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

In the matter of an Application for Orders in the nature of Writ of *Certiorari*, under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Kolombage Udara Sudarshanie Silva,
   No. 120/3, Bobabila, Makuldeniya.

PETITIONER

CA No. CA/Writ/0304/2019

v.

1. Subasinge Arachchige Dona Maria Reeta Pilaminahamy,
   No. 42, Pathimawatha,
   Bandirippuwa, Lunuwila.

2. Horathal Pedige Manjula Pradeep Kumara,
   No. B24/8, Kubalgama, Dewanagala,
   Mawanella.

3. W. M. T. S. Wijesundara,
   Assistant Title Investigating Officer,
   Additional Registrar of Title Registration,
   Department of Title Registration,
   Regional Office, Wennappuwa.

4. P. D. C. Gratian,
   Assistant Commissioner,
   Department of Land Settlement,
   Regional Office, Wennappuwa.

5. Commissioner General of Land Settlement,
Department of Land Settlement, No. 160,
Kirula Road,
Colombo 05.

5A. Gamini Ilangaratne,
Commissioner for Land Settlement,
Department of Land Settlement,
"Mihikathamedura", No. 1200/6,
Rajamalwatte Road, Battaramulla.

6. National Savings Bank,
Head office- National Savings Bank,
Colombo 03.

7. N. A. D. T. Bandara,
Registrar of Title Registration.
Land Registry,
Marawila.

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : Dr. Sunil F. A. Cooray with Nilanga Perera for the Petitioner.

Hilary Livera with Gimhani Livera for the 1st and 2nd Respondents.

Sumathi Dharmawardene PC, ASG with R. Aluwihare, SC, for 3rd, 5th and 7th Respondents.

Chula Bandara with Gayathri Kodagoda for the 4th Respondent.

Eraj de Silva with J. Sundaramoorthi for the 6th Respondent.

WRITTEN SUBMISSIONS : 13.07.2023 (by the Petitioner)

23.06.2023 (by 1st and 2nd Respondents)

12.07.2023 (by 3rd, 5th, 7th Respondents)

11.07.2023 (by the 4th Respondent)

28.06.2023 (by the 6th Respondent)

ARGUED ON : 05.06.2023

DECIDED ON : 20.07.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner instituted these proceedings seeking *inter-alia*, mandates in the nature of writ of *certiorari* quashing the reports marked 'P11' and 'P 12'; the first-class title certificates issued in favour of the 1st Respondent marked 'P13' and the first-class title certificate issued in favour of the 2nd Respondent marked 'P 14'.

The 1st and 2nd Respondents, the 3rd and 5th Respondents, the 4th Respondent, the 6th Respondent, and the 7th Respondent filed their statement of objections seeking to dismiss or reject the application of the Petitioner.

Factual background

According to the facts presented to this Court, the Petitioner's maternal great-grandfather, Subasinghe Arachchige Don Peduru Appuhamy was the owner of the land which is the subject matter of this application. Peduru Appuhamy gifted the land to Petitioner's mother Hapuarachchige Dona Chamali Roshani subject to his own life interest and of his wife Imihami Appuhamylage Lucihamy ('P 1'). Later, the Petitioner's mother re-transferred the land to Peduru Appuhamy ('P 2'). Thereafter, Peduru Appuhamy gifted the land to the Petitioner in 2001, once again reserving

life interest for himself and for his wife Lucihamy ('P 3'). Peduru Appuhamy died in or around 2002. Thereafter, Petitioner lived in the land with Lucihamy until her marriage in 2011 and thereafter, proceeded to live with the husband at Makuldeniya in Mahiyanganaya area. According to the Petitioner, the life interest holder Lucihamy had purportedly revoked the deed of gift 'P 3' by deed of declaration 'P 4' in 2012 and transferred the land to the 1st Respondent by deed 'P 5'.

In consequent to the commencement of registration of title under the Registration of Title Act No. 21 of 1998 (hereinafter referred to as the 'RT' Act) in the area where the subject matter of this application is situated, cadastral plan 'P 9' was prepared in which the land in the suit is depicted as Lot No. 15. According to the Petitioner, the cadastral plan 'P 9' was Gazetted under Section 12 of the RT Act, giving notice to the public to forward claims, if any. Thereafter, under Section 14 of the RT Act, the determination of the Commissioner of Title Settlement regarding the land parcel was published in the Gazette marked 'P 10'.

The Petitioner states that since she was living far away, she was unaware of her land being subject to a cadastral survey and that it was Gazetted for the claims of ownership. According to the Petitioner, the 1st Respondent has made a claim to Lot No. 15 in plan 'P 9' based on the aforementioned deed 'P 5' and has obtained the first-class certificate of title to Lot No. 15.

The Petitioner has produced the title investigation report prepared by the Assistant Title Investigation Officer which was approved by the Assistant Commissioner of the Department of Land Title Settlement marked as 'P11'. A report submitted by the Assistant Commissioner of the Department of Land Title Settlement marked as 'P 12' was also submitted.

The Petitioner contended that Lucihamy, who had only a life interest in the land in question had no lawful right to revoke the Deed of Gift 'P 3' effected in favour of the Petitioner.

The 1st Respondent who obtained a first-class Certificate of Title, later transferred the said land to the 2nd Respondent who is the son-in-law of the 1st Respondent.

The Certificate of Title issued in the name of the 2nd Respondent is marked 'P14' and the copy of the title register in which the transfer of title is registered is marked 'P 15'. Thereafter, the 2nd Respondent has mortgaged the land to the 6th Respondent bank.

As per the Petitioner's statement, the Petitioner filed case No. 2000/L in the District Court of Marawila on 17th September 2015, against the violation of her proprietary rights. The Petitioner prayed from the District Court *inter-alia* a declaration that the Plaintiff is the owner of the land upon the Deed of Gift 'P 3', a declaration that the Deed of Revocation of Gift 'P 4' and the Deed of Gift 'P 5' executed by Lucihamy are void in law, a declaration that the certificate of title issued to the 1st Respondent ('P 13') and the certificate of title issued to the 2nd Respondent 'P 16' are void. Further, the Petitioner prayed for a declaration that a deed of lease and the mortgage bond executed by the 2nd Respondent in favour of the 6th Respondent bank are also void ('P 16' and 'P 18').

