate action and write to the president in respect of this irregular appointment. The letter was as follows:-



Mr. M. M. Mihal,
Secretary,
Judicial Service Association.

Regarding the appointment of Mr. Ramanathan Kannan as a High Court Judge from Unofficial Bar

I write with reference to your letter dated 06. 02. 2017, on the above subject.

02. Having considered your letter, the Judicial Service Commission has directed me to inform, that the Judicial Service Association has liberty to write to the His Excellency the President and take any appropriate action.

G. M. W. P. Jayathilake
High Court Judge
Acting Secretary
Judicial Service Commission

- Since there was no formal reply by BASL, Exco called upon its 3rd emergency meeting on 18th of February 2017 and unanimously decided that there are no sufficient grounds to reconsider the decision taken in 1st emergency meeting to refrain from functioning as returning officers at the upcoming election for the post of BASL president.
- About 10 days later BASL responded to JSA by a letter dated 16th of February 2017 stating that since the Bar Association had never been involved in appointing judges, neither the Bar Council nor the Executive Committee had been called upon to consider recommending Mr. Kannan. The latter had been recommended for appointment by the President of the Batticaloa Bar Association had been forwarded by BASL President Mr. Geoffrey Alagaratnam to President & CJ and this appointment had been made by the dearth of Tamil speaking judges in North and East provinces. The letter was as follows:-

16. 02. 2017

Secretary
Judicial Services Association

Dear Sir,

This refers to your letter dated 06. 02. 2017 on the appointment of Mr. R. Kannan to the High Court, to the Secretary of the Bar Association of Sri Lanka.

Since the Bar Association of Sri Lanka has never been formally involved in the process of appointments to the judiciary, neither the Bar Council nor the Executive Committee were called upon to consider any recommendation of Mr. R. Kannan for Judicial appointment.

When the letter of the Judicial Services Association was tabled at the executive Committee meeting of the Bar Association on the 9th of February 2017, the president of the BASL appraised the Committee of the following:

- a) An application of Mr. Kannan was recommended by the President of the Batticaloa Bar which in turn was



forwarded by the President of the BASL to His Excellency the President in September 2016 with a covering note and with copies to His Lordship the Chief Justice and the Honourable Minister of Justice.

- b) The circumstances in which Mr. Kannan's name was proposed included inter alia the fact that for more than an year there have been representations being made of the dearth of Tamil speaking Judges of the High Courts in the Northern and Eastern Provinces; the dearth of Tamil speaking career judges eligible for promotion to the High Court and the reluctance of the Hon. Attorney General to release his officers for such appointments
- c) That His Excellency the President in accordance with the Constitution has on the recommendation of the Judicial Service Commission and with the concurrence of the Honourable Attorney General appointed Mr. Kannan to the High Court.
- d) On previous instances too where appointments have been made from the private bar there have been consultations between the executive and the leaders of the Bar and that in the history of the Association the Bar Council and the Executive Committee have not considered recommendations for judicial appointments.

Amal R. Randeniya,
Secretary,
Bar Association of Sri Lanka.

The very next day on 17th of February 2017, the Secretary of BASL restated in a further short worded letter to JSA that a) neither the Executive Committee nor the Bar Council of BASL has recommended Mr. R. Kannan for the position of High Court judge, and b) therefore the BASL has not made any such recommendation. The letter was as follows:-

17. 02. 2017
Secretary,
Judicial Service Association of Sri Lanka.

Dear Sir,

Appointment of Mr. R. Kannan as Judge to the High Court

In addition to my letter dated 16. 02. 2017, I would like to state further that the Executive Committee of the Bar Association at their meeting held on 09. 02. 2017 has decided that the Executive Committee or the Bar Council of the Bar Association of Sri Lanka has not arrived at any decision in the past to recommend the appointment of Mr. R. Kannan as Judge of High Court and therefore there is no recommendation from the Bar Association of Sri Lanka.

Thank you,
Amal A. Randeniya
Secretary
Bar Association of Sri Lanka.

- On 27th of February 2017, Secretary of BASL forwarded the above version to the President and also JSC. The letter was as follows:-



27. 02. 2017

His Excellency Maithripala Sirisena
President of Sri Lanka
Presidential Secretariat
Colombo I

Your Excellency

Appointment of Mr. R. Kannan as Judge of the High Court

We forward herewith the letter sent by Bar Association of Sri Lanka to the Judicial Service Association with regard to the appointment of Mr. R. Kannan.

We forward this letter with the intention of placing before your Excellency the stand taken by the Bar Association of Sri Lanka, in this regard.

Yours faithfully,

Amal A. Randeniya

Secretary

Bar Association of Sri Lanka.

- Following this statement of BASL that they did not recommend Mr. Kannan be appointed to the High Court, JSC wrote to the President on 23rd of February 2017 stating that JSC had been under the impression that the BASL had recommended the appointment of Mr. Kannan as indicated in the letter dated 15th of December 2016 sent by the Secretary to the President to JSC. But if no proper recommendation has been made by BASL, the recommendation forwarded by JSC shall have 'no force or avail in law'. JSC letter completely retracted with the recommendation made in terms of article III(2)(a) of the Constitution that Mr. Kannan be appointed to the High Court. That immediately rendered Mr. Kannan's appointment unconstitutional. However, JSC had not made a formal recommendation in terms of Article III(2)(b) of the Constitution that Mr. Kannan be removed.
- In the meantime, Hon. Chief Justice K. Sripavan retired on 28th of February 2017 and Justice Priyasath Dep became as the Chief Justice.
- On 8th of March 2017 the Secretary to the President wrote to new JSC requesting a formal recommendation in terms of Article III(2)(b) of the Constitution to remove Mr. Kannan from the High Court. To the best of our knowledge, JSC has not yet sent that recommendation regarding the appointment which has already been decided by the same as an irregular.
- Exco on its meeting held on 23rd March 2017, unanimously decided to call an Emergency General Meeting on 1st of April 2017 to consult the views of general membership.
- At the Emergency General meeting the membership of JSA unanimously adopted and approved five resolutions as follows: -
 - I. According to the decision of the JSC dated 23.02.2017 and the letter dated 17.02.2017 of the Secretary of the Sri Lanka Bar Association, the recommendation made by JSC for the appointment of Mr. Ramanathan Kannan has no force or avail in law and thereby the appointment of Mr. Ramanathan Kannan is an appointment having no force or avail in law. In this context, Judicial Service Association respectfully request His Excellency the president to remove Mr. Ramanathan Kannan from the position of the High Court Judge.



2. Since the appointment of Mr Ramanathan Kannan is an appointment having no force or avail in law, JSA respectfully request the JSC to recommend His Excellency the President to remove Mr. Ramanathan Kannan from the position of the High Court Judge.
 3. Since the appointment of Mr Ramanathan Kannan has no force or avail in law, judicial Service Association respectfully request the judicial Service Commission to consider not to allow Mr Ramanathan Kannan to function as High Court Judge till he is removed from the said position by His Excellency the President.
 4. As stated in the 1st to 3rd resolutions we, the members of JSA strongly believe that the independence of the judiciary guaranteed by the constitution of the Democratic Socialist Republic of Sri Lanka has been violated and we the members of the association request His Excellency the President of Sri Lanka and Honorable JSC to restore and uphold the integrity and independence of the judiciary.
 5. Appointment of Judges for High Court from unofficial bar undermines the knowledge, experience and sacrifices made by the District Judges and Magistrates who work under immense pressures and difficulties for long periods of time in difficult areas during their career. Therefore, we intend to respectfully request the JSC to refrain from recommending nominations submitted to them from the unofficial bar for appointing High Court Judges directly in future.
- Then JSA wrote to His Excellency the President informing and requesting Mr. Ramanathan Kannan be removed following the resolutions passed by the JSA at its Emergency General Meeting. The letter was as follows:-

අතිගරු ජනාධිපති මෛත්‍රීපාල සිරිසේන මැතිතුමා,
 ජනාධිපති මන්දිරය,
 කොළඹ - 01.

අතිගරු ජනාධිපතිතුමණි,

මහාධිකරණ විනිසුරු රාමනාදන් කන්නන් මහතා මහාධිකරණ විනිසුරු ධූරයෙන් ඉවත් කරන ලෙස කරනු ලබන ඉල්ලීමයි.

2017. 04. 01 දින කොළඹ දිසා අධිකරණයේ දී පවත්වන ලද අධිකරණ සේවා සංගමයේ හදිසි මහා සභා රැස්වීමේ දී ඒකමතිකව සම්මත කර ගත් තීරණයන් ප්‍රකාරව ඔබතුමා වෙත ලියමි.

අධිකරණ සේවා සංගමය, ශ්‍රී ලංකාවේ සියලුම පහළ අධිකරණ විනිශ්චයකාරවරුන් (දිසා විනිසුරුවරුන් සහ මහේස්ත්‍රාත්වරුන්) සාමාජිකත්වය දරණ එකම සහ අනන්‍ය සංගමය වේ. අප සංගමයේ සියලුම සාමාජිකයින්ගේ අයිතිවාසිකම් උල්ලංඝනය වන ලෙස සහ වැරදි කරුණු ඔබතුමන් වෙත ඉදිරිපත් කර, කරනු ලැබූ මහාධිකරණ විනිසුරු රාමනාදන් කන්නන් මහතාගේ පත්වීම සම්බන්ධයෙන් මින් පෙර අවස්ථා කිහිපයකදීම ඔබතුමා හමු වී සහ ඔබතුමාට ලිඛිතව අප විසින් කරුණු ඉදිරිපත් කර ඇත.

