News Letter

THE JUDICIAL SERVICE ASSOCIATION OF SRI LANKA

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2023 VOLUME 01

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Executive Committee Members of the JSA - 2023

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**Morality cannot be legislated,
but behavior can be regulated.
Judicial decrees may not change the heart,
but they can restrain the heartless.**

- Marti Luther King JR -

Office Bearers

Editorial

"It has gone too far…the judicial institution will be damaged and judicial integrity undermined"

-Justice Michael Kirby

An essential component of democratic governance is the idea that the various parts of the government should carry out their responsibilities without interference from one another. This principle highlights the significance of maintaining functional autonomy among the essential institutions of the state, such as the legislative and the judiciary, and serves as a safeguard against the consolidation of power in the hands of any one person or group. Additionally, this principle prevents power from being concentrated in the hands of any one person or group. It emphasises how important it is for each arm of government to carry out its responsibilities in a way that is consistent with the constitutional mandate that has been given to it.

According to the perceptive remarks made by Justice Michel Kirby, the concept of the separation of powers avoids the development of totalitarian control and maintains the values of liberty and freedom. This idea promotes democratic concepts such as transparency, accountability, and the rule of law by ensuring that no branch of government can exercise unchecked authority. Other democratic principles are also advanced by this idea. The rule of law is one of the other democratic ideals that this principle helps to uphold and protect.

In Montesquieu's seminal work "The Spirit of Laws," in which he advocated for the establishment of a system of checks and balances to prevent the abuse of power by any one branch of government, the concept of "separation of powers" was first elaborated. This was done to prevent any one branch of government from becoming too powerful. This was the first instance in which the idea of the division of powers was developed to its full potential.

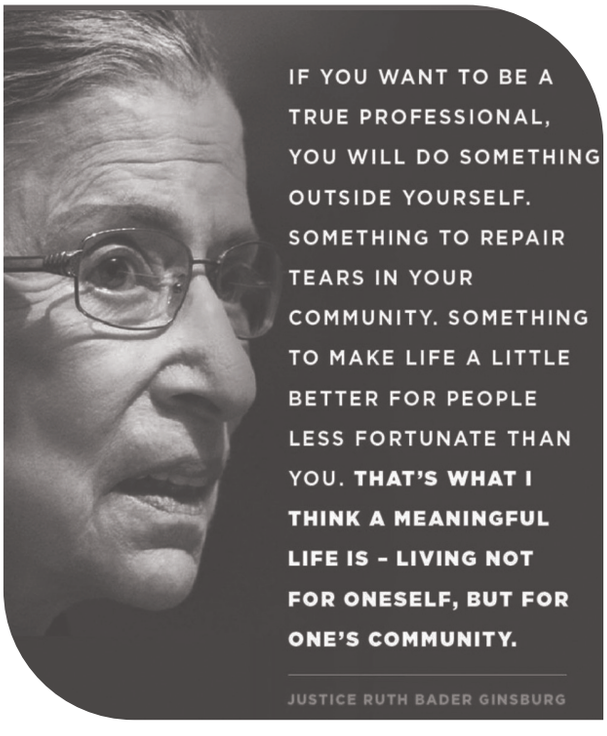
These fundamental concepts were further elaborated upon by the "Latima House Principles," which were presented to the public in 1998. These principles stress the critical role played by the several branches of government in supporting democratic administration and recognise the inherent legitimacy of each branch. Additionally, they call attention to the fact that each branch possesses its own intrinsic legitimacy. This paper places a significant amount of stress on the significance of displaying deference and respect for one another among the several branches of the government. This is done in acknowledgement of the reality that each of the three branches of government has a unique and significant role to play in achieving the overarching goal of democratic governance.

In spite of the fact that these concepts are sound, there have been instances throughout the years in which the legislative and judicial arms of government have found themselves at odds with one another, particularly in relation to issues affecting the invalidation of constitutional provisions. In circumstances like these, judges are required to maintain a steadfast commitment to defending the constitutionally mandated sanctity of the document as well as the democratic principles and goals that are outlined within it. In order to strike a fair balance between competing interests and take into account the underlying cultural norms and values that drive the drafting of the constitution, constitutional provisions need to be interpreted in a manner that is both careful and nuanced.

At the same time, Parliament needs to recognise that it is responsible for itself and that it needs to be held accountable for the activities that it engages in. Because doing so runs the risk of weakening the rule of law and eroding public trust in the constitutional process, it should not exploit the benefits it receives in order to evade the appropriate amount of judicial examination. Instead, it should refrain from doing so. For the sake of ensuring that the democratic system functions in an effective manner, it is imperative that each department of the government be held accountable for its actions.

It is crucial that, while we navigate the complexity of contemporary administration, we maintain our adherence to the idea of the separation of powers. This pillar of democratic government prevents the buildup of unrestrained authority while fostering openness, accountability, and adherence to the rule of law. To do this, the legislative branch must behave responsibly and refrain from abusing its privileges to bypass necessary judicial review. In addition, the judicial branch must interpret the law with care and deliberation, keeping in mind the values and conventions of the communities it serves.

We must be careful in our attempts to preserve this fragile balance of power moving forward. We must acknowledge the vital role that each department of government plays in preserving our democracy and maintain our commitment to encouraging transparency, accountability, and adherence to the rule of law. Only by steadfastly adhering to the principles of the separation of powers can we hope to create a society that is more just, equitable, and prosperous for all.



His Lordship Justice Dehideniya retired from the judiciary of Sri Lanka

His Lordship Justice Dehideniya serving long tenure of 39 years, retired from the judiciary. His Lordship had his early education at St.Thomas' College, Matale. In 1977 he entered Sri Lanka Law College. In 1979 his Lordship passed the final examination at Sri Lanka Law College with First Class Honours. He admitted to the Bar in 1980 and thereafter he started practice in Matale as Junior of Mr. S. B.Wijeratne who was a senior practitioner in Matale bar.

Justice Dehideniya stepped to the judiciary of Sri Lanka from the Primary Court in Tangalle. He has had vast and varying experience in the original courts – serving in Tangalle, Nawalapitiya, Wennappuwa and as a District Judge in Ampara, Kurunegala, Pandura and Negombo.

After serving many years in the original courts, Justice Dehideniya was appointed to the High Court. He was the first High Court Judge of Puttalam. As a High Court Judge he served in both the criminal and civil appellate courts as well as the Commercial High Court. In 2015 His Lordship Dehideniya was elevated as a Judge of the Court of Appeal and in 2017 he was appointed as the President of the Court of Appeal. On January 16th, 2018, Justice Dehideniya was sworn in as a Judge of the Supreme Court.

Recognizing his Lordship's vast experience in the career judiciary the President of Sri Lanka in April 2020 appointed him as a member of the Judicial Service Commission, upon the retirement of His Lordship Justice Sisira de Abrew. His Lordship also served as the Director of the Sri Lanka Judges' Institute.

The JSA is highly appreciated the valuable service rendered by his Lordship Justice Dehideniya for the independence of the Judiciary of Sri Lanka and the JSA wish him success, a long life, and contented and happy retirement.

The JSA welcomes Justice Amarasekara to the Judicial Service Commission

The JSA welcomes Hon. Justice E. A. G. R. Amarasekara to the Judicial Service Commission.

On 07th February 2023, Justice E.A.G.R Amarasekara, Judge of the Supreme Court, has been appointed as the new member of the Judicial Service Commission by the president of the Democratic Socialist Republic of Sri Lanka.

Justice Amarasekara, a career judge for 30 years, before being elevated as a judge of Supreme Court on the 09.01.2019. The JSA wishes Hon. Justice Amarasekara all the best and success

New Appointments to the Supreme Court and the Court of Appeal

The President of the Court of Appeal Hon. Justice Priyantha Fernando was sworn in as a Judge of the Supreme Court on 6th February 2023 and Hon. Justice Bandula Karunarathne was appointed as the President of the Court of Appeal on 6th February 2023. Further Hon. High Court Judge M. A. R Marikkar took oaths as a Judge of Court of Appeal on the 6th February 2023.