Analysis

The District Court action: is it an alternative remedy that excludes the right for a prerogative writ?

First and foremost, I will consider the Petitioner's right to maintain this application.

The 1st and 2nd Respondents argued that since the Petitioner availed herself of the alternative remedy provided by the Act by instituting action in the District Court bearing No. 2000/L seeking similar reliefs, the Petitioner cannot maintain the instant application for a prerogative writ.

Admittedly, the Petitioner has not made a claim in response to the publication made in the Extraordinary Gazette No. 1808/25 dated 3rd May 2013 ('3 R 1'), in terms of Section 12 of the RT Act. There was only one claimant, the 1st Respondent, and no other competing claims. Consequently, the Commissioner of Title Settlement has not referred the matter to the District Court of the area for investigation and determination.[1] The issue of aggrieved claimants appealing to the District Court of the area against the declaration made by the Commissioner of Title Settlement[2] also does not arise. The other instance where the Act provides for the intervention by the Court is the opportunity given to an aggrieved party to file an action in the District Court within ten years from the registration. This recourse is available for a party when the impugned registration is a second-class title of ownership[3]. In this instance, the registration is a first-

[1] Under Section 21 of the RT Act.
[2] Under Section 22 of the RT Act.
[3] Under Section 29 of the RT Act.

class title of absolute ownership[4]. Therefore, Section 29 of the RT Act does not apply in this instance.

However, there is another instance where a party could seek remedy from Court under the RT Act. Section 59 provides that a Court may order rectification of the register where it is satisfied that any registration has been obtained by fraud. Once such an order is made, the Registrar of Title has to rectify the register and the other records maintained under the RT Act[5]. Thus, it is clear that the RT Act has allowed Court intervention even after the registration of the title. It is important to observe that although in Sections 21, 22, and also in Section 29, the Court having jurisdiction is specified as the District Court having jurisdiction over the area in which such a land is situated, in Section 59, the Legislature has not specified the Court. Therefore, at first glance, it appears that a party seeking a remedy under section 59 is free to bring an action in the District Court or invoke writ jurisdiction of this Court. Yet, a committed fraud must be established for a Court to order rectification of the register under Section 59. In a writ application, this Court will not decide on disputed facts as such[6]. Therefore, in my view, the remedy under Section 59 is quite independent of an application for a prerogative writ.

Be that as it may, it is clear that the entries in the Title Register are subject to being reviewed in Courts and for rectification. Consequently, there is no sanctity attached to the Certificate of Title or to the entries in the Title Register, as submitted by the Respondents.

In the instant application, the Petitioner seeks relief upon the breach of principles of natural justice and also under the procedural impropriety which is amenable to a writ.

Next, I will consider whether the aforementioned remedy excludes writ jurisdiction.

In the case of *Obeysekera v. Albert and others* (C.A.),[7] the Court of Appeal considered the alternative remedy available to an aggrieved party under Section 20 (1) of the Industrial Disputes Act to repudiate an arbitration award. It was held that *certiorari* is a discretionary remedy and will not normally be granted unless and until the plaintiff has exhausted other remedies reasonably available and equally appropriate. The Court held that

[4] 'P 13' and '6 R 4(b)'
[5] Under Section 58 (2) of the RT Act.
[6] *Wijenayake and others v. Minister of public Administration,* [2011] 2 Sri.L.R. 247
[7] [1978- 79] 2 Sri L. R. 220.

Section 20 (1) of the Industrial Disputes Act conferred the right on the aggrieved party to repudiate the award and accordingly, such party cannot seek, a discretionary remedy such as *certiorari*.

However, in the latter case of *E. S. Fernando v. United Workers Union and others*[8] the Supreme Court, contrary to the above decision of the Court of Appeal, held that *'assuming that the repudiation of an award in terms of section 20 is a "remedy", yet it is not an adequate and an effectual remedy. To disentitle the petitioner-appellant to the remedy by way of certiorari, the "alternative remedy" must be an adequate and effectual remedy. In Obeysekera vs. Albert and others, the Court of Appeal does not seem to have sufficiently addressed its mind to the question of the* ***adequacy and efficacy of the "remedy"*** *provided in section 20 of the Industrial Disputes Act. In this view of the matter, as at present advised.'*

Consequently, the Supreme Court held that *Obeysekera v, Albert and others* (C.A.)[9] has been wrongly decided[10].

S. M. Mehta, in his book titled *Indian Constitutional Law,*[11] states that '*the existence of an alternative remedy may be a ground for refusing a writ of certiorari, where the defect of jurisdiction is not patent on the face of record and the fundamental rights are not involved.* ***This is a Rule of convenience and not a Rule of law*** *and hence certiorari may be issued even when an alternative remedy is available. Thus, an alternative remedy which is not* ***speedy, effective, or adequate*** *is no ground for refusing a writ of certiorari.'*

I am aware that there is no allegation of violation of fundamental rights in the instant case, which is beyond the jurisdiction of this Court. However, this is only one of the two aspects that S.M. Mehta has taken into account in making the above comment. The other is the defect of jurisdiction on the face of the record, which is present in this case, for the reasons stated hereinbelow in this judgment.

In *Somasunderam Vanniasingham v. Forbes and another* (S.C.)[12] Her Ladyship Bandaranayake J., (as Her Ladyship then was) observed that[13]

[8] [1989] 2 Sri L. R. 199, S.C. Appeal No. 38/86, Supreme Court minutes dated 31st October 1989.
[9] Supra note 7.
[10] This finding was re-affirmed by the Supreme Court in the case of *Somasunderam Vanniasingham v. Forbes and another* [1993] 2 Sri L. R. 362.
[11] 1990 edition, at p.334.
[12] [1993] 2 Sri L. R. 362.
[13] Ibid at p. 369.