2017. 02. 22 දින ඔබතුමා හමු වූ අවස්ථාවේ දී ඉහත පත්වීම සිදුකිරීමේදී ඔබතුමා වෙත වැරදි කරුණු ඉදිරිපත් වීම හේතු කොට ගෙන සිදු කරනු ලැබූ පත්වීමක් බැවින්, එම පත්කිරීම සිදු කිරීම සම්බන්ධයෙන් ඔබතුමා ඉතා කනගාටුවට පත්වී ඇති බව අපි හොඳින්ම දුටුවෙමු. ඒ අනුව ඔබතුමාගේ නියමය පරිදි ජනාධිපති ලේකම්තුමා විසින් 2017. 02. 23 දින අධිකරණ සේවා කොමිෂන් සභාවට යවන ලද ලිපිය ප්‍රකාර 2017. 02. 23 දින අධිකරණ සේවා කොමිෂන් සභාව විසින් පහත තීරණයට එළඹී බව එදිනම එනම්, 2017. 02. 23 දිනයේදීම අධිකරණ සේවා කොමිෂන් සභාවේ ලේකම්තුමා විසින් ඔබතුමාගේ ලේකම්තුමා වෙත දන්වා ඇත.



ඒ අනුව එම තීරණය නම්,

“ජනාධිපති ලේකම්තුමාගේ 2017. 02. 23 දින ලිපියේ දන්වා ඇති පරිදි ශ්‍රී ලංකා නීතිඥ සංගමයේ විධිමත් නිර්දේශයක් නොමැති නම් රාමනාදන් කන්නන් මහතා මහාධිකරණ විනිශ්චයකාරවරයෙකු ලෙස පත් කිරීම සඳහා අධිකරණ සේවා කොමිෂන් සභාව විසින් ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 111(2) (අ) ව්‍යවස්ථාව යටතේ ලබා දී ඇති නිර්දේශය නීතිය හමුවේ බලසහිත සහ වලංගු නිර්දේශයක් නොවේ.”

(එම ලිපියේ පිටපතක් X-1 ලෙස ලකුණු කර ඉදිරිපත් කර සිටිමි.)

එසේ ම ශ්‍රී ලංකා නීතිඥ සංගමය ද ඔබතුමා වෙත 2017. 02. 27 දිනැති ලිපිය මගින් ඉතා පැහැදිලිවම දන්වා ඇත්තේ, විනිසුරු රාමනාදන් කන්නන් මහතා පත් කිරීම සඳහා ශ්‍රී ලංකා නීතිඥ සංගමයේ කිසිදු නිර්දේශයක් ලබා දී නොමැති බව යි.

(එම ලිපියේ පිටපතක් X-2 ලෙස ලකුණු කර ඉදිරිපත් කර සිටිමි.)

ඒ අනුව 2017. 02. 23 දින අධිකරණ සේවා කොමිෂන් සභාවේ තීරණය අනුව, රාමනාදන් කන්නන් මහතාගේ පත්වීම මුල සිටම බලරහිත පත්වීමක් බවට පත්වන්නේ ය.

එසේ හෙයින්, ආණ්ඩුක්‍රම ව්‍යවස්ථාව අනුව නිසි ලෙස පත් නොවූ පුද්ගලයෙකු මහාධිකරණ විනිසුරුවරයෙකු ලෙස තවදුරටත් සේවය කිරීම ආණ්ඩුක්‍රම ව්‍යවස්ථාව උල්ලංඝනය කිරීමකි. එනමින්ම, එය සමස්ථ ශ්‍රී ලංකා වාසීන්ගේ පරමාධිපත්‍ය බලය උල්ලංඝනය කිරීමකි. ඒ අනුව මෙම පත්වීම නිවැරදි කිරීම ඉතාම අත්‍යාවශ්‍ය බව අධිකරණ සේවා සංගමයේ ඒකමතික අදහස වේ.

ඒ අනුව 2017. 04. 01 දින කොළඹ දිසා අධිකරණයේ දී පවත්වන ලද අධිකරණ සේවා සංගමයේ හදිසි මහා සභා රැස්වීමේ දී මෙම ලිපිය සමඟ අමුණා ඉදිරිපත් කරනු ලබන යෝජනා ඒකමතිකව සම්මත වූ බව ඔබතුමා වෙත ගෞරවයෙන් දැනුම් දී සිටිමි.

(එම යෝජනා X-3 ලෙස ලකුණු කර ඉදිරිපත් කර සිටිමි.)

ඒ අනුව සමස්ථ පහළ අධිකරණ විනිශ්චයකාරවරුන්ගේ ඒකමතික ඉල්ලීම වන්නේ, ආණ්ඩුක්‍රම ව්‍යවස්ථාවට පටහැනි, මුල සිටම බල රහිත තත්ත්වයකට පත් වී ඇති රාමනාදන් කන්නන් මහතාගේ පත්වීම නීතිය හමුවේ මුල සිටම බල රහිත සහ අවලංගු පත් වීමක් ලෙස සලකා රාමනාදන් කන්නන් මහතා මහාධිකරණ විනිසුරු ධුරයෙන් ඉවත් කරන ලෙසටයි.

මේ සම්බන්ධයෙන් අප සංගමයේ සාමාජිකයන් සමඟ වැඩිදුරටත් සාකච්ඡා කිරීම සුදුසු යැයි ඔබතුමා කල්පනා කරන්නේ නම්, ඒ සඳහා අප හට ඔබතුමා හමු වීමට අවස්ථාවක් ලබා දෙන ලෙස ද ඉතා ගෞරවයෙන් ඉල්ලා සිටිමි.

එම්. එම්. එම්. මිහාල්,

ලේකම්,

අධිකරණ සේවා සංගමය,

මහේස්ත්‍රාත් - ගල්කිස්ස.

අධිකරණ සේවා සංගමයේ සමස්ථ සාමාජික විනිසුරුවරුන් වෙනුවෙන්.

- Still JSA is waiting for the appropriate actions of relevant authorities.



JSA Reference No - JSASL/2017/1/1

J. A. A. JAYASINGHE AMBAWELA
VS
L. S. LALITH KUMARA LIYANAGE

SUPREME COURT

Priyasath Dep P.c., C.j.,

B. P. Aluwihare P.c., J.

Anil Gooneratne J.

S.C. APPEAL No. 10/2013

SC/HCCA/LA/511/2012

HCCA KEGALLE 831/2011

D.C. KEGALLE 6932/L

21.02.2017

Action for declaration of title- Prescription- Adverse possession- Reliefs which can be granted in an action for declaration of title- Can the disputed lot partitioned in the judgment of an action for declaration of title

Plaintiff filed this action for a declaration of title to lot 21, small portion of land, which he claims to have purchased by a deed. Plaintiff's claims he amalgamated the said lot with one other lot, namely lot 20, which he has purchased earlier and possessed both lots as one land. Plaintiff complained that during his absence the Defendant illegally erected a fence to prevent the Plaintiff enjoying lot 21. Both the Defendant and Plaintiff admittedly owns adjoining lots to each other. The Defendants claim to lot 21 is not on a deed but based on prescription. The learned District Judge delivered Judgment dismissing Plaintiff's action and partitioning lot 21 between the parties to the suit.

HELD:

- (1) In an action for a declaration of title, either Judgment should be entered in favour of the Plaintiff, if title is established by Plaintiff and, if not, dismiss the action.
- (2) Partitioning a lot could be made only in a partition suit and not in an action for declaration of title.

- (3) Defendant's claim that he has prescribed to the particular lot 21 need to be proved as per Section 3 of the Prescription Ordinance. Mere possession would not suffice.

APPEAL from the judgment of the High Court [Civil Appeal], Kegalle.

Cases referred to:

- (1) *Pathmasiri and Another Vs. Baby and Another* 2006 (1) SLR 35.

Nuwan Bopage for the Defendant-Respondent-Petitioner

M.S.A. Saheed for the Plaintiff-Appellant-Respondent

20.03.2017

GOONERATNE J. delivered the judgment.

* * * * *

JSA Reference No - JSASL/2017/1/2

DINAYADURA KANAKARATNE
VS
WASALAGE GUNAWATHIE AND OTHERS

SUPREME COURT

Sisira De Abrew J.

Anil Goonaratne J.

K. T. Chitrasiri J.

S.C. APPEAL 36/12

S. C. (SPL) LA 2/2011

C.A. APPEAL No.669/95(F)

D.C. GALLE No. 10146/P

11.11.2016

Finality of an interlocutory decree- Section 48(4) and



Section 26 of the Partition law- Importance of all the steps are compiled with in strict sense- Importance of serving summons Notice under section 16(3) of the Partition Law- Can issuing notices through courts at a subsequent time cure the said defect of the Court Commissioner?- Not taking mandatory steps is a grave violation of the law- Fraud- Duty of the Court to nullify the effect of an Interlocutory Decree in case of fraud- Section 48(3) of the Partition Law- Power of the Appellate Court to exercise its revisionary power to prevent injustice-

Petitioner had been living on the land having built a dwelling house on the land. Neither the Plaintiff nor the Defendant had any possession of the land at any given time. Moreover, the Court Commissioner who carried out the preliminary survey has stated that the Petitioner had claimed the buildings and the entire plantation found on the land. However, Section 16(3) of the Partition law notice was not served to the Petitioner. After entering of the interlocutory decree in the original court, Petitioner made an application under sec.48(4) to enable her to intervene. This application was refused, nevertheless, petitioner was successful in the appeal to the Court of Appeal. Plaintiff has preferred this appeal to the Supreme Court against the judgment by the Court of Appeal.

