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

In the matter of an Application for Orders in the nature of a Writ of Certiorari under and in terms of Article 140 of the Constitution.

C.A. (Writ) Application
No.33/2013

1. **Pilippu Arachchige Abeysekara,**
   Chariman,
   "Mahasen Govi Sanvidhanaya",
   Bambaragalayaya, Halmillawewa,
   Pansiyagama.
2. **Bogahagedara Kularatne,**
   Chairman,
   "Vimukthi Govi Sanvidhanaya",
   Walagambapura,
   Makulpotha.
3. **Manik Devage Lesli Jayasooriya,**
   Chairman,
   "Samagi Govi Sanvidhanaya",
   Irudeniyaya, Mahapitiya,
   Polpithigama.
4. **Walimuni Devage Illangaratne,**
   Chairman,
   "Irudeniyaya Govi Sanvidhanaya",
   Irudeniyaya, Mahapitiya,
   Polpithigama.
5. **Rathupuncha Devayalage Ajith Chaminda Kumara,**
   Chairman,
   "Samagi Govi Sanvidhanaya",
   Tholombu Ela, Pothuwila,

Polpithigama.

6. **Hathurusinghe Devage Nimal Jayathissa,**

   Chairman,

   "Madahapolayaya Eksath Govi Sanvidhanaya",

   Irudeniyaya, Polpithigama.

   PETITIONERS

-Vs-

1. **Minister of Land and Land Development,**

   No. 1200/6, "Mihikatha Madura",

   Land Secretariat,

   Rajamalwatta Road, Battaramulla.

2. **Hon. Minister of Environment and Natural Resources,**

   No.82, Rajamalwatta Road,

   Battaramulla.

2A. **Mr. Gamini Vijith Vijayamuni Zoysa,**

   Minister of Wildlife Resources Conservation,

   Ministry of Wildlife Resources Conservation,

   Govijana Mandiraya,

   No.80/5, Rajamalwatta Avenue,

   Battaramulla.

3. **Secretary,**

   Ministry of Environment and Natural Resources,

   No.82, Rajamalwatta Road,

Battaramulla.

3A. **Mr. B.K.U.A. Wickremasinghe,**

Secretary,

Ministry of Wildlife Resources Conservation,

Govijana Mandiraya,

No.80/5, Rajamalwatta Avenue,

Battaramulla.

4. **Commissioner General,**

Department of Fauna and Flora,

Ministry of Environment and Natural Resources,

No.82, Rajamalwatta Road,

Battaramulla.

4A. **Mr. H.D. Ratnayake,**

Director General,

Department of Wildlife Conservation,

Ministry of Wildlife Resources Conservation,

No.811A, Jayanthipura,

Battaramulla.

5. **The Chief Minister,**

Chief Ministers' Office,

Provincial Council (NWP),

Kurunegala.

6. **The Secretary,**

North Western Provincial Council Secretariat,

North Western province,

Kurunegala.

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Chula Bandara with Gayathri Kodagoda
for the Petitioners
Arjuna Obeyesekere Senior DSG
with Suranga Wimalasena SSC for the Respondents

Decided on : 30.07.2019

A.H.M.D.Nawaz., J

The factual matrix

The Petitioners in this case seek a writ of Certiorari to quash the Gazette (Extraordinary) notification no. 566/05 dated 11/07/1989 made under section 2 of the Fauna and Flora Protection Ordinance issued by the 1st Respondent's predecessor marked as 'P6'. The Petitioners are the Chairman of the respective *Govi Sanvidanayas* of Bambaragalayaya, Walagambapura, Mahapitiya, Irudeniya, Tholambuela, Pothuvila, Madahapolayaya, which were established under Irudeniyaya Highland Development project, situated in the Divisional Secretariat of Polpitigama in the district of Kurunegala. The story is told in the petition before this Court as to how, in the early years of 1970's, a few farmers had begun to encroach into state lands in the area and started cultivating and developing the said lands. Upon the said encroachment taking place, the Provincial Council of North-Western province and other government authorities took steps to provide the villages with such public utilities as public roads, co-operative stores, maternity homes and primary schools. These villages were also provided with electricity.