The JSA wishes all the best on their Lordship's new appointments.

JSA to be conducted Seminar Series

The JSA has decided to conduct seminar series in order to share knowledge and experience and a subcommittee was appointed to submit a proposal. The subcommittee has submitted a comprehensive proposal to the EXCO, on following objectives;

Main Objective of the programme

The main objective of this knowledge and experience sharing sessions is to enable the judges to improve their judicial skills in a friendly environment and to have some sort of consistency by interacting with the judges in other jurisdictions.

Other Objectives

- Identification of practical problems faced by judges
- Discuss such problems in a friendly environment
- Sharing experience of senior judges with new comers
- Build confidence of the newly recruited judges to face different strategies
- Sensitize judges on legal principles and practical implementation of legal principles
- Emphasize on adopting uniform criteria in specific cases and punishment of offenders
- Providing practical solutions for problems as per the law mixed with the experience of senior judges.
- Provide opportunity for judges to conduct lectures and improve their soft skills.
- Provide opportunity for judges to co-ordinate and organize an event
- Identify gaps of the legal framework and practices.
- Discuss various strategies for varies administrative problems
- Strengthen the connection and brotherhood among judges
- Discuss the possible strategies to maintain the production rooms, record rooms and the court premises in a proper manner.
- Discuss the possible ways for the disposal of cases, disposal of productions and destroy old case records.
- Share experience and views on the Bench and Bar relationship.

Steps taken regarding tax issue

On the 30th December 2023, the JSA had a discussion regarding the impact of amendment to the Inland Revenue Act with Finance Secretary and three other secretaries to the Treasury and the JSA pointed out the main issues regarding the amendment.

On the 5th January 2023, the JSA had a discussion with Secretary to the Justice Ministry and two other Additional Secretaries. In the said meeting the JSA informed the Secretary to the Justice Ministry regarding the outcome of the meeting had with Finance Ministry officials. The Secretary to the Justice Ministry was of the view that our decision to meet Finance Secretary and officials of Finance Ministry prior to the meeting with Justice Ministry Secretary was a good decision and informed us that she would be sending our request with her recommendations to the Finance Secretary on the same date.

She further directed the Additional Secretary Administration MOJ, to take steps to send the request made to Ministry of Justice by High Court Judges Association regarding Tax issue, to the Finance Secretary.

Writ Application filed by JSA

On the 23rd January 2023, a Writ application was filed by the JSA, challenging the amendment to the Inland Revenue Act which is directly affects to the rights of our members. Initially an interim order was granted. The matter is still pending before the Court of Appeal.

Decision of People's Bank on interest rates

As a result of the request made by the JSA to the People's Bank in respect of the interest rate variation of loans obtained by our members, the People's Bank had accepted our request and they informed the JSA that they have decided not to increase the interest rates of the loans obtained by our members.

Motor plus insurance package

The Motor Plus Insurance package with special benefits granted by Sri Lanka Insurance for the members of JSA, is extended till 31.12.2023. If you need any clarification, please contact Mr. Sheshan Saleem, Assistant Manager SLIC on 0777767493.

Memories of the get together October - 2022




Letter sent to the Ministry of Justice regarding tax issue

2022.01.09
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අධිකරණ අමාත්‍යාංශය,
කොළඹ 12.

2023.01.01 දින සිට ආදායම් බදු අයකර ගැනීම

2022 අංක 45 දරණ දේශීය ආදායම් (සංශෝධන) පනත ක්‍රියාත්මක වීමේදී විනිසුරුවරුන්ට මුහුණ දීමට සිදුවන අසාධාරණ තත්ත්වය පිළිබඳව සාකච්ඡා කිරීමට අප සංගමය වෙත 2023.01.04 වන දින සාකච්ඡාවක් ලබා දීම පිළිබඳව මුලින්ම ස්තුතිවන්ත වෙමි.

මේ වන විට එම අසාධාරණ තත්ත්වය පිළිබඳව ඔබතුමිය මෙන්ම මුදල් අමාත්‍යාංශයේ ලේකම්තුමා දැනුවත් කර ඇත.

උක්ත පනත මගින් මූල්‍යමය ප්‍රතිලාභ නොලබන දීමනා (Non-profitable Allowances) සම්බන්ධයෙන්ද, ඉතා විශාල ආදායම් බද්දක් අය කිරීම හේතුවෙන් විනිසුරුවරුන්ට තම එදිනෙදා රාජකාරී කරගෙන යාමට ද නොහැකි තත්ත්වයක් උදාවන බව අප විසින් සවිස්තරාත්මකව ඔබතුමියට සහ මුදල් අමාත්‍යාංශයේ ලේකම්තුමාට දැනුම් දී ඇති අතර, එම තත්ත්වය මුදල් අමාත්‍යාංශයේ ලේකම්තුමා විසින්ද පිළිගන්නා ලදි.

ඒ අනුව ඔබතුමිය විසින්ද අපගේ ඉල්ලීම් නිර්දේශ කර මුදල් අමාත්‍යාංශයේ ලේකම්තුමාට නොපමාව යොමු කරන ලද බව අප වෙත දන්වන ලදි.

කෙසේ වුවද, මේ වන විටත් ඒ සම්බන්ධයෙන් අවසාන තීරණය ගැනීමට පියවර ගනිමින් සිටින අතරතුරදී ජනවාරි මස වැටුපෙන් අසාධාරණ ලෙසට බදු මුදල් අයකරගත හොත් විනිසුරුවරුන් තම එදිනෙදා රාජකාරී කටයුතු පවත්වාගෙන යාමේ දී දැඩි අපහසුතාවයට පත් වීම වැළැක්විය නොහැකිය.

ඒ අනුව ආදායම් බදු සම්බන්ධයෙන් අවසන් තීරණයක් ගන්නා තෙක් අප සංගමයේ විනිසුරුවරුන්ගේ (දිසා විනිසුරු/මහෙස්ත්‍රාත්/අතිරේක දිසා විනිසුරු/අතිරේක මහෙස්ත්‍රාත්වරු) ජනවාරි මස වැටුපෙන් 2022 අංක 45 දරණ දේශීය ආදායම් (සංශෝධන) පනතේ ප්‍රතිපාදන ප්‍රකාරව මූල්‍යමය ප්‍රතිලාභ නොලබන දීමනා (Non-profitable Allowances) මත ආදායම් බදු අය කිරීම නොකරන ලෙසට මහාධිකරණ වෙත දැනුම් දෙන මෙන් කාරුණිකව ඉල්ලා සිටිමි.

ලේකම්.

Reply from the Ministry of Justice to Finance Ministry

Secretary
Telephone 2449959
Fax No. 2445447
E-Mail: secretary@moj.gov.lk
General Office
Telephone 2323022
Fax No. 2320785
Web Site: www.moj.gov.lk

අධිකරණ, බන්ධනාගාර කටයුතු හා ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍යාංශය
நீதி, சிறைச்சாலை அலுவல்கள் மற்றும் அரசியலமைப்பு மாற்றீரமைப்பு அமைச்சு
Ministry of Justice, Prison Affairs and Constitutional Reforms

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info@moj.gov.lk
E-mail
අංක 19, ශ්‍රී සංඝරාජ මාවත කොළඹ 10
இல 19, ஸ்ரீ சங்கராஜ மாவத்த கொழும்பு 10
No 19, Sri Sangaraja Mw Colombo 10

My No. MOJ/E08/JSC/COMMON/2023
Your No.
Date 2023.01. 11

ලේකම්,
මුදල් අමාත්‍යාංශය

<u>මහාධිකරණ, මහේස්ත්‍රාත් අධිකරණ හා දිසා අධිකරණ විනිසුරුවරුන්ගේ වැටුපෙන් බදු අය කරගැනීම</u>

උක්ත කරුණ සම්බන්ධයෙන් මහාධිකරණ විනිසුරුවරුන්ගේ සංගමය විසින් මෙයාට කරන ලද 2022.12.19 දිනැති ලිපිය හා අධිකරණ සේවා සංගමයේ සභාපති විසින් මෙයාට කරන ලද 2023.01.05 දිනැති ලිපිය හා බැඳේ. (පිටපත් අමුණා ඇත.)