'*where overlapping remedies exist for identical purposes, a question may arise as to whether the statutory remedy is exclusive or concurrent. The language of the enactment must first be examined. If concurrent, the Court's decision may be determined by deciding whether the statutory remedy provides a satisfactory alternative to the discretionary remedy by way of writ. As we have seen in the cases discussed,* ***an alternative remedy may be available only upon the existence of other factors which are hard to find and difficult to establish which then does not render that remedy satisfactory***.'

It was also observed, *'In this area of the law, where there is no illegality, the Court should first look into the question whether a statute providing for alternative remedies expressly or by necessary implication excludes judicial review. If not, where remedies overlap, the Court should consider* ***whether the statutory alternative remedy is satisfactory in all the circumstances****..... If not, the Court is entitled to review the matter in the exercise of its jurisdiction.* ***Of course, if there is an illegality there is no question but that the Court can exercise its powers of review****.[14]'*

Petitioner instituted the action in the District Court alleging that the 1st and 2nd Respondents jointly committed fraud against the Petitioner[15]. Therefore, the institution of action by the Petitioner in the District Court can be considered as a remedy sought under Section 59 of the RT Act where the Petitioner has to prove the existence of fraud. There is no doubt that proof of fraud is a difficult exercise. As it was observed by His Lordship Marsoof J., in the case of *Francis Samarawickrema v. Hilda Jayasinghe and another*[16]*,* proof of fraud in a civil action is equally the same balance of probabilities and nothing more. Yet, '*more serious the imputation, the stricter is the proof which is required'.*

Then the next pertinent question arises whether it could be considered as an adequate alternative remedy against the application for a prerogative writ.

His Lordship F. N. D. Jayasuriya J., in the case of *Kalamazoo Industries Limited v. Minister of Labour and Vocational Training,*[17] cited the following passage from Wade on *'Administrative Law'*

[14] Ibid at pp. 370, 371, citing *Colombo Commercial Co. vs. Shanmugalingam* 66 N.L.R. 26 *and Virakesari Ltd vs. P. O. Fernando* 66 N.L.R. 145.
[15] At paragraphs 24 and 26 of 'P 16'.
[16] [2009] 1 Sri.L.R. 293 at pp. 319, 320.
[17] [1998] 1 Sri. L. R. 235 at p. 249.

'*Judicial review is radically different from the system of appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. But in judicial review, the court is concerned with its legality. On appeal, the question is right or wrong. On review, the question is lawful or unlawful … Judicial review is a fundamentally different operation.*'

Accordingly, the basic principles involved in judicial review are distinct from those involved in an appeal. In my view, those are not the same as an action instituted in the District Court seeking a declaratory remedy as well.

The District Court action commenced in the year 2015 but, has not been concluded yet. Hence, it is apparent that the District Court action is not a speedy, effective, and efficacious remedy. On the other hand, the Petitioner has instituted instant application on the grounds of breach of the principle of natural justice and error on the face of the record. For the reasons which would be set out below in this judgment, there is a procedural defect on the face of the record coupled with breach of the principle of natural justice.

Hence, I am of the view that the institution of action in the District Court does not exclude writ jurisdiction.

Does delay defeat writ remedy?

The Petitioner first instituted the action in the District Court seeking declaratory reliefs and claiming consequential damages on the 17th of September 2015.

In the case of *Lindsey Petroleum Co. v. Hurd*[18], in dealing with delay it was observed; *'two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as related to the remedy*'

In *Seneviratne v. Tissa Dias Bandaranayake and another,*[19] it was observed that; '*if a person were negligent for a long and unreasonable time, the law refused afterward to lend him any assistance to enforce his rights; the law both to punish his neglect, "nam leges vigilantibus, non dormientibus subveniunt", and for other reasons refuses to assist those who sleep over their rights and are not vigilant.'*

[18] [1873] 5 AC 221.
[19] [1999] 2 Sri L. R. 341 at 351.

In the case of *Biso Menike v. Cyril de Alwis* (S.C.)[20] following observations were made by His Lordship Sharvananda J., that; *'a writ of certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But the exercise of this discretion by the Court is governed by certain well-accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver.*

The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights ***without any reasonable excuse*** *the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay.*

An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed.'

It was observed in *Issadeen v. The Commissioner of National Housing and others*[21]*; 'Although there is no statutory provision in this country restricting the time limits in filing an application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding "a good and valid reason" for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there* ***should not be an unjustifiable delay*** *in applying for the remedy.*'

However, in the aforementioned case of *Biso Menike v. Cyril de Alwis* (S.C.),[22] it was also observed that; '*when the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the* ***authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay*** *unless the*

[20] [1982] 1 Sri L. R. 368; at pp. 377 to 379.
[21] [2003] 2 Sri L. R. 10 pp. 15 and 16.
[22] *Supra* note 20.

conduct of the party shows that he has approbated the usurpation of jurisdiction.'

His Lordship Wanasundara J., stated in the case of *V. Ramasamy v. Ceylon Mortgage Bank*[23] (S.C.) that; *'....., it is my view that when we are dealing with a matter concerning the extent of the powers and jurisdiction, which is reposed in us, to be exercised for the public good,* ***we should hesitate to fetter ourselves with arbitrary rules*** *unless such a course of action is absolutely necessary. The principles of laches must, in my view, be applied carefully and discriminatingly and not automatically and as a mere mechanical device. In any such event, the explanation of the delay should be considered sympathetically…...*'

In the case of *Lulu Balakumar v. Balasingham Balakumar*[24] (S.C.), it was held that, *'.....****mere delay does not automatically amount to laches*** *and that the circumstances of the particular case, the reasons for the delay, and impact of the delay on the other party, must be taken into account.'*

Further, it was observed, *'In any event, the question of laches cannot be determined only by considering (...) how long a period of time, has elapsed. The circumstances are relevant.*'

In the case of *Wijayapala Mendis v. P. R. P. Perera and others*[25]*;*

'Delay is never an absolute bar, particularly where the challenge is to jurisdiction. In any event, a plea of delay must be considered on equitable grounds; as for instance, whether the conduct of the petitioner indicates acquiescence or a waiver of his rights and ***whether any appreciable prejudice had been caused to the adverse party by that delay.****'*

However, having considered the facts of this case, I am of the view, that the material prejudice is caused to the Petitioner and not to the Respondents.

