JSA News Letter

THE JUDICIAL SERVICE ASSOCIATION OF SRI LANKA

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Letter sent to Minister of Justice regarding fund allocation for Higher Education of Judges

Judicial Service Association of Sri Lanka

2023. 07. 17

ජනාධිපති නීතිඥ විජේදාස රාජපක්ෂ මැතිතුමා,
ගරු අධිකරණ, බන්ධනාගාර කටයුතු සහ ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍ය,
අධිකරණ, බන්ධනාගාර කටයුතු සහ ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍යාංශය,
කොළඹ 10.

දිසා විනිසුරුවරුන්ගේ සහ මහේස්ත්‍රාත්වරුන්ගේ පශ්චාත් උපාධි සඳහා මුදල් වෙන් කිරීම.

දිසා විනිසුරුවරුන් සහ මහේස්ත්‍රාත්වරුන්ගේ පශ්චාත් උපාධි කටයුතු සඳහා 2009 වර්ෂයේ සිට මේ දක්වා අඛණ්ඩවම පාඨමාලා ගාස්තු ගෙවීම අධිකරණ අමාතශ්‍යාංශය මඟින් සිදුකර ඇති නමුත්, මෙම වසරේ එකී පාඨමාලා ගාස්තු ගෙවීම සිදු කර නොමැති බවට අධිකරණ සේවා සංගමයේ පහත නම් සඳහන් සාමාජික දිසා විනිසුරුවරුන් සහ මහේස්ත්‍රාත්වරු විසින් අප සංගමය වෙත දන්වා ඇත.

විනිශ්චයකාරවරුන්ගේ දැනුම සහ කුසලතාවය වර්ධනය කර ගැනීම සඳහා සහ එදිනෙදා රාජකාරී කටයුතු වලට අවශ්‍ය නූතන දැනුම වර්ධනය කරගැනීමට පශ්චාත් උපාධි අධ්‍යයන කටයුතු අත්‍යාවශ්‍ය වී ඇති අතර, විනිශ්චයකාරවරුන්ගේ උසස් අධ්‍යාපන සුදුසුකම් සම්බන්ධයෙන් පසුගිය ජූලි 05 වන දා ශ්‍රී ලංකා පාර්ලිමේන්තුවේ පැවති විවාදයේදී ද, සාකච්ඡාවකට බඳුන් වී ඇති බව පෙනී යයි.

තවද, වෙනත් කිසිම රාජ්‍ය ආයතනයක් විසින්, මෙරට තුළ දී කරන පශ්චාත් උපාධි අධ්‍යයන කටයුතු සඳහා ගෙවීම් කිරීම නවතා නොමැති අතර, එක් අතකින් විනිශ්චයකාරවරුන්ගේ උසස් අධ්‍යාපන සුදුසුකම් පිළිබඳව ප්‍රශ්න කරන අතරතුරදී, ඊට සමගාමීව ගනු ලබන මෙවැනි තීරණ මගින් අධිකරණය දෙයාකාරයකින් දුර්වල කිරීම සිදුවන බවද පෙන්වා දීමට කැමැත්තෙමි.

එවැනි තත්වයක් යටතේ විනිශ්චයකාරවරුන්ගේ පශ්චාත් උපාධි අධ්‍යයන කටයුතුවලට අවශ්‍ය ප්‍රතිපාදන ලබා දීම අත්‍යාවශ්‍යයෙන්ම සිදු කළ යුතු කටයුත්තක් බව පැහැදිලිව පෙනී යයි.

පහත නම් සඳහන් දිසා විනිසුරුවරුන් සහ මහේස්ත්‍රාත්වරුන් මේ වන විටත් අධිකරණ සේවා කොමිෂන් සභාවේ නිර්දේශ සහිතව තම ඉල්ලීම අධිකරණ අමාත්‍යාංශය වෙත ඉදිරිපත් කර ඇති බවට අධිකරණ සේවා සංගමය වෙත දන්වා ඇත.

ඒ අනුව අධිකරණ සේවා කොමිෂන් සභාව මගින්ද නිර්දේශ කර ඇති පහත සඳහන් දිසා විනිසුරුවරුන් සහ මහේස්ත්‍රාත්වරුන්ගේ පශ්චාත් අධ්‍යයන කටයුතුවලට අවශ්‍ය ප්‍රතිපාදන නොපමාව ලබාදීමට අවශ්‍ය පියවර ගන්නා මෙන් කාරුණිකව ඉල්ලා සිටිමි.

01. එච්. එම්. බී. ආර්. විජේරත්න මෙනවිය - අතිරේක දිසා විනිසුරු, කොළඹ.
02. කේ. කේ. ලියනගේ මහත්මිය - දිසා විනිසුරු, නුගේගොඩ.
03. කේ. පී. එස්. හර්ෂන් මහතා - අතිරේක මහේස්ත්‍රාත්, කොළඹ.
04. ටී. ඒ. ඩී. හේමපාල මහතා - අතිරේක මහේස්ත්‍රාත්, මාලිගාකන්ද.
05. ආර්. එම්. එස්. එන්. සමරතුංග මහතා - දිසා විනිසුරු, රත්නපුර.
06. එල්. ඒ. ඩී. ජේ. එස්. විජේතුංග මහත්මිය - අතිරේක දිසා විනිසුරු, කුරුණෑගල.
07. අයි. එම්. එස්. බී. ඉලංගසිංහ මහතා - අතිරේක මහේස්ත්‍රාත්, කොළඹ.
08. එස්. බී. රාජකරුණා මහතා - අතිරේක දිසා විනිසුරු, මහනුවර.
09. එල්. ටී. වරුසවිතාන මහතා - අතිරේක දිසා විනිසුරු, ගාල්ල.
10. එච්. ඒ. තස්මින් මහත්මිය - දිසා විනිසුරු, මුතූර්
11. එන්. එස්. ගාමිනී සනත් මහතා - අතිරේක දිසා විනිසුරු, මාතර.

ස්තුතියි,

පසාන් අමරසේන,
ලේකම්,
අධිකරණ සේවා සංගමය.

Letter sent to Minister of Justice

2023. 07. 17

ජනාධිපති නීතිඥ විජේදාස රාජපක්ෂ මැතිතුමා,
ගරු අධිකරණ, බන්ධනාගාර කටයුතු සහ ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍ය,
අධිකරණ, බන්ධනාගාර කටයුතු සහ ආණ්ඩුක්‍රම ව්‍යවස්ථා ප්‍රතිසංස්කරණ අමාත්‍යාංශය,
කොළඹ 10.

පාර්ලිමේන්තු වරප්‍රසාද වලින් ආවරණය වෙමින්, විනිශ්චයට භාජනය වෙමින් පවත්නා නඩු කටයුතු විවේචනය කිරීම මගින් අධිකරණයේ ස්වාධීනත්වයට බලපෑම් කිරීම.

