

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

In the matter of an application for mandates in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No. 24/2021**

Wellawattage Sarath Peiris,  
No. 24/5, Vision House Road,  
Seeduwa North, Seeduwa.

**PETITIONER**

**Vs.**

- 1) Katunayake Seeduwa Urban Council,  
Seeduwa.
- 2) H.A.S. Ratnalatha,  
Acting Secretary,  
Katunayake Seeduwa Urban Council,  
Seeduwa.
- 3) D.K. Chamith Nishantha Fernando,  
Vice Chairman,  
Katunayake Seeduwa Urban Council,  
Seeduwa.
- 4) A.D.P. Indika Prasanna,  
Provincial Commissioner,  
Department of Local Government  
Western Province, Battaramulla.
- 5) Hon. Sagara Kariawasam,  
Secretary General,  
Sri Lanka Podujana Peramuna, Battaramulla.
- 6) M.T. Dinal Nesto Perera
- 7) W.W Sameera Thushanga Fernando,
- 8) M. Rushantha Tharaka Fernando
- 9) M.A Malkanthie

- 10) M.Nimal Iranga
- 11) Shermi Niluka Silva
- 12) Lalith Rohan Silva
- 13) Gamini Hettiarachchi
- 14) T. Sujith Sanjeewa Peiris
- 15) K.P Manoshana
- 16) P.V.D Piyasiri Gunasekera
- 17) K. Sama Hansamala Fernando
- 18) R.P Ruwan Nishantha Randeni
- 19) R.P Ruwan Chinthaka Weerasekera
- 20) K.A.D Nilan Priyanga
- 21) P. Anusha Lakmali Fernando
- 22) H.A.D Sudharsha Champika Hettiarachchi

The 6<sup>th</sup> to the 22<sup>th</sup> Respondents are members of Katunayake Seeduwa Urban Council.

### **RESPONDENTS**

**Before:** **Arjuna Obeyesekere, J / President of the Court of Appeal  
Mayadunne Corea, J**

**Counsel:** M.A. Sumanthiran, P.C., with Nadvi Bahaudeen for the Petitioner

Sanjeeva Jayawardena, P.C., with Rukshan Senadheera for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Vikum De Abrew, Senior Deputy Solicitor General with Manohara Jayasinghe, Senior State Counsel for the 4<sup>th</sup> Respondent

Ruwantha Cooray for the 6<sup>th</sup>, 12<sup>th</sup> – 21<sup>st</sup> Respondents

**Supported on:** 3<sup>rd</sup> March 2021, 25<sup>th</sup> March 2021 and 30<sup>th</sup> March 2021

**Written Submissions:** Tendered on behalf of the Petitioner on 20<sup>th</sup> April 2021

Tendered on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 3<sup>rd</sup> June 2021

Tendered on behalf of the 4<sup>th</sup> Respondent on 19<sup>th</sup> April 2021

Tendered on behalf of the 6<sup>th</sup>, 12<sup>th</sup> – 21<sup>st</sup> Respondents on 20<sup>th</sup> April 2021

**Decided on:** 10<sup>th</sup> June 2021

**Arjuna Obeyesekere, J., P/CA**

The issue in this application relates to the failure on the part of the Petitioner, the Chairman of the 1<sup>st</sup> Respondent, the Katunayake Seeduwa Urban Council, to have the the budget of the 1<sup>st</sup> Respondent for the year 2021 passed by the members of the 1<sup>st</sup> Respondent (i.e. the 3<sup>rd</sup>, 6<sup>th</sup> – 22<sup>nd</sup> Respondents), and the consequences that should flow from such failure.

In terms of Section 2(1) of the Urban Councils Ordinance (**the Ordinance**), the Minister may, by Order published in the Gazette, declare any area, which by reason of its development or its amenities is urban in character, to be a town for the purposes of the Ordinance. Section 4 provides that, *“the Urban Council constituted for each town shall .... be the local authority, within the administrative limits of the town, charged with the regulation, control and administration of all matters relating to the public health, public utility services and public thoroughfares, and generally with the protection and promotion of the comfort, convenience and welfare of the people and the amenities of the town.”* It is observed that in addition to the above, the relevant Urban Councils are responsible for the maintenance of public drains, watercourses, public fairs, local markets, lighting of streets and public places etc. Thus, an Urban Council plays a very important role in the day to day lives of the people living within its area. It is therefore paramount that an Urban Council has the necessary financial allocations in place in the form of its annual budget, passed by its members, to carry out and perform its statutory duties.

Members are elected to the Urban Councils every four years by the People, with the expectation that the members so elected would address the day to day issues of the Urban Council area in an expeditious and efficient manner. Not only should the elected representatives of the People be efficient, they should at all times ensure good governance, maintain strict financial discipline in respect of the funds of the local authority, refrain from any abuse of power and comply with the provisions of the Ordinance.

The Petitioner is a member of the United National Party. He had been elected as a member of the 1<sup>st</sup> Respondent in 1991 and has been re-elected as a member of the

1<sup>st</sup> Respondent at every Local Government Election held thereafter. The Petitioner has functioned as the Leader of the Opposition of the 1<sup>st</sup> Respondent as well as its Chairman on several occasions. Pursuant to his election as a member of the 1<sup>st</sup> Respondent in February 2018, the Petitioner has been declared elected as its Chairman in April 2018. The Petitioner states that his term of office is for a period of four years.

The Petitioner states that the 1<sup>st</sup> Respondent consists of nineteen members, of whom only six are from the United National Party. The balance thirteen consists of three members from the Sri Lanka Freedom Party, nine members from the Sri Lanka Podujana Peramuna and one member from the Janatha Vimukthi Peramuna. The Petitioner states that although the Sri Lanka Podujana Peramuna is the largest political party within the Council, he was elected as Chairman with the votes of the members of the Sri Lanka Freedom Party and the Janatha Vimukthi Peramuna. The Petitioner states that since October 2018, the members of the Sri Lanka Freedom Party have aligned themselves with the members of the Sri Lanka Podujana Peramuna. Even though the Petitioner did not have a majority within the Council thereafter, he states that he did not have any issue in carrying out the functions and operations of the 1<sup>st</sup> Respondent, until mid November 2020 when the 5<sup>th</sup> Respondent is said to have issued written instructions to the 15<sup>th</sup> Respondent, a member of the 1<sup>st</sup> Respondent elected from the Sri Lanka Podujana Peramuna, to take steps to defeat the budget of the 1<sup>st</sup> Respondent and thereafter appoint the 3<sup>rd</sup> Respondent, the current Vice Chairman, as the Chairman of the 1<sup>st</sup> Respondent.

I shall at the outset consider the four provisions of the Ordinance, which are particularly relevant to the issue that has arisen for the determination of this Court, namely Sections 26(2), 178, 178A and the proviso to Section 178A.

I shall commence with Section 178, in terms of which:

***“The Chairman of every Urban Council shall, each year, on or before such date as may be fixed by by-laws of the Council or by rules made under section 193, prepare and submit to the Council a budget for the next succeeding year in such form as may be prescribed by the Commissioner, and containing:***

- (a) *the details of the proposed expenditure set out in items under appropriate heads;*
- (b) *an estimate of the available income of the Council from sources other than rates;*
- (c) *an estimate of the rate or rates necessary for the purpose of providing for the proposed expenditure.”*

The necessity for an Urban Council to have a budget and the obligation of the Chairman of the Council to take responsibility for the preparation of the budget in terms of the law and thereafter **submit** the said budget to the Council is clearly established by Section 178.

As submitted by the learned President’s Counsel for the 1<sup>st</sup> Respondent, the ability of the Council to carry out its statutory functions in the following year is intrinsically linked to having a budget duly passed by the members of the Council, and demonstrates the ability of the Chairman to command the confidence of the majority of the Council and have the necessary finances to attend to the day to day operations and the vital developmental activities of the Council.

The next provision that is relevant to this application is Section 178A which reads as follows:

*“If the Urban Council **modifies** or **rejects** all or any of the items in any or supplementary budget or **adds** any item thereto and the **Chairman does not agree** with any **such decision** of the Council he shall re-submit the budget or supplementary budget to the Council for further consideration. Where a budget or supplementary budget is not **passed** by the Council within two weeks after it is re-submitted, the budget or supplementary budget shall, notwithstanding that it has not been passed by the Council, **be deemed to be the duly adopted budget** or supplementary budget of the Council.”*

The effect of Section 178A is that by operation of law, the budget **submitted** by the Chairman shall be considered as the duly adopted budget of a council, even though

the said budget has not been passed by the Council and therefore does not have the support of the majority of the members of the Council. The law therefore has provided a concession to a Chairman of an Urban Council to function for a period of two years, notwithstanding that he may not have the support of the majority of the Council to pass the budget. It must be kept in mind that notwithstanding the above deeming provision, the obligation placed on the Chairman by Section 178 to submit the budget to the Council for its decision must still be complied with, and that the concession under Section 178A extends only to a Chairman who does so.

It must be noted that in terms of Section 26 (2) of the Ordinance:

***“All matters or questions authorised by this Ordinance or by any other written law, to be decided by the members of an Urban Council shall be decided by the majority of members present and voting at any general or special meeting.”***

Thus, wherever the Ordinance refers to a decision of the Council or requires a decision to be taken by the members of the Council, it is imperative that such decision is taken by way of a vote of the members present at a general or special meeting of the Council. This position is clearly reflected in Section 178A of the Ordinance which requires a decision of the Council (a) upon the submission of the budget and (b) upon re-submission.

Section 178A was amended by Section 12 of the Local Authorities (Special Provisions) Act No. 21 of 2012 by the insertion of the following proviso:

*“Provided that, if the Council according to sections 178 and 178A of this Ordinance modifies or **rejects all or any items in any budget** or supplementary budget or adds any item thereto which was submitted to the Council at any time by the Chairman **after a period of two years** since the commencement of the term of office of the Council, and*

*if the Chairman **does not agree** to such **decision** of the Council,*

***he shall resubmit** the said budget to the Council for further consideration.*

*Where a budget or supplementary budget **is not passed** by the Council within two weeks **after it is resubmitted** for the second time,*

*the **Chairman** shall be **deemed to have been resigned** from the office of Chairman at the end of the said period of two weeks."*

Thus, with the introduction of the proviso, the concession provided to a Chairman by Section 178A to continue in office notwithstanding his inability to have the budget passed by a majority of the members of the Council has been limited to the first two years of office. After the first two years, it is not only imperative that the budget is submitted to the Council, it is also imperative that the budget is passed by a majority decision. The law has provided a Chairman with two opportunities to do so. The difference between the first two years and the next two years is that, in the latter two years, if the Chairman fails to submit or having submitted, fails to have the budget passed at least at the second opportunity, the Chairman shall be deemed to have resigned from his office.

In my view, Section 178A and the proviso contemplates two decisions of the Council which attracts the provisions of Section 26(2) and therefore requires a vote by the Council. The first is the **decision** of the Council to modify, add or reject the budget. The acceptance of a modification and/or an addition, or the rejection of the budget as a whole, should be by way of a majority vote of the Council. The second is the decision of the Council whether to pass the budget that has been re-submitted by the Chairman.

The above provisions can be summarised as follows:

- a) The obligation of preparing the budget is with the Chairman – vide Section 178;
- b) The obligation of submitting the budget to the Council is with the Chairman – vide Section 178;
- c) The budget must be passed by the Council and the obligation of having it passed by the Council is at all times with the Chairman – vide Section 178A;

- d) In the first two years however, even if the budget is not passed, by operation of law, the budget submitted by the Chairman is the duly adopted budget of the Council – vide Section 178A;
- e) After the first two years, the Chairman shall have the budget passed by the Council, for which he has been provided two opportunities – vide the proviso to Section 178A;
- f) After the first two years, the failure on the part of the Chairman to have the budget passed on the two occasions afforded to him would attract the consequences set out in the proviso to Section 178A – i.e. the Chairman is deemed to have resigned from office.

I shall now consider the facts of this application.

The Petitioner states that steps to finalise the budget for 2021 commenced on 17<sup>th</sup> November 2020, with the Petitioner issuing to all members a notice marked '**P15**' in terms of Section 25(2) of the Ordinance, convening a special meeting of the Council on 20<sup>th</sup> November 2020. The Petitioner states that although the entire membership of the 1<sup>st</sup> Respondent Council was present at the said special meeting to consider the budget, the meeting could not be held as the by-laws regulating the conducting of such a meeting had not been approved.

The Petitioner states that by letter dated 24<sup>th</sup> November 2020 marked '**P17**', he requested the members of the 1<sup>st</sup> Respondent to submit by 1<sup>st</sup> December 2020, their recommendations and suggestions relating to the draft Budget for 2021. The Petitioner states that only those members from the United National Party and the Janatha Vimukthi Peramuna responded to the said request. Even though the Petitioner had granted time till 1<sup>st</sup> December 2020 for the members to submit their recommendations, he states that the Financial Committee of the 1<sup>st</sup> Respondent had approved the draft Budget for 2021 on 27<sup>th</sup> November 2020. While the minutes of the meeting of the said Committee marked '**P21**' does not confirm this position, by his own admission, the Petitioner had proceeded to have the draft budget approved by the Finance Committee prior to the deadline given by him to the members for the submission of their recommendations.



The Petitioner states further that he issued to all members a notice dated 15<sup>th</sup> December 2020 marked 'P24' informing them that in terms of Section 25(2) of the Ordinance a special meeting of the Council has been convened for 18<sup>th</sup> December 2020 for the following purpose:

“ඔබ වෙත ලබා දී ඇති අයවැය කෙටුම්පතට අදාළව යම් විෂයක් වෙතක් කිරීමට, ඉවත් කිරීමට හෝ එකතු කිරීමට ඇත්නම් එදිනට එම සංශෝදන යෝජනා ඉදිරිපත් කිරීමට හැකියාව තිබෙන බවද වැඩි දුරටත් දන්වා සිටිමි.”

Let me now consider what happened at the special meeting held on 18<sup>th</sup> December 2020, as borne out by the minutes of the meeting marked 'P25'. According to the Petitioner, all members of the 1<sup>st</sup> Respondent were present. The Petitioner states that he proposed the adoption of the 2021 budget and that the said proposal was seconded by the 7<sup>th</sup> Respondent.<sup>1</sup> The Petitioner had thereafter read out his budget speech (2021 අයවැය ප්‍රතිපත්ති ප්‍රකාශය).

The Petitioner states that he afforded all members present an opportunity of studying the budget and submitting their recommendations and suggestions. The Petitioner admits that the 15<sup>th</sup> Respondent had thereafter brought a proposal, which had been seconded by the 3<sup>rd</sup> Respondent, to reject all items of expenditure heads of the Capital Expenditure in the 2021 budget of the 1<sup>st</sup> Respondent Council other than Nos. 31528 and 62528 (Local Loans and Development Fund).<sup>2</sup>

The Petitioner admits that a vote was taken on this proposal of the 15<sup>th</sup> Respondent to reject the budget,<sup>3</sup> and that the said motion was adopted by twelve members in support, six members against and one member abstaining.

The Petitioner had immediately thereafter submitted a proposal to approve the budget. The relevant portion of the minutes reads as follows:

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<sup>1</sup> Vide page 1 of 'P25'.

<sup>2</sup> Vide page 10 of 'P25' and page 35 of 'P25' - “කටුනායක සිදුව නගර සභාවේ 2021 අයවැය ලේඛනයේ ආශ්‍රිත වැය ශීර්ෂයේ වැය සංකේත අංක 11511 සිට 67517 දක්වා සියළු වැය ශීර්ෂයන් අතරින් 31528 හා 62528 දරන දේශීය ණය සංවර්ධන අරමුදලේ වැය ශීර්ෂ දෙක හැර සියළු වැය ශීර්ෂ ප්‍රතික්ෂේප කිරීමට ගරු නාගරික මන්ත්‍රී කේ. පී මනෝමන මහතා විසින් කරන ලද යෝජනාව ගරු උප සභාපති ඩී. කේ වමන් නිශාන්ත ප්‍රනාන්දු මහතා විසින් ස්ථිර කරන ලදුව....”

<sup>3</sup> Vide page 36 of 'P25'.

“කටුනායක සිදුව නගර සභාව වෙනුවෙන් සකස් කර ඇති අයවැය කෙටුම්පත සඳහා අනුමැතිය ලබාදීම සුදුසු බවට ගරු සභාපතිතුමා විසින් සිදුකරන ලද යෝජනාව ගරු නාගරික මන්ත්‍රී සමර තුමාගේ මහතා විසින් ස්ථිර කරන ලදුව ....”<sup>4</sup>

A vote has been taken thereafter and the proposal of the Petitioner to approve the budget had been defeated by thirteen votes to six. The Petitioner admits in paragraph 39(h) of his petition that *“the said budget was debated and voted upon. The said budget was not adopted by a 13:6 vote, with the Petitioner and the 7<sup>th</sup> – 11<sup>th</sup> Respondents voting in favour, and the rest of the 1<sup>st</sup> Respondent Council voting against the motion.”* Thus, for all intents and purposes, the budget having been submitted to the Council for its decision has been defeated.

The Petitioner claims that he *accepted all the changes* that were proposed on 18<sup>th</sup> December 2020 and accordingly prepared an amended budget in conformity with the provisions of Section 178 of the Ordinance. I have already referred to the fact that according to the minutes of the meeting held on 18<sup>th</sup> December 2020, all items of the budget, except two items had been rejected by a majority of the membership. The budget as a whole had thereafter been defeated, upon a motion of the Petitioner. Therefore it is not clear what is meant by the Petitioner *accepting all the changes* or whether the amended budget was now limited to budget head Nos. 31528 and 62528. The amended budget however is not before this Court.

The Petitioner states that he thereafter summoned a special meeting of the Council for 31<sup>st</sup> December 2020, which incidentally was the date by which the budget was required to have been passed, and made available a copy of the amended budget to all members. The minutes of the meeting held on 31<sup>st</sup> December 2020 are marked **‘P29a’**.

The Petitioner states that at the said meeting on 31<sup>st</sup> December 2020 he re-submitted to the Council the budget. This is borne out by the following paragraph in **‘P29a’**:<sup>5</sup>

“ගරු සභාපතිතුමා ඉදිරිපත් කරනු ලබන යෝජනාව

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<sup>4</sup> Vide page 36 of ‘P25’.

<sup>5</sup> Vide page 1 of ‘P29a’.

නගර සභා ආඥා පනතේ 178(1) වගන්තිය ප්‍රකාරව හා 2012 අංක 21 දරණ පළාත් පාලන ආයතන (විශේෂ විධිවිධාන) පනත මගින් ප්‍රධාන ප්‍රඥප්තියේ අංක 178අ වගන්තිය සංශෝධනය කිරීමට අදාළ අංක 12 ඡේදයට යටත්ව 2021 වර්ෂය සඳහා කටුනායක සිදුව නගර සභාව වෙනුවෙන් සකස් කරන ලද අයවැය කෙටුම්පත අනුමැතිය සඳහා 2020.12.18 වන දින විශේෂ සභාවට ඉදිරිපත් කරන ලදුව එය ප්‍රතික්ෂේප වූ අතර එදින ඉදිරිපත් වූ සංශෝධනයන්ට මා එකඟ වූ බැවින් එම සංශෝධනයන් ඇතුළත් කර සකස් කරන ලද සංශෝධිත අයවැය කෙටුම්පත සඳහා අනුමැතිය ලබාදීම සුදුසු බවට ගරු සභාවට යෝජනා කරමි”

Pursuant to a debate on the contents thereof, the 15<sup>th</sup> Respondent had moved that the re-submitted budget too be rejected.<sup>6</sup> The said motion to defeat the budget re-submitted by the Petitioner had thereafter been voted upon, and passed with a majority of twelve votes to six. The Petitioner admits that the budget was rejected on 31<sup>st</sup> December 2020.

After the motion to reject the budget had been passed by the Council, the Petitioner had proposed the following:

“මා විසින් මුල් වතාවේ ප්‍රතික්ෂේප වූ පසු දෙවෙනි වතාවේ නැවත සභාවට ඉදිරිපත් කරන ලද යෝජනාව සමර මන්ත්‍රිතුමා ස්ථිර කරන ලද අතර ඒ සම්බන්ධයෙන් තීරණයක් සටහන් කළ යුතු බැවින් පන්දය විමසන බව ප්‍රකාශ කරන ලදී

..... 2021 වර්ෂය සඳහා කටුනායක සිදුව නගර සභාව වෙනුවෙන් සකස් කරන ලද අයවැය කෙටුම්පත අනුමැතිය සඳහා 2020.12.18 වන දින විශේෂ සභාවට ඉදිරිපත් කරන ලදුව එය ප්‍රතික්ෂේප වූ අතර, එදින ඉදිරිපත් වූ සංශෝධනයන්ට සභාපතිතුමා එකඟ වූ බැවින් එම සංශෝධනයන් ඇතුළත් කර සකස් කරන ලද සංශෝධිත අයවැය කෙටුම්පත සඳහා අනුමැතිය ලබාදීම සුදුසු බවට ගරු සභාපතිතුමා විසින් සිදුකරන ලද යෝජනාව ගරු නාගරික මන්ත්‍රි සමර තුමාගේ ප්‍රනාන්දු මහතා විසින් ස්ථිර කරන ලද අතර .....”<sup>7</sup>

The proposal of the Petitioner to approve the budget had been submitted to the Council for its decision and had been defeated by twelve votes to six. The Petitioner had thereafter recorded as follows:

“ඒ අනුව මනෝභන මන්ත්‍රිතුමා<sup>8</sup> විසින් ගෙන ආ යෝජනාව බහුතර පන්දයෙන් සභා සම්මත වන බවත් මා විසින් ගෙනෙන ලද යෝජනාව මේ අවස්ථාවේ ප්‍රතික්ෂේප වූ බවත් සියළු දෙනාට ස්තූති කරන බවත් මාගේ දැනීමේ හා මා හට ලැබී ඇති උපදෙස් අනුව

<sup>6</sup> Vide page 9 of ‘P29a’.  
<sup>7</sup> Vide page 10 of ‘P29a’.  
<sup>8</sup> i.e. the 15<sup>th</sup> Respondent

තමුන්නාන්සෙලාගේ බහුතර පන්දයෙන් මෙම අයවැය ප්‍රතික්ෂේප කළත් මේ අයවැය සමමත වුවායේ මා සලකන බවත් මෙතකින් මෙම සභාවේ වැඩ කටයුතු අවසන් බවත් ප්‍රකාශ කරමින් මූලාසනයෙන් ඉවත් වන ලදී”<sup>9</sup>

What transpired at the meetings held on 18<sup>th</sup> December 2020 and 31<sup>st</sup> December 2020 can be summarised as follows:

- a) The budget was submitted to the Council on 18<sup>th</sup> December 2020;
- b) There were two votes taken on 18<sup>th</sup> December 2020;
- c) The first is the vote on the motion of the 15<sup>th</sup> Respondent to defeat the budget, which was duly passed by a majority of 12 votes to 6;
- d) The second is the vote on the proposal of the Petitioner that the budget be passed on its first submission, which too was defeated by 13 votes to 6;
- e) The budget was re-submitted to the Council on 31<sup>st</sup> December 2020;
- f) Once again, there were two votes taken on 31<sup>st</sup> December 2020;
- g) The first is the vote on the motion of the 15<sup>th</sup> Respondent to defeat the budget, which was duly passed by a majority of 12 votes to 6;
- h) The second is the vote taken on the re-submitted budget the adoption of which was proposed by the Petitioner, which too was defeated by 12 votes to 6;<sup>10</sup>
- i) The budget of the 1<sup>st</sup> Respondent submitted by the Petitioner for 2021 has therefore not been passed by the members of the 1<sup>st</sup> Respondent;
- j) Therefore, by 31<sup>st</sup> December 2020, the Petitioner had failed in his duty to have a budget passed by the Council for 2021.

The learned Senior Deputy Solicitor General for the 4<sup>th</sup> Respondent, the Commissioner of Local Government, Western Province submitted that by letter dated 31<sup>st</sup> December 2020 marked '**4R1**', the 2<sup>nd</sup> Respondent, the acting Secretary of

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<sup>9</sup> Vide page 11 of 'P29a'.

<sup>10</sup> Vide paragraph 3/page 4 of the written submissions of the Petitioner.

the 1<sup>st</sup> Respondent had informed the 4<sup>th</sup> Respondent that the budget of the 1<sup>st</sup> Respondent has been defeated on two occasions, that there is no approved budget for the year 2021 and sought directions on the manner in which the affairs of the 1<sup>st</sup> Respondent should be carried out from 1<sup>st</sup> January 2021. By his letter of the same date marked '4R2', the 4<sup>th</sup> Respondent has informed the 2<sup>nd</sup> Respondent that steps may be taken in terms of Section 19(6) of the Ordinance as the facts reveal that the Petitioner is deemed to have resigned from his post.<sup>11</sup>

The Petitioner states that the 2<sup>nd</sup> Respondent had informed him that the 4<sup>th</sup> Respondent had instructed her to issue a letter to the 3<sup>rd</sup> Respondent, the Vice Chairman of the Council to act in the office of Chairman. Aggrieved by the above communication of the 2<sup>nd</sup> Respondent, the Petitioner filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the *purported* authorization granted by the 4<sup>th</sup> Respondent to the 3<sup>rd</sup> Respondent to act as Chairman of the 1<sup>st</sup> Respondent;
- b) A Writ of Prohibition restraining the 3<sup>rd</sup> Respondent from acting as Chairman of the 1<sup>st</sup> Respondent;
- c) A Writ of Prohibition restraining the 1<sup>st</sup> – 3<sup>rd</sup> and 6<sup>th</sup> – 22<sup>nd</sup> Respondents from obstructing and/or interfering with the exercise of the powers and functions of the Petitioner as Chairman of the 1<sup>st</sup> Respondent.

The question that I must consider is whether the Petitioner is deemed to have resigned from the Office of Chairman of the 1<sup>st</sup> Respondent.

The learned President's Counsel for the Petitioner submitted that *whatever way the budget is presented or whichever way the Petitioner acts towards the budget* the budget was destined to be defeated in view of the written instructions given by the 5<sup>th</sup> Respondent. He submitted that the decision to reject the budget is illegal as it is not supported by any cogent reasons and is for a collateral purpose of removing the Petitioner from office.

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<sup>11</sup> Section 19(6) reads as follows: 'During the period commencing on the date of occurrence of a vacancy in the office of Chairman and ending on the date of election of a new Chairman or during the period of absence of the Chairman on account of illness or other unavoidable cause, the Vice-Chairman may exercise, discharge and perform the same powers, functions and duties as the Chairman.'

The learned President's Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that *the reasons or motivations as to why a Council or a majority would defeat a budget, is not a matter which can be in the epi-centre of the inquiry before this Court in as much as the Law does not admit of the vagaries of these motivations or the vicissitudes of time and man.* I am in agreement with the learned President's Counsel for the 1<sup>st</sup> Respondent that this Court cannot consider the intentions or motives of the members of the 1<sup>st</sup> Respondent when they exercise their vote at the Council.

The learned President's Counsel for the Petitioner submitted further that on both occasions – i.e. on 18<sup>th</sup> December 2020 and 31<sup>st</sup> December 2020 - the Petitioner had *agreed* to the proposals and suggestions made with regard to the budget, and therefore the *proviso will not be applicable in its entirety, and the proviso will have to be departed with as regards to this matter.*

It is not disputed that the concession granted by Section 178A to enable a Chairman of an Urban Council to function in office even where a duly submitted budget has not been passed by a majority comes to an end after two years of being elected as Chairman, and that the provisions contained in the proviso to Section 178A is applicable thereafter.

Once the budget is submitted to the Council and debated and whatever the modifications or additions that a Chairman may agree during or after such debate, the budget must be submitted by the Chairman to the Council for its **decision**. This is mandatory and is confirmed by the use of the word, '*decision*' in the proviso to Section 178A. In terms of Section 26(2), a decision would mean a vote. I am therefore of the view that the Chairman *agreeing* to any modifications or additions that may be proposed by one or more or even all members does not suffice in order to claim that the budget has been passed. The claim that the Chairman *agreed* with the modifications and amendments and therefore the budget has been passed is a red herring. The budget must be passed by a majority vote if the Chairman wishes to avoid the deemed resignation being triggered.

Where the Chairman decides to re-submit the budget for further consideration of the Council, he must have the budget passed by a majority vote of the Council. In my view, the crux of the matter is that the Chairman must ensure that he has in place a budget duly passed by the Council by the due date. If he fails in this regard, he is

deemed to have resigned from the office of Chairman by operation of law. The result is that there is a vacancy in the office of Chairman.

As is evident from the facts of this matter, the budget submitted by the Petitioner has been defeated on 18<sup>th</sup> December 2020 as well as on 31<sup>st</sup> December 2020 when it was re-submitted. The motion of the opposition to reject the budget has also been passed on the said dates. I am therefore of the view that the deeming provision in the proviso to Section 178A has been triggered and the Petitioner is deemed to have resigned from the office of Chairman of the 1<sup>st</sup> Respondent with effect from 31<sup>st</sup> December 2020. I am therefore unable to agree with the submission of the learned President's Counsel for the Petitioner.

Section 19(7) of the Ordinance, which has been introduced by Section 10 of the Local Authorities (Special Provisions) Act No. 21 of 2012 reads as follows:

*“Whenever the office of Chairman of an Urban Council falls vacant, notice of such vacancy shall forthwith be given by the Secretary of the Council to the Commissioner of Local Government and the Commissioner of Local Government shall thereupon proceed to fill such vacancy in the manner provided for the same in the Local Authorities Elections Ordinance.”*

It is in these circumstances that the 2<sup>nd</sup> Respondent, by letter dated 15<sup>th</sup> January 2021 marked '4R3', informed the 4<sup>th</sup> Respondent that there exists a vacancy in the office of Chairman of the 1<sup>st</sup> Respondent. Acting in terms of Section 66G of the Local Authorities Elections Ordinance,<sup>12</sup> the 4<sup>th</sup> Respondent had published a notice in Extraordinary Gazette No. 2211/25 dated 18<sup>th</sup> January 2021 marked '4R4' informing that a meeting to select a new Chairman for the Katunayaka Seeduwa Urban Council will be held on 1<sup>st</sup> February 2021. This meeting was subsequently re-scheduled for 22<sup>nd</sup> February 2021. However, as this Court was yet to consider this matter, but being of the view that the election can take place even after the end of the six week period, a direction was made on 18<sup>th</sup> February 2021 that the said meeting should not be held until the order of this Court is pronounced.

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<sup>12</sup> Section 66G reads as follows: “Whenever the office of Mayor or Deputy Mayor of a Council falls vacant during the term of office of such Council, the Commissioner of Local Government shall, within two weeks of his receiving notice from the Council of such vacancy and by notice or notices served in accordance with the provisions of subsections (2) or (4) of section 66C, convene a meeting for the election of a new Mayor or Deputy Mayor, as the case may be, and the date specified for the meeting in such notice or notices shall be such as to ensure that the new Mayor or Deputy Mayor, as the case may be, is elected within six weeks next succeeding the occurrence of the vacancy.”

I am of the view that the decision of the 4<sup>th</sup> Respondent to proceed on the basis of a vacancy in the office of Chairman of the 1<sup>st</sup> Respondent is in terms of the law. As provided by Section 19(6) of the Ordinance, where there is a vacancy, *the Vice-Chairman may exercise, discharge and perform the same powers, functions and duties as the Chairman*. The 4<sup>th</sup> Respondent may therefore continue with the steps initiated by him in terms of Section 66G of the Local Authorities Elections Ordinance to fill such vacancy.

In the above circumstances, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

**President of the Court of Appeal**

**Mayadunne Corea, J**

I agree

**Judge of the Court of Appeal**