In light of the aforementioned judicial precedence, it is clear that mere delay does not amount to *laches* and depends on the facts of each case.

The Petitioner who became aware of the execution of the deed 'P 5' sent a letter of demand[26] to the 1st Respondent on 25th June 2015. Thereafter, on the 9th July 2015, the 2nd Respondent transferred her rights to her son-in-

[23] 78 N.L.R. 510 at p.517.
[24] 1997 [B.L.R.] 22 and 23.
[25] [1999] 2 Sri L. R. 110, at p. 111.
[26] P. 122 of the District Court case record marked 'P 17'.

law, the 2nd Respondent[27]. The 2nd Respondent has then mortgaged his rights to the 6th Respondent on the 8th of July 2015. Accordingly, it is clear that the aforementioned transactions have taken place after the Petitioner informed the 1st Respondent of her intention to institute legal action. As a result, the 2nd Respondent's position that he is a *bona fide* purchaser is in serious doubt. Consequent to these, the Petitioner instituted the District Court action seeking redress against those acts of the 1st and 2nd Respondents. These writ proceedings are instituted after a period of four years therefrom. Nevertheless, a writ is a remedy distinct from a District Court action.

In the case of *Rathnayake v. Sarath, Divisional Secretary, Thihagoda*[28]*,* the Court of Appeal held that the delay occurred due to making an unsuccessful application to the Provincial High Court which had no jurisdiction in the matter is neither undue nor unexplained. The relevant part of the judgment reads as follows; *'It is pertinent to note that delay unexplained and undue in the circumstances of the case only can be considered in rejecting an application. The petitioner however has explained the delay occasioned by the unsuccessful application before the Provincial High Court Matara. In those circumstances, the period during the pendency of the proceedings before the Provincial High Court is neither undue delay not is it unexplained. However, it is for the court to consider whether the delay is unreasonable.'*

Furthermore, it is important to note that Section 59 of the RT Act does not specify a time limit to initiate proceedings. Nevertheless, a time limit of ten years is prescribed in Section 29 for a person aggrieved by the registration of a second-class title of ownership to seek an amendment of the register. Further, Section 22 of the Act provides that any claimant aggrieved by the declaration made by the Commissioner should prefer an appeal to the District Court '*within the prescribed period*'. However, no such period is prescribed either in the Act or in the Regulations. It is common knowledge that even a person seeking a declaration that a fraudulent deed is void has to institute an action within three years from the date on which the fraud was revealed. To my understanding, it is undesirable that a time period is not prescribed under Section 59. Yet, the fact remains that no time limit is prescribed for the institution of proceedings in Courts seeking rectifications of the register. Maybe the intention of the Legislature is to allow a committed fraud to be rectified at

[27] 'P 14'.
[28] [2004] 3 Sri L. R. 95, at p. 99.

any stage. I am aware that this is a writ application filed on a different basis. Yet, in my view manifest errors on the face of the record should be corrected at any stage.

In view of the analysis of facts in this judgment and on the aforementioned judicial precedence stated above, I am of the view that the Petitioner has explained the delay satisfactorily. Further, I am satisfied the order complained of, is manifestly erroneous. Therefore, I hold that the Petitioner is not guilty of *laches* and consequently, this application can be maintained for writs as prayed.

Whether the final and conclusive effect granted to the certificate of title by the statute rules out writ jurisdiction.

According to Section 32 of the RT Act, the registration of a person with a first-class title of absolute ownership shall vest the absolute ownership of such land in that person. Section 33 provides that entries in the Title Register shall be conclusive evidence of ownership and shall not be questioned in a Court of law except as provided for in the Act. Section 37 (2) provides that the certificate of title shall form conclusive evidence of the title to such *interest*. It appears to me that the word *ownership,* which was there in Sections 32, 33, and 37 (1) had been accidentally omitted in Section 37 (2).

Be that as it may, Section 33 (1) provides that entries in the Title Register shall not be questioned in a Court of law except as provided for in the RT Act. Further, Section 33 (2) of the RT Act provides that the interest of a person whose name appears in the Title Register may be assailed only as provided for in the Act.

Accordingly, Respondents argued that only the remedies under and in terms of the RT Act are available to the Petitioner and therefore, the Petitioner is not entitled to maintain the instant application seeking prerogative writs.

Consequently, the pertinent question arises as to whether the Petitioner is entitled to maintain this application for prerogative writs.

Dealing with the term "final and conclusive" and similar clauses in statutes, Professor H.W.R. Wade in his classic book titled '*Administrative Law'* states that *'if a statute says that the decision or order of some administrative body of tribunal 'shall be final' or 'shall be final and conclusive to all intense and purposes' this is held to mean merely that there is no appeal: judicial review of legalities unimpaired. Parliament*

only gives the impress of finality to the decisions of the tribunal on condition that they are reached in accordance with the law[29]*.'*

Further, it is stated that *'**a provision that the determination shall be conclusive for all purposes** or that a certificate **shall be conclusive evidence** of something might be expected to be interpreted in the same way as a finality clause, so as not to reject judicial review*[30]*.*'

(emphasis added)

The expression '*shall not be called in question in any court'* is interpreted in Section 22 of the Interpretation Ordinance[31], as amended. Accordingly, the expression shall not be called in question in any Court or any other expression of similar import whether or not accompanied by the words '*whether by way of writ or otherwise'* is interpreted to mean that no Court shall, in any proceedings and upon any grounds what so ever have jurisdiction to pronounce upon the validity or legality of such order, decision, determination, direction or finding made or issued in the exercise or the apparent exercise of the power conferred on such person, authority Court or tribunal.

However, the proviso of the same Section provides that these provisions shall not apply to the Supreme Court or to the Court of Appeal as the case may be in the exercise of its powers under Article 140 of the Constitution in respect of the matters specified under (a) and (b). Accordingly, under subparagraph (b) where such a person is bound to conform to the rules of natural justice, or where the compliance with any mandatory provision of any law is a condition precedent to the making or issuing of any such order decision, determination, direction or finding, and the Supreme Court or the Court of Appeal is satisfied that there has been no conformity with such rules of natural justice or no compliance with such mandatory provisions of such law, the provisions in Section 22 shall not apply.