පාර්ලිමේන්තු මන්ත්‍රී සරත් වීරසේකර මහතා විසින් ජූලි මස 07 දින පාර්ලිමේන්තුවේ දී ප්‍රකාශයක් කරමින් මුලතිවු මහේස්ත්‍රාත් අධිකරණයේ දැනට විනිශ්චයට භාජනය වෙමින් පවතින නඩුවක් සම්බන්ධයෙන් තමන්ගේ පුද්ගලික අදහස් දැක්වීමත්, අධිකරණමය කටයුත්තක යෙදී සිටි මුලතිවු මහේස්ත්‍රාත්තුමාගේ අධිකරණමය ක්‍රියාවන් සහ තීරණ (Judicial acts and Judicial decisions) අත්තනෝමතික ලෙසට ද්වේෂ සහගතව සහ පදනම් විරහිතව විවේචනය කිරීමත් සම්බන්ධයෙන්, 2023. 07. 13 පැවති විශේෂ විධායක කමිටු රැස්වීමේදී අධිකරණ සේවා සංගමයේ දැඩි අවධානය යොමු වී ඇත.

විනිශ්චයට භාජනය වෙමින් පවතින නඩු සම්බන්ධයෙන් පාර්ලිමේන්තුවේ මන්ත්‍රීවරුන් විසින් පාර්ලිමේන්තු විවාද වලදී තම අදහස් ප්‍රකාශ නොකිරීම සදාචාර සම්පන්න පාර්ලිමේන්තු සම්ප්‍රදායක් ලෙසට මේ දක්වා පැවති තත්ත්වයකි. කෙසේ වුවද මැතක පටන් සමහර පාර්ලිමේන්තු මන්ත්‍රීවරුන් විනිශ්චයට බඳුන් වෙමින් පවත්නා නඩු කටයුතු සම්බන්ධයෙන්, පාර්ලිමේන්තු වරප්‍රසාද වලට මුවා වී ඒවා ද්වේෂ සහගත හා පදනම් විරහිත ලෙසට විවේචනය කිරීම තුළින්, විනිශ්චයකාරවරුන්ට සහ අධිකරණයට බලපෑම් කිරීමට උත්සාහ කරන බව අධිකරණ සේවා සංගමය විසින් නිරීක්ෂණය කර ඇත.

එහි උච්චතම අවස්ථාව ලෙසට පසුගිය ජූලි මස 07 දින පාර්ලිමේන්තු මන්ත්‍රී සරත් වීරසේකර මහතා විසින් සිදු කරන ලද ප්‍රකාශය අධිකරණ සේවා සංගමයේ දැඩි අවධානයට ලක් වී ඇත.

ඔහුගේ ප්‍රකාශයේදී සිංහල සහ දෙමළ මහේස්ත්‍රාත්වරුන් ලෙසට මහේස්ත්‍රාතුමන්ලා වර්ග කර, ද්‍රවිඩ භාෂාවෙන් රාජකාරි කරනු ලබන

මහේස්ත්‍රාත්තුමන්ලා ද්වේෂ සහගත ආකාරයෙන් විවේචනය කිරීම සිදු කළ අතර, එමගින් ජාතිවාදය මත පදනම්ව විනිශ්චයකාරවරුන් බෙදා වෙන් කිරීමට කරන ලද උත්සාහය අධිකරණ සේවා සංගමයේ දැඩි අප්‍රසාදයට ලක් වී ඇති බවද දැන්වීමට කැමැත්තෙමු.

සංචරණය සහ තුලනය (Checks and Balances) මගින් ව්‍යවස්ථාදායකය, විධායකය සහ අධිකරණය යන රාජ්‍ය යාන්ත්‍රණයේ මූලික ආයතන තුන එකිනෙකට පාලනයක් සහිතව මහජනතාව වෙනුවෙන් සේවය කිරීම සිදු කළ යුතු බව පැහැදිලි කාරණයකි. කෙසේ වුවද, විනිශ්චයට භාජනය වෙමින් පවත්නා නඩු කටයුතු සම්බන්ධයෙන් පාර්ලිමේන්තුව තුළදී ද්වේෂ සහගත සහ පදනම් විරහිත ලෙසට විවේචනය කිරීම මගින් අධිකරණයේ ස්වාධීනත්වයට දැඩි බලපෑමක් සිදු වන අතර, එවැනි විනිශ්චයට බඳුන් වෙමින් පවත්නා නඩු කටයුතු සම්බන්ධයෙන් අදහස් දැක්වීම සහ විවේචනය කිරීම පාර්ලිමේන්තු මන්ත්‍රීවරුන් විසින් සිදු කිරීම, ශ්‍රී ලංකා පාර්ලිමේන්තුවේ වර්තමාන මුලසුන විසින් ද වැළැක්වීමක් හෝ පාලනය කිරීමක් සිදු නොකරන බව පැහැදිලිව පෙනී ගොස් ඇත. එසේ පාලනයකින් තොරව මේ ආකාරයෙන් විනිශ්චයට බඳුන් වෙමින් පවත්නා නඩු කටයුතු සහ විනිශ්චයකාරවරුන් ද්වේෂ සහගත සහ පදනම් විරහිත ලෙසට විවේචනය කිරීම මගින් අධිකරණය කෙරෙහි මහජනතාවගේ ඇති විශ්වාසය බිඳ වැටීම සිදු විය හැකි අතර, එමගින් බරපතල ප්‍රතිවිපාක මුළු රාජ්‍ය යාන්ත්‍රණයටම ඇති විය හැකි බව අධිකරණ සේවා සංගමයේ මතය වේ.

මුලතිවු මහේස්ත්‍රාත් අධිකරණයේ අධිකරණ කටයුත්තක් වන, ස්ථාන පරීක්ෂාවක් සිදු කරන අවස්ථාවේදී, එම නඩුවට අදාළ පාර්ශවයක්ද නොවන, කොළඹ දිස්ත්‍රික් පාර්ලිමේන්තු මන්ත්‍රී සරත් වීරසේකර මහතා විසින් මහේස්ත්‍රාත්තුමා ඉදිරියේ කරුණු දැක්වීමට උත්සාහ කළ අවස්ථාවේදී, මුලතිවු මහේස්ත්‍රාත්තුමා විසින් එසේ කරුණු දැක්වීමට ඔහුට අවස්ථාව ලබා නොදීම හේතුවෙන්, එකී මහේස්ත්‍රාත්තුමාට පුද්ගලිකවද විවේචන එල්ල කරමින් ද්වේෂ සහගත සහ පදනම් විරහිත ප්‍රකාශයක් පාර්ලිමේන්තුවේදී සිදු කරන ලද බව අධිකරණ සේවා සංගමය විසින් නිරීක්ෂණය කර ඇත.

ඉතාම ද්වේශ සහගත ලෙසට පදනම් විරහිතව, මෙතෙක් පැවති ශිෂ්ඨසම්පන්න පාර්ලිමේන්තු සම්ප්‍රදායන් බිඳ දමා එවැනි ප්‍රකාශ පාර්ලිමේන්තුවේදී සිදු කිරීම කණගාටුදායක තත්ත්වයක් බවට පැහැදිලිව පෙනී යයි. මේ ආකාරයෙන් දිගින් දිගටම කටයුතු කළහොත් අධිකරණයෙහි විනිශ්චයට භාජනය වී ඇති නඩු කටයුතු සම්බන්ධයෙන් සහ අධිකරණයේ ස්වාධීනත්වය සම්බන්ධයෙන් දැඩි බලපෑමක් සිදු වන අතර, එය තවදුරටත්

ඉදිරියේ දී සිදුවීම වැළැක්වීම මේ අවස්ථාවේ දී අත්‍යාවශ්‍යයෙන්ම සිදු කළ යුතු බව අධිකරණ සේවා සංගමය වෙනුවෙන් අවධාරණය කර සිටිමු.