In 1992, while these development works were underway, the North Western Provincial Council initiated a Highland Development project called "**Irudeniyaya Highland Development Project**" or as "**Irudeniyaya farmers colonization project**" to regularize the occupation of these farmers namely, the villagers of the state land. The Provincial Council also inaugurated the development project on 22/03/1994 and the Petitioners plead in this application that they were made to understand that they would be allocated with lands and permits under the Land Development Ordinance. The Petitioners plead that accordingly a plan was made to block out lands in the project area with a view to distributing it among the farmers.

The Petitioners further state that since the process of regularization was delayed, they had continuously made representations to the provincial authorities to regularize their occupation on this land. No steps had been taken to issue permits or any grant and the Petitioners state that in the latter part of the year 2012, the Petitioners were made to understand that the Department of Wildlife took steps to create an elephant corridor across these lands so that the wild elephants could move through the villages. The Petitioners further plead that when they made further inquiries, they learnt that the Minister of Land, Irrigation, and Mahaveli Development acting under s.2(2) of the Fauna and Flora Protection Ordinance by Gazette (Extraordinary) notification no. 566/05 dated 11/07/1989 had declared the land described in the schedule to the Gazette containing in extent approximately 21690 hectares as the "Kahalle-Pallekale" sanctuary.

It has been submitted before this Court that the Minister of Lands, Irrigation and Mahaweli Development prior to publishing this order in the said Gazette failed to consult the North Western Provincial Council. Accordingly it was argued that the said Gazette (Extraordinary) is

violative of the 13th Amendment to the Constitution and therefore it is null and void, illegal and is of no force or avail. In the circumstances, the Petitioners have sought a mandate in the nature of a Writ of Certiorari to quash the Gazette (Extraordinary) notification bearing no. 566/05 and dated 11/07/1989-**P6**. Moreover it was the contention of the Petitioners that the Declaration in the Gazette notification was not approved by Parliament.

It has also been submitted that the legitimate expectation engendered in them gives rise to their *locus standi* to secure this remedy.

Position of the Respondents

The learned Senior Deputy Solicitor General sought to counter the arguments of the Petitioners on the basis that their contention is untenable. The 2 grounds that he put forward were:

1. there was no requirement that an order under s.2(2) of the Fauna and Flora Protection Ordinance be approved in Parliament at the time the said order was made in 1989.
2. The 1st Respondent did not require the prior approval of the provincial council to make an order under s.2(2) of the Fauna and Flora Protection Ordinance.

The Respondents also raised 3 preliminary objections to the maintainability of this application for Judicial Review:

1. There has been such an inordinate delay on the part of the Petitioners in invoking the jurisdiction of this Court that they are guilty of *laches* and on this ground alone the Petition must be dismissed.
2. In attempting to explain the delay, the Petitioners have misrepresented or suppressed material facts.
3. The application of the Petitioners is futile in that their grievances will not be addressed through the grant of the relief prayed for in

this application and therefore the Petitioners lack the *locus standi* to maintain this application.

Let me deal with the preliminary objections raised on behalf of the Respondents.

Laches

It is axiomatic that an unexplained delay will defeat the grant of a discretionary remedy.

The following cases expound the defense of *laches* in Writ applications:

- ***President of Malalgodapitiya Co-operative Society v Arbitrator of Co-operative Societies, Galle*** (1949) 51 NLR 167;
- ***Dissanayake v Fernando*** (1968) 71 NLR 356;
- ***Gunasekara v Weerakoon*** (1970) 73 NLR 262; and
- ***Sarath Hulangamuwa v Siriwardena, Principal, Visaka Vidyalaya*** (1986) 1 SLR 275.

If one looks at the order 'P6' under impugnment, this order had been published in the Gazette (Extraordinary) as far back as July 1989. But this application for Judicial Review has been filed only in 2013- almost 24 years later.