2. එකී ලිපි මඟින් 2022 අංක 45 දරණ ආදායම් (සංශෝධන) පනත ක්‍රියාත්මක වීමෙදී මූලික නොවන ප්‍රතිලාභ සඳහා ආදායම් බදු අයකර ගන්නා ආකාරය දක්වමින් දේශීය ආදායම් කොමසාරිස් විසින් නිකුත් කර ඇති 2022.12.22 දිනැති අංක SEC/2022/E/05 දරන චක්‍රලේඛය ක්‍රියාත්මක වීමෙදී විනිසුරුවරුන්ගේ අසාධාරණයක් සිදු වන බව දක්වා ඇත.

3. ඒ අනුව එකී ඉල්ලීම් සම්බන්ධයෙන් තීරණයක් ලබා දීම සඳහා එම ඉල්ලීම් මෙතෙහි අවධානය සඳහා යොමු කරමි.

ආර්.එස්.කපුගේස්වත්ත
අතිරේක ලේකම් (පාලන)
දුරකථන :0112 438181
ෆැක්ස් :0112 438181
විද්‍යුත් ලිපිනය :addlsecadmin@moj.gov.lk

අත්. කලේ / ලේකම්
අධිකරණ, බන්ධනාගාර කටයුතු හා
ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍යාංශය

Letter sent to Provincial High Court, Colombo regarding tax deduction

2022.01.09
දමිත් තොටවත්ත මැතිතුමා,
මහාධිකරණ විනිසුරු,
බස්නාහිර පළාත්බද මහාධිකරණය,
කොළඹ 12.

2023.01.01 දින සිට බදු අයකර ගැනීම.

ඔබතුමාගේ 2023.01.04 දිනැති ලිපිය කොළඹ මහාධිකරණ කලාපය තුළ සේවය කරනු ලබන අප සංගමයේ සාමාජිකත්වය දරණ විනිසුරුවරුන් කිහිප දෙනෙකුට ද ලැබුණු බවට ඔවුන් විසින් අප සංගමය දැනුවත් කර ඇති අතර, 2023.01.07 දින පැවති විධායක කමිටු රැස්වීමේදී එලැඹෙන ලද තීරණය ප්‍රකාරව මෙම ඉල්ලීම සිදු කරමි.

2022 අංක 45 දරණ දේශීය ආදායම් (සංශෝධන) පනත ක්‍රියාත්මක වීමේදී විනිසුරුවරුන්ට සිදුවන අසාධාරණ තත්ත්වය පිළිබඳව අප විසින් මුදල් අමාත්‍යාංශයේ ලේකම්තුමා සහ අධිකරණ අමාත්‍යාංශයේ ලේකම්තුමිය දැනුවත් කරන ලද අතර, එම අසාධාරණ තත්ත්වය ඔවුන් විසින් පිළිගෙන, එකී තත්ත්වය සම්බන්ධයෙන් පිළියම් යෙදීමට පියවර ගැනීම සඳහා සලකා බලන බව අප වෙත වාචිකව දන්වා සිටින ලදි.

ඒ අනුව 2022 අංක 45 දරණ දේශීය ආදායම් (සංශෝධන) පනත ක්‍රියාත්මක වීමේදී විනිසුරුවරුන්ට සිදුවන අසාධාරණය සම්බන්ධයෙන් ඉතා ඉක්මනින් පිළියම් යෙදීමක් සිදුවන බවට අපේක්ෂා කරන බැවින්, ඒ සම්බන්ධයෙන් පියවර ගන්නා තුරු අප සංගමයේ සාමාජික විනිසුරුවරුන්ගේ (දිසා විනිසුරු/මහෙස්ත්‍රාත්/ අතිරේක දිසා විනිසුරු/ අතිරේක මහෙස්ත්‍රාත්වරු) වැටුපෙන් ආදායම් බදු අයකර ගැනීම අත්හිටුවීම සම්බන්ධයෙන් සලකා බලන මෙන් ඉල්ලා සිටිමු.

ලේකම්.

Letter sent to the secretary Judicial Service Commission

2023.03.28
ලේකම්තුමා,
අධිකරණ සේවා කොමිෂන් සභාව,
කොළඹ 12.

අධිකරණය සහ ව්‍යවස්ථාදායකය අතර අනවශ්‍ය ගැටුමක් ඇති කිරීම වැළැක්වීම.

ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාව මඟින් හිමිකර දී ඇති මහජනතාවගේ පරමාධිපත්‍යය බලතල භාවිතා කරමින් පසුගිය දා ශ්‍රේෂ්ඨාධිකරණය විසින් මූලික අයිතිවාසිකම් නඩුවකදී නිකුත් කරන ලද අතුරු නියෝගයක් පාදක කර ගනිමින්, අධිකරණය සහ ව්‍යවස්ථාදායකය අතර අනවශ්‍ය ගැටුමක් නිර්මාණය කිරීමට 1953 අංක 21 දරණ පාර්ලිමේන්තු වරප්‍රසාද පනත සාවද්‍ය ලෙස යොදා ගනිමින් සිටින්නේ ද යන්න සම්බන්ධයෙන් ශ්‍රී ලංකාවේ දිසා විනිශ්චයකාරවරුන් සහ මහෙස්ත්‍රාත්වරුන් නියෝජනය කරනු ලබන අධිකරණ සේවා සංගමයේ දැඩි අවධානය යොමු වී ඇත. 2023.03.18 දින රැස් වූ එකී සංගමයේ විධායක කමිටුව විසින් රටේ යුක්තිය ඉටුකිරීමේ ක්‍රියාවලිය සම්බන්ධයෙන් බරපතල ප්‍රතිවිපාක ඇති කරවිය හැකි මෙම කාරණය සම්බන්ධයෙන් ගැඹුරින් සාකච්ඡා කරන ලද අතර, අධිකරණය හා ව්‍යවස්ථාදායකය අතර නෛතික අර්බුදයක් නිර්මාණය වීම වැළැක්වීමට අවශ්‍ය සියලු පියවර ගැනීමට තීරණය කර, පළමුව ඒ සම්බන්ධයෙන් අධිකරණ සේවා කොමිෂන් සභාව දැනුවත් කළ යුතු බවට තීරණය කරන ලදී.

ව්‍යවස්ථාදායකය, විධායකය සහ අධිකරණය යන මහජනතාවගේ පරමාධිපත්‍යය බලතල ක්‍රියාත්මක කරන ප්‍රධාන ආයතන තුන එකිනෙකා අතර 'සංවරණ තුලන' (*Checks and Balaces*) ක්‍රමයක් පවත්වාගෙන යා යුතු අතර, විනිශ්චයට භාජනය වෙමින් පවතින නඩුවකදී අධිකරණය විසින් යුක්තිය ඉටු කිරීම සඳහා ලබා දෙන ලද තීරණයක් මඟින් පාර්ලිමේන්තු වරප්‍රසාද කඩ වී ඇති බවට තීරණය කර, එම තීරණය ලබා දුන් විනිශ්චයකාරවරුන් පාර්ලිමේන්තු වරප්‍රසාද කමිටුවක් ඉදිරියට කැඳවුවහොත් නීතියේ ආධිපත්‍යය සහ අධිකරණයේ ස්වාධීනත්වය බිඳවැටී එහි ඊළඟ අනිවාර්යය ප්‍රතිඵලය වශයෙන් රාජ්‍ය යාන්ත්‍රනය බිඳවැටීම සිදුවන බව තරයේ විශ්වාස කරමු.