අධිකරණ අමාත්‍යවරයා ලෙසට සහ ජ්‍යෙෂ්ඨ ජනාධිපති නීතිඥවරයෙකු ලෙසට ඔබතුමාට මේ සම්බන්ධයෙන් දන්වා සිටීමට අධිකරණ සේවා සංගමය තීරණය කරන ලද අතර, අධිකරණයේ ස්වාධීනත්වයට පාර්ලිමේන්තු මන්ත්‍රීවරුන්ගෙන් පාර්ලිමේන්තුව තුළදී පාර්ලිමේන්තු වරප්‍රසාද වලට මුවාවී, සිදුවන බලපෑම සම්බන්ධයෙන් පාර්ලිමේන්තුව තුළදී කරුණු ඉදිරිපත් කර, අධිකරණයේ ස්වාධීනත්වය ආරක්ෂා කර ගැනීම වෙනුවෙන් කටයුතු කිරීම ඔබතුමා විසින් සිදු කරනු ඇතැයි අපි තරයේ විශ්වාස කරන්නෙමු.

ඉහත සඳහන් කරුණු සියල්ල සැළකිල්ලට ගෙන, පාර්ලිමේන්තු මන්ත්‍රී සරත් වීරසේකර මහතා විසින් මුලතිවු මහේස්ත්‍රාත් අධිකරණයේ දැනට විනිශ්චයට බඳුන් වෙමින් පවත්නා නඩුවක් සම්බන්ධයෙන් පාර්ලිමේන්තු වරප්‍රසාද වලට මුවාවී සිදු කරන ලද ප්‍රකාශයෙහි ඇති බරපතල තත්ත්වය සහ, එමඟින් අධිකරණයේ ස්වාධීනත්වයට සිදුවන බලපෑමත්, නීතියේ ආධිපත්‍ය බිඳවැටීමෙන් රාජ්‍ය යාන්ත්‍රණය බිඳ වැටීමට ඇති හැකියාවත් සම්බන්ධයෙන් අධිකරණ අමාත්‍යවරයා ලෙසට පාර්ලිමේන්තුව දැනුවත් කර, මෙවැනි තත්ත්වයන් නැවත ඉදිරියේදී ඇතිවීම වැළැක්වීමට අවශ්‍ය පියවර ගන්නා මෙන් අධිකරණ සේවා සංගමය වෙනුවෙන් කාරුණිකව ඉල්ලා සිටිමු.

ස්තුතියි,

රුවන් දිසානායක,
සභාපති,
අධිකරණ සේවා සංගමය.

පසාන් අමරසේන,
ලේකම්,
අධිකරණ සේවා සංගමය.

Letter sent to the Secretary Judicial Service Commission

2023. 07. 17

ලේකම්තුමා,

අධිකරණ සේවා කොමිෂන් සභාව,

කොළඹ 12.

<u>අධිකරණයේ ස්වාධීනත්වය සම්බන්ධයෙන් ඇති විය හැකි සෘජු හා වක්‍ර බලපෑම් පිළිබඳව දැනුම් දීමයි.</u>

2023. 07. 05 දින ''අධිකරණ කටයුතු වල ප්‍රමාදය හා ඒ හා සම්බන්ධ කරුණු'' යන මාතෘකාව යටතේ ශ්‍රී ලංකා පාර්ලිමේන්තුවේ පැවති සභාව කල් තැබීමේ විවාදයේ දී හා මෑත කාලීන පාර්ලිමේන්තුව සැසි වාරවලදී ඉදිරිපත් වූ කරුණු පිළිබඳව අධිකරණ සේවා සංගමය 2023. 07. 13 වන දින පවත්වන ලද විශේෂ විධායක කමිටු රැස්වීමේදී ගැඹුරින් සාකච්ඡා කරන ලද අතර එකී නිරීක්ෂණයන් අධිකරණ සේවා කොමිෂන් සභාව වෙත දැන්වීමට ද තීරණය කරන ලදී.

අධිකරණ සේවා කොමිෂන් සභාව මෙන්ම අධිකරණ සේවා සංගමය ද නඩු ප්‍රමාදය වැළැක්වීම සඳහා අධිකරණමය වශයෙන් පසුගිය වසර 07ක පමණ කාලසීමාව තුළ දී ගනු ලැබූ පියවරයන්ට පාදක වී තිබූ හේතු පිළිබඳව ව්‍යවස්ථාදායකය විසින් යම් සාධනීය පියවරක් ගන්නේ නම් යුක්තිය පසිඳලීමේ ක්‍රියාවලිය කාර්යක්ෂම කිරීමට එහි ඇති වැදගත්කම පිළිබඳව අපිදු පූර්ණ අවබෝධයකින් සිටිමු.

එසේ වුවද යථෝක්ත පාර්ලිමේන්තු විවාදයන්හි දී සමහරක් කථිකයින් විසින් ආසන්න කාලයේ ශ්‍රේෂ්ඨාධිකරණය විසින් ප්‍රකාශ කරන ලද මූලික අයිතිවාසිකම් නඩු තීන්දු වල ස්වභාවය, ඉලක්ක ගත අධිකරණවල විනිශ්චයකාරවරුන්ගේ වෘත්තීය සුදුසුකම්, පසුගිය කාලයේ සාමාජීය වැදගත්කමක් යුත් නඩු විභාග කරන ලද මහේස්ත්‍රාත්වරුන්ගේ තීන්දු හා නියෝගයන් වල ස්වභාවය සහ විශේෂයෙන්ම අධිකරණ පරිපාලනය සම්බන්ධයෙන් අධිකරණ සේවා කොමිෂන් සභාව වෙත ආණ්ඩුක්‍රම ව්‍යවස්ථාව මගින් පිරිනමා ඇති බලතල ඉවත් කර ඒ සඳහා වෙනම ආයතනයක් පිහිටුවීම ආදිය කේන්ද්‍රගත කරමින් විවේචනයක් සිදු කරන ආකාරය පැහැදිලිව නිරීක්ෂණය විය. මෙහි වඩාත්ම බරපතල තත්ත්වය වන්නේ පසුගියදා නුවරඑළියේ දී පවත්වන ලද ''ජාතික නීති සමුළුව'' හිදී ශ්‍රේෂ්ඨාධිකරණ විනිශ්චයකාරතුමෙකු පවත්වන ලද දේශනයක කොටස් හා සාවද්‍ය සංඛ්‍යා ලේඛන උපුටා දක්වමින් වාචික ප්‍රහාරයන් අධිකරණ පද්ධතිය වෙත එල්ල කිරීමයි.

නඩු ප්‍රමාදයන්ට අදාළ හේතු සොයා බැලීමෙන් අනතුරුව අධිකරණ සේවා කොමිෂන් සභාවේ චක්‍රලේඛ 391 හා 392 ආදිය නිකුත් කිරීම මගින් අධිකරණය විසින්ම පසුගිය කාලයේ ගනු ලැබූ පියවරයන් හේතුවෙන් දීර්ඝ කාලයක් තිස්සේ ගොඩ ගැසී තිබූ නඩු විශාල ප්‍රමාණයක් මේ වන විට විභාග කොට අවසන් කර ඇති අතර සමහරක් අධිකරණවල මෙයට වසර 05කට පමණ පූර්වයෙන් පැවති නඩු ප්‍රමාණය මේ වනවිට කීප ගුණයකින් අඩු වී තිබේ.