HELD:

- (1) The Plaintiff has failed to make the petitioner a party to the action as required by Section 5 of the Partition Law.
- (2) Such a failure of the plaintiff amounts committing fraud on the petitioner.
- (3) Failure in issuing notices under sec 16(3) is a grave violation by the Commissioner, which cannot be cured at a subsequent time, even by issuing notices through court.

Chitrasiri J “In this instance, the surveyor has failed to serve such a notice to the Petitioner Sriyalatha at the time she made her claim before the commissioner, to entire improvements found thereon. It is a gross violation of Section 16(3) of

the Partition Law. Issuing notices through courts at a subsequent time cannot cure the said violation of the Court Commissioner.”

- (4) Since the plaintiff has failed to follow the procedure referred to in the Partition Law, the interlocutory decree was vacated and the petitioner was permitted to intervene, under the proviso to Section 48(3) of the Partition law.

APPEAL from the judgment of the Court of Appeal of Sri Lanka

Cases referred to:

- (1) **Mather Vs. Thamotharam Pillai** [6 NLR 246]
- (2) **Mohamedaly Adamjee Vs. Hadad Sadeen** [58 NLR 217]
- (3) **Siriwardena Vs. Jayasumana** [59 NLR 400 at 401]
- (4) **Craig Vs. Kanseen** [1943 (1) A E R 108]

D.M.G.Dissanayake for the Defendant-Respondent-Respondent-Appellant

S.S.Sahabandu P.C. for the substituted PetitioneAppellant-Respondent

17.03.2017

CHITRASIRI J. delivered the judgment.

* * * * *

JSA Reference No - JSASL/2017/1/3

PEOPLES BANK

VS SRI LANKA INSURANCE CORPORATION LTD

SUPREME COURT

S. Eva Wanasundera P.c., J,

Upaly Abeyrathne J.

K. T. Chitrasiri J.



SC (CHC) APPEAL No. 18/09 S. C. (SPL) LA 2/2011
H.C.(CIVIL) CASE No. 140/2003(1)
08.08.2016.

Guarantee bond- Principle debtor- Guarantor- Should the plaintiff first sue Principle Debtor before proceeding against Guarantor? - Applicable law in guarantee bonds- Roman Dutch law or English Law

BAT International is a firm engaged in road construction and related activities. Road Development Authority(RDA) has awarded a contract to BAT International to perform road rehabilitation work. BAT International had applied for overdraft facilities from the Respondent, Peoples Bank. Peoples Bank had granted two overdraft facilities amounting to 18 million rupees to BAT International, on the undertaking that all the payments that are to be made to BAT International by the RDA will be deposited into the current account in the Peoples Bank and, also on the condition that BAT International should provide a Guarantee for the repayment of the overdraft facilities amounting to 18 million rupees. The Appellant, Sri Lanka Insurance Corporation Limited (SLIC), issued a Guarantee Bond, which BAT International submitted to the Peoples Bank to secure overdraft facilities. BAT International fell into arrears on payment and the Plaintiff moved the Commercial High Court for a decree against SLIC to enforce the guarantee bond. Commercial High Court ruled in favour of the Plaintiff and SLIC has preferred this appeal to the Supreme Court.

Main contention of the Appellant was that the bank should sue the Principal Debtor (BAT International) before filing action against the Guarantor (SLIC).

HELD: Majority Judgment delivered by **WANASUNDERA P.C., J.**,

- (1) Guarantee Bond contains no provision that the Peoples' Bank should first demand from the Principal before demanding from the guarantor.
- (2) The norm and accepted practice in the business

world is when one party grants an assurance to another party guaranteeing to pay on demand, if the principal does not pay the guarantor is bound pay.

- (3) If guarantee bond is interpreted to mean that Bank has to first demand from the principal, then file action against the principal and then only the Bank can demand and file action against the guarantor, no Bank who would want to grant any facility to any principal on such a guarantee. The trade and commerce will surely crash down in such a scenario.

Law of Guarantees by **Geraldine Andrews** and **Richard Millet** 2nd Edition at page 19: "The fact that the obligations of the guarantor arise only when the principal has defaulted in his obligations to the creditor does not mean that the creditor has to demand payment from the principal or from the surety, or give notice to the surety, before the creditor can proceed against the surety."

Appeal is hereby dismissed with costs.

Dissenting minority judgment by **CHITRASIRI J.**

- (4) The Commercial High Court Judge has not addressed following issue of law, main contention forwarded by the Defendant, when he decided the case in favour of the plaintiff.

"Could the creditor (plaintiff bank) file and maintain action against the guarantor (defendant-Insurance Corporation) to recover dues under the two Guarantee Bonds, without first instituting action against the principal debtor (BAT International)?"

- (5) The law applicable in this kind of transaction is the Roman Dutch Law and not English Law

APPEAL from the judgment of the Commercial High Court

Cases referred to:

- (1) **Hemas Marketing (Pvt) Ltd. Vs Chandrasiri and Others** (1994) 2 SLR, 181)



UNREPORTED | UNREPORTED | UNREPORTED | UNREPORTED | UNREPORTED | UNREPORTED

(2) Indica Traders (Pvt) Ltd. Vs Seoul Lanka Constructions (Pvt) Ltd (1994, 3 SLR 387)

(3) Gurusin Appu vs Carlina Hamine [02 NLR 307]

(4) Wijewardene vs Jayawardene [19 NLR 198] and [26 NLR 193]

Nihal Fernando PC for the Defendant Appellant

Kushan D'Alwis PC for the Plaintiff Respondent

17.03.2017.

WANASUNDERA J delivered majority judgment.
CHITRASIRI J. delivered the dissenting judgment.

* * * * *

JSA Reference No - JSASL/2017/I/4

**KONARA MUDIYANSELAGE BANDARA MENIKA
VS
KONARA MUDIYANSELAGE KUMARA MUTUWELLA**

SUPREME COURT

Sisira De Abrew J

Upali Abeyratne J

Anil Goonaratne J

SC Appeal 99/2013

SC/HC(CA)LA No.122/2012

HC NO. UVA/HCCA/BDL/25/2008(F)

DC MONARAGALA L/1959

15.2.2017

Action for declaration of title- Wrong folio- Priority of a deed- Forged deed- Title at the time of filing the action- Interpretation of a deed- Notary's attestation states vendors signed the deed whereas one vendor put thumb impression

instead of signing- Witnesses required to prove a deed- Notary and one attesting witness dead- Only one available witness testified

The Plaintiff-Appellant instituted this action in the District Court seeking a declaration of title to the property in suit. Both parties admitted at the trial that the Plaintiff-Appellant was the owner of property in question. The Defendant-Respondent at the trial has taken up the position that the Plaintiff-Appellant, by Deed No.6984 dated 5.8.1988, has sold the property in suit to him. The Plaintiff-Appellant, in her evidence, contended that Deed No.6984 was a forged deed as the Plaintiff-Appellant had not signed the said deed. Moreover, it was contended that as the Deed No.6984 had not been registered in the proper folio in the Land Registry, the Defendant Respondent cannot claim title based on that deed.

Strangely, there was no issue raised at the trial to the effect that Deed No.6984 was a forged deed. Nevertheless, Plaintiff-Appellant contended that Deed was not a valid as the Notary Public who attested the deed has stated that the Plaintiff-Appellant signed the deed, whereas that Deed only contained a thumb impression, wherein her signature was supposed to appear. Moreover, the Plaintiff-Appellant has not lodged a complaint to the police, to the effect the said deed was forged.

Learnt District Judge entered judgment in favour of the Plaintiff. The defendant appealed to the Civil Appeal High Court and District Judge's judgment was reversed therein. The Plaintiff preferred this appeal against Civil Appeal High Court judgment.

HELD:

SISIRA DE ABREW J

- (1) If a deed is not registered in the proper folio in the Land Registry and the said deed is challenged on the basis that another deed on the same property was registered in the proper folio, the deed registered in the proper folio gets the priority of registration and validity over the other deed.



- (2) But if there is no contesting deed, the deed that was not registered in the proper folio does not lose its validity merely because it is registered in wrong folio.

SISIRA DE ABREW J “in my view, the purchaser of the property does not lose title of the property merely because it was not registered in the proper folio in the Land Registry.”

- (3) It is clear that the Notary Public who attested the deed No.6984 has made a note to the effect, “This left thumb impression is the thumb impression of KM Bandara Manike.” (the Plaintiff-Appellant).
- (4) Besides, the other vendor, Plaintiff-Appellant’s husband, has in fact signed the deed, unlike the Plaintiff-Appellant. Hence, the Notary may, by stating ‘signed’ in his attestation is referring to the other vendor.
- (5) Absence of police complaint lodged by the Plaintiff to the effect that purported deed was forged deed shows that deed was not in fact forged.
- (6) Plaintiff’s inability to raise issue as to deed’s genuineness weakens Plaintiff’s case.
- (7) One of the attesting witnesses of the deed No.6984 stated in his evidence that the Notary Public and the other attesting witness are dead. Therefore, it is sufficient to call only one remaining witness to give evidence to prove the due execution.

The Appeal was dismissed. Civil Appeal High Court judgment affirmed.