This is an inordinate and substantial delay on the part of the Petitioners. The Petitioners cannot be heard to argue that they were unaware of the said notification and the document submitted by the Petitioners and the Respondents show conclusively that the Petitioners were aware of the declaration of the area as a sanctuary and thus estoppel will operate against them from denying the existence of the impugned order 'P6'.

a) The Extraordinary Gazette notification marked 'P6' and a declaration of the area under consideration as a sanctuary was common knowledge amongst persons living in that area.

b) Document marked '**P1**', produced by the Petitioners. This is a copy of the project report for the Irudeniyaya Highland Development project attached by the Petitioners, which had been issued in 1994 at the time the project was inaugurated. In page 1 of '**P1**', the fact that the said area had been declared a sanctuary has been specifically stated and there is an express reference to the fact that the area is a sanctuary. 'P1' is clearly a 1994 document as the Petitioners themselves admit that the project was inaugurated in 1994 and that the Petitioners who were privy to this document had knowledge that the "Kahalle- Pallekale" sanctuary had been declared. In addition to **P1**, documents marked **P5**, **R9**, and **R10** all establish that the Petitioners could not have been unaware of the declaration of the area as a sanctuary. Therefore, the objection raised by the Respondents on the ground of *laches* has been rightly taken and on this ground alone, this application should suffer the fate of a dismissal *in limine*.

<u>Suppression/ misrepresentation of material facts</u>

This was another objection raised by the learned Senior Deputy Solicitor General. It was contended that by claiming that the Petitioners were unaware of the said notification until the latter part of 2012, the Petitioners have sought to suppress and/or misrepresent material facts. If it emerges that material facts have been suppressed, that ground alone is sufficient to dispose of the application without having to go into an adjudication of merits-See- ***Alphonso Appuhamy v Hettiarachchi*** (1973) 77 NLR 131, 135; ***Dahanayake v Sri Lanka Insurance Corporation Ltd*** (2005) 1 SLR 67, 78-79; ***Namunukula Plantations v the Minister of Lands and Others SC Appeal no. 46/2008***.

In *Namunukula Plantations Limited* v. *The Minister of Lands and Others* SC Appeal No 46/2008; decided on 13.03.2012, **His Lordship Saleem Marsoof J** held as follows:

> *"If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice,* ***the court not only has the right, but a duty to deny relief to such person****. It is therefore my considered opinion that this court need not, and should not, answer any of the questions on which special leave to appeal was granted, as the letter dated 30th November 2000 (A), which is reproduced in full in this judgment, clearly demonstrates that the Appellant has been guilty of deceptive conduct, and has* ***not only suppressed, but also misrepresented*** *material facts before the Court of Appeal as well as this Court...." (At page 9 – Italics added).*

In the following cases *laches* was foremost in the dismissal of an application for a writ of certiorari- ***Moosajees Ltd v Eksath Engineru Saha Samanya Kamkaru Samithiya*** (1976) 79 (1) NLR 285, ***Sarath Hulangamuwa v Siriwardena, Principal, Visaka Vidyalaya*** (1986) 1 Sri LR 275 and ***Faleel v Susil Moonesinghe*** (1994) 2 Sri LR 301, 313.

So it is quite clear that in a bid to explain the delay for making this application the Petitioners have fallen far short of displaying clean hands and suppression of material facts is quite rife in the application. One tends to agree that the Petitioners have not come with clean hands.

Plea of Futility

The Petitioners in this case have alleged that they entertain a legitimate expectation to obtain a permit or a grant. In the same breath, they have prayed that the order made by the Minister P6 be quashed. The quashing of the order P6 is less likely to result in the grant of a permit or the grant under the Land Development Ordinance and thus, there is no rational nexus between the remedy sought in the application for Judicial review and the grant of a permit for which the Petitioners aver there has been a holding out of a promise or assurance.

Times without number, the plea of futility has been decisive in the dismissals of applications-see ***P. S Bus Company Ltd v Members and the Secretary of the Ceylon Transport Board*** (1958) 61 NLR 491, 496 where Sinnatamby J. held that *'a writ... will not issue where it would be vexatious or futile'*.

In the case of ***Ratnasiri and Others v Ellawala*** (2004) 2 Sri LR 180 at 208 Marsoof, PC. J cited what Soza, J. had stated In Siddeek v Jacolyn Seneviratne and Other (1984) 1 Sri L.R 83 at 90:

> *'The Court will have regard to the special circumstances of the case before it issues a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality."*

In the case of ***P. S Bus Company*** cited above, it was also recognized that when it would create grave public or administrative inconvenience a writ of certiorari would not be granted. The same view was articulated with regard to a writ of mandamus in the case of ***Inasitamby v Government Agent, Northern Province*** (1932) 34 NLR 33, 37.

