

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

*In the matter of an application made under and in
terms of section 9E (1) of the Muslim Mosques and
Charitable Trusts or Wakfs Act No.51 of 1956 as
amended*

Court of Appeal Case No.
CA/LTA/06/22

Wakfs Tribunal Case No.
WT/268/2019

1. Mohamed Ibrahim Mohammed Mafaz
No. 40/10, King Lane, Pannawa, Kobeigane.
2. Mohammed Jabir Mohammed Maznavi
No.51/1, Beira Road, Colombo 12.
3. Pakeerdeen Sahib
No.427/D, Kanamoolai, Madurankuliya.
4. Abdul Raseedu Muhammadu Manas
No.22, Western Solden Road, Puttalam.
5. Mohammed Mohamed Ashraf
No.32, Temple Avenue, Maradana, Colombo 10.

PLAINTIFFS

- Vs -

1. Mohamed Alavi Nawaz Gafoor
No.57, Green Path, Colombo 07.
2. Majid Abdul Carder
NO.85, Barnes Place, Colombo 07.
3. Mohamed Riyaz Mohamed Hamza
No.11, Ruhunukala Mawatha, Colombo 08.

And Presently

Puisne Judge – High Court of Fiji.
Registrar of the High Court of Fiji,
Fiji.

4. Ahmed Jazeem Mohamed Arif
No.171/7A, Bauddhaloka Mw,
Colombo 04.
5. Mohamed Zubair Nehru Caffoor
No.10/16A, Lake Drive, Lake Drive
Enclave, Colombo 08.
6. Mohamed Iqbal Faiz Abdul Caffoor
No.31, W.A.D. Ramanayake Mawatha,
Colombo 02.
7. Farzad Hussain Caffoor
No.05, Flower Road, Colombo 07.
8. Azmeth Hussain Caffoor
No.114B, Horton Place, Colombo 07.
9. Mohamed Thalib Hussain Caffoor
No.81, Horton Place, Colombo 07.
10. Mohamed Uvais Mohamed Hamza
No.26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

Trustees of the Trust established by the
Deed/indenture of Trust bearing No.2125 dated
1935.11.21 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 03.09.2022

1. Majid Abdul Carder
No.85, Barnes Place, Colombo 07

2. Mohamed Riyaz Mohamed Hamza
No.11, Ruhunukala Mawatha, Colombo 08.

And Presently

Puisne Judge – High Court of Fiji.
Registrar of the High Court of Fiji,
Fiji.

By his Attorney –
Mohamed Uvais Mohamed Hamza
No.26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

3. Mohamed Iqbal Faiz Abdul Caffoor
No.31, W.A.D. Ramanayake Mawatha,
Colombo 02.

4. Farzad Hussain Caffoor
No.05, Flower Road, Colombo 07.

5. Azmeth Hussain Caffoor
No.114B, Horton Place, Colombo 07.

6. Mohamed Thalib Hassan Caffoor
No.81, Horton Place, Colombo 07.

By his Attorney –
Fathima Inneth Sherin Caffoor
No.10/16A, Lake Drive, Lake Drive Enclave,
Colombo 08.

7. Mohamed uvais Mohamed Hamza
No.26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

8. Sithy Shihara Caffoor
No.114B, Horton Place, Colombo 07.

9. Mohamed Hejazi Thahir
No.117, Hampden Lane, Wellawatte,
Colombo 06.

10. Mohamed Hussain Sulaiman
61, Ananda Coomeraswamy Mawatha,
Colombo 03.

11. Mohamed Abdul Nasser Hammad
No.05, Flower Road, Colombo 07.

12. Jamila Hanim Abdul Carder
No.85, Barnes Place, Colombo 07.

Trustees of Trust established by the
Deed/indenture of Trust bearing No. 2125
dated 1935.11.21 attested by John Wilson of
Colombo, Notary Public.

DEFENDANTS – PETITIONERS

- Vs -

1. Mohamed Ibrahim Mohamed Mafaz
No.40/10, King Lane, Pannawa,
Kobeigane.
2. Mohamed Jabir Mohamed maznavi
No.51/1, Beira Road, Colombo 12.
3. Pakeerdeen Shahib
No.427/D, kanamoolai, madurankuliya.
4. Abdul Raseedu Muhammadu Manas
No.22, Western Solden Road, Puttalam.
5. Mohamed Mohammed Ashraf
No.32, Temple Avenue, Maradana,
Colombo 10.

PLAINTIFFS – RESPONDENTS

6. Mohamed Alavi Nawaz Gafoor
No.57, Green Path, Colombo 07.
7. Mohamed Zubair Nehru Caffoor
No.10/16A, lake Drive, Lake Drive
Enclave, Colombo 08.
8. Ahmed Jazeem Mohamed Arif
No.171/7A, Baudhaloka Mawatha,
Colombo 04.