APPEAL from the judgment of Civil Appeal High Court of Badulla

Cases referred to:

- (1) **Peeris vs Savunhami** 54 NLR 207
- (2) **Loku Menika vs Gunasekara** [1997] 2 SLR

281

S N Vijithsingh for the Plaintiff-Respondent-Petitioner-Appellant

DMG Dissanayake for the Defendant-Appellants-Respondent-Respondents

17.03.2017.

SISIRA DE ABREW J delivered the judgment.

* * * * *

JSA Reference No - JSASL/2017/1/5

MICHAEL RANJITH FERNANDO

VS

MARCUS FERNANDO & PREMA DAYANI

SUPREME COURT

Eva Wanasundera P. C., J.

Priyantha Jayawardena P. C. J. &

H. N. J. Perera J.

SC Appeal No. 117/2011

SC/HC/CA/LA/No. 57/2011

WP/HCCA/GPH/188/2002(F)

D.C. NEGAMBO CASE No. 4677/L

06.02.2017.

Res judicata- requisites for a plea of res judicata- sec.207 of the Civil Procedure Code- sec.84 of the Civil Procedure Code- Dismissal of Plaintiff’s case on non-appearance of plaintiff- Rent and ejectment- Declaration of title- sec.41 of the Civil Procedure Code- discretion of the plaintiff to decide the period damages were claimed

Manamalage John George Fernando had two sons named Marcus and Michael Ranjith. Father donated an undivided portion to Michael Ranjith the second son, keeping life interest on 1980. Later on, he donated the rest of property to Michael Ranjith. Sometime later, George withdrew the life interest rights he reserved in the first deed



Meanwhile, George's other son Marcus had come into a room in the house in 1979, with the consent of his father. After sometime, father had filed ejectment case against, Marcus, to get him evicted from that part of the house. By that time, George had only the life interest of the land on which the tiled house was situated. The District Court had dismissed the case for non-appearance of the Plaintiff (father). Later, father had passed away.

Michael Ranjith, the sole owner of the whole property subsequently filed a declaration of title case to evict the Defendants and damages. The District Judge held with the Plaintiff, Michael Ranjith. The Civil Appellate High Court reversed District Court judgment based on res judicata. Thereafter, the Plaintiff has appealed to the Supreme Court.

HELD:

- (1) In *Herath Vs Attorney General* 60 NLR 193 it was held that Sec. 207 of the Civil Procedure Code will apply only to decrees pronounced after there had been adjudication on the merits of a suit and not to a decree entered under Sec. 84 of the Civil Procedure Code, in consequence of the non-appearance of the Plaintiff.
- (2) K.D.P. Wickremasinghe in his book on Civil Procedure in Ceylon states that, for the doctrine of res judicata to operate, there must be three requisites, namely, same person, same thing and same cause of action. It is contained in Sec. 207 of the Civil Procedure Code.
- (3) Firstly, plaintiff (father) in the earlier case and present case (son) two different persons, hence, Res judicata cannot be applied.
- (4) Secondly, the cause of action in the RE case had arisen for the life interest holder of the house and property, whereas, cause of action in present case has arisen for the sole owner of the house and the land.
- (5) Thirdly, it is not the same thing that the two cases refer to. The first case refers to the eviction of the defendants from a part of the house, whereas, present case refers to the entire land.

- (6) the Plaintiff has liberty to choose from which date he seeks damages

APPEAL from the judgment of the High Court [Civil Appeal], Gampaha.

Cases referred to:

- (1) *Perera Vs Fernando* 17 NLR 300
- (2) *Herath Vs Attorney General* 60 NLR 193
- (3) *Sockalingam Chetty Vs Kalimuttu Chetty* 1944 NLR 330
- (4) *Dharmadasa Vs Piyadasa Perera* 1964 NLR 249

Sanjeeva Jayawardena PC for the Plaintiff Respondent-Appellant.

Dr. S.F.A. Cooray for the Defendants Appellants Respondents.
15.03.2017.

EVA WANASUNDERA P.C., J. delivered the judgment.

* * * * *

JSA Reference No - JSASL/2017/I/6

K G S NICHOLAS KARIYAWASAM

VS

OFFICER IN CHARGE,

POLICE STATION, PAYAGALA AND HON. ATTORNEY GENERAL

COURT OF APPEAL

A. W. A. Salam J (P/Ca) &

Malini Gunaratne J

C A.(PHC) APN 108/2013

HC KALUTARA CASE No. HCRA 25/2013

MC KALUTARA CASE No.22148

An order for eviction by a Magistrate- Criminal Jurisdiction of the Magistrate Court-Magistrate's power to evict a suspect



pending proceeding- Magistrate's power to convert criminal proceedings to civil proceedings- Revisionary powers of the Apex Court against miscarriage of Justice- Exceptional grounds

The petitioner is an orphan from birth and given shelter in an orphanage since he can remember. 'B report' was filed in the Magistrate's Court of Kalutara alleging commission of certain offences by the petitioner along with certain others. The learned Magistrate in the same proceedings made order to have the petitioner evicted from the orphanage in question. The order made by the learned Magistrate evicting the children who have attained the age of majority, including the petitioner from the orphanage includes a condition that, those who are not willing to vacate the premises are obliged to show cause.

The petitioner has moved the High Court in revision without resorting to show cause. Learnt High Court judge refused that application due to absence of exceptional grounds. Petitioner again invoked present revision application to challenge the order made by the learned Magistrate evicting the petitioner and the judgment by learnt High Court judge.

HELD: -

1. The learned Magistrate in the exercise of his criminal jurisdiction has no authority to direct the eviction of the accused before he decided whether the suspects are guilty of the charges levelled against them.
2. Where a strong case for the interference of this Court is made out or a miscarriage of justice, this Court is obliged to revise such an order.
3. Magistrate is not entitled to turn the nature of the proceedings of criminal case into a civil proceeding even the parties are agreeable to such a move. Magistrate had no authority or any right whatsoever to make the order relating to possession in the present case.

Application of revision against the judgment delivered by High Court judge,

Cases referred to:

- (1) **R C Fernando vs Wijesekara** SC 524/63
- (2) **Perera vs Mendis** (1948) 49 New Law Report 240
- (3) **Thegis vs Agonis** 22 New Law Report 376
- (4) **W.H.Thulyananda Senananda, vs OIC, Special Crimes Investigation Bureau, Police Station Mirihana** C.A.(PH.C) APN 28/2014 - H.C. Colombo HCR 17/2014

Janaka Amerasinghe for the 5th Accused-Petitioner-Petitioner.

Amila Palliyage for the 1st, 4th, 6th - 10th Accused-Respondent-Respondents.

Anoopa de Silva SSC for the Hon. Attorney General.

29.08.2014

A.W.A. Salam J delivered the judgement

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JSA Reference No - JSASL/2017/I/7

HON. ATTORNEY GENERAL

VS

**BALASUBRAMANIAM JOSEPH PETER
AND ATAPATTU MUDIYANSELAGE DANAPALA**

COURT OF APPEAL

K.T. Chitrasiri J

W. M. M. Malini Gunaratne

C.A.(PHC) APN No.138/2012

H.C. KANDY No.243/2011

Argued on: 02.09.2014

**Fine- State cost- Sec. 306 of the Criminal Procedure Code-
Limits of sentencing powers**



Learned High Court Judge in Kandy by his order dated 12th September 2012 has imposed a fine on the 2nd Accused, a sum amounting to of Rs. 45,000/-, carrying a default sentence of two years rigorous imprisonment. Having imposed a fine, upon considering the submissions made on behalf of the 2nd accused, the learned High Court Judge decided to levy a crown cost in lieu of the fine imposed.

HELD:

- I. Section 306 (3) (II) of the Criminal Procedure Code contains express provision that state costs can be imposed only up to a sum of Rs. 1500/-. Therefore, the decision to impose a crown cost of Rs. 45,000/- is unlawful.
2. Hence, the fine of Rs. 45,000/- imposed on the 2nd accused for the committing of offence of Trafficking and Possession of Cannabis under poison Opium and Dangerous Drugs Ordinance Act No.13 of 1994 is to stand as it was.

Application allowed.

APPEAL from the order of High Court, Kandy

Haripraya Jayasundera D.S.G. for the Complainant -Petitioner.

Amila Palliyage for the 2nd Accused-Respondent.

Judgment on: 02.09.2014

Chithrasiri J delivered the judgement

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JSA Reference No - JSASL/2017/1/8

**THOTAGE ARIYASENA
VS
MADDUMADEVAGE ALEN BOMBUWALA
AND
77 DEFENDANT RESPONDENTS**

COURT OF APPEAL

C.A. APPEAL No.1104/96(F)

D.C. KALUTARA CASE No.4259/P

A.W. A. SALAM J(P/CA)

24.07.2014.

Partition law – Duty of the trial judge – Judgment- Parties were declared to be owners of undivided shares in the judgment without specifying exact portion- schedule of share to be filed by the Plaintiff- Legality

The learned District Judge delivering the judgment having decided that the parties should be allotted undivided shares, failed to give exactly the shares each party will entitled to in the judgment. Judgment states that the plaintiff should tender a schedule of shares and if the schedule of shares so tendered is consistent with the judgment it should be accepted as part and parcel of his judgment.

HELD:

- (1) The judgment in the strict sense of the law cannot be regarded as a proper judgment in view of the direction given by the learned District Judge that the schedule of shares directed to be tendered by the plaintiff should be accepted as part and parcel of his judgment.
- (2) It is settled law that in a partition action the trial judge must decide the nature and extent of the interest each party is entitled to upon an examination of the title in terms of Section 25 of the partition Law.
- (3) This Judgment of the learned District Judge totally violate the provisions of the partition law hence shall be vacated. Case was sent for retrial.