යුක්තිය ඉටු කිරීමේ ක්‍රියාවලියට සෘජුව බාධා ඇති කරන ඉහත අනීතික හා සම්ප්‍රදාය විරෝධී ප්‍රයත්නය පිළිබඳව අධිකරණ සේවා සංගමයේ දැඩි අවධානය යොමු වී ඇති බවද, අධිකරණයේ ස්වාධීනත්වය ආරක්ෂා කරගනිමින් පොදු මහජනතාව වෙනුවෙන් නිසි ලෙස යුක්තිය පසිඳලීමේ ක්‍රියාවලිය පවත්වාගෙන යාමට කුමන අයකු විසින් හෝ බලපෑම් සිදු කරන්නේ නම් ඊට එරෙහිව ගත යුතු සියලු ක්‍රියාමාර්ග ගැනීමට පසුබට නොවන බවද දැනුම් දීමට අධිකරණ සේවා සංගමයේ විධායක කමිටුව විසින් තීරණය කරන ලදි.

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SMALL CLAIMS COURT'S PROCEDURE COURT ACT NO 33 OF 2022 AS A MEANS OF ENHANCING ACCESS TO JUSTICE: CHALLENGES AHEAD

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Introduction

Right of access to justice is a more commonly used term and it is fundamental in a modern liberal state. This means that the citizens have access to defend their interests in court and achieve full inclusion in the political community. Epistemological, socioeconomic, and legal market disparities hinder the materialization of the right that citizens possess to access courts to defend and solve their conflicts.[1] Every country in the world have issues relating to access to justice and laws delays which in turn have negative impact on the economic development of a country. Therefore, the countries such as Canada, Kenya, Singapore, United States had taken a proactive role in establishing Small claims to reduce the backlogs and provide easy access to justice. Hence the small claims court has a significant place in access to justice theory.[2] Furthermore, Small claims courts are more often referred to as 'People's Court.[3] A judge in a small claims court is charged with the responsibility of satisfying access and justice needs of citizens and also enhancing government efficiency in the administration of justice.[4]

In Sri Lanka Small Claims Court's Procedure Act, No.33 of 2022 was enacted, and jurisdiction is conferred pursuant to Judicature (Amendment) Act, No.34 of 2022. The Act became operative from 01st January 2023 by Gazette no. 2310/40 dated 2022/12/15. Although this Act is not novel, this is the first instance of the act becoming operative. Therefore, it is necessary to understanding the rationale of the Small Claims Courts Procedure Act to achieve the expected outcome of this Act.

What is a Small Claim

Accordingly, "small claim" means a debt, damage or demand referred to in the Seventh Schedule of the Judicature Act, which does not exceed Rs.1500000.00.[5]

Jurisdiction

Small claims Court is a court of first instance[6] which shall be established in each judicial district of Sri Lanka.[7] Judges of the Small Claims Court are appointed by the Judicial Services Commission.[8]

Chapter V A of the Judicature Act (as amended by act No.34 of 2022) deals with the jurisdiction of the small claims court. It is a **Court of record with exclusive original civil jurisdiction** to hear and determine all actions specified in seventh schedule.[9] However, the Small Claims Court has no **jurisdiction** to hear and determine any action filed under chapter LIII of CPC **(summary procedure on liquid claims)** and further it has no jurisdiction to hear and determine **any action for the recovery of money where special provisions**

1 Colin Crawford, Access to justice:Theory and practice from a comparative perspective
2 Shelley McGill, 'Small Claims Court Identity Crisis: A review of recent reform Measures' (2010) 49 Can. Bus. L.J. 213 at 214–17 [McGill, 'Identity Crisis']
3 Sean C. McGuire and roderick A. Macdonald, 'Small Claims Court Cant' (1996) 34 Osgoode Hall L.J. 509.
4 ibid
5 Section 34 of Small Claims Courts Procedure Act No. 33 of 2022
6 Section 2 (e) of the Judicature Act (as amended by Act No.34 of 2022)
7 Section 5 of the Judicature Act (as amended by Act No.34 of 2022)
8 Section 6 of the Judicature Act (as amended by Act No.34 of 2022)
9 Section 29 A (1)

are made under any other written law. All actions specified in **seventh schedule** of the Judicature Act shall **not exceed Rs.1500000.00 without interest**/ such other amount fixed by the Minister by an order in Gazette.

It is important to note that proceedings before any Small Claims Court may be taken by the special procedure for Small Claims Court as provided in the Small Claims Courts' Procedure Act No.33 of 2022 and any other written law.[10] A unique feature is that in a Small Claims Court a party is entitled to join Several Transactions within the financial limit stipulated in Judicature Act.[11] Another important provision is that the ability to relinquish/abandon part of a claim to invoke jurisdiction of Small Claims Court.[12] When a Plaintiff has abandoned/relinquished part of a claim to invoke the jurisdiction of the Small Claims Courts Procedure Act it is necessary to include an averment in the plaint to that effect. In a situation where the action is filed in a wrong court the Court should act under section 47 of the SCCP Act and return the Plaint.[13] If returned date of filing and date of returning to be excluded in computation of prescriptive period.

Pleadings

In a case filed under the SCCP Act the pleadings are limited to Plaint, Answer and Replication.[14] The Plaint **should** be in Form 1 of the schedule to SCCP Act and Section 40 of CPC and Section 46 of CPC are applicable as to the contents of the Plaint. A unique feature is that every plaint filed and **affidavit or affidavits** in support of the facts stated and produce the **instrument, contract, agreement, bill of exchange, promissory note, cheque** or **document sued upon** and **all other documentary evidence** relied, if any, in possession, or power.

Small Claims Court has discretion, refuse to entertain the plaint for any reason and return the same for amendment or reject the plaint, as set out in section 46 of the Civil Procedure Code and if the Plaint is accepted summons shall be issued in the Form No.2 set out in the schedule.[15]

When the Defendant appear on summons the Judge shall ask the Defendant whether he intends to admit the plaint with or without terms and if the Defendant admits the claim the Judge shall record the fact and enter judgment on the admission made by the Defendant.[16] If the Defendant does not admit the plaint a duly stamped written answer should be filed setting out the defense and claim in reconvention(if any). The **Answer** should be in accordance to Form 3 in the schedule and shall contain the particulars as set out in Section 75,76-78 of CPC. The answer to be filed within **one month** of the appearance of the Defendant in court.[17]

It is also important to note that an **affidavit or affidavits** in support of the answer or the facts stated in the claim in reconvention and produce **all documents or all other documentary evidence relied,** if any, in possession or power of the Defendant.[18]

If there is a **claim in reconvention,** a replication may be permitted to be filed in the Registry together with an affidavit or affidavits and documents, if any, and the **rules relating to answer** shall apply to a replication by the plaintiff.[19]

10 Section 29B
11 Section 3 of the Small Claims Courts; Procedure Act No. 33 of 2022
12 Section 4 SCCP Act
13 Section 5 SCCP Act
14 Section 6 SCCP Act
15 Section 9 SCCP Act
16 Section 10 SCCP Act
17 Section 11 SCCP Act
18 Section 12 SCCP Act
19 Section 13 SCCP Act

If the plaintiff admits the claim in reconvention, the Small Claims Court shall record such admission on record and require the plaintiff to sign the same. The Small Claims Court may enter judgment against the plaintiff in respect of such claim in reconvention according to the admission so made. Such admission shall be in writing, signed by the plaintiff and his signature attested by an attorney-at-law.[20]

If claim in reconvention exceeds the monetary jurisdiction of the Small Claims Court, the Small Claims Court may, notwithstanding the sum of claim stated therein is in excess of the monetary jurisdiction of the Small Claims Court, hear such claim in reconvention and enter decree according to law, to avoid multiplicity of actions.[21] All affidavits and the documents which have been annexed with the answer and the replication shall be served on the opposing party or parties along with the answer or the replication. The Small Claims Court may in its discretion impose costs on the defaulting party.[22]

Amendment of Pleadings

No application for the amendment of any pleadings shall be allowed unless the Court is satisfied, for reasons to be recorded by the Court, that **grave and irremediable injustice** will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has **not been guilty of laches**:[23] The Court may at **any time,** on an application being made by any party, **correct any clerical or arithmetical mistakes** in the pleadings.