So the grant of a writ of certiorari to quash the declaration of a sanctuary is bound to lead to futility as far as the Petitioners are concerned. The annulment or extinguishment of sanctuary will cause an imbalance in the environment and that raises severe environmental issues. This case thus brings to the fore the topic of sustainable development as the learned Senior Deputy Solicitor General expatiated in his written submissions and I will set forth my views on that aspect of the matter later, before I part with this judgment.

It would thus be manifest that the Respondents should succeed on their pleas of bars to jurisdiction that they have raised. *Non obstante* I would go into the grounds that have been advanced to impugn P6-the Gazette notification declaring a sanctuary.

The first ground urged by the Petitioner - The Order made by the Minister requires the approval of Parliament

Quintessentially the Petitioner's case is that the Order marked as P6 should have received the imprimatur of Parliament for the Order to become effective and failure to obtain such approval means that there is no valid Order. The Petitioners relied on Section 2(5) of the Fauna and Flora Protection Ordinance in support of this argument.

Section 2(5) of the legislation deals with the amendment of the boundaries of a Sanctuary already declared under Section 2(2). The Respondents' argument was that Section 2(5) applies only where an amendment is made to an Order already made under Section 2(2). However, since the Order P6 is not an amendment to an existing Order but a declaration of an area of land as a sanctuary for the first time, the provisions of Section 2(5) do not apply.

The Section 2(2) of the Act – as it stood in 1989 - did not require the Order to be approved by Parliament. The requirement of approval of Parliament was brought in only by an amendment in 2009 to Section 2(2). The approval introduced in 2009 is not retrospective so as to embrace a situation where there was no approval required as it stood in 1989. Accordingly the validity of the Order **P6** must be considered in light of pre-2009 amendment stage.

The progression of Section 2 of the Act, in so far as it relates to this case, goes as follows:

(a) Section 2(2) of the Fauna and Flora Protection Ordinance, as it stood in 1956, reads as follows:

> "The Minister may by Order published in the Gazette declare that any specified area of land within Ceylon (other than land declared to be a National Reserve) shall be a sanctuary for the purposes of this Ordinance."

It has to be noted that the Principal Act did not contain any provision for the amendment of an Order made under Section 2(2).

(b) Even though the Ordinance was amended by Act No. 44 of 1964, Section 2(2) was not amended.

(c) Though the Ordinance was amended by Act No.1 of 1970, Section 2(2) was not amended but the Amendment Act introduced Section 2(5), which empowered the Minister to

amend or vary the limits of a Sanctuary. However, an Order amending the boundaries had to be approved by Parliament.

(d) Section 2(2) that was in existence in 1989 is found in the 1980 Legislative Enactments.

(e) After 1970, the Act was amended only in 1993 by Act No. 49 of 1993. However, Section 2(2) was not amended.

(f) The requirement to obtain the approval of Parliament for an Order made under Section 2 was first introduced by the Fauna and Flora Protection (Amendment) Act No. 22 of 2009, with the addition of Section 2A.

It is thus clear that for the Order **P6** to be valid, the Minister was not required to get the approval of Parliament. The only instance in which the approval of Parliament was required [in 1989] was under Section 2(5) of the Act when the limits of a Natural Reserve or Sanctuary were being altered or varied.

The introduction of Section 2A in 2009 makes it clear that prior to this date no such requirement to obtain approval of Parliament for an Order made under Section 2(2) was in place.

So the Minister did not act *ultra vires* when he published **P6** in 1989. There is no illegality that taints the declaration of a sanctuary.

The Amendment Act No. 22 of 2009 that made the following significant amendment to Section 2(5) repays attention.

"In the case of any change of boundaries or the disestablishment of a National Reserve or Sanctuary or Managed Elephant Reserve, a study shall be conducted and such study shall include an investigation of the ecological consequences of the proposed change.

Thus, no changes to the existing boundaries demarcated in the Order published in Gazette Notification No. 566/05 marked **P6** can be made without an investigation of the ecological consequences of the proposed change.