Appeal from the District Court of Kalutara

Cases referred to:

- (1) **Memanis Vs Eide** 59 Ceylon Law at page 46
Asoka Fernando for the Defendant-Appellants
Champaka Ladduwahetty for the Respondent.
Judgment date: 06.08.2014
Salam J delivered the judgement

Complied by Mr. Mahee Wijeweera, District Judge, Tangalle



Once upon a country.....

About 2,500 years ago, the Gautama Buddha clearly explained the dreams seen by King Pasenadi of Kosala, the titular head of Kingdom in Eastern India.

THE FOURTH DREAM

The King said:

“I saw men unyoking a team of draught-oxen, sturdy and strong, and instead setting young steers to draw the load: and the steers proving unequal to the task laid on them, refused and stood stock still, so that the wagons did not move.

What shall come of it?”

The Buddha replied:

“Here again this will not have any bearing on you. During the days of unrighteous rulers, wise men and aged councilors skilled in the precedent, fertile in expedience and able to get through business, learned in the laws of the country, will not be honoured nor appointed to courts of law. Those appointed officials, ignorant alike of statecraft and of practical knowledge shall not be able to bear the burden of their honours or to govern, and because of their incompetence would not be able to discharge their duties. Whereupon the aged and wise lords shall keep in mind having been passed over earlier and shall decline to assist saying: “It is of no business of ours, we are outsiders. You were appointed, now you carry on.” Hence they shall stand aside and ruination will result just as the yoke that was laid on the young steers that were not strong enough to carry the wagons.

“you have nothing to fear, oh king, from those far-off times when all the nations will be poorly run by the young and foolish.”

THE FIFTH DREAM

The King said:

“Sir, I saw a horse with a mouth on either side, to which fodder was given on both sides and it ate with both mouths. It was eating voraciously.

This was my fifth dream. What shall come of it?”

The Buddha replied:

“This dream too shall have its fulfilment only in the future, in the days of unrighteous and foolish rulers who shall appoint unrighteous and covetous men to be judges. These base ones, fools, despising the good, would take bribes from both sides as they sit in the seat of judgement and shall be filled with this two-fold corruption even as the horse that ate fodder with both mouths at once.”



Of new salary structure

As a result of lengthy discussions made by JSA along with High Court Judges Association, the secretary to the Ministry of Justice has sent recommendations for a separate salary structure to the salaries and carders commission as same as proposed by JSA. However, it should be noted that proposals have not yet been approved and still being considered by necessary authorities. JSA would continuously take appropriate actions to achieve maximum outcome for benefit of its members. The letter & the annexure were as follows:-

කේ. එල්. එල්. විජේරත්න මහතා

සභාපති,

ජාතික වැටුප් හා සේවක සංඛ්‍යා කොමිෂන් සභාව

මහාධිකරණ විනිසුරුවරුන්ගේ හා සෙසු අධිකරණ නිලධාරීන්ගේ වැටුප් සංශෝධනයට අදාළ යෝජනා

මහාධිකරණ විනිසුරුවරුන් හා සෙසු අධිකරණ විනිසුරුවරුන්ගේ වැටුප් සංශෝධන සම්බන්ධව 2017. 02. 15 දින අධිකරණ අමාත්‍යාංශයීය නියෝජිතයින්ගේද, අධිකරණ සේවා කොමිෂන් සභාවේ නියෝජිතයින්ගේද, අදාළ විනිසුරු සංගම්වල නියෝජිතයින්ගේද සහභාගිත්වයෙන් ඔබ කොමිෂන් සභාවේදී පැවති සාකච්ඡාව හා බැඳේ.

02. එහිදී එකඟවූ කරුණු අනුව අධිකරණ සේවා කොමිෂන් සභාවේ නියෝජිතයින්, මහාධිකරණ විනිසුරුවරුන්ගේ සංගමයේ නියෝජිතයින්, අධිකරණ සේවා සංගමයේ නියෝජිතයින් හා කම්කරු විනිශ්චය සභා සභාපතිවරුන්ගේ සංගමයේ නියෝජිතයින්ගේ සහභාගිත්වයෙන් අධිකරණ අමාත්‍යාංශයේදී 2017.02.20 දින සාකච්ඡා කොට එකඟවූ පරිදි විනිසුරුවරුන් සඳහා සකස් කරන ලද වැටුප් ව්‍යුහය පිළිබඳ යෝජනාව ඉදිරි කටයුතු සඳහා මේ සමග එවන බව කාරුණිකව දන්වමි.

03. මෙම යෝජිත වැටුප් ව්‍යුහය සකස් කිරීමේ දී පහත කරුණුද අවධානයට ලක් කර ඇත.

- කළමනාකරණ සේවා චක්‍රලේඛ අංක 05/2016 යටතේ 2020 දී ලබා දීමට නියමිත මූලික වැටුප 2017.01.01 දින සිට ක්‍රියාත්මක වන පරිදි ලබාදේ.
- රජය විසින් නිල නිවාස ලබා දී ඇති විනිසුරුවරුන්ගේ වැටුපෙන් 06% මුදලක් අය කරනු නොලැබේ.
- වෘත්තියේ නොයෙදීමේ දීමනාව ලෙස මහාධිකරණ විනිසුරුවරුන්ට හා විශේෂ ශ්‍රේණියේ අධිකරණ නිලධාරීන්ට රු. 75,000/- ද, අනෙකුත් අධිකරණ නිලධාරීන්ට රු.50,000/-ද යෝජනා කර ඇත. මෙසේ යෝජනා කර ඇත්තේ විනිසුරුවරුන් ලෙස සේවයට බඳවා ගනු ලබන්නේ නීතිඥ වෘත්තියේ අවම වශයෙන් වසර 05ක පළපුරුද්දක් සහිත නීතිඥවරුන් වන බැවින් සහ එවැනි නීතිඥවරුන් පෞද්ගලික නීතිඥ වෘත්තිය හැර දමා අධිකරණ සේවය සඳහා පොළඹවා ගත හැකි ආකර්ෂණීය දීමනාවක් ගෙවිය යුතු බැවිනි. එමෙන්ම විනිශ්චයකාරවරුන්ට වෙනත් වෘත්තියක නියැලීමේ අවස්ථාවද නොමැති බව ඔබගේ අවධානයට යොමු කරවමි.
- නිල නිවාස දීමනා වර්තමාන වෙළඳපොළ වටිනාකමට ගැලපෙන පරිදි සකස් කර ඇත.
- රාජ්‍ය පරිපාලන චක්‍රලේඛ අංක 14/2008 යටතේ විනිසුරුවරුන් හට නිල රථ ලබා දීමට රජයට වැය වන මුදල නිල රථ දීමනාවක් ලෙස වැටුපට එකතු කර ගෙවීමට යෝජනා කෙරේ. මෙම යෝජනාව සිදුකිරීමේදී ජාතික අයවැය චක්‍රලේඛ අංක 01/2006 (i) හි විධිවිධානද සැලකිල්ලට ගෙන ඇත. එහි කාණ්ඩ අංක 02 යටතේ අතිරේක ලේකම් හා සමාන මට්ටමේ නිලධාරීන් සඳහා රු. 200,000/-ක මාසික බදුකුලියක් ගෙවිය හැකි බැවින් මහාධිකරණ විනිසුරුවරුන් හා විශේෂ ශ්‍රේණියේ අධිකරණ



නිලධාරීන් සඳහා රු.200,000/- මාසික නිලරථ දීමනාවක් යෝජනා කර ඇත. ජ්‍යෙෂ්ඨ සහකාර ලේකම් හා සමාන මට්ටමේ තනතුරු සඳහා රු. 135,000/-ක් වාහන සඳහා මාසික බදු කුලිය ලෙස හිමි බැවින් අනෙකුත් අධිකරණ නිලධාරීන් සඳහා රු.135,000/-ක් මාසික නිලරථ දීමනාව ලෙස යෝජනා කර ඇත. තවද මෙම වක්‍රලේඛයට අනුව පෞද්ගලික පාර්ශවයකින් මෝටර් රථයක් කුලී පදනම මත ලබා ගන්නේ නම් රජයට දැරීමට සිදුවන පිරිවැයම විනිසුරුවරුන් තම පෞද්ගලික මෝටර් රථය භාවිතා කිරීම වෙනුවෙන් වැටුපට එකතු කර ගෙවන බැවින් ඒ සඳහා රජයට අමතර වැය බරක් දැරීමට සිදු නොවේ.

