

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

*In the matter of an application for a  
mandate in the nature of writ of  
Certiorari under and in terms of  
Article 140 of the constitution.*

Angappuly Radage Mettananda  
Chandrawansha  
Manandola,  
Kahawatta.

**PETITIONER**

**C.A. Case No. WRT- 0265/19**

**Vs**

1. Director,  
Plantation Management Monitoring  
Division,  
Ministry of Plantation,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
  
2. Jayaweera Mudiyanseelage Chandrika  
Priyadarshani.  
Plantation Management Monitoring  
Division,  
Ministry of Plantation,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.

3. Hon. Naveen Dissanayake.  
Minister of Plantations,  
Ministry of Plantation,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.

3(a). Hon. Ramesh Pathirana.  
Minister of Plantation Industries and  
Export Agriculture,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.

4. Secretary,  
Ministry of Plantation,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.

5. Agalawatta Plantation PLC.  
No. 19, Dudley Senanayake Mawatha,  
Colombo 8.

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

### **RESPONDENTS**

**BEFORE :** **M. T. MOHAMMED LAFFAR, J**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** Senaka De Saram, with Nirosha Bandara, and Aruna Jayathilake, for the Petitioner.  
Zehri Zain, DSG, for the 1<sup>st</sup> to 4<sup>th</sup> and 6<sup>th</sup> Respondents.  
Kapila Liyanagamage, instructed by F.J and G. De Saram for the 5<sup>th</sup> Respondent.

**DECIDED ON:** 31.10.2023

## **ORDER**

### **WICKUM A. KALUARACHCHI, J.**

The petitioner has filed this application seeking a writ of certiorari quashing the ejectment notice. (Filed with the petition marked P-21(D)). The ejectment notice has been issued in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979.

The petitioner filed the petition dated 12<sup>th</sup> August 2023 requesting to substitute the wife of the petitioner in place of the deceased petitioner. The learned State Counsel appearing for the 1<sup>st</sup> to 4<sup>th</sup> and 6<sup>th</sup> respondents, informed the court that the State has no objection for the substitution. The learned Counsel for the 5<sup>th</sup> respondent filed a statement of objections regarding the substitution. This order has to be made whether the application for substitution will be allowed or not.

A preliminary objection was raised on behalf of the 5<sup>th</sup> respondent that the writ application ought to be dismissed, as the deceased petitioner has failed to file a Memorandum under and in terms of Part VI of the Court of Appeal (Appellate Procedure) Rules 2018. In addition, the following objections have been taken on behalf of the 5<sup>th</sup> respondent:

- (a) After the death of the Petitioner, the 2<sup>nd</sup> Respondent could not take any further step pursuant to the Quit Notice marked P21(D) served on the deceased Petitioner under and in terms of Section 3 of the State Lands (Recovery of Possession) Act, No. 7 of 1979, which is impugned in this Writ Application.
- (b) After the death of the Petitioner, the 2<sup>nd</sup> Respondent could not prosecute the application for ejectment filed against the deceased Petitioner under and in terms of Section 5 of the State Lands

(Recovery of Possession) Act No. 7 of 1979, in the Magistrate's Court of Pelmadulla.

- (c) The State Lands (Recovery of Possession) Act No. 7 of 1979, has not provided for the substitution of a person named in an application for ejectment filed before the Magistrate's Court after the death of such person.

The relevant provision in respect of the Memorandum in terms of Part VI of the Court of Appeal (Appellate Procedure) Rules 2018 [Amendment to Court of Appeal (Appellate Procedure) Rules 1990 by the Addition of Part VI] reads as follows:

“1. Every petitioner who files any application under Article 138, 140 and 141 of the Constitution to the Court of Appeal shall file together with such application, a memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the applicant's death and/or change of status in cases where the application and/or appeal survives the death and/or change of status of the petitioner.”

