IN THE COURT OF APPEAL

Of THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Mackwoods Tea (Private) Limited,

No. 10, Gnanartha Pradeepa Mawatha,

Colombo-08.

PLAINTIFF

CA.RI Application No.10/2017

DC Nuwara Eliya Case No.
SPL/176/16

-Vs-

Agalawatte Plantation PLC,

Level RF, Brown Capital Building,

No.19, Dudley Senanayake Mawatha,

Colombo-08.

DEFENDANT

AND NOW

Mackwoods Tea (Private) Limited,

No. 10, Gnanartha Pradeepa Mawatha,

Colombo-08.

PLAINTIFF-PETITIONER

-Vs-

Agalawatte Plantation PLC,

No. 361,Kandy Road, Nittambuwa.

DEFENDANT-RESPONDENT

BEFORE : **A.H.M.D. Nawaz, J** and
E.A.G.R. Amarasekara, J.

COUNSEL : Mr. Upul Jayasooriya, P.C with Mr. Sandamal Rajapakshe for the Plaintiff-Petitioner.

Mr. S. Parathalingam, P.C with Mr. N.R. Sivendran, Mr. Gamini Senanayake, Ms. Renuka Udumulla and Ms. Dushyanthi Jayasuriya for the Defendant-Respondent.

Decided on : 27.09.2017

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

The Plaintiff-Petitioner (sometimes hereinafter called "the Petitioner") has preferred this application to this Court invoking Article 138 of the Constitution for *restitutio in integrum*. The Counsel for the Defendant-Respondent (sometimes herein after called "the Respondent") in his written submissions has quoted the following definitions given to the term "*Restitutio in Integrum*".

> "**Restitutio in integrum** ..... *In the civil law, restoration or restitution to the previous condition. This was effected by the praetor on equitable grounds, at the prayer of an injured party, by rescinding or annulling a contract or transaction valid by the strict law or annulling a change in the legal condition produced by an omission, and restoring the parties to their previous situation or legal relations. The restoration of a cause to its first state, on petition of the party who was cast, in order to have a second hearing*..... **(Black's Law Dictionary 6th Edition page 1313)."**

"**Restitutio in integrum** - *The rescinding of a contract or contracts (e.g., on the ground of fraud) so as to restore the parties to their original position.*" **(Mozley & Whiteley's Law Dictionary [12th Edition] page 319)**

"**Restitutio in integrum** – *(Restoration to the original Position) "The remedy administered by Courts of equity in rescinding a contract or otherwise placing parties in the position they occupied before entering into a transaction."* **(P.G Osborn's Law Dictionary 3rd Edition- page 279)**

"Restituto in integrum - *The rescinding of a contract or transaction so as to place the parties to it in the same position with respect to one another which they occupied before the contract was made or the transaction took place.*

Fraud renders any transaction voidable at the option of the party defrauded: and if, when it is avoided, nothing has occurred to alter the position of affairs, the rights and remedies of the parties are the same as if it had been void from the beginning. The party, exercising his option to rescind, is entitled to be restored, as far as possible, to his former position. Such a restoration is restitutio in intergrum. (***Satgur Prasad v. Har Narain Dias*** 7 Luck 64 (PC): AIR 1932 PC 89). **(K.J. Aiyar's Judicial Dictionary 1988 10th Edition at pages 890 and 891)**

"**Restitutio in intergrum** - *Entire restitution; restoration to one's former condition. A minor is entitled to entire restitution against all acts done by himself, or others on his behalf, during his minority, which have been to his lesion. The effect of such restitution is to place him in the same position quoad each particular transaction as if it had never been entered into. This right must be judicially claimed by the minor, by challenging the deed or transaction complained of before the expiry of the quadriennium- the four years following his attaining majority- otherwise his claim to restitution is barred. Where a contract is entered into under essential error on the part of one or both contracting parties, the contract will be set aside, but only on restitution in integrum being made, and the parties restored to the same position in which they were before the contract was made. Thus, if the contract was made for the sale of land, and on the faith of the contract being a valid one the purchaser has proceeded to build upon or otherwise improve the estate, the seller can only have the contract set aside and the lands restored to him*

on making repayment to the purchaser the price paid by him, with interest thereon, as well as of the whole sums expended by him on the improvement of the estate..."
[Trayner's Latin Maxims 410 Edition at pages 558 and 552]

