

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA

In the matter of an application under  
Section 46 of the Judicature Act No.2 of  
1978 for the Transfer of District Court of  
Badulla Case No.SPL/80/2007.

CA. Transfer Application No.785/09

D.C. Badulla Case No.SPL.80/07

1. Athony Alles,  
Chairman, No.65/7, Park Street,  
Colombo 02.
2. Viki Alles,  
Vie Chairperson, No.65/7, Park Street,  
Colombo 02.

**Defendants-Petitioners**

Vs.

Sarath Ananda Sudasinghe,  
Canaverella Estate.  
Namunukula, Passara.

**Plaintiff-Respondent**

Tusker Bottling Co. (Pvt) Ltd.,  
(Under Liquidation)  
Lincoln Piyasena, Liuidator,  
No.51/1A, Fife Road, Colombo 5.

**Defendant-Respondent**

BEFORE : **S.SRISKANDARAJAH, J (P/ CA).**

COUNSEL : A.S.M. Perera PC with P.Kumarawadu  
for the Petitioners.

J.C.Weliamuna with Sanjeewa Ranaweera  
for the Plaintiff -Respondent.

Argued on : 29.02.2012

Decided on : 20.09.2012

**S.Sriskandarajah, J,**

The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are husband and wife and were Chairman and Vice-Chairman respectively of Tusker Bottling Company (Pvt) Limited. These two Petitioners and the Company were made party defendants in the District Court of Badulla in Case No.SPL/80/2007. These Petitioners in this case are seeking an order from this court to transfer the said case to the District Court of Colombo or to any other District Court. The said case was filed by one Sarath Ananda Sudasinghe against the company and the two Petitioners on the basis that he was an employee of the said company and there was a breach of contract of employment entered into between the said company and the said employee. In the said case, the learned District Judge, on 26/07/2007 issued an interim order ex-parte and issued notice of interim injunction on the Defendants. The Petitioners contended that the said interim order was not served on them, as they were residing in Colombo. When the Petitioners tendered their proxy in the said case through their Attorney-at-Law, the enjoining order and the notice of interim injunction were delivered in open court to their Attorney-at Law. The Petitioners submitted, by order dated 18/01/2008, the learned District Judge fixed the said case for ex-parte trial to be taken up on 21/08/2008 and an interim injunction and

civil warrant was issued against the Petitioners. The civil warrant was issued against the Petitioners as the Petitioners were absent to stand for the inquiry into the alleged disobedience of the said enjoining order. The Petitioners surrendered to the District Court of Badulla on 17/03/2008 and consequently they were enlarged on bail and warrant recalled. The inquiry into the said charge of contempt of court was fixed for 5<sup>th</sup> of May 2008. On 5<sup>th</sup> of May 2008, the Petitioner's Counsel had taken up preliminary objection to the contempt charges, and the said preliminary objections were rejected by the learned District Judge by his order dated 26<sup>th</sup> June 2008. Thereafter the inquiry was fixed for 4/11/2008 and it was postponed to 27/01/2009. On 27/01/2009 the Petitioners were indisposed and thereafter the inquiry was postponed for 23/04/2009. On 23/04/2009, the Petitioners could not appear and their Instructing Attorney appeared and civil warrants were issued against the Petitioners.

The Petitioners in this Application are seeking for an order to transfer the case from the District Court of Badulla to Colombo on the basis that the Petitioners have reasonable fear of danger to their life and limb or property to appear in the said District Court, that the Petitioners submitted that they have received death threats from the former employees of their company, Tusker Bottling Company (Pvt) Limited. They submitted that the Plaintiff in the said case is in a position to instigate and mobilize over 4000 estate workers who are working under him to endanger the lives of the Petitioners and to harass the Petitioners when they visit Badulla, especially for attendance for this case as the date is known well in advance. The Petitioners have also submitted that they have lodged Police complaints, but the Police have not taken any action to inquire into their complaints. For these reasons the Petitioners submitted that a fair and impartial trial cannot be held in the District Court of Badulla and, therefore, the Petitioners seek an order from this court under Section 46(1)(a) of the Judicature Act No.2 of 1978 to transfer this case from the District Court of Badulla to any other court.

The case filed in the District Court of Badulla is by an employee of the Petitioner Company, and the dispute is in relation to the employment of the said workman. It is evident that the said company was wound up on 28/11/2008 and a Liquidator was appointed by court, and the workmen of the said company are now working in different companies and in these circumstances the Petitioners' submission that the Plaintiff in the said District Court case could instigate and mobilize 4000 estate workers who are working under him to endanger the lives of the Petitioners has no merit as those workers have no interest in the said company or that they have any grievance towards the Petitioners who were owners of the said company which is no more in existence. It could be seen that the Petitioners, after the institution of the said proceedings in the District Court of Badulla had, on several occasions, appeared in the said court without any difficulty, and the complaint made to the Police in relation to the said employee is in 2007, and now we are in 2012, nearly four years had passed, even at the time when they made that complaint, the Police have not taken any action against the said employee, presumably that the Police would not have had sufficient material to take action against them, and as at now, several years had passed, and the company in which the employee was working is no more in existence, in these circumstances the Petitioners' claim that their lives are threatened if they appear in the said District Court case cannot be substantiated. Hence this court is not inclined to grant the relief prayed for by the Petitioners and this application is dismissed without costs.

President of the Court of Appeal