විනිශ්චයකාරවරුන්ගේ හිඟය, කාර්ය මණ්ඩලයේ විශාල පුරප්පාඩු ප්‍රමාණය, කනිෂ්ඨ කාර්ය මණ්ඩලය සඳහා අධිකරණ කටයුතු පිළිබඳ දැනීමක් හා උසස් චරිත ස්වභාවයක් නොමැති සේවකයින් විධායකය හරහා පත් කිරීම, භෞතික සම්පත් සැපයීම ක්‍රමිකව කප්පාදු කිරීම, විනිශ්චයකාරවරුන්ගේ පුහුණු කටයුතු හා උසස් අධ්‍යාපනය සඳහා ආණ්ඩුව විසින් ලබා දෙමින් තිබූ ප්‍රතිපාදන මුළුමනින්ම පාහේ කපා දැමීම සහ කොවිඩ් වසංගතය වැළැක්වීම සඳහා වූ මාර්ගෝපදේශ මත විටින් විට අධිකරණ වසා දැමීම ආදී සීමා සහිතභාවයන් මධ්‍යයේ වුවද පසුගිය වර්ෂ 05ක කාලය තුළ අධිකරණයන් ඉදිරියේ පවරන ලද නඩු ප්‍රමාණයට බෙහෙවින් අත්‍යාසන්න වූ ප්‍රමාණයක් සම්පූර්ණයෙන්ම විසඳා අවසන් කර ඇති බව සංඛ්‍යාලේඛන අනුව සනාථ වේ.

මෙවැනි තත්ත්වයක් යටතේ ක්‍රමිකව අවප්‍රමාණය වෙමින් යන ප්‍රශ්නයකට අනවශ්‍ය කාලීන වැදගත්කමක් ලබා දී අධිකරණය වෙනත් ආයතනයක පාලනයට යටත් කර මහජනතාවගේ පරමාධිපත්‍ය බලය ප්‍රකාරව උරුම වී ඇති අත්‍යන්ත ස්වාධීන තත්ත්වය අහිමි කිරීමේ උත්සාහයක් ක්‍රියාත්මක වෙමින් පවතින්නේ ද යන්න පිළිබඳව අප සංගමය සැක පහළ කර සිටියි.

අධිකරණ කටයුතු වල ප්‍රමාදයක් ඇති තැන් සොයා බලා එයට පිළියම් යෙදීමට ගනු ලබන අවංක උවමනාවන්ට මෙතෙක් කළ ආකාරයටම අපගේ පූර්ණ සහයෝගය ලබා දෙන නුමුදු, අධිකරණයේ ස්වාධීනත්වයට බලපෑම් එල්ල කරනු ලබන නිශ්චිත හා විනාශකාරී ඉලක්කගත ව්‍යාපෘතියක බාහිර හා අභ්‍යන්තර කොටස්කරුවන් පිළිබඳව අප සංගමය සෑම විටම අවධානයෙන් සිටින බවත්, එසේ බලපෑම් එල්ල කිරීමට ගනු ලබන උත්සාහයන් පරාජය කිරීමට තරාතිරම නොබලා ගත යුතු ක්‍රියාමාර්ග ගැනීමට අධිකරණ සේවා සංගමය කිසිවිටෙකත් පසුබට නොවන බවත්, අවධාරණය කරනු කැමැත්තෙමු.

රුවන් දිසානායක,
සභාපති,
අධිකරණ සේවා සංගමය.

පසාන් අමරසේන,
ලේකම්,
අධිකරණ සේවා සංගමය.

COMMON INTENTION V COMMON OBJECT[1]

During a cricket match between Sri Lanka and Pakistan, a group of Sri Lankan spectators entered the ground and attacked the umpire for giving an out and thereby sending a Sri Lankan batsman out of the ground. The umpire received grievous injuries. If the attackers while watching the match from the pavilion, intolerant of the defeat, independently desired without any concert with each other, to attack the umpire to cause injuries then there is no Common Intention. Each offender had a similar intention but not a common intention. Therefore, each offender is responsible only for the act and the magnitude of the result that he has committed. But once the umpire signalled out one or few attackers indicated to others by word or gesture to attack the umpire and others agreed by word or gesture then they share a common intention to attack the umpire. Here S 32 of the Penal Code applies and each of such persons is liable for that act of the wrongdoer in the same manner as if it were done by him alone.

On the other hand, if the number of the attackers were 5 or more and the object or the goal of every member was to cause grievous injuries to the victim by entering the ground then an unlawful assembly is constituted within the boundary limits of the ground. Consequently, each member who joined and remained in the assembly knowing that the particular umpire would be attacked to cause injuries is responsible for causing grievous hurt to the umpire under S 146 of the Penal Code whether or not any member did any act to cause injuries. If any member decides to withdraw from the others after entering the ground and before the attack, he is still liable only for the offence of unlawful assembly but not for causing injuries. While causing injuries to the umpire one of the offenders attacks a Pakistani cricketer as well. Now all offenders shall be liable for the same if all of them knew that the Pakistani cricketer would also be attacked during the prosecution of their object on the basis that the liability will extend not only to the offence committed in the prosecution of the common object but also to offences which the members of the assembly knew to be likely committed in prosecution of that object.

Differences between Common Intention and Common Object in brief;

1. While the same intention shared in agreement constitutes common intention no prior agreement is required for the common object under S 146. Common object can be formed on the spur of the moment.
2. Commission of physical acts by all the accused is required for the application of S 32 of the Penal Code. If the accused had joined and remained in the assembly knowing that the offence would be committed in prosecution of the common object of the assembly he is liable regardless of his physical participation in the commission of the offence. However, mere innocent presence in an assembly of persons, as for example a bystander, does not make the accused a member of an unlawful assembly unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly.
3. Unlawful assembly itself is an offence while Common Intention does not create a separate offence.
4. An unlawful assembly is constituted only when the purpose of the assembly is one of the objects mentioned in S 138 and no such limitation is imposed under S 32.

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1 This is an attempt to explain these two concepts that come under vicarious liability in simple terms. This is written on invitation- Priyantha Liyanage, High Court Judge, Hambantota.

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Experience Sharing Workshop

The I[st] ever workshop organized by the Judicial Service Association was successfully held in Marriot Resort, Weligama on 27[th] and 28[th] May 2023 as a Residential workshop. The series of workshops has been permitted by the Judicial Service Commission by letter dated 21.04.2023.

Participant judges were comprised with 29 most junior judges of the area, President and Secretary of the JSA, Chief Magistrate Colombo and 6 representatives of organizing subcommittee to JSA. Selection of participant Judges was based on seniority, geographic distance to the venue and the coordination of the workshop.

United Nations Office of Drug and Crimes provided financial assistance for the event.

Hon. Justice Priyantha Fernando (The Judge of the Supreme Court), Hon. Justice Sampath Abeykoon (The Judge of the Court of Appeal), Hon. Aditya Patabendige (High Court Judge) and Hon. Manjula Tilakaratne (High Court Judge) contributed for the workshop as resource persons. United Nations Office of Drug and Crimes provided financial assistance for the event.