In his celebrated book on Law of Contract Dr. Weeramantry refers to the remedy of *Restitutio in integrum* in the following manner;

> "*Ristitutio is however available not merely for the purpose of restoring person under disability to the position they would have enjoyed had they not entered in to the contract which is impugned. It is also a general remedy available for restoration of the status quo ante in all that wide range of situations in which the law for one reason or another deems it proper to free a party from the consequences of his contract. Remedy lies in cases of mistake, fraud, undue influence and illegality have been discussed in some detail in the respective chapters of this work dealing with these topics.*
>
> *Two distinct senses must be noted in which the expression restitution in integrum is used. In the sense of Roman and Roman Dutch law it means a type of action which may be called in aid by a party desiring to liberate himself from a contract in to which he has entered. In the sense in which the term is sometimes used in English law it means however the effect which is achieved by a decree of rescission of a contract.*
>
> *In modern Roman Dutch practice, a claim for rescission and restitution on a ground such as fraud, mistake or incapacity is described as restitutio in integrum and there tends to be a blurring of the of the distinction between the sense suggestive of a type of action and the sense suggestive of legal consequences.*
>
> *The remedy of restitution is also sought to liberate a party to a case from a judicial decree affecting his rights which has been entered in consequence of such vitiating circumstances as fraud or mistake. Such relief is granted on*

*grounds similar to those on which restitutio is granted in cases of contract. Applications for such relief are not infrequent in Ceylon and are often sought in combination with a prayer for revision of the decree impugned."***(The Law of Contracts by C.G. Weeramantry -Volume 2 at pages 1003 and 1004)**

The aforementioned definitions and extracts without doubt indicates that the discretionary remedy *restitutio in integrum* in general is wider in scope to encompass private acts such as contractual relationships and judicial acts but at the same time this Court has to take into consideration that this is not an action filed to rescind or vitiate a contract or its outcome on grounds of mistake, fraud, minority of a party etc. and to restore the parties to the same position that they were before they entered in to the contract. No doubt that such an action has to be filed first in a court of first instance. What is contemplated here is an application filed under Article 138 of the Constitution. Therefore, it is necessary to consider whether this application falls within the ambit of Article 138 of the Constitution. The relevant part of the aforesaid Article 138 as amended by the 13th Amendment reads as follows:

"138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or law which shall be committed by the High Court , in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance"

A careful reading of the aforementioned Article 138 will show that it is a provision brought to establish supervisory jurisdiction over the courts, tribunal and institution

below by way of appeal, revision and *restitutio in integrum*. It does not confer jurisdiction over acts of individuals or group of individuals. Supervisory jurisdiction created by this Article, including *restitutio in integrum* is to review causes, suits, actions, prosecutions, matters and things that have been taken cognizance by a court or tribunal or institution below. Even in **C.A. Case No. 02/2016, *Rajapakse Mudiyanselage Karunaratne vs. Illuktenna Arachchilage Piyasena,*** this Court has held as follows;

> *"A careful reading of the scope and ambit of restitution in integrum brings out the fact that the exercise of this extraordinary jurisdiction extends to all causes, suits actions, prosecutions, matters and things of which a court of First instance, tribunal, or other institutions may have taken cognizance in that there must be a court of first instance, tribunal or other institution which must have heard in the first instance a cause, suit, prosecution, matters and things, so to speak. It is the orders, judgments or whatever description you may call it, that are made in the first instance, that become susceptible to cognizance of this court in its exercise of restitutio in integrum."*

It is my considered view that the sole and exclusive jurisdiction given to this Court by the aforesaid Article does not contemplates all types of incidents or acts or situations that call for the remedy of *restitutio in integrum* but only incidents or acts or situations which are the outcome of judgments, decisions or steps of a court or tribunal or institution below are involved.