DEFENDANTS – RESPONDENTS

Before: C.P. Kirtisinghe – J
Sampath K.B. Wijeratne – J

Counsel: Suren Gnanaraj instructed by Sanath Wijewardena for the Defendants - Petitioners.
N.M. Shahid with M.A. Zaid for the 1st and 5th Plaintiffs – Respondents instructed by Prabuddhika Tissera.
Hejaz Hisbullah with Shifan Maharooof for the 2nd, 3rd and 4th Plaintiffs – Respondents instructed by Prabuddhika Tissera.

Supported on: 12.10.2022

Decided on: 20.10.2022

C.P. Kirtisinghe – J

When this case was taken up for support before us on 12.10.2022 the learned Counsel for the 2nd, 3rd and 4th Plaintiffs – Respondents made an application to transfer this case to another division of this Court as we had heard an earlier case bearing no. LTA/06/21 and expressed an opinion regarding the issuing of notice to the Respondents. Therefore, the learned Counsel submitted that in the interest of due administration of justice it is appropriate to transfer this case to another division of this Court to win the public confidence. The learned Counsel for the 1st and 5th Plaintiffs – Respondents is supporting this application and the Counsel for the Defendants – Petitioners is objecting to this application. There is no allegation of bias against this bench and the learned Counsel for the 2nd, 3rd, 4th Plaintiffs – Respondents informed that they have confidence in the incumbent Judges. In the earlier case we have issued notice to the Respondents and also issued a stay order to maintain the *status qua*. It is the submission of the learned Counsel for the 2nd, 3rd and 4th Plaintiffs – Respondents that we have expressed an opinion regarding the facts of the case when the notices were issued on the Respondents.

In the earlier application no. LTA/06/21 and in this case some of the parties are the same and the important issue in both cases is whether the N.D.H. Abdul Gafoor Trust is a Muslim charitable trust or not.

The learned Counsel for the 2nd, 3rd and 4th Plaintiffs – Respondents has cited the following quotation from Dr. Justice A.R.B. Amarasinghe’s text on “Judicial Ethics” which reads as follows;

The preferable view is expressed in other American decisions which held that a judge may not try a case in which he or she has formed an opinion of the case before the hearing in favour of one of the parties. In ***Wasiolek v City of Philadelphia***, the judge expressed an opinion about what the Court’s award would be before the hearing of argument. On appeal, the case was sent for hearing before another judge. Likewise in ***Leighton v Henderson*** a judge who prematurely indicated that he would find for the Petitioner was held to have been disqualified.

The learned Counsel has also cited the judgment of *In re Kanagarathnam* 54 NLR 419 and the judgement of ***Ceylon Tea Marketing Limited Vs Prepacked Exports (Pvt) (Ltd) and others*** 1998 (2) SLR 146.

In the case of *In re Kanagarathnam*, it was held that a charge of contempt of Court ought not to be tried by a judge who has already reached the conclusion that the accused person is guilty. In that case in an inquiry to vacate an order made under section 653 of the old civil procedure code for sequestration of property before judgement the learned District Judge had come to a clear conclusion about the guilt of the Appellants and stated “I have no doubt in my mind that the averments contained in the affidavit are false and that the persons who had sworn the affidavits and the plaintiff who had depended on these affidavits have been guilty of gross contempt of Court”. Therefore, the learned District Judge had formed an opinion before and come to the conclusion that the accused person is guilty.

In the case of ***Ceylon Tea Marketing Limited Vs Prepacked Exports (Pvt) (Ltd) and others*** 1998 (2) SLR 146 it was held that since the learned High Court Judge who heard the case appeared to have expressed a concluded opinion on the merits of the case it is desirable that the trial be heard by another judge.

The learned Counsel for the Defendant – Petitioner has cited the case of ***In the matter of a rule against an Attorney – at – Law*** 2008 (1) SLR 275. In that case S.N. Silva CJ had observed as follows;

“I have to emphasize that an objection to the participation of a Judge should be only on firm foundation. Any frivolous objection that is taken would only impede

the due administration of justice, which may even amount to contempt of Court. The Respondent's objection to the participation of a Judge without offering an explanation of the impugned conduct is frivolous".

In that case although Justice Marsoof was functioning as Judge of the Supreme Court in the earlier fundamental rights application the merits of that case had no bearing on the subsequent contempt proceedings.

Although we have issued notice on the Respondents in the earlier case no LTA/06/21 and issued a stay order to maintain a *status qua* we have not expressed an opinion regarding the merits of that case. We have not decided the question whether N.D.H. Abdul Gafoor Trust is a Muslim charitable Trust or not. We have not expressed an opinion on that matter. This Court has issued notice on the Respondents in that case because we were of the view that there is a matter that has to be looked into. Yet we have not come to a conclusion in respect of that matter. Therefore, there is no reason for us to refuse to hear this case and transfer it to another division of this Court. Therefore, we reject the application of the 2nd, 3rd and 4th Plaintiffs – Respondents.

Judge of the Court of Appeal

Sampath K.B. Wijeratne – J
I agree

Judge of the Court of Appeal