For the reasons which would be stated hereinafter in this judgment, this Court is of the view that the Commissioner of Title Settlement has failed to act in conformity with the rules of natural justice and has failed to comply with the regulations published in Gazette No. 1050/10 dated 21st October 1998[32].

[29] H.W.R. Wade and C. F. Forsyth, *Administrative Law,* Eleventh Edition, at p. 609.
[30] Ibid at p. 610
[31] No. 21 of 1901, as amended.
[32] Regulation No. 4 (a).

Accordingly, I am of the view that Section 22 of the Interpretation Ordinance is not a bar to maintain the instant application.

In the case of *Atapattu and others v. People's Bank and others*[33], the issue before the Supreme Court was whether Article 140 is subject to the other laws which were kept alive by Article 168 (1). Article 140, unlike Article 146, has a phrase that the powers and authority of the Court of Appeal are '*subject to the provisions of the Constitution'*. The Supreme Court held that the phrase '*subject to the provisions of the Constitution*' is necessarily there to avoid conflicts between Article 140 and other Constitutional provisions such as Articles 80 (3), 120, 124, 125, and 126 (3). Consequently, it was held that the aforementioned phrase refers only to contrary provisions in the Constitution itself, and does not extend to provisions of other written laws. The Supreme Court observed that the language used in Article 140 of the Constitution is broad enough to confer unfettered jurisdiction to the Court of Appeal to review, even on grounds excluded by the ouster clauses.

Further, His Lordship Fernando J., observed that the presumption must always be in favour of the jurisdiction which enhances the protection of the rule of law, and against an ouster clause which tends to undermine it.

Article 140 also provides that the power of the Court of Appeal has to be exercised '*according to law'*. Therefore, I am of the view that it is pertinent to consider the phrase '*according to law'* in Article 140 of the Constitution as well. In the cases of *Goonasinghe v. de Kretser*[34], *Nakkuda Ali v. Jayaratne,*[35] and *M. D. Chandresena and two others v. S. P. de Silva (Director of Education)*[36] Court interpreted the term '*according to law'* to mean the relevant Rules of English common law. The above decisions were based on the premise that the law relating to prerogative writs originated and evolved in the United Kingdom. This had been followed by our Courts in a long line of authorities.

In the cases of *B. Sirisena Cooray v. Tissa Dias Bandaranayake and two others,*[37] it was held that '*the writ jurisdiction conferred upon the Superior Courts by Article 140 of the Constitution and it cannot be lawfully restricted by the provisions of ordinary Legislation contained in the ouster clauses*.'

[33] [1997] 1 Sri L. R. 208.
[34] (1944) 46 N. L. R. 107.
[35] (1950) 51 N. L. R. 457.
[36] [1961] 63 N. L. R. 143.
[37] [1999] 1 Sri L. R. 1, at p. 13.

In the case of *Wickremasinghe Aruna Sameera v. Justice S. I. Iman, Chairman, Administrative Appeals Tribunal and others*[38], Samayawardhena J., sitting in Court of Appeal (as His Lordship then was) having considered Section 8 (2) of the Administrative Appeals Tribunal Act No. 4 of 2002 which reads '*a decision made by the tribunal shall be final and conclusive and shall not be called in question in any suit or proceedings in a Court of law'*; the Court observed that '*This is a statutory ouster clause, and not a constitutional ouster clause. Ouster clauses contained in statutes, as a general rule, do not oust the writ jurisdiction conferred on Courts - in Sri Lanka, on the Court of Appeal by Article 140 of the Constitution. There is a presumption in favour of judicial review and courts have throughout history shown their great reluctance to accept ouster clauses at face value. The tendency of Courts has been to give ouster clauses a restrictive interpretation as much as possible so as to preserve their jurisdiction to review administrative decisions. The leading English case of Anisminic Ltd v. Foreign Compensation Commission (1969) AC 147 provides a striking illustration of this tendency. It is generally understood that the ouster/preclusive/finality clauses are there to prevent appeals and not to prevent judicial review. Those clauses do not and cannot prohibit the Court of Appeal from exercising its writ jurisdiction to look into the jurisdictional issues of the decisions of the administrative bodies or tribunals*[39] *(...)*'

Professor H.W.R. Wade[40] states as follows on the phrases '*shall be final'* or '*shall be final and conclusive*'; *'Many statutes provide that some decision shall be final. That provision is a bar to any appeal. But the courts refuse to allow it to hamper the operation of judicial review. As will be seen in this and the following sections, there is a firm judicial policy against allowing the rule of law to be undermined by weakening the powers of the court. Statutory restrictions on judicial remedies are given the narrowest possible construction, sometimes even against the plain meaning of the words. This is a sound policy since otherwise administrative authorities and tribunals would be given uncontrollable power and could violate the law at will. Finality is a good thing but justice is better.'*

'Enactments designed to oust the jurisdiction of the courts entirely in respect of all remedies have come to be known as "ouster clauses".

[38] CA. Writ Application 73/2016, Court of Appeal minutes dated 20th February 2019.
[39] *Ibid* at pp.3 and 4.
[40] *Supra* note 29.

However, they are worded, they are interpreted according to the same principle.[41]'

Above all, as I have already stated above in this judgment, despite the finality clauses incorporated in the RT Act, the Act itself permits Court intervention even after the registration of title of ownership or other interest[42].

In light of the above analysis, I hold that the Petitioner is entitled to maintain this application.

Whether the 3rd, 4th, 5th, and 7th Respondents followed the procedure laid down in the RT Act.

In *St. Joseph Stockyards Co. v. United States*[43] it was observed;

'(...) The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied and whether the proceeding in which facts were adjudicated was conducted regularly…'

In the case of *The Council of Civil Service Unions v. Minister for the Civil Service*[44] Lord Diplock has stated that;

'(...) "procedural impropriety" rather than failure to observe the basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also the failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice…'

It has been further stated;

'(...) "procedural propriety", I see no reason why it should not be a ground for judicial review of a decision made under powers of which the ultimate source is the prerogative.'