The second ground urged by the Petitioner - The Minister has to consult the Provincial Council prior to making an order of this nature.

The Petitioners contended that in terms of the provisions of the 13th Amendment to the Constitution regarding the alienation of State Lands, the 1st or 2nd Respondent should have consulted the North Western Provincial Council prior to making the Order

A look at the 13th Amendment repays attention.

1. Item 1 of Appendix II of List I of the 9th Schedule Constitution reads as follows:

"1. State land –

1:1 State land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilized by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial

Council with regard to the utilization of such land in respect of such subject."

As per this Item, the Government is duty bound to consult the relevant Provincial Council when land is required for the purpose of the Government in a Province, when the land is to be utilized by the Government.

The demarcation of a particular area as a Sanctuary under the Fauna and Flora Protection Ordinance can, by no stretch of imagination amount to a land being utilized for the purpose of the Government.

In terms of Section 2 (3) of the Fauna and Flora Protection Ordinance 'an area declared to be a Sanctuary or a Managed Elephant Reserve may include both State land and land other than State land'.

In light of this provision it is incorrect to state that demarcation of an area as a sanctuary will result in the use of land coming within the said Sanctuary for the purposes of the Government.

So law does not impose a requirement that the relevant Provincial Council be consulted prior to making such an order.

The Senior Deputy Solicitor General drew the attention of the judgment of the Supreme Court in ***The Superintendent, Stafford Estate vs Solaimuthu Rasu*** [SC Appeal 21/2013 – SC Minutes of 26.09.2013], where the Supreme Court made an evaluation of the provisions of the Constitution and concluded as follows:

(a) State Land is referred to in the Reserved List and it is only from this germinal origin that the Republic could assign to a Provincial Council land for limited purposes;

(b) When interpreting the provisions of the Constitution with regard to land vis-à-vis Provincial Councils, the sequence would be to start from List II, then go to Item 18 of List I and to Appendix II. Thus, the powers of the Provincial Council with regard to land as set out in Appendix II are limited by Item 18 of List I.

(c) Item 18 of List I has only given the following rights over land – "Land, that is to say, rights in or over land, land tenure transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II." This, of course is subject to the overarching principle that State Land shall continue to vest in the Republic.

In the circumstances the demarcation of a sanctuary does not fall within Item 18 of List I since there are no rights being created over land, there is no alienation or transfer of land or land improvement. Thus, the Provincial Councils have no role to play when a Sanctuary is declared and thus, the necessity to obtain the consent of the Provincial Council, as set out in Appendix II, does not arise.

Thus even on the two grounds that were urged on the merit, this application for judicial review must fail.

Sustainable Development

Before I conclude, let me advert to an argument that was brought forth by the Senior Deputy Solicitor General. As he correctly pointed out in his written submissions, this case raises a very important issue – i.e. the balancing of interests between development and the needs of man on the one hand as opposed to the protection of the natural resources of the country and its environment on the other, which is now commonly referred to as "Sustainable Development".

The Fauna and Flora Protection Ordinance was introduced in 1937 in order to protect the fauna and flora of our great nation, to permit the declaration of certain areas of land as National Reserves, National Parks and Sanctuaries. It defies imagination that the need for such an Act was felt at a time when we were under the colonial yoke. The introduction of the Act demonstrates the importance that was attached, as far back as 1937, to sustainable development and the need to protect the environment and the natural resources of this country for the future generations.

As evidenced by documents marked as **R1 – R5** annexed to the Objections filed by the state, the said sanctuary, known as the Kahalla - Pallekale Sanctuary, is situated within the districts of Kurunegala and Anuradhapura and is 21690 hectares in extent. This is the only sanctuary situated within the Kurunegala District with a forest cover of approximately 3.5%.

This sanctuary is home to several flora which is unique to the dry zone. The land area covered by the sanctuary has also been the traditional home of elephants for a very long period of time.

The Hakwatuna Oya and the Hakwatuna Reservoir are situated at the southern boundary of the said Sanctuary and adjacent to the said Development Project. Water from this reservoir is used for agriculture by farmers. The land on which the said Project has been established is part of the catchment area of the said reservoir.

