

**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, Mandamus  
and Prohibition in terms of Article 140 of the  
Constitution of Sri Lanka.*

**CA/WRIT/137/2022**

Nagananda Kodithuwakku  
Maha Lekam,  
Vinivida Padanama,  
99, Subadrarama Road,  
Nugegoda.

**Petitioner**

Vs.

1. Chandana Sooriyabandara  
Director General,  
Department of Wildlife Conservation,  
811A, Jayanthipura,  
Battaramulla.
2. Chandana Wickramaratne  
Inspector General of Police,  
Sri Lanka Police Headquarters,  
Colombo 01.
3. Thilak Premathilake  
Director General,  
National Zoological Gardens,  
Anagarika Dharmapala Mawatha,  
Dehiwala.
4. Ven. Bellanwila Dhammaratana Thero,  
Chief Incumbent,  
Bellanwila Rajamaha Viharaya,  
Dehiwala Road,  
Bellanwila.

5. Wimalaweera Dissanayake  
Former State Minister of Wildlife and  
Forest Resource Conservation,

And now;  
C. B. Rathnayake  
Minister of Wildlife and Forest  
Resource Conservation,  
No. 1090, Sri Jayawardanepura,  
Rajagiriya.

6. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Petitioner appears in person.

Parinda Ranasinghe PC, ASG with Shemanthi Dunuwille SC for the 1<sup>st</sup>  
2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

**Supported on** : 02.02.2023

**Decided on** : 03.03.2023

**Sobhitha Rajakaruna J.**

The Petitioner filing this Application on 01.04.2022 seeks for a writ of Mandamus directing the 1<sup>st</sup> Respondent to hand over the elephant calf named 'Miyam Kumar' to the Safari Park at Ridiyagama or to any other appropriate place. A writ of Prohibition is also sought to prevent the 1<sup>st</sup> Respondent from issuing licenses enabling the 4<sup>th</sup> Respondent to possess elephants. In addition to above, the Petitioner is challenging the Gazette Extraordinary Notification No. 2241/41 dated 19.08.2021.

The 4<sup>th</sup> Respondent filed limited Statement of Objections on 01.12.2022 along with an affidavit.

On 02.02.2023, the Petitioner made submissions in support of this Application. The learned Additional Solicitor General for the 1<sup>st</sup> to 3<sup>rd</sup>, 5<sup>th</sup> & 6<sup>th</sup> Respondents and the learned Counsel for the 4<sup>th</sup> Respondent made submissions on the same day opposing this Application. The Respondents move that this Application be dismissed in limine as the Petitioner, in the instant Application, is relying on the same set of documents which were annexed to the application bearing No. CA/Writ/77/2021 and the said application CA/Writ/77/2021 has been withdrawn by the Petitioner. After such submissions, this Court reserved the order on issuance of notice until 03.03.2023.

The Petitioner filed a motion on 21.02.2023 attempting to tender two new documents, marked as 'X20' and 'X21'. In terms of Rule 3(1)(a) of the Court of Appeal Rules, the Petition in respect of applications made to the Court of Appeal (for the exercise of the powers vested in the Court of Appeal by Article 140 or Article 141 of the Constitution) should be accompanied by the original documents material to such application in the form of exhibits. Where a petitioner is unable to tender such documents, he shall state the reason for such inability and seek leave of the court to furnish such documents later. As per the said Rule, where a petitioner fails to comply with such provisions of the said Rule, the court may, ex mero motu or at the instance of any party, dismiss such application.

However, the privilege given to a petitioner to furnish documents after filing the petition should not be abused by introducing new documents when the Court has already reserved the order, after hearing submissions, unless there are any exceptional grounds. There is no application up to date to amend the Petition (together with the affidavit) or to file a limited Counter Affidavit in reference to the averments in the limited Statement of Objections filed on behalf of the 4<sup>th</sup> Respondent. Tendering documents at a stage where the Court has reserved its order to be delivered on a future date would certainly cause prejudice to the other parties of the case. Unless there is consent of all parties, the documents should be tendered following due process and/or according to the Rules of this Court.

In light of the above, I reject the application for tendering documents by way of the said motion dated 21.02.2023. However, this order should not impede the Petitioner from

furnishing documents in compliance with the Rules of the Court of Appeal at an appropriate stage of this case.

The Court observes that the said Gazette Extraordinary Notification No. 2241/41 dated 19.08.2021 is being challenged in another application by different parties before this Court. Based only on such ground, the Court is inclined to issue formal notice on the Respondents. Anyhow, considering the tests applicable to granting of interim relief, I proceed to refuse the application for interim relief as the facts and the circumstances in relation to the relief prayed for in paragraph (අ) of the prayer of the Petition do not warrant this Court to grant such interim relief at this stage.

For fuller and proper adjudication of this matter, we are of the view that the 1<sup>st</sup> Respondent or any of his representatives should visit the place where the Elephant 'Miyan Kumar' is kept and submit a report to Court with regard to the prevailing state of the well-being of the Elephant. The 1<sup>st</sup> Respondent when reporting to Court can get the assistance of a suitable veterinary surgeon of a Department of Veterinary Clinical Sciences affiliated to a local university or a government institution to confirm the prevailing health condition of the Elephant. Thus, the 1<sup>st</sup> Respondent is directed to submit a report as mentioned above through the Attorney General within five weeks from today and the 4<sup>th</sup> Respondent is directed to make all necessary arrangements to facilitate the 1<sup>st</sup> Respondent to comprise the such Report.

The Registrar is directed to communicate this order to the 1<sup>st</sup> Respondent.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**