Under Section 12 of the RT Act, once the Commissioner of Title Settlement receives the cadastral maps, should publish a notice in form No. 1 of the first schedule in a Gazette, calling for any claimants to the land specified

[41] *Supra* note 17 at p. 612.
[42] Section 59 of the Rt Act.
[43] [1936] 298 US 38.
[44] [1985] AC 374.

in such notice to submit their respective claims to him within a prescribed period from the date of publication of the notice. Accordingly, the Commissioner of Title Settlement has published the Gazette Notification No.1808/25 dated 3rd May 2013 ('3 R 1').

The Petitioner has stated that after marriage, she had been living with her husband at Makuldeniya, Mahiyanganaya, far away from the area where the land is situated, and was unaware that it had been Gazetted for claims to be made in respect of ownership of the land. At the argument, the learned Counsel for the Petitioner submitted that an ordinary person cannot be expected to read all the Gazette notifications published by the government and also to identify lands with reference to a cadastral plan. I am in favour of the above submission. I observe that in the Gazette notification published under Section 12 of the RT Act, the land is described according to the cadastral plan. The only information an ordinary person could understand is, that it is regarding the lands situated within the village of Bandiripppuwa.

Be that as it may, the Legislature has taken into account the difficulties that could arise in publishing notices, etc. has made provisions under Section 67 of the Act enabling the Minister to make Regulations in respect of procedure and practice to be observed for the purpose of carrying out or giving effect to the provisions of the Act. Accordingly, the Minister of Lands has made Regulations published in the Extra Ordinary Gazette Notification No. 1050/10 dated 21st October 1998 ('P 19'). These regulations were subject to the amendments made to them by Extra Ordinary Gazette Notifications No. 1886/58 dated 31st October 2014 and No. 2308/27 dated 1st December 2022. In terms of Regulation No. 4 published in the Gazette notification 'P 19', the Commissioner shall also cause to publish a notice in Form No. 2 of the first schedule in Sinhala, Tamil, and English daily newspapers circulated in Sri Lanka, making reference to the number and date of the Gazette notification published under Section 12 of the Act. In addition, the Commissioner of Title Settlement, as soon as the notice under Section 12 of the Act is published in the Gazette, shall make an order to the Divisional Secretary of the area to display a similar notice at places that will ensure the widest publicity. The Divisional Secretary shall comply with such order and report to the Commissioner of Title Settlement within two weeks. Furthermore, Regulation 4(c) provides that the Commissioner may give further publicity, if he so desires, through radio, television, or any other means.

Hence, it appears to me that even though it would be difficult for a layman to understand the details of the cadastral map, the Legislature has made every attempt to give the widest publicity inviting claims to the lands subject to registration of title.

In response to the statement made by the Petitioner that she was unaware that her land had been Gazetted for claims, none of the Respondents have stated that notices were published in the newspapers in all three languages giving the widest publicity. All that the Respondents have stated is that notices were published in the Gazette and were displayed in the area.

The 3rd and 5th Respondents have stated[45] that the notices under Section 12 were published in the Gazette and were displayed in the area but, it was only the 1st Respondent who submitted a claim for the subject land. The 7th Respondent has stated[46] that notices were published in the Extra Ordinary Gazette No. 1808/25 dated 3rd May 2013 and were displayed in the area calling for the claims but, the Petitioner has failed to submit any claim. The 4th Respondent has stated[47] that after preparing the cadastral plan 'P 9', notice was published in the Gazette notification under Section 12 of the RT Act and Lucihamy was the only claimant to Lot No 15. The statement that it was Lucihamy who made the claim is contrary to the statement of the 3rd and 5th Respondents that it was the 1st Respondent who made the claim. Yet it is not the function of this Court to decide on facts as such.

All that the 4th Respondent states in his report marked 'P 12 / 4 R 2' is that the notices were published in the Gazette and were displayed in the area.

Under Regulation 23, the Commissioner has to maintain a file called the *notice file* which should contain copies of the Gazette, newspapers, details of the publicity given through the radio and other means, and notes describing the manner in which the notices were published. Consequently, there could be no difficulty in submitting those proofs to Court in response to the Petitioner's allegation that she was unaware that her land had been included in a cadastral survey and was Gazetted for claims.

In light of the above analysis, it is clear that the 1st to 5th and 7th Respondents have failed to cause a notice published in the newspapers in terms of Regulation 4 of the Gazette notification 'P 19'.

[45] At paragraphs 7 (a), 12 (a), and 14 (b) of the statement of objections.
[46] At paragraphs 7 (a), 10 (a), and 12 (b) of the statement of objections.
[47] At paragraph 10 (iii) of the statement of objections.

In *Ladamuttu Pillai v. The Attorney General*[48] (S.C.) the Court observed,

'when an Ordinance or an Act provides that a decision made by a statutory functionary to whom the task of making a decision under the enactment is entrusted shall be final, the Legislature assumes that the functionary will arrive at his decision in accordance with law and the rules of natural justice and after all the prescribed conditions precedent to the making of his decision have been fulfilled[49] *(...)'.*

'The Legislature entrusts to responsible officers the task of carrying out important functions which affect the subject in the faith that the officers to whom such functions are entrusted will scrupulously observe all the requirements of the statute which authorises them to act. It is inconceivable that by using such a word as "final" the Legislature in effect said, whatever determination the Land Commissioner may make, be it within the statute or be it not, be it in accordance with it or be it not, it is final, in the sense that the legality of it cannot be agitated in the Courts'.