- (f) පුද්ගලික මෝටර් රථ වෙනුවෙන් නිල රථ දීමනාව ලබා ගන්නේ නම් එම මෝටර් රථය පුද්ගලික භාවිතය වෙනුවෙන් අයකරන ගාස්තුව අය නොකරයි.
- (g) දෙපාර්තමේන්තු ප්‍රධානියකු වශයෙන් ගෙවන දීමනාව සකස් කිරීමේදී විනිසුරුවරුන්ට පැවරී ඇති අධිකරණමය රාජකාරිවලට අමතරව පැවරී ඇති පරිපාලනමය, මූල්‍යමය හා ප්‍රසම්පාදන රාජකාරි හා වගකීම්ද සැලකිල්ලට ගෙන ඇත. විශේෂයෙන්ම 19වන ආණ්ඩුක්‍රම ව්‍යවස්ථා සංශෝධනයෙන් පසුව මෙම කටයුතු සම්බන්ධව විගණනයක් සිදුවන බැවින් විගණන විමසුම් සඳහා ද පිළිතුරු ලබා දීමට සිදු වී ඇත. මීට අමතරව ආයතන සංග්‍රහයේ දක්වන පරිදි මහාධිකරණ විනිසුරුවරුන්, දිසා අධිකරණ විනිසුරුවරුන්, මහේස්ත්‍රාත්වරුන් හා කම්කරු විනිශ්චය සභා සභාපතිවරුන් ආයතන සංග්‍රහයේ කාර්යයන් ඉටු කිරීම සඳහා දෙපාර්තමේන්තු ප්‍රධානීන් ලෙස හඳුනාගෙන ඇත.
- (h) බද්දට යටත් ආදායම තීරණය කිරීමේදී අංක SEC/2015/05 දරන බදු වක්‍රලේඛය අදාළ කරගෙන ඇත.
- (i) නව වැටුප් ව්‍යුහය 2017.04.01 දින සිට ක්‍රියාත්මක වීමට යෝජනා කෙරේ.
- (j) යෝජිත වැටුප් ව්‍යුහයේ සඳහන් නිල රථ දීමනාව හෝ රජය විසින් සපයන නිල රථයක් ලබා ගැනීම හා යෝජිත නිල නිවාස දීමනාව ලබා ගැනීම හෝ රජයේ නිල නිවාසයක් භාවිතා කිරීම විනිසුරුවරයාගේ අභිමතය පරිදි සිදුකළ හැක.

04. ඔබ සමග කරන ලද සාකච්ඡාවේදී ගරු විනිසුරුවරුන් සඳහන් කළ ආකාරයට යෝජිත වැටුප සෑම වසර 02කට වරක් ප්‍රතිශෝධනයට ලක් කිරීමටත් එය පහත සඳහන් සාමාජිකයින්ගෙන් සමන්විත කමිටුවක් මගින් සිදු කිරීමටත් යෝජනා වී ඇත.

01. ගරු අග්‍රවිනිශ්චයකාරතුමා විසින් පත් කරන ගරු ශ්‍රේෂ්ඨාධිකරණ විනිශ්චයකාරතුමෙක්
02. ගරු අභියාචනාධිකරණ සභාපති විනිසුරුතුමා විසින් නම් කරන ගරු අභියාචනාධිකරණ විනිසුරුතුමෙක්
03. අධිකරණ අමාත්‍යාංශයේ ලේකම්
04. අධිකරණ සේවා කොමිෂන් සභාවේ ලේකම්
05. මුදල් අමාත්‍යාංශයේ නියෝජිතයෙකු
06. මහාධිකරණ විනිසුරුවරුන්ගේ සංගමයේ සභාපති හෝ ලේකම්
07. අධිකරණ සේවා සංගමයේ සභාපති හෝ ලේකම්
08. කම්කරු විනිශ්චය සභා සභාපතිවරුන්ගේ සංගමයේ සභාපති හෝ ලේකම්

පද්මසිරි ජයමාන්න

ලේකම්

අධිකරණ අමාත්‍යාංශය

- පිටපත් :
01. ලේකම්, අධිකරණ සේවා කොමිෂන් සභාව
 02. ගරු සභාපතිතුමා, මහාධිකරණ විනිසුරුවරුන්ගේ සංගමය
 03. ගරු සභාපතිතුමා, අධිකරණ සේවා සංගමය
 04. ගරු සභාපතිතුමා, කම්කරු විනිශ්චය සභා සභාපතිවරුන්ගේ සංගමය

Proposed Salary for High Court Judges and Judicial Officers

Category	Salary step	Existing Basic Salary	Personal Allowance (50% of basic salary)	Special Allowance (20% of Basic Salary)	Professional Allowance 15000	Book Allowance 20000	Appeal Allowance 7500	Proposed basic salary	Additional Allowances						Proposed Gross Salary	Deductions			Payee Tax	Propose Net Salary	Taxable Income	T.Income *16% 20000 Payee tax	
									Official Vehicle Allowance	Fuel Allowance (2251*117) Approximately	Telephone Allowance	Drivers Allowance	Allowance as Dpt. Head	Non Practicing Allowance		Cost of Living Allowance	Proposed Housing Allowance	W&O.P (7% of Basic Salary)					Agrahara Stamp
High Court Judges	JS 2/2016	112450	56225	22490	15000	20000	7500	233665	200000	26325	13900	15000	30000	75000	7800	60000	16357	125	25	39850	605333	374065	39850
	JS 1/2016																						
Judicial Service	SPL	104305	52152.5	20861	15000	20000		212318.5	200000	26325	11500	15000	15000	75000	7800	50000	14862	125	25	35887	562045	349291	35887
	Class I Grade I/ PLT I/ DCWC	95625	47812.5	19125	15000	20000		197562.5	135000	26325	11500	15000	15000	50000	7800	45000	13829	125	25	30220	458988	313875	30220
	Class I Grade II	82605	41302.5	16521	15000	20000		175428.5	135000	26325	11500	15000	15000	50000	7800	45000	12280	125	25	27720	440903	298251	27720
	Class II Grade I/ PLT II/ DCWC	71195	35597.5	14239	15000	20000		156031.5	135000	26325	11500	15000	15000	50000	7800	45000	10922	125	25	25529	425055	284559	25529
	Class II Grade II	59630	29815	11926	15000	20000		136371	135000	26325	11500	15000	15000	50000	7800	45000	9546	125	25	23309	408991	270681	23309





Public representations for a new Judiciary

The special committee for public representations on constitutional reforms has published its final report. The committee has recommended for vast changes in present judicial structure. Since limited attention of our members vital proposals are briefed here as follows:-

Of the Constitutional Court

- Establishment of a constitutional court with the following jurisdictions
 - a. Determine the Constitutionality of proposed amendment to the constitution.
 - b. Determine the Constitutionality of the Bill of parliament.
 - c. Determine and declare whether of Bill of parliament are inconsistent enacted by parliament and provincial councils.
 - d. Judicial review of legislation to determine the Constitutionality of laws enacted by parliament and provincials.
 - e. Declare on matters pertaining to the interpretation of the Constitution.
 - f. Judicial review of any decision taken by the Judicial Service Commission.
 - g. Hear appeals on judgment of the supreme court when the Constitutional court is the view that there exists a matter of national and Constitutional importance.
 - h. Here petitions challenging judicial orders and judgments on the footing that it infringes on the exercise of Fundamental Rights/Human Rights.
 - i. Consultative jurisdiction to enable the president, prime Minister and speaker to seek the opinion of the Constitutional court on any matter of constitutional importance.
- Consultative Court should be the apex of the court of Sri Lanka and shall be a court of record.
 - a. The Constitutional court to comprise the president and 6 other judges.
 - b. President and Judges of the constitutional court be appointed by the president on the recommendation of the constitutional council.
 - c. The constitutional court shall function as either a full court or a division of 5 judges.
- It is proposed that the constitutional court should be composed of retired judges of the supreme court, persons of eminence with academics qualifications on law or related subjects, retired eminent personalities from the official or unofficial bar.
- It is recommended that persons who have been directly involved in politics or those holding or having held any position in any political party should not be appointed to the constitutional court.

Of appointments and office of the Judges of Supreme Court & Court of Appeal

- When there is a vacancy in the supreme court or court of Appeal, the president should be required to call upon the chief justice, the Attorney-General and the Bar Association of Sri Lanka to submit their recommendations with regard to the person who should be appointed as a Judge of the supreme court or court of Appeal;



- Thereafter, the president should be required to select the person he recommends, from and out of the names of the person who have been recommended by the chief Justice, the Attorney-General and the Bar Association of Sri Lanka;
- The president should then submit to the constitutional council the name of the person he recommends together with the names of all other persons who were recommended by the chief Justice, the Attorney-General and Bar Association of Sri Lanka;
- In the event the constitutional council approves the appointment of the person recommended by the president, such person should be appointed by the president;
- In the event the constitutional council does not approve of the appointment of the person recommended by the president, the constitutional council should set out its reasons for its decision and recommend to the president that another person be appointed, from and out of the names of the other persons who were recommended by the chief Justice, the Attorney-General and the Bar Association of Sri Lanka;
- In such event, the president should appoint such other person as is recommended by the constitutional Council;
- The Chief justices and the president of the court of Appeal should hold such office only for a maximum of six years and if a chief justices or president of the court of Appeal completes his of six years prior to reaching the age of 65, he should be given the option of retiring with full benefits at the end of his term of six years or continuing to serve as a judge of the court until he reaches the age of 65;
- Upon retirement, Judge of the supreme court of Appeal should not accept any paid or unpaid employment in the state sector for a minimum period of three years following retirement, except for teaching in an institution recognized by the University Grants commission or Sri Lanka Law college.