A catchment area is essential for the maintainability of a reservoir for the reason, inter alia, that the rainwater that is absorbed by the trees and the soil situated within the catchment area is released gradually to the Reservoir, thus ensuring a continuous supply of water to the reservoir.

As a result of the trees situated within the catchment area being cleared for the setting up of the said Project, there has been a rapid erosion of the top soil which has resulted in the soil being washed into the said reservoir, together with the agro-chemicals that are used by those carrying out agricultural activity within the said Project. Consequently, the siltation level in the Reservoir has increased resulting in the capacity of the said Reservoir decreasing. The establishment of the said Project within the said catchment area has thus caused a grave environmental crisis.

In those circumstances it was contended by the Respondents that a quashing of the Order (P6) would result in deforestation, the destruction of habitat in the area, soil erosion, agro-chemicals used by those carrying out agricultural activities in the area being washed into the Hakwatuna Reservoir and reducing its capacity. There would be as a direct consequence environmental pollution and degradation.

As demonstrated by the documents marked as R7 and R8 tendered with the Objections, the land area covered by the Sanctuary has been the traditional home to elephants for a very long period of time and was one of the factors that was taken into consideration at the time the said area was

declared as a sanctuary. The Hakwatuna Oya and the reservoir are the only water resources available in the southern area of the sanctuary for wild pachyderms. The area covered by the said Project has been part of the corridor used by the elephants to access the said Reservoir and it was stated that wild elephants have frequently used the said area as its traditional migratory path for getting water from Hakwatuna tank. The establishment of the said Project and the development of infrastructure therein have led to the obstruction of the said corridor resulting in the human elephant conflict. Any further development of the area that may arise from the cancellation of the Order **P6** would severely affect, inter alia, the elephants, which is a protected species. This was the sum total of the arguments placed before Court by the learned Senior Deputy Solicitor General which was aimed as an additional contention.

I would hold the view that development cannot subsist upon a deteriorating environment. Sustainable development recognises the value of both development and environment. Sustainable development denotes economy growth without destroying the resource base of a nation and engages a new approach of integration of production with resource conservation and enhancement, providing for adequate livelihood and equitable access to resources. The World Commission on Environment and Development, in its *Our Common Future* (1987) reiterates the balancing of these competing interests and our Courts have been quite alive to issues pertaining to environment-see A.R.B Amerasinghe J. in ***Bulankulama v Minister of Industrial Development*** (Eppawala case) SC application no. 884/99 F/R; Prasanna Jayawardena, PC.J in ***Ravindra Gunawardena Kariyawasam v Central Environmental Authority and Others*** SC FR Application No. 141/2015 decided on 04.04.2019.

In his separate opinion delivered in the ICJ in the ***Gabcikovo – Nagymaros Project (between Hungary and Slovakia) case*** (1997) Judge Weeramantry brought out the meaning, scope and implications of the principle of sustainable development. Using an interdisciplinary approach, Judge Weeramantry examined diverse historical materials from different civilizations and went onto identify certain perspectives and principles that can be productively incorporated into modern Environmental Law.

> *"Among those which may be extracted from the systems already referred to are such far reaching principles as the principle of Trusteeship of earth resources, the principle of intergenerational rights and principles that development and environmental conservations must go hand in hand."*

Justice Weeramantry rejected a fragmented approach to International Environmental Law, in particular to the principle of Sustainable Development. To begin with, he emphasized the urgent need for "harmonization" and "reconciliation" of the modern principles of development and environmental protection to avoid 'a state of normative anarchy.'

Judge Weeramantry stressed the need to go beyond individual rights and self interest to achieve environmental protection. Courts too must pursue this goal for the common good of all.

> *"International environmental law will need to proceed beyond weighing the rights and obligations of parties within a closed compartment of individual state self-interest, unrelated to the global concerns of humanity as a whole.."*

Subjects having a nexus with the principle of sustainable development have to be interpreted with a view to advancing environmental protection

since Judicial Review involves an interpretation of laws. It is incumbent upon this Court to interpret Fauna and Flora Protection Legislation with a view to averting environmental degradation.

In the circumstances upon a total consideration of all the issues immanent in the case, I proceed to refuse this application for Judicial Review.

JUDGE OF THE COURT OF APPEAL