Evidence

Section 17-18 stipulates the the provisions for requests for commissions, reports, certified copies and discovery of documents. Accordingly Any party may make an application on or **before** the **date fixed for settlement** with **notice to all** other parties to obtain the following–

(a) **commissions**; (Chapter XXIX of the Civil Procedure Code shall apply)

(b) call for **reports** from persons having special and independent knowledge of facts;

(c) order for the **discovery, production, inspection or admittance of the genuineness** of documents by any party (Chapters XVI and XXIX of the Civil Procedure Code shall apply)

(d) order for the issuance of **certified copies** of any documents in the custody of any **public officer, public corporation, Provincial Council, any local authority, bank, board, body corporate or unincorporated, partnership, hospital, medical institute, court, tribunal** or any such similar institution

(e) **other** appropriate **orders** in respect of the **discovery of documents** in the possession of any third party.

The **party who has obtained an order** shall take **steps within two weeks** from the date of such order and in the event such party **fails** to take such steps, the Small Claims Court may, notwithstanding such default and **subject to any costs, continue further proceedings.**

The provisions of sections 94 to 100 of the Civil Procedure Code, shall not apply to the proceedings in the Small Claims Court.[24]

The Small Claims Court, on its own motion or at the request of any party, may permit the **documents discovered during the proceedings,** but not annexed to the plaint or the answer or the replication, to be **produced with an affidavit.**[25] (Section 20)

20 Section 13 (2) SCCP Act
21 Section 14 SCCP Act
22 Section 15 SCCP Act
23 Section 16 SCCP Act
24 Section 19
25 Section 20 SCCP Act

Settlements

Section 21-22 and Section 29E of Judicature Act is relevant for the settlement of the case. According it is the **Duty of the Judge** of the Small Claims Court **by all lawful means** to **make every effort** to **induce** the parties, **before or during the trial, to arrive at a settlement**. the **settlement shall be recorded and signed by the parties** and a judgment made in accordance with the terms as settled. The Small Claims Court shall forthwith **on the date the pleadings are completed, fix a date for the settlement** within a period of **four weeks** from the date of the completion of pleadings. it shall be the **duty of the Small Claims Court, before** the case is **fixed for trial**, to **persuade the parties to arrive at a settlement** of the dispute, and record such settlement if any, and enter judgment and decree accordingly.[26]

If a **party fails to be present in person** on the date fixed for settlement **without sufficient cause,** the Small Claims Court may **order costs** against such defaulting party or parties, **unless** the parties enter into a **settlement on the same day.**

The Small Claims **Court may** in appropriate case, (with the consent of the parties) **enter the final judgment solely on the pleadings, affidavits and documents** annexed by the parties without oral evidence and upon hearing all the parties by way of submissions.[27] If there is **no settlement** between the parties, the Small Claims Court shall **fix the matter for trial** (Civil Procedure Code shall apply)[28] The provisions of Chapter XVIIA of the Civil Procedure Code in respect of **pre-trial shall not apply** to the proceedings of the Small Claims Court.[29]

Trial

Section 22-28 of the Small Claims Courts' Procedure Act stipulate provisions as to trials in Small Claims Court.

The Small Claims Court shall **record admissions** between the parties. It is **not imperative to record issues** of parties and the Small Claims Court may proceed to hear and determine the dispute in accordance with the provisions of the Act. In view of special matters involved, **Court may on its own motion proceed to record the issues** arising out of the pleadings, affidavits and documents, if any, and proceed to hear the action.[30]

The **affidavits filed** by the parties with the pleadings and additional affidavits filed with the permission of the Small Claims Court, **shall be considered as the evidence in chief** of the respective party or parties.[31]

The Small Claims **Court may permit** the parties to lead **additional evidence, whether oral or documentary,** only where–

(a) additional evidence is **relevant** to the determination of the matters in dispute;

(b) additional evidence **could not have been obtained and adduced at the first instance** with **reasonable diligence** and **best efforts** and non- production is **beyond the control** of such party;

(c) it is necessary to prove a document of which the **genuineness is impeached** by the opposing party; and

(d) the evidence of official witness or any other witness who is **unable to testify by way of an affidavit** is required to be led, the parties shall **takeout summons** on the said witness according to the provisions of this Act.[32]

26 Section 21 SCCP Act
27 Section 21 (2) SCCP Act
28 Section 22 (1) SCCP Act
29 Section 22(2) SCCP Act
30 Section 23 (1) SCCP Act
31 Section 23 (2) SCCP Act
32 ibid

The Small Claims Court, on an application made by any party **may permit to call any other witness** or witnesses **not referred in the pleadings** or to **produce the documents not annexed** to the pleadings in the **interest of justice**.[33] The Small Claims Court **may permit** the parties to **lead further evidence on documents discovered or elicited by way of commissions**.

The provisions of **sections 121 and 175 of the Civil Procedure Code shall not apply** to the proceedings of the Small Claims Court.[34]

the provisions of subsections **(1) (2), (3) and (4) of section 151A of the Civil Procedure Code shall, mutatis mutandis, apply** to examination of a **witness on an affidavit, cross examination, re-examination and admissibility and authenticity of any document** annexed to such other affidavit.[35]

A salient feature of the Small Claims Courts Procedure Act is that it is not be necessary to adduce proof of any document tendered to a Small Claims Court or discovered, **unless the genuineness of such document is impeached** by the opposing party with valid reasons.[36]

In the event the **Small Claims Court,** after evidence is led as to the proof of the document, **accepts the document,** the **party who impeached** the document shall be **liable to pay incurred costs of proving** such document, in addition to taxed costs.[37]

Another special feature is that a time frame has been given in the statute for the expeditious disposal of a case in the Small Claims Court. Therefore, the Small Claims Court shall make every effort to **conclude the proceedings within eighteen months** from the commencement of such proceedings, unless the Judge is prevented from acting accordingly for reasons to be recorded by him.[38]

The provisions contained in **Chapter XII** of the Civil Procedure Code, except in relation to any appeal made against any order made on defaults, shall apply in respect of the consequences and cure of **default of the parties.**[39]

Appeals

Section 29 of the Small Claims Courts' Procedure Act stipulate provisions for appeal. Any person **aggrieved by a judgment** of the Small Claims Court, may prefer an **appeal to the High Court for the Province established by Article 154P** of the Constitution against such judgment for any **error in fact or in law.**

Any person **aggrieved by an order** including the order setting aside or refusing to set aside the judgment entered upon default made by any Small Claims Court in the course of any action, proceeding, or matter may **prefer an appeal to the High Court for the Province established by Article 154P** of the Constitution against such order for the correction of any error in fact or in law, with the **leave first had and obtained from such High Court.**

The provisions of Chapters LVIII, LIX, LX and LXI of the Civil Procedure Code with reference to appeals, shall apply.

Any application for **leave to appeal** or **final appeal** under this Act shall be heard and **concluded within a period of twelve months** from the preference of such application or appeal unless the judge is prevented from acting accordingly and reasons to be recorded by him.

33 Section 24 SCCP Act
34 Section 24(2) SCCP Act
35 Section 24 (3) SCCP Act
36 Section 25 (1) SCCP Act
37 Section 25 (2) SCCP Act
38 Section 27 SCCP Act
39 Section 28 SCCP Act

General Provisions

The provisions of the **Evidence Ordinance (Chapter 14) shall apply to** proceedings before the Small Claims Court.[40]

If any matter should arise for which **no provision is made** in this Act, the provisions of the **Civil Procedure Code** governing a like matter shall, with such suitable adaptations as the justice of the case may require, be adopted and applied, if such provisions are not inconsistent with the provisions of this Act.[41]

Another salient feature is that **No proceedings** in the Small Claims Court shall be **invalidated** on account of any **technicalities** in procedure or **formal defect or irregularity** in the pleadings, affidavits or forms, and the Judge of Small Claims Court, in his discretion and in the interest of justice, shall ensure that such **technicalities will not impede** the administration of justice, **unless a substantial prejudice has been caused** or occasioned a failure of justice by such defects or irregularities to the parties.[42]

A special roll shall be kept for cases instituted under the provisions of this Act, where the District Judge functions as the Judge of the Small Claims Court under this Act.[43]

All proceedings pending in the District Court of any judicial district, but **before the commencement of the pre-trial** on the day preceding the date of operation of this Act, in respect of any matter within the jurisdiction of a Small Claims Court, shall on the date of operation of this Act **stand removed to the appropriate Small Claims Court** and such **Small Claims Court shall have jurisdiction** to take cognizance of, hear and determine or **to continue or complete the same in accordance with the procedure in which the action was instituted in such District Court** and all orders made, in respect of every such action before such District Court shall have the same force and effect as if they have been made by that Small Claims Court.[44] Therefore, it is clear that at the initial stage there are two types of cases in the Small Claims Court. First is the new cases filed in accordance with the provisions of the Small Claims Courts' Procedure Act. Secondly, the cases where originally filed in District Court which falls in to the definition of small claims where the pre-trial has not commenced. In the second category the cases will proceed in the Small Claims Court in accordance with the procedure in which the action was instituted in the District Court. In such cases no amendment of pleadings is necessary.

