

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

In the matter of an application for order in the nature of Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ranil de Silva  
No, 5/6, Capitol Residencies, 65,  
Dharmapala Mawatha,  
Colombo 7.

**CA - Contempt of Court**  
**Application No.CA/COC/10/2016**  
**CA(Writ) No.155/2014**

**Petitioner**

**Vs.**

1. Director- General  
Coast Conservation and Coastal Resource  
Management Department 4<sup>th</sup> Floor,  
Ministry of Fisheries Building,  
New Secretariat, Maligawatta,  
Maradana,  
Colombo 10.
2. Gamini Hewage  
Acting Director Coastal Resource  
Management Division Coast Conservation  
and Coastal Resource Management  
Department 4<sup>th</sup> Floor,  
Ministry of Fisheries Building,  
New Secretariat, Maligawatta,  
Maradana,  
Colombo 10.
3. Poojitha Prabath Weerawardana  
No.3 85 B, Galle Road,  
Kosgoda

**Respondents**

**Before:** **N. Bandula Karunarathna J. P/CA**

**&**

**M. Ahsan R. Marikar J.**

**Counsel:** Avindra Rodrigo, PC with Kasuni Jayaweera, AAL for the petitioner

Amasara Gajadeera, S.C. for the 1<sup>st</sup> and 2<sup>nd</sup> accused-appellants  
Palitha Kumarasinghe, PC with Harith De Mel, AAL instructed by  
Sanath Wijeratne, AAL for the 3<sup>rd</sup> respondent

**Written Submissions:** By the petitioner – 04.07.2023

By the respondent – 05.07.2023

**Inquiry on:** 07.06.2023

**Decided on:** **30.10.2023.**

**N. Bandula Karunarathna J. P/CA**

The petitioner in the present Contempt of Court matter, instituted a Writ Application bearing No. CA (WRIT) 155/2014 before this court in terms of the petition and corresponding affidavit dated 28.05.2014. The petitioner in the said Writ Application *inter alia*, sought a mandate in the nature of a Writ of Certiorari to quash a development permit issued by the, then Acting Director of Coastal Conservation and Coastal Resource Management Department, to the 3<sup>rd</sup> respondent. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have been discharged from those proceedings, under Section 14 of the Coast Conservation Act No. 57 of 1981 as amended.

The said development permit was issued by the Acting Director of Coastal Conservation and Coastal Resource Management Department. The petitioner says that it permitted the construction of a two-storey Ayurvedic Centre (SPA) within the coastal zone at a 20-meter distance from the permanent vegetation line. The petitioner urged that the development permit ["X-3"] was issued in violation of the objectives, policies and criteria set out in the Coastal Zone Management Plan 1997 and as such the said issuance of the development plan was *ultra vires* on the powers conferred upon the Director General of Coastal Conservation and Coastal Resource Management Department.

In the said Writ Application, the petitioner *inter alia* prayed for;

- (a) a mandate in nature of a Writ of Certiorari to quash the purported permit issued by the Acting Director of Coastal Conservation and Coastal Resource Management Department ["X-3"];

- (b) an interim order restraining the respondent and his servants, agents and employees from engaging in any development activity in whatever form but not limited to any activity likely to alter the physical nature of the coastal zone in any way and including the construction of the buildings and works, the deposit of water or other material from outfalls, vessels or by other means, the removal of sand, sea shells, natural vegetation, sea grass and other substances, dredging and filling, land reclaiming and mining or drilling for material, pursuant to the purported permit marked as 'P23' until the final determination of this application.

The said Writ Application was supported before this Court on 26.06.2014 and having heard submissions of counsel for the petitioner, this Court directed that notice be issued to the respondents. The petitioner also reserved the right to support an interim relief prayed for in the petition, in the event the necessity so arose.

Thereafter, by motion dated 22.01.2015 the petitioner moved to support the application for the interim order prayed for in the petition as the respondent was continuing to carry out construction activities relating to the development permit which was sought to be quashed by the petitioner through the said Writ Application. An Inquiry in respect of the said application for the interim order as prayed for in the petition was held on 25.03.2015, and 19.06.2015.

This Court issued the interim order prayed for in the petition, subject to the following conditions;

- a) The 3<sup>rd</sup> respondent who is the respondent now, in these contempt proceedings is not permitted to carry out any further construction or development work until the final determination of this case, and;
- b) If the 3<sup>rd</sup> respondent has already obtained the Certificate of Conformity for the construction in question, he is permitted to carry on with the business he is permitted to do until the final determination of this case.

On or about 10.09.2015, the respondent preferred an application to this Court seeking permission to carry out four (4) items of work, which the respondent stated was necessary to carry on his business of an Ayurvedic Spa. They are namely;

- i. the final painting work;
- ii. fixing of electrical fixtures and fittings;
- iii. tiling work for bathroom floors in the upstairs rooms;
- iv. fixing of window panes for window frames already fixed.

The learned Counsel for the petitioner in the Writ Application objected to the said application of the respondent to vary the interim order issued by this Court, however, taking cognizance of, *inter alia*, the fact that the respondent appeared to have obeyed the order of Court and stopped construction as at that date, Court by an order dated 05.11.2015 permitted the respondent to continue with his work limited only to the four areas referred to in the aforesaid motion dated 10.09.2015.