Of removal of judges of Apex Courts

- The president should not make any Order for a removal of Judge of the supreme Court or Court of Appeal unless the removal of the Judge from office has been recommended by the Constitutional council of the ground of proved misconduct or impropriety which render that Judge unsuitable to continue as a Judge of the Supreme Court or Court of Appeal or on the ground of proved mental or physical incapacity to function as a Judge of this Supreme Court or Court of Appeal;
- The Constitutional Council should not make any such recommendation for the removal of a judge of the supreme Court or Court of Appeal except upon due consideration of a Report submitted to the Constitutional Council by the Judicial Commission for the superior court where a panel Inquiry has found the Judge to be guilty of misconduct or impropriety or a report submitted to the Constitutional Council by the Judicial Commission for the superior court that proved mental or physical incapacity prevents the Judge from Functioning as a Judge of the Supreme Court or Court of Appeal;
- In the event that, after due consideration of a report submitted to the Constitutional Council by the Judicial commission for the superior courts that a panel of Inquiry has found the Judge to be guilty of misconduct, the constitutional council determines that , such misconduct or impropriety dose not amount to misconduct or impropriety which renders that Judge unsuitable to continue as a Judge of the Supreme Court or Court of Appeal, the Constitutional Council shall remit the report to the Judicial Commission for the superior court to decide on appropriate disciplinary action to be taken against that Judge other than the removal from office.



Of Judicial service commission

- The judicial service Commission (which presently consists of the Chief Justice and two other Judge of the Supreme Court) should consist of the following persons:
 - ✓ The Chief Justice, who should be the chairman.
 - ✓ Two senior Judge of the supreme Court.
 - ✓ The president of the Court of Appeal.
 - ✓ One senior lawyer of eminence and integrity nominated by the Chief Justice upon the recommendation of the Bar Association of Sri Lanka. Such person should hold office for a period of 05 years and should be prohibited from appearing in any Court or Tribunal during his period of holding office.
- The Judicial service commission should have the powers of appointment, promotion, transfer, dismissal, administrative authority and disciplinary over all Judge of First Instance including Judges of the High Court.
- The secretary of the Judicial Service Commission should be a High Court Judge.

JSA asks for a deep consideration on above proposals and send your views to the secretary for necessary steps.

A PARADOX !

Many years ago, a Law teacher came across a student who was willing to learn but was unable to pay the fees. The student struck a deal saying, “I will pay your fee the day I win my first case in the court”. The Teacher agreed and proceeded with the law course. When the course was finished and teacher started pestering the student to pay up the fees, the student reminded him of the deal and pushed days.

Fed up with this, the teacher decided to sue the student in the court of law and both of them decided to argue for themselves.

The teacher put forward his argument saying “If I win this case, as per the court of law, the student has to pay me as the case is about his non-payment of dues. And if I lose the case, the student will still pay me because he would have won his first case ... So either way I will get the money.”

Equally brilliant, the student argued back saying: “If I win the case as per the court of law, I don’t have to pay anything to the teacher as the case is about my non-payment of dues. And if I lose the case, I don’t have to pay him because I haven’t won my first case yet. So either way, I am not going to pay the teacher anything”.

This is one of the greatest paradoxes ever recorded. Who is right and who is the winner? This is part of ancient Greek history. The lawyer teacher was Protagoras (c.485-415 BCE) and the student was Euthalos.

This is known as Protagoras’s Paradox. This case was not solved.

The most interesting part – this is still debated (even today) in law schools as a logic problem!



Name list of contributors to the farewell for former Chief Justice

Name of the JSA Member	Designation	Station
01. Mr: W.P.S. Nissanka	District Judge	Colombo
02. Mr: J.A. Kahandagamage	District Judge	Gampaha
03. Mr: S.J. Morawaka	Additional District Judge	Colombo
04. Mr: T.J. Tennakoon	District Judge	Galle
05. Mr: P.P.R.E.H. Singappulige	Additional Secretary	Ministry of Justice
06. Mr: M.A.A. Anawaratna	District Judge	Panadura
07. Mr: M.P. Moahaidein	District Judge	Batticaloa
08. Mrs: M.G.N.C.M. Ferdinandez	District Judge	NuwaraEliya
09. Mr: M.P.M. Abeyratne	District Judge	Homagama
10. Mr: M.M .S.Y. Mapa Bandara	District Judge	Nugegoda
11. Mrs: S. Nandasekaran	District Judge	Chavakachcheri
12. Ms: C. Amaratunga	District Judge	Mt.Lavinia
13. Mr: M.G.G. Siripala	District Judge	Avissawella
14. Mr: N.M.M. Abdulla	District Judge	Trincomalee
15. Mr: R.P.D.P.P. Ratnayake	Additional District Judge	Colombo
16. Mr: G.A.B. Pilapitiya	District Judge	Horana
17. Mrs: A.N.J. De Alwis	Additional District Judge	Colombo
18. Mr: A.M.M. Sahabdeen	Additional District Judge	Colombo
19. Mr: H.S. Somaratne	Deputy Secretary	Judicial service commission
20. Mr: W.K.D. Wijeratne	Magistrate	Nugegoda
21. Mr: M. Ganesharajah	Magistrate	Batticaloa
22. Mrs: A.T.N. Fernando	District Judge	Negombo
23. Miss.A.I.K. Ranaweera	Additional District Judge	Colombo
24. Miss. K.S.L. Jayaratne	Magistrate	Fort
25. Mr: R.S.A. Dissanayake	Additional Magistrate	Colombo
26. Mr: W.M.M. Thalgodapitiya	District Judge	Kandy
27. Mr: H.S. Ponnampereuma	District Judge	Kegalla
28. Mr: R. Weliwatta	Magistrate	Negombo
29. Mr: V. Ramakamalan	District Judge	Kalmunai
30. Miss.S.H.M.N. Lakmali	Additional District Judge	Negombo
31. Mr: D.G.N.R. Premaratne	District Judge	Matale
32. Miss. W.D. Wimalasiri	Additional District Judge	Gampaha
33. Mr:J. Trotsky	Additional Magistrate	Colombo
34. Mr:M.M.M. Mihal	Magistrate	Mt.Lavinia
35. Mr:T.J. Prabhakaran	District Judge	Kebithigollewa
36. Mr: M. Wijeweera	District Judge	Tangalle
37. Mr: I.P.D. Liyanage	District Judge	Hatton
38. Mr: R.R.J.U.T. Rajakaruna	Additional District Judge	Kandy



Name of the JSA Member	Designation	Station
39. Mr: R.A.D.U.N. Ranatunga	Magistrate	Homagama
40. Mr: T.M.C.S. Gunasekara	District Judge	Bandarawela
41. Mr: M.P. Ranasinghe	Additional District Judge	Colombo
42. Mr:R.M.S.B. Chandrasiri	Additional Magistrate	Colombo
43. Mr:A.N. Peiris	Magistrate	Galle
44. Mr:A.G. Alexrajah	District Judge	Mannar
45. Mr:L.C. Madanayake	Additional District Judge	Colombo
46. Mrs:P. Paranagama	Magistrate	Wattala
47. Mr: H.K.N.P. Alwis	Magistrate	Kaduvela
48. Mr: I.R. De Silva	Magistrate	NuwaraEliya
49. Mr: L.D.H. De Silva	District Judge	Wariyapola
50. Mr: P.M.T. Bandara	Senior Assistant Secretary	Judicial service commission
51. Mr: R.S.M. Wijesekera	District Judge	Nawalapitiya
52. Mrs: W.D.C. Wijebandara	Additional Magistrate	Colombo
53. Miss.D.M.C.M. Danansooriya	District Judge	Anuradhapura
54. Mrs: R.S.M.L.P.A. Weerasinghe	Additional Magistrate	Mt.Lavinia
55. Mr: C.H.G. Liyanage	Magistrate	Panadura
56. Mr: S.S.K. Withana	Additional District Judge	Avissawella
57. Mr: N.D.B. Gunaratne	District Judge	Puttlama
58. Mr: A.M.I.S. Attanayake	Magistrate	Kandy
59. Mr: A.A. Anandarajah	District Judge	Kilinochchi
60. Mr: A.M.M. Riyal	District Judge	Kytes
61. Mr: S.W.K. Senadeera	Magistrate	Matugama
62. Mrs: W.K.D.S. Weerathunga	Magistrate	Maligakanda
63. Mr: D.P. Mudunkotuwa	District Judge	Balangoda
64. Mr: Y.R.B. Nelundeniya	Additional District Judge	Moratuwa
65. Mr: J. Kajanithibalan	District Judge	Jaffna
66. Mr: V.H.G.S. De Mel	District Judge	Chilaw
67. Mr: D.M.D.C. Bandara	Sup.Num. Additional District Judge	Colombo
68. Mrs: C. Weerasooriya	Juvenile Magistrate	Battaramulla
69. Mr: U.S. Kalansooriya	Additional Magistrate	Kandy
70. Miss. H.M.B.R. Wijeratne	Magistrate	Kalutara
71. Mr: D.M.A. Seneviratne	Additional Magistrate	Nugegoda
72. Mrs: G.A.R. Atigalle	Additional Magistrate	Colombo
73. Mr: G.N. Perera	Additional District Judge	Kandy
74. Mrs: K.K. Liyanage	Additional Magistrate	Panadura
75. Mr: E.A.K.D. Eritawala	Additional Magistrate	Negombo
76. Mr: S. Satheestharan	Magistrate	Jaffna
77. Mr: T. Sarawanarajah	Magistrate	Avissawella
78. Mr: P. Sivakumar	District Judge	Point Pedro
79. Miss. A. Kanagarathnam	Senior Assistant Secretary	Judicial service commission
80. Miss.K.G.D. Amarasinghe	Additional Magistrate	Colombo
81. Mr: A.S. Bodaragama	Magistrate	Elpitiya