Challenges

It is necessary that the legal practitioners and the Judicial Officers are mindful of the objectives of this Act. As this is a novel procedure it is natural that lawyers, staff and even the judges tend to follow the old procedure which is familiar. There need not be any objections on technical issues. It would be a herculean task for the Judges in the combined courts. A special emphasis needs to be placed for settlement conferences as it is the role of the Judge to induce/persuade parties for a settlement. Settlement conference to be effective must be conducted in a conference room. The Judges has a key role to play as it is necessary to speak to the parties and lawyers during the proceedings to make the settlement more effective. It is also necessary that the lawyers file the documents and affidavits of the party concerned and the witnesses. Due to the lack of conference rooms and judges and trained staff it is a challenge for the Judges to proceed with the new procedure. Although it is a challenge this is an opportunity for the Judges to reduce the workload within few months which will pave the way to allocate quality time for other more complicated cases in the District Court.

40 Section 30 SCCP Act
41 Section 31(1) SCCP Act
42 Section 31(2) SCCP Act
43 Section 32 SCCP Act
44 Section 33 SCCP Act

SUPREME COURT

JSALR 2023 /I//1

Indiketiya Hewage Kusumadasa Mahanama and Piyadasa Dissanayake Vs **Commission to Investigate Allegations of Bribery or Corruption and Hon.Attorney-General**

SC TAB 1A and 1B/2020

Before : Vijith K.Malalgoda, PC, J.
L.T. B Dehideniya, J.
P. Padman Surasena, J.
S.Thurairaja, J.
Yasantha Kodagoda, PC, J.

Decided on : 11.01.2023

Section 3, 4, 5 and 11 of the Bribery Act No 19 of 1994, Have the charges in the indictment framed in lawful manner?, Admissibility of Voice Recordings, power of a magistrate to give voice samples to the Government Analyst, "Safe Custody" of a voice recording and Section 4(1)(d) of the Evidence (Special Provisions)Act, Fair Trial

Yasantha Kodagoda, PC, J.

Being aggrieved by the conviction and sentences imposed by the High Court at bar the 1st accused Appellant and the 2nd Accused Appellant on the counts of conspiracy to solicit a sum of money under the Bribery Act had preferred two appeals to the Supreme Court under and in terms of Section 12 B of the Judicature Act read with the provisions of Code of Criminal procedure code Act No 15 of 1979.

Held:

1. The procedure regarding the commencement of an investigation in relation to the offences under the Bribery Act No 19 of 1994 is clearly seen in Section 3, 4 and 5 of the act. But the commission must be satisfied that any communication it receives is genuine and that such communication discloses material upon which an investigation ought to be conducted. 19th Amendment to the Constitution by Article 156 A had also empowered the CIABOC to hold preliminary inquiries or investigations into allegations of bribery or corruption on its own motion also.

   The information which is treated as the 1st information as per our law is the first information relating to the commission of the offence given to any inquirer or officer in charge of a police station.

2. If the Director General is directed under section 11 of the CIABOC Act by the CIABOC to forward an indictment, he is only bound to follow the provisions in section 12(i) and (ii) of the CIABOC Act. In the absence of any complaint, that the Director General CIABOC had failed to comply with section 12(i) and (ii) of the CIABOC Act when forwarding the indictment before the High Court at Bar it is correct in refusing the jurisdictional objection raised on behalf of the 2nd Accused before the High Court at Bar. The trial judge before whom the indictment is filed is therefore

   bound to accept the indictment and take up the trial unless there is material to establish that the Director General CIABOC had failed to comply with the provisions of section 12(i) and (ii) of the CIABOC Act.

3. The prosecution must prove *aliunde* that there are reasonable grounds to believe that two or more persons have conspired together to commit an offence or an actionable wrong. In order to do so judge can be guided, by the evidence already led which gives an indication that a conspiracy already exists and by assurance of the prosecuting counsel that he would at later stage lead further evidence. The existence of a conspiracy need not be conclusively proved in order to render evidence admissible under section 10.

4. The providing of voice sample for arriving at conclusions on scientific basis is a discovery of relevant fact and does not amount to a confession in the sense of violating rule against self-incrimination. To interpret it in such manner negates the functionality of sections 123 and 124 of the criminal procedure code. Therefore

the magistrate had power to give voice samples to the government analyst and the compulsion of the Accused Appellants to give voice samples is not a breach of the rule against self-incrimination nor has it caused a miscarriage of justice.

Entrapment as a defense is not part of our criminal justice system.

1. It is of paramount importance to recognize that victims of crime are also entitled to receive a fair trial. What is even more important to note that when an offence has been committed the public at large and the state also have the entitlement to have a lawful, fair and expeditious trial against the perpetrator of the offence.
2. If it is found that a fundamental right the accused-appellant was entitled to enjoy had been infringed during the trial proceedings and such infringement had resulted in a miscarriage of justice the conviction of the accused-Appellant must be set aside.

The Conviction and Sentence of the High Court at bar has been affirmed and the appeals of both 1st and 2nd Accused Appellant were dismissed.

JSALR 2023 /I//II

Haji Lebbai Mohamed Ismail alias Mohamed Lebbai

Vs **Dawooduge Mohamed Abiyar & others**

SC Appeal : 127/2012

Before : Priyantha Jayawarena, PC, J.
P. Padman Surasena,J. &
E. A. G. R. Amarasekara, J.

Decided on : 01/04/2021

E. A. G. R. Amarasekara, J.

The plaintiff instituted proceedings in the District Court of Kurunegala seeking inter alia, for a declaration of title to the land described in the 2nd schedule to the plaint and to have the Defendant evicted from the said land.

Even though the Defendant admitted the title deed marked P.1, by which the plaintiff's predecessors obtained title to the land in dispute, stated that the said deed marked P.1 has been revoked by the donor of the said Deed, by Deed No 1272 dated 11/10/1982 marked as P.4 at the trail. Furthermore, the Defendant had claimed prescriptive title to the land in suit on the basis of long and continuous possession of the Defendant and his predecessors in title.

The learned District Judge held that, since the disputed land is within the Kurunegala District where Kandyan Law applies, donor could cancel the Deed without giving any reason and such revocation is valid. But in appeal, learned High Court Judges held that, Kandyan Law is not a territorial law that applies to all the people resident in the Kandyan province but a law personal to Kandyan Sinhalese and admittedly, the Donor of the Deed marked P.1 being a Tamil, he is not governed by the Kandyan Law and therefore the Donor by himself cannot revoke the gift made by the said Deed marked P.1 and set aside the Judgment of the District Courtof Kurunegala.

Being aggrieved with the said judgment of the Learned High Court Judges, the Defendant has instituted the present appeal before the Supreme Court and, their Lordships have granted leave mainly on two questions of Law i.e., was there tacit acceptance by the donee of the Deed marked P 1 in all the circumstances of the case and did the High Court err in falling to take in to consideration the evidence relating to Prescriptive Possession of the Defendant?