According to the aforementioned rule, when the writ application was filed, the petitioner should have filed a Memorandum nominating at least one person as his legal representative for the purpose of prosecuting the application in the event of the petitioner's death. Rule 3 of Part VI states that “If the petitioner does not file such a memorandum, the court may dismiss the application in the event of the death of the petitioner or the change of status of the petitioner.” It is to be noted that what is stated in Rule 3 is “the Court may dismiss the application”. Therefore, it is apparent that the court has the discretion to dismiss the application for not filing

the memorandum with the application or to allow the application to be proceeded effecting the substitution. As the issue involved in the application is to eject the petitioner and his dependents from the land that they possessed, I decide that it is proper to go into the merits of the application and determine the said issue. Accordingly, I hold that the application should not be dismissed for the reason of not filing a memorandum.

The 5<sup>th</sup> respondent has raised the other objections on the basis that the writ application does not survive after the death of the petitioner. The following objections have been raised in the statement of objections:

- No further steps could be taken on the quit notice served on the deceased petitioner after the death of the person to whom the notice was served.
- The 2<sup>nd</sup> respondent could not prosecute the application for ejectment filed against the deceased petitioner in the Magistrate Court of Pelmadulla after his death.
- In an application for ejectment, the State Lands (Recovery of Possession) Act has not provided for the substitution after the death of the person named in the application.

Now, I proceed to deal with the above objections. The ejectment notice marked P-21(D) reads as follows:

අස් කිරීමේ දැන්වීම

රජයේ ඉඩම් (සන්නකය ආපසු ලබා ගැනීමේ) පනතේ කාර්ය සඳහා නිසි බලධරයකු වූ වැවිලි කර්මාන්ත අමාත්‍යාංශයේ වැවිලි කළමනාකරණ අධිකාරණ අංශයේ සහකාර අධ්‍යක්ෂිකා ජයවීර මුදියන්සේලාගේ වන්දිකා ප්‍රියදර්ශනී වන මම අංගප්පුලි රදාගේ මෙන්තානන්ද වන්දුවංශ වන ඔබ මෙහි වූ උපලේඛනයේ විස්තර කර ඇති රජයේ ඉඩමෙහි අනවසරයෙන් පදිංචිව සිටින බව මාගේ මතය හෙයින් එම පනතේ 3 වන වගන්තියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාර,

(අ) ඔබේ යැපෙන්නන් කිසිවෙකු වෙතොත් ඔවුන්ද සමග ඒ ඉඩම අත්හැර යන ලෙස; සහ

(ආ) ඒ ඉඩමේ නිරවුල් සන්තකය 2018.01.30 වන දින හෝ එදිනට පෙර මා හට හෝ වටාපොත වතුයායේ, වතු අධිකාරී වතුර මාලේවන මහතා වෙත හෝ ඔහුගේ අනුප්‍රාප්තිකයකු වෙත භාරදෙන ලෙස අංගප්පුලී රදාගේ මෙත්තානන්ද වන්දුවංශ වන ඔබට නියම කරමි.

(Emphasis added)

It is apparent from perusing the above ejection notice that the 2<sup>nd</sup> respondent has filed an application in the Magistrate Court of Pelmadulla to eject not only the deceased petitioner but also all of his dependents. Hence, it is clear that an order could be obtained in the Magistrate Court case to eject the dependents of the deceased petitioner and get back the vacant possession of the land to the State even after the death of the petitioner. Therefore, after the death of the petitioner, this writ application, which was filed to obtain an order quashing the quit notice, survives for the dependents. To obtain the aforementioned relief, the substitution has to be made, and substitutes must proceed with the application.

For the foregoing reasons, I overrule the objections taken on behalf of the 5<sup>th</sup> respondent. The application to substitute Kiribathgalage Champika Priyadarshani, the wife of the petitioner in place of the deceased petitioner is allowed. No costs.

**JUDGE OF THE COURT OF APPEAL**

M. T. Mohammed Laffar, J

I agree.

**JUDGE OF THE COURT OF APPEAL**