

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

**Court of Appeal Case No.
CA/LTA/0011/19**

Wakf Tribunal Case No.
WT/268/19

1. Mohamed Ibrahim Mohammed Mafaz,
40/10, Kings Lane,
Pannawa, Kobeigane.
2. Mohammed Jabir Mohammed Maznavi,
51/1, Beira Road,
Colombo 12.
3. Pakeerdeen Shib,
427/D, Kanamoolai,
Madurankuliya.
4. Abdul Raseedu Muhammedu Manas,
22, Western Solden Road,
Puttalam.
5. Mohamed Mohamed Ashraf,
32, Temple Avenue, Maradana,
Colombo 10.

PLAINTIFFS

VS.

1. Mohamed Alavi Nawaz Gafoor,
57, Green Path,
Colombo 07.
2. Majid Abdul Carder,
85, Barnes Place,
Colombo 07.
3. Mohamed Riyaz Mohamed Hamza,
11, Ruhunukala Mawatha,
Colombo 08.

And presently

Pusine Judge – High Court of Fiji,

Registrar of the High Court of Fiji,
Fiji.

4. Ahmed Jazeem Mohamed Arif,
171/7A, Baudhaloka Mawatha,
Colombo 04.
5. Mohamed Zubair Nehru Gafoor,
10/16A, Lake Drive, Lake Drive Enclave,
Colombo 08.
6. Mohamed Iqbal Faiz Abdul Gafoor,
31, W.A.D. Ramanayake Mawatha,
Colombo 02.
7. Farzard Hussain Gafoor,
5, Flower Road,
Colombo 07.
8. Azmeth Hussain Gafoor,
114B, Hortan Place,
Colombo 07.
9. Mohamed Thalib Hussain Gafoor,
81, Hortan Place,
Colombo 07.
10. Mohmed Uvais Mohamed Hamza,
26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

All are currently the trustees of the
Muslim Charitable Trust established by
the deed/indenture of trust bearing No.
2125 dated 21.11.1935 attested by John
Wilson of Colombo, Notary Public.

DEFENDANTS

AND NOW BETWEEN

In the matter of an application for Leave to Appeal under and in terms of section 754(2) read with section 757 of the Civil Procedure Code and section 55A of the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956 (as amended) against the Order of the Wakfs Tribunal dated 02.03.2019.

1. Mohamed Alavi Nawaz Gafoor,
57, Green Path,
Colombo 07.
2. Majid Abdul Carder,
85, Barnes Place,
Colombo 07.
3. Mohamed Riyaz Mohamed Hamza,
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All are currently the trustees of the Muslim Charitable Trust established by the deed/indenture of trust bearing No. 2125 dated 21.11.1935 attested by John Wilson of Colombo, Notary Public.

DEFENDANT-PETITIONERS

VS.

1. Mohamed Ibrahim Mohammed Mafaz,
40/10, Kings Lane,
Pannawa, Kobeigane.
2. Mohammed Jabir Mohammed Maznavi
51/1, Beira Road,
Colombo 12.
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22, Western Solden Road,
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5. Mohamed Mohamed Ashraf,
32, Temple Avenue,
Maradana,
Colombo 10.

PLAINTIFF-RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. and
K.K.A.V. SWANADHIPATHI, J.**

Counsel: Chandaka Jayasundera, PC with Mehran Careem and Imaz
Imthiyas instructed by Nalin Samarakkoon for the Petitioners.

N.M. Saheed with M.M.F. Shafeena and N.R. Husni for the
Respondents.

Written Submissions on: 08.09.2020 (by the Defendant-Petitioners).

06.02.2020 (by the Plaintiff-Respondents).

Argued on: 08.03.2021.

Decided on: 14.07.2021.

MOHAMMED LAFFAR, J.

The Defendant-Petitioners (hereinafter referred to as the “Petitioners”) are seeking Leave to Appeal from the order of the Wakfs Tribunal dated 14.12.2019. The leave was granted on 13.02.2020.

The Plaintiff-Respondents (hereinafter referred to as the “Respondents”), in terms of the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 (as amended), instituted action before the Tribunal against the Petitioners, seeking relief as prayed for in the prayers to the plaint dated 31.10.2019.

When the matter was taken up for hearing before the Tribunal, the learned Counsel for the Petitioners raised several preliminary objections as to the maintainability of this action. Of which, the significant preliminary objection, which is relevant to this order, reads as follows:

“The certificate marked P4, issued in terms of section 9E (3) of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 (as amended), is bad in law, and therefore, the action is liable to be dismissed *in-limine*.”

The contention of the learned President’s Counsel for the Petitioners was that the certificate marked P4 was issued by the Director of the Department of Muslim Religious and Cultural Affairs (hereinafter referred to as the Director of the DMRCA), and whereas the said certificate should have been issued by the Director of the Muslim Mosques and Charitable Trusts or Wakfs (hereinafter referred to as the Director of the MMCTW), as envisaged by the Act.