Held:

1. A donation given by a ded is not valid, if the donation is not accepted by the done, and a deed of revocation is not mandatory.
2. Acceptance of a donation is a matter of fact and no particular form is required for the acceptance. As such it depends on the facts of each case.
3. If the gift was not accepted, it is not necessary to execute a deed of revocation though there is a practice of executing deeds of revocation. Such revocation has to be considered as mere declaration by the original donor as to nonexistence of a valid gift.
4. A duly constituted gift can never be revoked by the donor, unless the donee has turned out to be ungrateful. A donor may expressly reserve to

himself the power to revoke a gift, and revocation in the exercise of such power is valid. If the reservation is to revoke in case of misconduct of the donee, such misconduct should be averred and proved to justify a revocation.

5. A gift that is subject to a limitation or a condition may be revoked if such condition attached to it has not been fulfilled.
6. A revocation of a deed of gift on gross ingratitude can be done only on an order made by a competent court.

JSALR 2023 /I//III

1. Iddagodage Sarath Kumara

2.Walpita Pathiranage Prasanna Perera Vs **Attorney General**

SC Appeal : 228/2014

Before : P. Padaman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Decided on : 08th February 2023

Perusing information book extracts, non-summary proceedings by trail judge / by appeal courts.

Facts;

1st and 2nd accused- appellant were indicted before High Court Colombo an offence under sec 296 read with 32 of the Penal Code. 1st accused convicted and 2nd accused acquitted. 1st accused appeal against the said judgement to the Court of Appeal. Court of Appeal has affirmed the HC judgement.

Appellant appealed to the Supreme Court on two questions of laws (grounds):

1. Erred in law by perusing the information book extracts, non -summary proceedings.
2. Prejudice caused to the appellant by perusing the IB extracts and non -summary proceedings.

Held:

- Appellant complaining that on the failure on the part of High Court Judge to consider in appellant favour of the vital omission on the evidence of the prosecution eyewitness in her evidence at the non -summary inquiry. Therefore their Lordships of the Court of Appeal perused the Non summary proceedings and the Information book extracts.
- The law which relates to perusing Information extracts under sub section 3 and 4 of the section 110 of the Code of Criminal Procedure Code Act No 15 of 1979(CCPC) our law has not completely shut out any use of the statements recorded under inquiry or trail.
- It is mandatory under section 162(2) of the CCPC 15 of 1979 to attach every indictment preliminary. There was a preliminary inquiry under Chapter XV and of the documents and of the inquest proceedings, if there had been held an inquest;
- Where there was no preliminary inquiry under Chapter XV copies of statements to the police, if any of the accused and the witnesses listed in the indictment;
- Under Section 159(2) Magistrate shall transmit the record of the inquiry together with all documents; and things produced in evidence; and copy certified under his hand of such records and such documents and one of the certified copy of the notes of investigation and statements furnished by the officer in charge of the police station;
- Therefore, if it is completely prohibited for the trail judge even to touch them those documents could have been completely kept away from the trail judge. The extent to which can be used by the trail judge when defense counsel point out vital omission, judge personally peruse the statement in the information book and determine any vital omission and decide the credibility of that issue.
- When the matter in Court of appeal judges are equally entitled to read the statements recorded and peruse the information Book and determine. That to be a personal duty of the judge.
- However without any evidence being adduced as to the presence of any motive on the part of the accused to commit a crime, if judge arrived a conclusion using Information Book Extracts, the Court of Appeal should have been more careful when engaging in such exercises.

- Above two issues were answered negative and not erred in law by perusing IB extracts by the Court of Appeal,
- And no prejudice has been caused to the 1st Accused appellant mere reason that Court of Appeal perused the IB and information book extracts, non-summary proceedings.

Appeal dismissed and conviction affirmed.

JSALR 2023 /I//IV

Mohamed Saleem Mohamed Fawsan Vs **Majeed Mohamed and Others**

SC Appeal : 135/2017

Before : Vijith K. Malalgoda, P.C, J.
Kumuduni Wickremasinghe, J.
Mahinda Samayawardhena, J.

Decided on : 31.03.2023

Application under Ses. 323 & 337 of the Civil Procedure Code – Complexity of the law relating to execution of writ – Duty of fiscal in the execution of writ – Obstruction to the fiscal and judgment-creditor – Dispossession of the bona fide claimant – Can a fresh writ be issued only if the original writ was unexecuted?

Samayawardhena, J.

In terms of section 325 of the Civil Procedure Code, the 1st plaintiff filed the petition dated 05.08.2004 stating inter alia that the fiscal had delivered possession of the property to him on 24.05.2004 removing the two defendants and all others holding under them, but on 16.07.2004 the 3rd respondent forcibly ejected him from the property at the instigation of the 1st and 2nd defendant-respondents. He sought restoration to possession and punishment of the respondents in terms of section 326. The learned District Judge held an inquiry into the matter.

At the inquiry, after the closure of the petitioner's case, the respondents took up the objection that the petitioner's application under section 325 cannot be maintained without the fiscal's report. This was accepted by the Attorney-at-Law for the petitioner and withdrew the application seeking the permission of Court to issue a fresh writ of possession. The District Judge made order dated 23.02.2012 dismissing the pending application and allowing the petitioner to make a proper application to execute the decree.

It is thereafter that the petitioner filed the petition in terms of sections 323 and 337 read with section 839 of the Civil Procedure Code to execute the writ. All the respondents filed objections to this application. The learned District Judge dismissed the application. On appeal, the High Court of Civil Appeal of Kalutara affirmed the order of the District Court and dismissed the appeal. This appeal by the petitioner is against the judgment of the High Court of Civil Appeal.

Held:

1. A restrictive interpretation should not be given to the word "unexecuted" found in section 337(3). It must be given a purposive interpretation.
2. Section 337(3)(b), does not enact that a fresh writ can only be issued if the original writ is unexecuted. What the section says is, "a writ of execution, if unexecuted, shall remain in force for one year only from its issue, … or a fresh writ may at any time after the expiration of an earlier writ be issued, till satisfaction of the decree is obtained." The word "unexecuted" refers to the period of one year stated therein and nothing else.
3. After the expiration of an earlier writ, a fresh writ may at any time be issued until satisfaction of the decree. This shall be understood as full satisfaction of the decree, not partial satisfaction of the decree.
4. So long as the application is made within 10 years as defined in section 337, fresh writs can be issued until satisfaction of the decree.
5. In terms of section 337(3)(b), even if the writ is executed, if complete and effectual possession is not delivered, the judgment-creditor can apply for a fresh writ to be issued. Further, even if complete and effectual possession is delivered, if the judgment-creditor is subsequently obstructed or ousted, the judgment-creditor can apply for a

fresh writ if the application falls within the 10 year period as described in section 337 subject to section 347 when applicable.

The Order of the District Court and the Judgment of the High Court of Civil Appeal were set aside and directed the learned District Judge to hold a fresh inquiry.

JSALR 2023 /1//V

Sangili Ramalingam Vs **Mohamed Hajji Anwer**

SC Appeal : 182/2017

Decided On : 12.01.2023

Before : Buwaneka Aluwihare, PC, J.
L. T. B. Dehideniya, J.
P. Padman Surasena, J.

Criminal Misappropriation, Sec 25(1) of the Debt Recovery (Special Provisions) Act No. 2 of 1990, requisite mental element, 'knowledge'

Buwaneka Aluwihare, PC, J.

Facts of the case-

- Accused was charged before the magistrate's court on three counts punishable under section 25[1] of the Debt Recovery (Special Provisions) Act No. 2 of 1990 and one count of Criminal Misappropriation punishable in terms of section 386 of the Penal Code.
- At the conclusion of the trial, the learned magistrate having concluded that the prosecution had failed to prove any of the charges preferred against the Accused, found him not guilty as charged and proceeded to acquit him.
- Being aggrieved by the said order of acquittal, the Complainant appealed against the said judgment of the learned magistrate, sanction having first obtained from the Honourable Attorney General, to the High Court.
- After hearing the appeal, the learned High Court judge in delivering the judgment, holding that the learned magistrate had erred in finding the Accused not guilty and acquitting him, set aside the said orders, and proceeded to convict the Accused on all four counts.