'The word "final " is not a cure for all the sins of commission and omission of a statutory functionary and does not render legal all his illegal acts and place them beyond challenge in the Courts. The word "final" and the words "final and conclusive" are familiar in enactments which seek to limit the right of appeal; but no decision of either this Court or any other Court has been cited to us in which those expressions have been construed as ousting the jurisdiction of the Courts to declare in appropriate proceedings that the action of a public functionary who has acted contrary to the statute is illegal[50] *'.*

Ismail J., has observed as follows in the case of *Siriwardene v. Hon. Chelliah Kumarasuriar, Minister of National Housing and Construction and others*[51] *'the Minister proceeded to make the vesting order under Section 17 (1) before the Commissioner could have decided on the precedent conditions set out in Section 13 in relation to the application and* ***before he could have complied with the procedural requirements specified*** *in Section 17 of the Ceiling on Housing Property Law. There has thus, been a procedural failing and the Minister has therefore, acted* ***ultra-vires*** *and in excess of his jurisdiction in making the vesting order under Section 17 (1) of the said law.* ***The vesting order is, therefore, a nullity,***

[48] (1957) 59 N.L.R. 313.
[49] Ibid at p. 329
[50] Ibid
[51] [1995] 1 Sri L. R. 50 at p. 54.

and all subsequent steps taken by the Commissioner on the basis of the said vesting order are void in law. (emphasis added)

Accordingly, the Court of Appeal concluded that failure to comply with the statutory procedure leads to nullity.

In light of the above analysis, it is apparent that the Respondents have failed to follow the procedure laid down in Regulation 4 of the Gazette Notification 'P 1'; which nullifies the proceedings.

Whether the 1st to 5th and 7th Respondents have violated the Rule of natural justice.

According to Section 13 of the RT Act, the Commissioner of Title Settlement shall cause an investigation to be conducted in order to determine the genuineness or otherwise of the claims made in response to a notice under Section 12. The 4th Respondent stated in his statement of objections that since the only claimant was Lucihamy, there was no necessity to conduct an inquiry under Section 13 of the RT Act[52]. However, Section 13 clearly states that the genuineness or otherwise of claims made has to be determined after an investigation. The 3rd and 5th Respondents have stated that the 3rd Respondent conducted a *'search of prior registration of title'* in respect of the subject land in the Land Registry of Marawila. Consequently, the 3rd Respondent has observed that the revocation of the Deed of Gift by Lucihamy is invalid and has made an entry in the forms titled *'Pre-investigation notes on documents at the Title Registration Office'* ('3 R 3'). According to the 3rd and 5th Respondents, the 3rd Respondent has subsequently submitted his observation to the 4th Respondent and the 4th Respondent has instructed the 3rd Respondent that the Deed of Gift could be revoked. Consequently, the 3rd Respondent has proceeded to prepare the Title Investigation Report marked 'P 11' and the 4th Respondent has approved the same. The 3rd and 5th respondents have submitted that they acted in good faith at all times[53]. According to the minute made in *'Pre-investigation notes on documents at the Title Registration Office'* ('3 R 3'), the 4th Respondent, the Assistant Commissioner has received instructions from the Legal officer at the head office to the effect that the revocation of the Deed of Gift is valid. Accordingly, the above decision of the 3rd Respondent as well as of the 4th Respondent are influenced by extraneous considerations.

[52] At paragraph 10 (iii) of the statement of objections.
[53] At paragraph 13 (d) to (k) of the statement of objections.

This Court observes that Lucihamy was only a life interest holder and she had no right whatsoever to cancel the Deed of Gift executed by her husband Peduru Appuhamy in favour of the Petitioner ('P 3') and also to transfer the said land to the 1st Respondent upon deed 'P 5'.

However, as I have already stated above in this judgment, in a writ application, the Court will not rule on the disputed facts.

Be that as it may, according to *'Pre-investigation notes on documents at the Title Registration Office'* ('3 R 3'), the 3rd Respondent has come across deed 'P 3' executed in favour of the Petitioner, consequent to the search conducted by him at the Land Registry of Marawila. The 3rd Respondent has made a note that there is no condition in the deed 'P 3' reserving the right to revoke. Further, the only condition in the said deed is that the gift is subject to the life interest of the donor and his wife Lucihamy.

The 3rd Respondent in conducting his investigation into the genuineness or otherwise of the claim made in respect of the subject land, has identified the Petitioner as a person having an interest in the land but, failed firstly, to notify the Petitioner and secondly, to offer the Petitioner an opportunity to present her case.

In my view, this is a flagrant violation of the *audi alteram partem* rule and constitutes a breach of the basic principle of natural justice.

On the other hand, when it was revealed that the Petitioner has a legitimate claim to the subject land, even after considering the opinion of the legal officer at the head office, the 3rd and 4th Respondents could have at least registered a second-class title in the name of the 1st Respondent without registering in a first-class title.

Alternatively, since the RT Act provides for the Commissioner of Title Settlement to refer the matter to the District Court when he is of the view that it would be more appropriate for the investigation to be carried out by the District Court, he should have referred the matter to the District Court for a determination[54]. Therefore, it is *unreasonable* on the part of the 3rd and 4th Respondents not to have referred the matter to the District Court.

In my opinion, in order to ensure proper registration, the RT Act should have provisions for establishing a competent panel, at the very least. The Minister has the power to appoint a qualified panel to be referees of title

[54] Section 21 of the RT Act.

registration under the Registration of Titles Act of Jamaica[55], as per Section 6. Under the Title Registration system in Austria, it is necessary for the Court to authorize the registration.

Another argument advanced by the learned Counsel for the 6th Respondent is that the Petitioner suppressed and/or misrepresented the material facts and/or came before this Court with unclean hands[56]. The 6th Respondent has not disclosed the grounds upon which it is alleged as above. Therefore, there is no need to address the said allegation of the 6th Respondent.

The learned Counsel for the 6th Respondent bank has submitted that the bank relying on the final and conclusive effect attached to the certificate of title under the RT Act, granted a loan to the 2nd Respondent. It was contended that if this Court proceed to quash the Certificate of Title, that would adversely affect not only the 6th Respondent bank but, also other agencies that rely on the finality of a Certificate of Title. As I have already stated above in this judgment, the Legislature whilst enacting the finality clauses in the RT Act, has left it open for the Court to intervene and order rectification of the Register under Section 59 of the RT Act. Accordingly, I hold the view that a Certificate of Title under the RT Act is not incontestable, as stated by the learned Counsel.