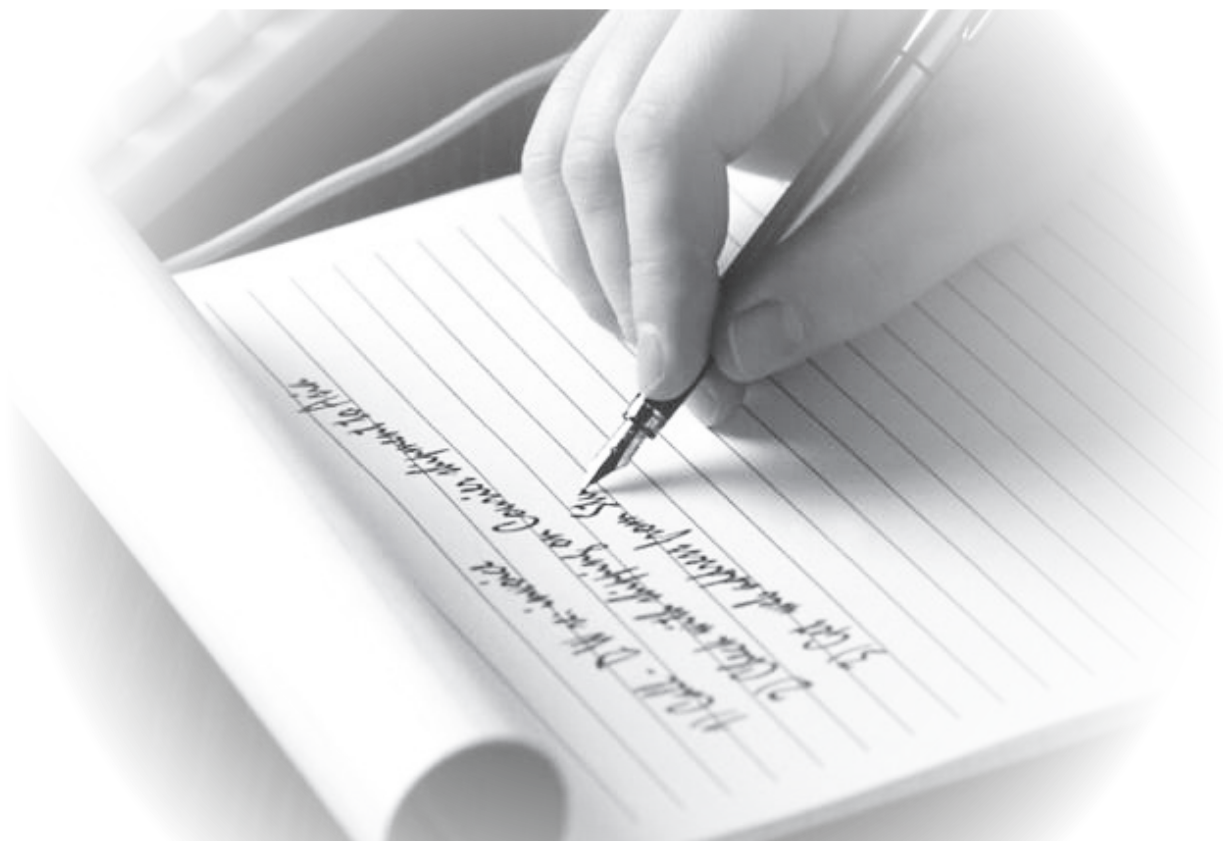


Name of the JSA Member	Designation	Station
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83. Mr: M.H. Fareekdeen	District Judge	Teldeniya
84. Mrs:R.M.A. Atapattu	Additional District Judge	Kalutara
85. Mr: R.A.M. Rajapakse	Additional District Judge	Kegalle
86. Mr: H.S.U. Ramyakumara	Additional District Judge	Kegalle
87. Mr: K.C.A. Samaradivakara	District Judge	Wellawaya
88. Mrs: A.D.C. Silva	Additional District Judge	Matugama
89. Mr: T.A.D. Hemapala	District Judge	Welimada
90. MissK.U.T. De Silva	Magistrate	Matara
91. Miss. D.M. Kodithuwakku	Additional District Judge	Kuliyapitiya
92. Mrs: K.A.D.S.C. Perera	District Judge	Minuwangoda
93. Mr: M.G.K. Perera	Magistrate	Kegalle
94. Mr: L.M. Rathnayaka	Additional Magistrate	Maligakanda
95. Mrs: B. Abeysinghe	District Judge	Ruwanwella
96. Mr: S.G.C. Wickramanayaka	District Judge	Kurunegala
97. Mrs: M.M. Jayasekara	Registrar	Supreme Court
98. Mr: G.M.T.U. Suwandurugoda	Additional District Judge	Mount Lavinia
99. Mr:I.N.N. Kumara	District Judge	Polonnaruwa
100. Mr: D. Wijesinghe	Additional District Judge	Matara
101. Miss.K.V.M.P. De Silva	District Judge	Balapitiya
102. Mrs: K.A.G. Punchihewa	Additional District Judge	Matara
103. Mr: D.M.J. Dissanayaka	Magistrate	Horana
104. Mrs: G.H.K.N. Silva	District Judge	Nikaweratiya
105. Mrs: B.G.N.T.K. Bogahadeniya	Magistrate	Bibila
106. Mr: D.M.S. Karunarathna	District Judge	Hambantota
107. Mrs: P.S. Pathirana	Additional Magistrate	Matara
108. Mr: R.S.M. Mahendrarajah	District Judge	Marawila
109. Mr: I.N. Rizwan	District Judge	Mutur
110. Mr: S. Leninkumar	Additional District Judge	Vavuniya
111. Mr: A.C. Rizwan	District Judge	Valaichchenai
112. Mr: M.I. Wahabdeen	District Judge	Potuvil
113. Mr: N.T. Heenatigala	Additional District Judge	Polonnaruwa
114. Mr: R.M.S.N. Samaratunga	Magistrate	Angunakolapelesa
115. Miss. A.I. Hettiwatte	Additional Magistrate	Galle
116. Mr: M.S.M. Samsudeen	District Judge	Mulativu
117. Miss. R.V.N.K. Vitharana	Magistrate	Embilipitiya
118. Mr: K.R.N.S. Weerasinghe	District Judge	Mahiyanganaya
119. Mrs: L.A.D.J.S. Wijethunge	Magistrate	Anamaduwa
120. Mr: I.M.S.B. Illangasinghe	District Judge	Dambulla
121. Miss. K. Kumarasiri	Trainee	Sri Lanka Judges Institute
122. Mr: W.M.K.A.P.L. Fernando	District Judge	Hingurakgoda
123. Mr: U.V.D.T. Dammika	District Judge	Kantale
124. Mrs: R.W.R.G.T.U. Rajapakshe	District Judge	Tissamaharama



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126. Mr: W. R. G. Abeysinghe	Additional District Judge	Chilaw
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128. Mr:D. De. S. Weerawardena	District Judge	Kekirawa
129. Mr: P.P.J. Fernando	Additional Magistrate	Embilipitiya
130. Mr: R.M.G.C. Rajapakshe	Magistrate	Pilessa
131. Mr: T.U. Rajapakshe	District Judge	Maho
132. Mr: S.L.M. Wijesinghe	District Judge	Walapane
133. Mrs: H. M. Thasneem	Trainee	Sri Lanka Judges Institute
134. Mr: K. M. J. P. Samarasinghe	District Judge	Morawaka
135. Mrs: A. N. R. Perera	Trainee	Sri Lanka Judges Institute
136. Mr: H. U. K. Palpola	Magistrate	Deiyandara
137. Mr: L. T. Warusavithana	Magistrate	Galgamuwa
138. Mrs: W. M. S. L. Dasanayaka	Additional District Judge	Ampara
139. Mr: H. P. N. S. K. Wimalarathna	Magistrate	Siyambalanduwa
140. Mr: W. M. N. P. Gunasekara	Magistrate	Bandarawela
141. Mr: M. A. R. Mallawaarachchi	Additional District Judge	Maho
142. Mr: B. P. R. Jayasekera	Acting Magistrate	Badulla
143. Mrs: R. G. N. K. Rankothge	Trainee	Sri Lanka Judges Institute
144. Mr: B. A. A. I. Buddhadasa	Magistrate	Thambuththegama
145. Mr: P. L. N. Silva	Trainee	Sri Lanka Judges Institute
146. Mrs: H. P. S. Dulangika	Trainee	Sri Lanka Judges Institute
147. Mrs: F. S. Mahfi	Magistrate	Hettipola
148. Mrs: W. Nawarathna	Magistrate	Dehiattakandiya
149. Mr: M. D. S. P. Dodangoda	Trainee	Sri Lanka Judges Institute
150. Mrs: J. Karuppiyah	Juvenile Magistrate	Jaffna
151. Mrs: M. N. Nanayakkara	District Judge	Walasmulla
152. Mr: I. P. Razzaq	Magistrate	Kalmunai
153. Mrs: G. Shylavan	Trainee	Sri Lanka Judges Institute

Members whose names are mistakenly omitted in the list are anticipated to confirm the contribution as soon as possible for the purpose of updating the details. In addition to above members, several High Court Judges made their contributions for success of the event. JSA is indebted to the High Judge's Association for the participation of its Hon. President and members.



ISA kindly invite all the members to submit their articles, views and suggestions to improve the quality, style and substance of next volume of the News Letter.

Numbering of News Letters

The Editors of the News Letter have decided to number each copy of the News Letter hereinafter, not by the month but by the Volumes of particular year for easy reference by legal fraternity and academics. Harvard referencing system requires a continuous publication model.

After this change, if someone is to quote something in a News Letter, it would appear as follows:-

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