Held:

1. As far as the charge of Criminal Misappropriation is concerned, the allegation is that the accused dishonestly 'misappropriated' the garments he obtained from the virtual complainant. It is clear from the evidence that this was a pure and simple sale of goods and once the virtual complainant parted with the consignment of garments, the Accused was free to appropriate it in any manner he wished. Simply, there was no arrangement between the Virtual Complainant and the Accused as to the manner in which the garments should be dealt with. Hence, one cannot say that the accused 'misappropriated' the garments.
2. It is clear that the provision contained in Sec 25(1) of the Debt Recovery (Special Provisions) Act No. 2 of 1990 is not a strict liability provision and a mental element is part of the offence.
3. In an instance where a cheque is dishonoured due to lack of sufficient funds, the requisite mental element is **knowledge** on the part of the Accused, whereas when the reason for a cheque to be dishonoured is either the same being countermanded or closure of the account after the cheque was issued, then the mental element that has to be established is one of **dishonesty**.
4. In a prosecution under Section 25 of the Act, the reason or the reasons as to the issuance of the cheque is not relevant, as the nature of the transaction is immaterial as far as the offence is concerned.
5. In any event there was no material placed before the court to show that the Accused did not have the knowledge that the credit balance was insufficient to meet the cheque. Regard being had to common course of natural events and human conduct plus the attended circumstances, it would be reasonable for the court to presume that the Accused was aware that the amount of money lying to his credit in the bank account in question was insufficient[to meet the cheques] at the time relevant to the impugned transaction.

If any facts were especially within the knowledge of the Accused which was indicative of 'lack of

knowledge' on his part as to the funds lying to the credit of the bank account, then it was incumbent on the Accused to prove that fact within the meaning of Section 106 of the Evidence Ordinance.

Appeal is partially allowed.

JSALR 2023 /I//VI

S. Albert and Others Vs **S. Sivakumar**

SC (CHC) Appeal No. 04/2017

Before : S. Thurairaja, P.C, J.
A. L. Shiran Gooneratne, J.
Janak De Silva, J.

Decided on : 23.01.2023

Sections 8 and 12 of the Prescription Ordinance, acquisitive prescription and extinctive prescription, acknowledgment of debt made after the action on the debt was barred by the provisions of the Prescription Ordinace.

Janak De Silva, J.

Held:

1. The doctrine of prescription works twofold. First, it can allow a person to acquire the property or servitudes of property belonging to another person by long and uninterrupted possession by adverse title to the other party. In a sense, this mode permits a person to acquire new rights while extinguishing the rights enjoyed by another party. This is acquisitive prescription which is given statutory recognition in section 3 of the Prescription Ordinance.
2. On the other hand, extinctive prescription is where obligations are extinguished after a specified period of time. In extinctive prescription no new rights are created unlike acquisitive prescription although one may argue that in theory there is in fact a right created in one party not to be sued on the extinguished obligation.

   Extinctive prescription can operate in two ways. On the one hand, it can prevent an action from being brought on a debt while safeguarding the debt as a natural obligation. The South African Prescription Act 1943 is a case in point. On the other hand, it may extinguish the debt or obligation as the Prescription Act 1969 of South Africa. This distinction has far-reaching consequences. Where the obligation survives but the action is prescribed, the surviving obligation has other utilities such as the possibility to be the basis of set off or compensatio which is not possible where the obligation is extinguished
3. The words **right to sue in respect thereof** stated in Sec. 11 of the Ordinance, in this regard indicates the intention of the legislature to preserve the obligation and bar only the remedy. The action is barred but the obligation survives.
4. The Prescription Ordinance merely bars the remedy with lapse of time and does not extinguish the debt, there is no rational justification to insist that an acknowledgment must be made before the expiry of the limitation period to be effective. An acknowledgment of the debt to be effective for the purposes of section 12 of the Prescription Ordinance need not be made before the expiry of the period of limitation.

Appeal allowed.

JSALR 2023 /I//VII

Raigam Wayamba Salterns P.L.C., V
Hon. Attorney General

CA (PHC) : 213/2017

Before : Prasantha De Silva, J.
K. K. A.V. Swarnadhipathi, J.

Decided On : 16.03.2023

K. K. A.V. Swarnadhipathi, J.

1. The Complainant-Respondent Respondent [hereinafter named called as the Respondent] filed charge against two accused in the Magistrate Court of Warakapola. The accused were charged under Section 2(1)(F) of the Food Act No.26 of 1980, amended by Section 2(1)(a) of the Act No.20 of 1991 and Section 5(e) of the Food Iodization of Salt Regulations 2005 punishable under Section 18(1)(c)(1) of Food Act No.26 of 1980 read with Section 14(1)(c) of Food Act (Amended) No.20

of 1991. The charge sheet was filed on the 13th of July 2015, on the same day the learned Magistrate ordered to issue summons to both accused. On the notice returnable date, the 5th of October 2015, the 1st Accused appeared before the Court and pleaded guilty to the charge. On summons, the 2nd accused appeared before Court on the 4th of January 2016. On that date, an amended plaint was read to the 2nd accused, who pleaded not guilty.

2. On the 22nd of August 2016, the prosecution started giving evidence. While P.W. I was giving Evidence-in-Chief, the prosecution produced a document they sought to mark as [P3]. On behalf of the 2nd Accused, an objection was taken against accepting the document marked [P3]. The document sought to be marked as [P3] was a Government Analyst's report of the salt samples sent by the prosecution. The learned Magistrate overruled the objection on the 19th of September 2016. Among other facts, the learned Magistrate cited Section 44(3) of the Criminal Procedure Code, making annexing documents with the summons mandatory.
3. Aggrieved by this decision, the 2nd Accused filed a revision application to the High Court of Kegalle under Case No. H.C.R./5114/R. After listening to both parties at the inquiry, the learned High Court Judge held with the Magistrate by order dated 12th of December 2017.
4. Court of Appeal held that;

- Section 23(1) of the Food Act No.26 of 1980 reads as follows:-

  "In the absence of evidence to the contrary, a document purporting to be a report or a certificate signed by the approved Analyst or an additional approved Analyst upon any matter submitted to him for examination or analysis shall be sufficient evidence of the facts stated therein."

- It further states that such report or a certificate of the approved Analyst shall not be received in evidence by the learned Magistrate unless the prosecution has complied with the two conditions in Section 23(3) of the Food Act.
- According to Section 23(3)The prosecution should have furnished a copy of the report or certificate to the Accused. And Reasonable notice of the intention of producing the report or certificate in the evidence must be communicated to the Accused person.
- On behalf of the Appellant, it was argued that Section 24(2) of the Food Act had given an opportunity to the Accused person to challenge the report. Provision is made in the Act to request from Court to send the remaining sample to another Analyst.
- According to the Food Act, when the prosecution requests a sample to be sent to the Analyst, it is mandatory for the Magistrate to send ½ to the Analyst and retain the other ½.
- When perusing the Magistrate Court's case record, the Analyst examined the sample and made his report on the 5th day of 2015. This indicates that the report had come to Court within a short time. The prosecution pointed out that the time taken by the Analyst to report back was two months
- For centuries, this country's criminal law principles held that let a hundred guilty go free rather than one innocent person is punished. This rule made judgers to be very careful when the Court exercises its powers in imposing punishments. The verdict should be pronounced not on a balance of probability but beyond a reasonable doubt.
- Since the prosecution had failed to prove that a copy of the report was sent along with the charge sheet or that the Accused was given a copy before the 4th of January 2016, the Respondents had not complied with mandatory provisions of the Food Act.

Therefore, appeal allowed.

On 16. 12. 2022, Volume IX of the JSA Law journal was launched and the award presentation of the Justice Amarathunga Memorial Best Article Competition was held. Miss N. W. K. L. P. Lankangani, Additional District Judge, Warakapola was awarded as the winner of the competition.

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