In this backdrop, it is worth looking at the factual background stated in the petition by the Petitioner in anticipation of a remedy in the nature of restitution of its possession of the Labookellie Tea Center. Though the Petitioner has instituted an action (No.SPL 176/2016) in the Nuwara Eliya District Court, it does not allege any miscarriage of justice or error or harm caused by a decision or act of the District Court of Nuwara Eliya. In fact, an enjoining order and extensions of it

have been granted in Petitioner's favour. The Petitioner has not pinpointed any order, step, decision or act of the said District Court which has to be reviewed or considered under this application. The Petitioner's grievance is that it was dispossessed of Labookellie Tea Center by the Respondent when two enjoining orders were in force staying any interference to its possession. It is clear that the enjoining orders were not served on the Respondent at the time of alleged eviction. It is the position of the Petitioner that there was a collusive relationship between the Respondent and one of its employees, namely Dileep Vedanayagam who has changed its allegiance to the new management. The Petitioner states that CEO of the aforesaid Tea Center verbally informed said Dileep Vedanayagam that the enjoining order is in operation but acting in violation of the enjoining order Dileep Vedanayagam verbally abused the said CEO and prevented him from discharging his duties. The Petitioner further states that the Respondent while having cognizance of the said enjoining orders surreptitiously issued the termination of lease agreement letter indicating the date as 30th November 2016 which was in fact posted on 3rd December 2016. It should be noted that the enjoining orders were supported and issued on 1st of December 2016 which is one day after the date of the termination letter.

Since there is no enjoining order against Dileep Vedanayagam and he is an employee of the Petitioner, Petitioner's statement that he acted in violation of the enjoining orders is not acceptable. On the other hand, whether he had any collusive relationship with the Respondent is a fact that has to be more suitably established first in a court of first instance after full trial. In the same manner whether the Respondent surreptitiously back dated and issued the termination of lease agreement letter or the Petitioner filed the action and supported the application for enjoining orders in the District Court after coming to know that a decision had been taken by the Respondent to terminate the lease agreement in a lawful manner is also a fact that has to be more suitably established first in a court of first instance after full trial.

I also observe even though **P8a** has been tendered as proof of lease rental payments, the contents of it reads with the conditions relating to the rental payments of the lease agreement **P5** suggests that there would have been a considerable default of payment till the payment referred in **P8a** is done. This shows even the validity of termination of the lease agreement is a fact that has to be properly evaluated after a full trial in a court of first instance. It shall be also noted that there are provisions in **P5** that enables the Respondent to take over the possession when there is a default.

Whatever the truthfulness of the stance taken by the Petitioner, it is clear that alleged acts of eviction and termination of lease are not the outcome of an order, decision or a step taken by the District Court of Nuwara Eliya but acts of the Respondent. As discussed before in this judgment those acts or their consequences do not fall within the ambit of Article 138.

The Petitioner argues that he has no other remedy but if the Respondent took possession to defeat the court order while knowing the existence of an enjoining order prohibiting such an act it could be dealt with for contempt of court. (*see* ***Ganamuttu vs. Chairman Urban Council Bandarawela*** 43 N.L.R 366) It seems that the Petitioner has already resorted to this remedy (vide paragraphs 21 and 22 of the petition and **P18**). On the other hand, if the acts of eviction of the Petitioner and taking of possession are in breach of the legal obligation the Respondent had towards the Petitioner, the Petitioner can resort to a legal action based on the new cause of action that took place after filing the DC Nuwara Eliya Case No. SPL176/2016.

It is also observed that reliefs prayed in prayer **'b'**, **'c'** and **'d'** of the petition are declarations based on the documents **P6**, **P5** and **P13**.Those are basically reliefs that can be granted after full trial by a court of first instance and cannot be fall within the ambit of Article 138 of the Constitution to be considered by this Court in the first instance in an application for *restitutio in integrum*. Though reliefs

prayed in prayer '**e**' and '**d**' of the petition contemplates the restoration of possession, as mentioned before, if any eviction has taken place it is not the result of an act or step of a court or tribunal or institution below. Therefore, my considered view is that the main reliefs prayed in the petition do not fall within the ambit of jurisdiction given to this Court for *restitutio in integrum* by the Article 138 of the Constitution.

Therefore, this Court declines to issue notice in the first instance and the application for *restitutio in integrum* is dismissed forthwith.

JUDGE OF THE COURT OF APPEAL

A.H.M.D. Nawaz
I agree

ACTING PRESIDENT OF THE COURT OF APPEAL