JSA expects to continuously organize the series of workshops with the purpose of sharing knowledge and experience among the members of judiciary.

SUPREME COURT

JSALR 2023 /II//1

Bulanawewe Gedara Loku Banda Dharmasena Vs **Bulanawewe Gedara Abeyarathne Banda karunathilake and Others**

SC Appeal : 29/2014

Before : Murdu N. B. Fernand, PC. J.
S. Thurairaja, PC. J.
Mahinda Samayawardhena, J.

Decided on : 06.04.2023

Section 755 (1)c,d 758(1)b 9c 759(2), 770 of the civil procedure code.

Samayawardhena, J.

At the time of the trail , in addition to the plaintiff, there were eight defendants. The only contesting defendant was the 4th defendant. The others were sailing with the plaintiff. Those defendants (except the 4th) did not raise issues. cross-examine the plaintiff's witnesses or lead evidence After trail the District judge entered judgment as prayed for by the plaintiff allotting undivided shares to all the parties. At the argument before the high court. the plaintiff-respondent moved that the appeal be dismissed in limine since the other defendants had not been made parties and hence there was no properly constituted appeal.

Held

01. In terms of Section 755(1)c and (d) and Section 758(1)(b) and (c) of the civil procedure code the notice of appeal and the petition appeal shall contain inter alia the names and addresses of the parties to the action and the names of the appellant and the respondents. The failure to name four defendants as parties to the appeal violates these Sections.
02. All the necessary parties shall be made parties to the appeal. Necessary parties to the appeal are the parties who will be prejudicially or adversely affected be the result of appeal.
03. Apart from naming the correct parties as respondents, there are several other requirements to be fulfilled for the constitution of a proper appeal in Sections 755(1)a, b and e, 756, 758(a),d to f Section 759(2) refers to those requirements.
04. That a necessary party has not been named as a respondent to the appeal or having made a respondent, notice has not been served on him, the court need not dismissed the appeal in limine on the ground that the appeal is not properly constituted, The court has the discretion to rectify such defects under Section 770.
05. If the appeal has been filed out of time, it cannot be cured by invocation of Section 759(2) of the civil procedure code because relief can be granted under that Section for non- compliance with the provisions relating to the appellate procedure other than a provision specifying the period within which any act or thing is to be done' as stated in the Section itself. The time limits within which steps are to be taken, such as filing the notice of appeal and petition of appeal are mandatory and imperative .
06. Failure to name the defendants as respondents is a curable defect under Section 759(2) civil procedure code and the high court of civil Appeal has not power to grant such relief under Section 759(2) of the civil procedure code . The Court can issue the requisite notice of appeal against whose decree the appeal is made but also who has not been made a party to the appeal under in terms of Section 770 of the civil procedure code.

JSALR 2023 /II//II

Sabaragamuwa Development Bank Vs **Ranjith Lionel kuruneru and Others**

SC Appeal : 219/2014

Before : P. Padman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeysekara, J.

Decided on : 06.04.2023

Section 16 of the Recovery of loans by Bank. (Special Provisions) Act No 04 of 1990 Section 325, 326,327 of the civil procedure code.

Samayawardhena, J.

The Appellant, Sabaragamuwa Development Bank (as the judgment Creditor) made an application seeking delivery of possession of the property described in the certificate of sale issued in terms of section 16 of the Recovery of Loans by Bank (Special Provisions) Act no 04 of 1990 The court Allowed the application and the fiscal executed the writ. After the filling fiscal report the appellant judgment creditor made an application in terms of Section 325 and 326 of the civil procedure code Stating that although the fiscal had delivered possession to the appellant, such possession was not property delivered as the 1st-4th respondent and sought effective delivery of possession by removing the building and ejecting the respondents from the property .

Then the 1st-4th respondents made an application in terms of section 325 and 326 of the civil procedure code seeking restoration to possession.

Held

01. Inquiries on execution proceedings held in terms of section 325 are not full- blown trials but summary inquiries to provide speedy and inexpensive remedies. Such inquiries shall be concluded with 60 days of the publication of notice on the land allowing any claimants to intervene.

02. The inquiry in terms of section 325 are to be investigated the claims of persons other than the judgment - debtor purportedly in possession of the land, The decree holder's right to have the decree executed arises from his decree and the burden is on the claimant to support his claim as against that decree. Although the right to commence the section 325 inquiry lies with the judgment Creditor as the petitioner. he cannot be expected to prove the negative.

03. In terms of Section 327 if the resistance abstraction, hindrance or ouster is by a person in possession in good faith independent of the judgment - debtor by virtue of any right or interest which has been established the court shall dismiss the petition of the judgment - creditor.

04. Section 327 is connected to section 326, Section 326 deals with how the judgment creditor's application can be allowed whereas Section 327 deals how his application can be dismissed confirming the possession of the claimant.

05. When Section 325"326 and 327 are read together it is clear that the judgment- debtor has no defense (subject to exceptions such as that he was already satisfied the decree) and the person other than the judgment - debtor shall prove to the satisfaction on the court that, firstly he is in possession and secondly he is in such possession in good faith and on his own account or an account of some person other than the judgment- debtor by virtue of any right or interest.

06. There is no burden cast upon the respondents to prove their claim until the initial burden is discharged by the appellant judgment- creditor by proving his application made under Sec 325(1).

07. The petitioner is the decree holder or the judgment creditor and by virtue of the decree in his favor, he was every right to have it executed, Execution proceedings shall not be converted to a second trail. The court shall not discourage the judgment - creditor from having the decree executed by imposing unnecessary fetters. Instead, the court shall facilitate the judgment creditor reaping the fruits of his hard- earned victory. what is necessary is not the mere execution of the decree but enforcement of the decree. what is the use of having decree on a piece of paper if the decree holder cannot translate it into reality, Justice should be real not illusory .

JSALR 2023 /II//III

M. M. Anzari and Others Vs **Majeeda Mohomad and Others**

SC Appeal : 135/2017

Before : Vijith K. Malalgoda, J.

Kumuduni Wickramasinghe, J.

Mahinda Samayawardhena, J.

Decided on : 31.03.2023

Section: 323, 325, 337

Samayawardhena, J.

The original plaintiffs filed the action on 06.10.1988 seeking a declaration of title and ejectment of the two defendants. The District court granted the reliefs as prayed for in the plaint dated 08.12.1993. The two defendants appealed the court of appeal. The Court of appeal dismissed the appeal with costs, and subject to the condition that the declaration of title granted to the plaintiffs would be limited to the 2/3 share of the 1st and 3rd plaintiffs because the 2nd plaintiff (Owner of 1/3 share) had died during the pendency of the case and no steps had taken for substitution.

Held

01. Person in mala fide possession would volunteer to be disposed by the fiscal in the execution of the decree since they can easily secure restoration to possession through

    Court and consolidate their possession.

    The time period within which

02. The 10 year period ought to be interpreted broadly in favor of the decree holder not against him. If the judgment- debtor had held himself fraudulently out of reach of process, it is a matter the court shall take cognizance of in calculating the 10 year period.

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 .