It appears that the Legislature has anticipated such situations and provided under indemnification to any person who suffers loss or damage or who is prejudiced by reason of any rectification of the register in pursuance of an order of the Court under the Act[57]. On the other hand, the 6th Respondent Bank has the right to recover its losses against the mortgagor for failing to warrant and defend title. Therefore, the 6th Respondent bank is not left without a remedy for any loss, they would have suffered. In my opinion, it is not necessary to put a bank on a higher footing than an ordinary person.

It is unfortunate that our RT Act does not have specific provisions regarding mortgages, like in the Title Registration Act of Jamaica[58].

Another potential argument is that the Petitioner could be compensated under Section 60 of the RT Act. Yet, in my view, damages are not the proper remedy for the Petitioner who had to suffer for the fault of others.

[55] The Registration of Titles Act No. 60 of 1954, as amended.
[56] At paragraph 5 of the Objections.
[57] Section 60 (1) (a).
[58] *Supra* note 55.

Another argument advanced by the Respondents is that this application is futile since the Petitioner has not sought to quash the Gazette notification marked 'P 10'. Their contention was that even if the reliefs sought by the Petitioner are granted, the Gazette notification 'P 10' would remain intact. 'P 10' is a Gazette notification published under Section 14 of the RT Act

The learned State Counsel for the 3rd 5th and 7th Respondents submitted in the written submission that as per Section 14, it is the Gazette notification 'P 10' which depicts the determination of the Commissioner of Title.

However, the Gazette is merely the publication of the determination of the Commissioner of Title Settlement. Once the publication is made an aggrieved claimant could prefer an appeal to the District Court against the *declaration*[59]. After the publication of the Gazette notification under Section 14, if the Commissioner of Title Settlement is of the view that a claimant has established his claim; under Section 20 of the RT Act, he shall declare such claimant eligible for the registration as the owner and shall register such interest in the Title Register. It is this registration, that confers on a person a first-class title of absolute ownership. Furthermore, it is the entries in the Title Register that have a conclusive effect[60]. A Certificate of Title is issued to those who possess a title of ownership or other interest. The Certificate of Title shall form conclusive evidence of the title[61]. The Gazette notification in terms of section 14 of the RT Act could be distinguished from publication in terms of section 38 of the Land Acquisition Act. A publication in terms of section 38 of the Land Acquisition Act itself vests the property in the state. But as I have already stated, a Gazette notification in terms of section 14 of the RT Act itself does not confer absolute title. The absolute title is conferred by the subsequent administrative steps.

The learned State Counsel for the 3rd, 5th, and 7th Respondents, in the written submission, drew the attention of the Court to the case of *Rathansiri and others v. Ellawala and others*[62] and argued that this application is futile without quashing the Gazette notification 'P 10'. This was a case where a decision taken by the Transfer Appeal Board was approved and adopted by the Secretary to the Ministry of Tertiary Education. No relief was sought in respect of the decision made by the Secretary to the Ministry. In the circumstances, it was held that it would be futile to grant the relief prayed

[59] Section 22 of the RT Act.
[60] Section 33 of the RT Act.
[61] Section 37 (2) of the RT Act.
[62] [2004] 2 Sri L.R. 180.

for since it would still leave intact the decision made by the 4th Respondent. In fact, the above decision supports the Petitioner. If the registration reflected in 'P 13' and 'P 14' is not quashed, the registration will remain intact even if the declaration published in the Gazette 'P 10' is quashed.

The above proposition is further affirmed when Sections 58 and 59 of the RT Act are considered. Under Section 58, it is the registers and the other records that are rectified by the Registrar of Title. Under Section 60 also it is the register that the Court would order to rectify. The Gazette Notification published pursuant to Section 14 will remain as it stands.

Therefore, in my view, the Certificate of Title is the material document, that the Petitioner *inter-alia* has sought to quash. The Petitioner has sought to quash both Certificates of Title issued in the name of the 1st Respondent ('P 13') and the subsequent Certificate of Title issued in the name of the 2nd Respondent ('P14').

Furthermore, Lord Denning in the Privy Council case of, *Mcfoy v. United Africa Company Ltd*[63] stated that '*if an act in law is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expert it to stay there. It will collapse.'*

In *Leelawathie and another v. The Commissioner of National Housing and others*[64] His Lordship Sripavan J., reproduced the following observation made by His Lordship Sharvananda J., (as His Lordship then was) in the case of *Sirisena and others v. Kobbekaduwa, Minister of Agriculture and Lands*[65]*; 'there are no degrees of nullity. If an act is a nullity, it is automatically null and void there is no need for an order of the court to set it aside though it is sometimes convenient or prudent to have the court declare it to be so'.*

Once the registration is quashed[66], the Gazette notification would not have any force or avail.

[63] [1961] 3 AER 1169.
[64] [2005] 1 ALR 14 at. 18.
[65] 80 N.L.R. 182.
[66] 'P 14' and 'P 15'.

'P 14' and 'P 15' are signed by the 7th Respondent, a party to this case. In addition, the Petitioner has sought to quash the Title Investigation Report ('P 11') and the report submitted by the 4th Respondent ('P 12'). 'P 11' is the document on which the 3rd Respondent sought approval from the 4th Respondent to register a first-class title and the 4th Respondent has approved the same. Therefore, 'P 11' is the document that led to the registration of the first-class title in the name of the 1st Respondent. However, 'P 12', although it is not addressed to anyone, appears to be an internal report submitted by the 4th Respondent.

Conclusion

In light of the analysis made above in this judgment, I am of the view that the 3rd and 4th Respondents have violated the Rules of natural justice and the procedure laid down under the RT Act. Further, I am of the view the conduct of the Respondents is unreasonable and shocks the conscience of the Court. Accordingly, on the grounds of failure to adhere to the Rules of natural justice, impropriety of procedure, and unreasonableness I issue a writ of *certiorari* prayed for in paragraph (B) of the prayer of the Petition quashing the document marked 'P 11' and also writs of *certiorari* prayed for in paragraph (C) of the prayer of the Petition quashing the certificates of title marked 'P 13' and 'P 14'.

Parties shall bear their own costs.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL