

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 in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 208/2020

- 1) Mohammed Faleel Hathem,
34/A, Prathibimbarama Road,
Kalubowila, Dehiwela.
- 2) Marcellynus Cecil Tyrone Ockersz,
59A, Pepiliyana Mawatha, Pepiliyana.

PETITIONERS

Vs.

1. Hon. Magistrate,
Magistrate's Court No. 4,
Colombo 12.
2. Hayleys Aventura (Pvt) Ltd,
No. 400, Deans Road, Colombo 10.

RESPONDENTS

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

Counsel: Romesh De Silva, P.C., with Shanaka Cooray for the Petitioners

Nishan Premathiratne with Krishan Fernandopulle for the 2nd Respondent

Argued on: 4th March 2021, 9th March 2021, 26th March 2021 and 28th April 2021

Written Submissions: Tendered on behalf of the Petitioners and the 2nd Respondent on 7th June 2021

Decided on: 14th June 2021

Arjuna Obeyesekere, J., P/CA

This matter was taken up for argument together with CA (Writ) Application No. 211/2020 and CA (Writ) Application No. 355/2020. By way of a motion filed on 7th June 2021, the Attorneys-at-Law for the Petitioners and the 2nd Respondent have informed that they are in agreement for this Court to deliver judgment in CA (Writ) Application No. 211/2020 and for the said judgment to bind the parties in this application.

By a judgment delivered today in CA (Writ) Application No. 211/2020, I have issued a Writ of Certiorari quashing the Order made by the Hon. Magistrate of Colombo on 29th June 2020 in Case No. 30656/04/20 to issue summons on the Petitioner in that application. I have also held that the said judgment shall not prevent the 2nd Respondent from making a further application to the Hon. Magistrate to act in terms of Section 139 of the Code of Criminal Procedure Act No. 15 of 1979, as amended.

I accordingly issue a Writ of Certiorari quashing the Order made by the Hon. Magistrate of Maligakanda in Case No. 9527/20 on 12th March 2020 to issue summons on the Petitioners in this application. I also hold that this judgment shall not prevent the 2nd Respondent from making a further application to the Hon. Magistrate in terms of Section 139 of the Code of Criminal Procedure Act. Such an application, if made, shall be considered by the Hon. Magistrate in terms of the law.

I make no order with regard to costs.

President of the Court of Appeal