The contention of the learned Counsel for the Respondents was that the Director of the DMRCA, who has issued the certificate in dispute marked P4, is having a dual role, both as the Director of the DMRCA and the Director of the MMCTW. As such, the certificate marked P4 is a valid document in terms of section 9E (3) of the Act.

The certificate marked P4 has been signed by the Director of the DMRCA. However, the contents of the said certificate substantiates the fact that the same was issued under section 9E (3) of the said Act, which reads thus:

“As per approval of the Wakfs Board of Sri Lanka on 08th October 2019, permission is hereby granted to institute legal action in Wakfs Tribunal under provisions of section 9E (3) of the Wakfs Act No. 51 of 1956 as amended by Act No. 21 of 1962 and 33 of 1982 against the Trustees of

the N.D.H. Gafoor Trust regarding Wakfs property situated in Colombo-14."¹

Having scrutinized the certificate marked P4, it is abundantly clear that Mr. M.R.M. Malik was mindful of the fact that he has issued the same as the Director of the MMCTW as well in addition to the Director of the DMRCA.

The attention of this Court is drawn to the observation made by the Wakfs tribunal in this regard, which reads thus:

*"It is an undisputable fact that the Director of Muslim Religious and Cultural Affairs, over a period of time, has been performing the functions pertaining to those of the Director designated under the Wakfs Act. The issuance of the certificates (like P4) has been accepted in several cases as the function of the Director for **Mosques and Muslim Charitable Trusts of Wakfs**. Since one person is functioning in a dual position, the mere wrong designation appearing under the signature of the Director in P4 cannot be taken as fatal for the dismissal of the action,"*²

It is to be noted that the Wakfs Tribunal is an original Court as far as the case in hand is concerned. The Tribunal is having a benefit of scrutinizing number of certificates issued in terms of section 9E (3) of the Act in several cases. In the circumstances, the foregoing observations of the Tribunal in respect of issuing of certificate by the Director cannot be disregarded.

In ***Alwis vs. Piyasena***³, it was held that *"it is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."*

In the impugned order dated 14.12.2019, the Wakfs Tribunal further observed the fact that the Minister of Muslim Religious and Cultural Affairs, by his letter dated 11.06.2018 has appointed Mr. M.R.M. Malik as Director for

¹ Vide para 2 of the P4.

² Vide p. 5 of the Wakf Tribunal's judgment (P6).

³ [1993] 1 Sri LR 119.

Muslim Mosques and Charitable Trust/Wakfs as well. This observation has not been challenged by the Petitioners in their petition⁴.

In these respects, having considered the totality of the documentary evidence and the observations made by the Tribunal it is manifestly clear that the Director of the DMRCA is lawfully functioning as the Director of the MMCTW as well.

I do agree with the observation made by the Wakfs Tribunal stating that this is a *technical objection* raised by the learned Counsel for the Petitioners.

In the case of ***Elias vs. Cader***⁵ , the Supreme Court observed that,

*“...For the proper dispensation of justice, raising of technical objections should be discouraged and the parties should be encouraged to seek justice by dealing with the merits of cases. The raising of such technical objections and dealing with them and the subsequent challenges on them to the superior courts takes up so much time and adds up to the delay and the backlog of cases pending in Courts. Very often the dealing of such technicalities become only an academic exercise with which the litigants would not be interested. The delay in dispensation of justice can be minimized if the parties are discouraged from taking up technical objections which takes up valuable judicial time. What is important for litigants would be their aspiration to get justice from courts on merits rather than on technicalities. As has often been quoted it must be remembered that courts of law are Courts of justice and not academies of law.”*⁶

The learned President’s Counsel for the Petitioners cited the case of ***Sheriff vs. Jamaldeen***⁷ where it was held that, it is mandatory to obtain a certificate from the Director to invoke the jurisdiction of the District Court/Wakfs Tribunal.

⁴ Vide p. 4 of the Wakf Tribunal’s judgment (P6).

⁵ SC. Appeal No. 50/2008. S.C. Minutes dated 28.06.2011.

⁶ *ibid.*, at p. 7.

⁷ [2000] 2 Sri LR 190.

It is pertinent to be noted that the *Sheriff's* case (supra) is factually different from the instant case. In the case in hand, the said certificate has been filed by the Respondents along with the plaint. But, in *Sheriff's* case the approval was not obtained from the Board and the certificate was not issued by the Director. In the circumstances, it is the view of this Court that the decision in *Sheriff's* case has no application to the instant case.

For the foregoing reasons, I see no reason to interfere with the order of the Wakfs Tribunal dated 14.12.2019. Thus, the appeal is dismissed with costs, fixed at Rs. 25,000/- and the impugned order is affirmed.

The Registrar is directed to dispatch a copy of this order to the Wakfs Tribunal.

Judge of the Court of Appeal.

K. K. A. V. SWARNADHIPATHI, J.

I agree.

Judge of the Court of Appeal.