If the Judgment creditor does not make the application within one month, he will not able to apply under Section 325.

JSALR 2023 /II//IV

Attoney Genaral Vs **Dekum Ambakotuwa Prageeth Nishantha Bandara**

SC Appeal : 220/2012

Before : Murdu N. B. Fernando PC, J.

Kumuduni Wickramasinghe, J.

Achala Wengappuli, J.

Ordered on : 10th March 2023

Section:364 (2) penal code

Supreme Court Rules 1978, 1990

Achala Wengappuli, J.

D. A. P. N Bandara was indicated by the AG on 19.10.1997, alleging that he committed an offence punishable under Section 364(2) of the panel code. The court found him quality as charged and imposed imprisonment, fine and compensation, The court of appeal set aside the conviction entered against the Accused Appellant However in the operative part of the caption to the Said application i,e the part demarcated by the Section titled "AND NOW BETWEEN" which indicates the names of the parties to the application before court the appellant had named one Imbulana Liyanage Darmarathna and not the actual Accused Appellant before the court of Appeal.

Held

- Sub part A of the supreme court rules 1990, which consist of a total number of 17 rules (from rule 2 to 18), set out the procedure an applicant must follow and should comply with, when making an application for special leave to appeal.

- ❖ That naming all parties who may be adversely affected by the result of the appeal should be made parties as a mandatory requirement that an applicant must comply in seeking leave to appeal against a judgment or an order.
- ❖ No comparable provision could be found in the Supreme Court Rules to the statutory provisions contained in section 322 of the code of criminal procedure code and section 759 of the civil procedure code.

JSALR 2023 /II//V

Arulampalam Gnaneswaran and another Vs **Kasilingam Sritharan and another**

SC Appeal : 104/2017

Before : P. Padman Surasena, J.
Janak De Silva, J.
Mahinda Samayawardhena, J.

Decided on : 27. 06. 2023

Section 86(2) of the Civil Procedure Code, time limit for filing an application for the vacation of an ex parte decree, calculation of the period of 14 days in terms of section 86(2) of the Civil Procedure Code, applicability of section 8(1) of the Interpretation Ordinance.

Padman Surasena, J.

The Plaintiff-Respondent-Appellants (hereinafter sometimes referred to as the Plaintiffs) instituted action relevant to this case on 14.08.2013 in the District Court of Jaffna against the 1st Defendant-Appellant-Respondent (hereinafter sometimes referred to as the 1st Defendant) and the 2nd Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 2nd Defendant) seeking a declaration of title to the land described in the schedule to the plaint and the ejectment of the said Defendants from the said land. As the 1st Defendant and 2nd Defendants failed to appear before court after serving summons on them, case was fixed for ex parte trial against 1st and 2nd Defendants. At the conclusion of the trial ex parte decree was entered on 26.02.2014 and served on the 1st Defendant on 22.05.2014 and on the 2nd Defendant by way of substituted service on 07.05.2014. Then the 1st Defendant filed proxy, petition and affidavit under Section 86(2) of the Civil Procedure Code on 28.04.2014, seeking to purge his default and prayed inter alia that the ex parte decree be vacated. The Plaintiffs raised a preliminary objection to the maintainability of the said application on the basis that the said application was time barred. The learned District judge, by his order dated 19.11.2014, followed the decision in the case of Ceylon Brewery Limited vs Jax Fernando, Proprietor, Maradana Wine Stores and upheld the aforesaid preliminary objection raised by the Plaintiffs and proceeded to dismiss the ex parte vacation application of the 1st Defendant. On the appeal, the Provincial High Court of Civil Appeals set aside the order of the District Court dated 19.11.2014 and also the ex parte decree on the basis that section 86(2) of the Civil Procedure Code does not specify a limitation on the computation of the 14 days period and therefore when calculating the said 14 days the Sundays and public holidays must be excluded as per section 754(4) of the Civil Procedure Code which applies for similar computations of time.

The central question to be decided in this appeal is as to how a judge should calculate the period of 14 days stipulated in section 86(2) of the Civil Procedure Code.

Held:

- In the case of The Ceylon Brewery Limited vs Jax Fernando, Proprietor, Maradana Wine Stores 2001 (1) SLR 270, the Supreme Court had considered exactly the same question and decided that it is settled law that provisions which go to the jurisdiction must be strictly complied with and the intervening holidays cannot be excluded in computing a period exceeding six days.
- The same judicial precedence was followed by Justice Anil Gooneratne in the case of SC Appeal No. 153/2014 decided on 10.06.2016 and reiterated that the compliance of the requirement under section 86(2) of the Civil Procedure Code

is mandatory as legislative intention was to strictly stipulate the 14-day time limit to enable the District Court to assume jurisdiction to inquire into such applications.

- The learned Judge of the Civil Appeal High Court in his judgment in the instant case has made a reference that the Plaintiff's written submissions contained a specific reference to the judgment of the Ceylon Brewery's Case. However, the learned Judge of the Civil Appeal High Court had failed to give due recognition and apply the said ratio decidendi when he decided the instant case.
- In the case of Flexport (Pvt) Limited & two others vs. Commercial Bank of Ceylon Limited, Hon Priyasath Dep PCJ decided that section 8(1) of the Interpretation Ordinance is applicable when making an application to purge the default under section 86(2) of the Civil Procedure Code, which stipulates as follows;
    - "Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, and the last day of the limited time is a day on which the court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open"
- For the above reasons, It was decided that the petition filed on 09.06.2014 by the 1st Defendant seeking to purge his default and praying for the vacation of the ex parte decree filed under Section 86 (2) of the Civil Procedure Code must stand dismissed on the ground that it was not filed within the stipulated timeframe.

The judgment of the Civil Appeal High Court of the Northern Province dated 27.01.2016 was set aside. The order of the learned District judge dated 19.11.2014 was affirmed and restored. The appeal was allowed.

JSALR 2023 /II//VI

Hetti Achchige Anton Sujeewa Perera Vs **Attorney General and others**

SC Appeal : 101/2012

Before : Priyanthe Jayawardena PC, J.
A. L. Shiran Gooneratne, J.
Arjuna Obeyesekera, J.

Section 28(1), 63(1), 63A and 63B of the Mines and Minerals Act No. 33 of 1992 as amended by Act No. 66 of 2009, Forfeiture of the lorry to the State based on a conviction of a charge punishable under Section 63(1) Mines and Minerals Act as amended.

Decided on : 05.07.2023

Priyantha Jayawardena PC, J.

The Claimant-Appellant-Appellant [hereinafter referred to as the "Appellant"] is the registered owner of the lorry bearing registration number SG GM-1178, which was forfeited to the State by the learned Magistrate of Marawila. The driver of the lorry had pleaded guilty for committing the offence of transporting two cubes of gravel without a valid permit and at the inquiry regarding the lorry, only the Appellant had given evidence. At the conclusion of the inquiry, the learned Magistrate hold that the Appellant had failed to take necessary precautions to prevent the driver from committing the offence of illegally transporting gravel without a valid license. The Appellant preferred and Appeal to the High Court seeking to set aside the said Order. The High Court held that the Appellant had no right to appeal against the Order of the Magistrate's Court and affirmed the Order. Being aggrieved by the said Judgment, the appellant had moved the High Court to grant leave to appeal to the Supreme Court and both counsels appearing for the Appellant and the Respondent before the Supreme Court had agreed to confine to the question of law as to whether the Provincial High Court err in law when it upheld the forfeiture of the lorry based on a conviction of a charge punishable under section 63(1) of the Mines and Minerals Act No. 33 of 1992.

The primary question of law to be decided in this appeal is whether the lorry used to transport gravel could be forfeited to the State after an inquiry held under section 63B(1) of the Mines and Minerals Act No. 33 of 1992, as amended by Act No. 66 of 2009.

Held:

- The Mines and Minerals Act No. 33 of 1992 was enacted while repealing the Salt Ordinance (chapter 211), Radioactive Minerals Act, No. 46 of 1968, and the Mines and Minerals Law, No. 4 of 1973 and established the Geological Survey and Mines Bureau to regulate the exploration for, mining, transportation, processing, trading in or export of, minerals and to provide for matters connected therewith or incidental thereto with the view to having a more efficient and effective framework to regulate the exploration of mining in the country.
- As the State could not achieve the intention of the Parliament by enacting the Principal Act due to lack of sufficient provisions in it, the legislature amended sections 4, 5, 6, 8, 12, 13, 20A, 27, 28, 29, 30, 31, 33, 35, 37, 42, 46, 46A, 47, 48, 49, 51, 55, 57, 58, 61, 63, 64, 68, and 70 of the Principal Act by enacting the Mines and Minerals (Amendment) Act No. 66 of 2009.
- The Principal Act was amended by inserting sections 63A and 63B along with several other sections to achieve the object of the Principal Act by conferring power on Police Officers to seize and then forfeit to the State, any machinery, equipment or materials used in or in connection with the commission of an offence when an offence has been committed under this Act.
- In answering the question as to whether a "machinery" or "equipment" can be used to transport the minerals, it is necessary to give a purposive interpretation to the words "machinery" or 'equipment" in order to achieve a logical and rational meaning. A literal interpretation to those words would make the said part of the section futile.
- The provisions of the Mines and Minerals Act No.33 of 1992, as amended, should be interpreted in harmony with Article 27(14) of the Constitution to preserve and improve the environment for the benefit of the community.
- The word "any" referred to in the said section has been intentionally used to include any mineral, machinery, equipment or material that has been used in connection with an offence committed under the said Act.
- As the transportation of minerals without a valid licence is an offence under the said Act, the equipment used to transport minerals falls within the scope of section 63B(1). As per the dictionary meaning and the context where the word "equipment" is used in the Mines and Minerals Act, the word "equipment" used in the Act should be taken to include a 'vehicle' (lorry, tipper or even a bullock cart) used to transport minerals without a valid license issued under the said Act.
- The interpretation given to the word "equipment" in the judgment in Nishantha and 3 others v State [2014] 1 SLR 105 is per in curium, as it has not considered the aforementioned amendments to the Principal Act in the context of sections 26, 28(1), 63(1), 63A and 63B of the Act and in light of the object of enacting the Principal Act and the said interpretation to the word "equipment" is repugnant to Article 27(14) of the Constitution.

The appeal was dismissed, without costs.

JSALR 2023 /II//VII

Sunnadeniyage Jayadasa Vs **Sudusinghage John Singho & others**

SC Appeal : 218/2016
Before : S. Thurairaja, P.C.,
J. Kumuduni Wickremasinghe, J.
Mahinda Samayawardhena, J.
Decided on : 27.03.2023

Samayawardhena, J.

❖ A judge cannot solely depend on a EQD report submitted by an expert. The expert only expresses

his opinion on the matter. It is not conclusive. The Court has to take the expert's opinion into careful consideration to form its independent opinion. The Court cannot blindly accept such evidence.

This has been stated also in Gratiaen Perera v. The Queen (1960) 61 NLR 522, Charles Perera v. Motha (1961) 65 NLR 294, Fernando v. The State (1972) 75 NLR 315.

❖ According to the Section 58 of the Evidence Ordinance, if formal admissions have been recorded at the beginning of the trial there is no necessity for further proof. However Section 31 of the Evidence Ordinance relates to informal admissions mostly made out of Court. Thus if an admission has been recorded during the trial then court does not further looking into the matter. In jurisdictions where adversarial system of justice is adopted such as Sri Lanka, it is a rudimentary principle of law that the case shall be decided by the judge as it is presented before him by the competing parties and not in the way the judge thinks the case ought to have been presented before him.

Consequently, if an admission has been recorded, a judge is not required to go into the matter further.

JSALR 2023 /II//VIII

Mundigala Pathirage Jimonona Perera Vs **Rupasinghe Arachchige Diana Priyadarshani**

SC Appeal : 140/2017

Before : P. Padman Surasena, J.
Yasantha Kodagoda, P.C., J.
Mahinda Samayawardhena, J.

Decided on : 12.05.2023

Mahinda Samayawardhena, J.

In terms of sections 2 and 3 of the Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017, an irrevocable deed of gift may be revoked on the ground of gross ingratitude.

❖ Slight ingratitude is not sufficient. There should be gross ingratitude. What constitutes gross ingratitude is a question if fact not a question of law. Thus there is no rigid rule as to what will amount to gross ingratitude. An assault on the donor by the donee, threats to cause bodily injury to the donor by the donee, continuous slander and insult, damage to the donor's property, ill-treatment of the donor, failure to fulfil the conditions of the gift (such as that the donee shall provide succour and assistance to the donor) can constitute gross ingratitude. The onus of proof is on the donor and the standard of proof is on a balance of probabilities. The same has been discussed in ; Sinnammah v.Nallanathar (1946) 47 NLR 32, Krishnaswamy v. Thillaiyampalam (1957) 59 NLR 265, Fernando v. Perera (1959) 63 NLR 236, Calendar v. Fernando [2001] 2 Sri LR 355, Ariyawathie Meemaduma v. Jeewani Budhdhika Meemaduma [2011] 1 Si LR 124, De Silva v. De Croos [2002] 2 Sri LR 409, Gunawathie v. Premawathi (SC/APPEAL/31/2013, SC Minutes of 05.04.2019), Wasantha Cooray v. Indrani Cooray [2020] 1 Sri LR 150.

JSALR 2023 /II//IX

Dharma S. Samaranayake Vs **Sarasavi Publishers (Pvt) Limited**

SC Appeal : 60/2013

HC (Civil) No: 27/2008/IP

Before : Murdu N.B. Fernando, PC J.
P. Padman Surasena, J.
A.H.M.D. Nawaz, J.

Decided on : 17.05.2023

Murdu N.B. Fernando, PC. J.

❖ The notion 'copyright' does not survive in 'ideas' and subsists only in the material form in which the ideas are expressed. In order to secure copy protection, the author must bestow upon the 'work' sufficient 'judgement, skill and labour or capital' or 'sweat of the brow' as certain jurisdictions refers to the test. The precise amount of 'judgement/knowledge, or skill and labour' that is required in order to acquire copyright cannot be defined in explicit terms. It depends on the speciality and facts of each case and is very much a subjective test.

- Although its no doubt that an original 'work' of a person can be copyrighted, 'originality' does not mean that the work must be of original or inventive thought. The 'work' must not be copied from another 'work' and it should originate from the author.
- The law of copyright protects 'work' which are created as a result of an individual's creativity. Thus, it concerns the 'creators', literary and artistic creations and safe guards the legitimate interests of the 'users' of such creation.
- Sri Lankan courts have clearly identified and recognized the reputation of a singer and went onto state that there has to be a way of safeguarding the rights of original artists, composers and singers especially when a singer has achieved a reputation which would be recognized from generation to generation(Fernando v. Gamlath).

COURT OF APPEAL

JSALR 2023 /II//X

Adikari Arachchilage Nimal Chandrasiri, Vs **Meththasinghe Arachige Samantha, Public Health Inspector**

Before : Sampath B. Abayakoon, J.
P. Kumararatnam, J.

CA(PHC)APN: 24/2016

Decided on : 09. 08. 2023

Revision Application under Article 138 of the Constitution/Duty of a Magistrate/Section 124 of the Criminal Procedure Code

Sampath B. Abayakoon, J.

Being aggrieved by the order dated 16-02-2016 of the learned High Court Judge of Chilaw the petitioner has invoked the revisionary jurisdiction of this court under and in terms of Article 138 of the Constitution.

The Petitioner-Petitioner-Respondent initiated proceedings against the Petitioner who was the area sales agent of Ceylon Tobacco Company before the Magistrate Court of Chilaw under the National Authority on Tobacco and Alcohol Act No. 27 of 2006 as amended by Amendment Act No. 03 of 2015, alleging that he had in his possession, six cardboard boxes containing tobacco products namely, cigarettes, manufactured by the Ceylon Tobacco Company without the required pictorial warnings as stipulated by the Act on the said six boxes. It appears from the report filed before the learned Magistrate that the petitioner has allegedly committed an offence in terms of section 34 (1) of the Act.

It had been his position that since these large cardboard boxes were only used to transport the packets of cigarettes, the said boxes would not be sold to the end user and the individual cigarette packets or the cigarette cartons which contained several separate cigarette packets had the necessary pictorial warnings in terms of the Act and therefore, he was not in violation of the relevant provisions of the Act.

The respondent represented by a Senior State Counsel of the Attorney General's Department has requested the Court to send the productions in its totality, namely, the 6 large sealed cardboard boxes together with its contents to the Government Analyst.

The learned Magistrate of Chilaw has pronounced his order in relation to the applications made by both the parties on 12-01-2016. In his order, he has decided to allow the application made by the learned Senior State Counsel to send the productions to the Government Analyst. Accordingly, he has directed the Registrar of the Court to retain the 6 cardboard boxes which are the disputed boxes without the alleged pictorial warnings in terms of the Act, and also to retain one carton each which has several cigarette packets in it from each of the Page 7 of 15 6 boxes and to release the rest of the cigarettes on a bond to the petitioner.

The respondent has preferred an application in revision through a Senior State Counsel on the basis of being aggrieved by the said order of the learned Magistrate of Chilaw, in terms of Article 154P of The Constitution to the Provincial High Court of

North Western Province holden at Chilaw challenging the said order.

The learned High Court Judge after considering the application has ordered on 16- 02-2016 to suspend the release of the productions of the petitioner. The impugned order sought to be challenged in this revision application before this Court.

Held:

1. It is the considered view of this court that the learned Magistrate of Chilaw was correct in refusing to act as a rubber stamp of the learned Senior State Counsel when he refused the application as to the manner how the productions should be sent to the Government Analyst.
2. It is trite law that a judge should not be a rubber stamp of a prosecutor or investigating officer under the guise of his duty to assist investigations in a criminal matter. Judges are there not to sanction applications by the prosecutors or investigators merely because they wanted certain things to be done in the guise of seeking assistance in terms of section 124 of the Code of Criminal Procedure Act.

   Mahanama Tillakaratne Vs. Bandula Wickramasinghe and Others (1999) I SLR 372

   Wills Vs. Sholay Cangany (1915) 18 NLR 443

   Danny Vs. Sirinimal Silva, Page 14 of 15 Inspector of Police and Others (2001) I SLR 30)
3. The learned High Court Judge of Chilaw was misdirected as to the facts and the relevant law when it was determined that the learned Magistrate has failed to assist the investigation in this matter. The petitioner has adduced sufficient exceptional grounds for this Court to interfere with the order of the learned High Court Judge of Chilaw. Accordingly, the order dated 16-02-2016 by the learned High Court Judge of Chilaw cannot be allowed to stand and it is hereby set aside.

   The court affirms the order dated 12-01-2016 by the learned Magistrate of Chilaw pronounced in the Magistrate Court of Chilaw Case No. B 1152/2015.

A Farewell message to a strong pillar in the Judicial Sphere

Judicial Service Association takes this opportunity to express warm wishes and heartfelt gratitude to Hon. Justice Prasantha de Silva for an invaluable twenty-eight years of continuous service to the Sri Lankan Judiciary. Justice de Silva started his legal career in 1989 and joined Judiciary as a Magistrate in 1995. His Lordship was later elevated as a Judge of the Court of Appeal in 2020. He served as the secretary of the Judicial Service Commission and as the Deputy Director of the Sri Lanka Judges Institute in 2018. Further, Justice de Silva contributed a tremendous service as the Editor of the Judges Journal vol. III, vol. IV and vol. V.

Judicial Service Association is pleased to mention His Lordship's honourable unique role in the judiciary, especially in maintain the independence of the judiciary, high standard of judicial conduct and undertaking the arduous task of developing the legal norms during his career.

We wish Justice de Silva Good health and joyous days in retirement.

Memories of Jaffna Trip and Get- together 2023

"Falsa demonstration non nocet cum de corpore vel persona constat"

A false description does not harm if there be sufficient certainty as to the object- corpus or person

"Nil facit error nominis cum de corporevel persona constat"

An error of name makes no difference when it appears from the body of the instrument

Judicial Service Association of Sri Lanka

3rd November 2023

Justice Janak De Silva,
Supreme Court Judge.

Re- Articles for the JSA Law Journal 2023 Volume X in line with Justice Gamini Amarathunga Memorial Award

As requested by Your Lordship, the guidelines issued by the JSA regarding the abovementioned articles are as follows-

1. The article should be written in English on any legal topic relating to law or administration of justice.
2. It should be an original work of the author and should not have been published elsewhere earlier.
3. The average length of articles should be between 3000 to 6000 words in length (including footnotes).
4. All citations should be in foot notes and not in the text.
5. Author should include self 'academic qualifications and details of the current employment. Those biographical details should be starred (*) and preceded with footnotes.
6. Author is expected to cheek accuracy of all references in the manuscripts before submission.
7. Papers should be numbered sequentially.

The words count of the submitted Articles are as follows-

1. Confiscation: A judicial perspective analysis - words 12930
2. Deconstruction of Gender Dimensions in a Legal Sense for Economic Prosperity – words 8981
3. The requirement of establishing the breach of peace is threatened or likely in the proceedings under section 66 of Primary Courts Procedure Act -words 4564
4. Application of classical and neo-classical theory in Sri Lankan criminal justice system: a critical evaluation - words 3859
5. Sri Lanka's constitution making process: A Critique - words 5658
6. The concept of legitimate expectation in a nutshell - words 5144

Thank you.

Yours sincerely,

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Mahesh Wakishta
Editor -JSA

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