The respondent was further directed by this Court not to violate any of the conditions beyond the areas that the Court had permitted by the said order until the final determination of the action. The petitioner learned that the respondent was continuing and carrying out construction and development work, including the construction of a new structure atop the existing building,

on the pretext of carrying out permitted construction work, and thereby was acting in violation of the orders of this Court. Learned President's Counsel for the petitioner argued that the said conduct of the respondent was in Contempt of Court. Therefore, the petitioner filed this Contempt of Court application annexing thereto, evidence of the conduct of the respondent, which was in violation of the then operative interim order and invoked the jurisdiction of this Court by petition and affidavit dated 04.08.2016.

Having considered the submissions made on behalf of the petitioner and upon perusing the evidence produced before the court, this Court issued a summons to the respondent on 03.10.2016. The respondent having entered an appearance before this Court, filed its statement of objections dated 23.01.2017 and raised several preliminary objections against the maintainability of the application of the petitioner.

The petitioner says that the said writ application was taken up for argument before this Court and by judgment dated 24.11.2022, it was refused to be granted a mandate in the nature of writ of certiorari as prayed for in the petition and dismissed the application of the petitioner for reasons set out in the said judgment. The petitioner submits that the petitioner has preferred a special leave to appeal application to the Supreme Court seeking to impugn the said judgment by case bearing No. SC/SPL/LA/07/2023 and the matter is scheduled to be taken up for support on 22.11.2023.

Pursuant to the judgment of the said writ application, the petitioner informed this Court that it is desirous of maintaining this contempt of court application filed in relation to the violation of an order granted by this Court when such interim order was operative and binding upon the respondent. When the matter was taken up before this Court on 07.06.2023, the Court noted that the respondent had raised certain preliminary objections, and therefore, the parties were directed to file their respective written submissions in relation to the said preliminary objections and the matter was reserved for order.

The respondent has alleged that the petitioner has obtained an order from this Court to issue a summons to the respondent;

- i. by making false averments in the petition;
- ii. by fraudulently suppressing material facts and misrepresenting material facts;
- iii. by misleading this Court;
- iv. without *prima facie* satisfying this Court that the alleged offence has been committed by the respondent.

The respondent has sought to substantiate the allegations, broadly, by insinuating that the petitioner suppressed from this Court a photograph filed by the respondent along with his statement of objections filed in the said writ application, which is reproduced by the petitioner by annexing the same to the statement of objections filed in these proceedings, marked as "R3", which according to the respondent demonstrates that the water tank structure constructed by the respondent. This was challenged by the petitioner as the contemptuous act, in fact, existed prior to the grant of the interim order on 19.06.2015. The respondent alleges that the petitioner.

Intentionally suppressed the said photograph by only attaching the statement of objections of the respondent to the petition of the petitioner without its annexures.

It is important to note that the petitioner vehemently denies such false accusation and demonstrates the good faith and good conduct of the petitioner as follows;

- i. The petitioner annexed the statement of objections filed by the respondent in the said writ application, to the petition in these proceedings, marked as "X-5";
- ii. The documents attached thereto were not separately attached as the entire case record of the said writ application, including the photograph "R3", were annexed as part and parcel of the petition, so as to not burden this brief by duplication of documents;
- iii. This Court would no doubt appreciate that the said photograph annexed to the statement of objections of the respondent filed in the said writ application marked as "3R15(c)", though is not given a separate marking, is very much a part of the record, which was tendered to the Court on 29.09.2016, well prior to the filing of the statement of objections by the respondent, on 23.01.2017.
- iv. Accordingly, the respondent's contention that the said photograph marked as "R3" was intentionally suppressed by the petitioner, is a complete falsehood.

The learned President's Counsel for the petitioner submits that such admission on the part of the respondent that the photograph "R3" depicts the existence of the water tank tower prior to the interim order granted by this Court in fact strengthens the application of the petitioner. As per the photograph, the structure of the water tank appears to be a structure constructed from ground level upwards. As shown in "R3" it appears that at the time this photograph was taken, which as claimed by the respondent, is prior to the grant of interim order, the water tank structure has surpassed the ground floor as well as the first floor and reinforcement bars can be seen protruding from atop of the structure for further constructions. The learned Counsel for the petitioner argued that the status of the building as depicted in the photograph marked as "R3" is similar to the nature of the building depicted in the photograph annexed to the petition in these proceedings, marked as "X-1000". At the time the petitioner obtained the interim order, the water tank structure was in existence.

It is important to note that the petitioner has not taken the position in these proceedings that the entire structure of the water tank was constructed by the respondent subsequent to the interim order. It is the position of the petitioner that the said structure of the water tank was further developed and constructed by the respondent, in violation of the orders granted by this Court. Even after the variation of the interim order, the respondent was only allowed to engage in four identified items of work, namely, final painting work, fixing of electrical fixtures and fittings, tiling work for bathroom floors in the upstairs rooms and fixing of window panes for window frames already fixed.

Learned Counsel for the petitioner submits that further construction or completion of the water tank structure is not among the permitted items of work. The Court order is as follows;

"The Court has permitted him to operate the business he is permitted to do but he complains that he is not in a position to commence operation without completing the said work which in our view are only final touches but cannot be considered as major construction work.... Therefore, after considering all the submissions made by counsel for all the parties Court decides to permit the 3<sup>rd</sup> respondent to continue with his work only limited to the four areas, he has referred to in his motion dated 11.09.2015 in order to commence operation of his trade or business."

The respondent has admitted that "R3" depicts the status of the building prior to the grant of interim order, then subsequent to the variation of the order on 05.11.2015, the respondent was only permitted, to complete final finishing work, including plastering and painting work of the water tank structure.

The petitioner contended that the respondent is seeking to rely on this "photograph - R3" to mislead this Court by deducing a wrong interpretation thereto in order to insinuate that the water tank structure was completed prior to the issuance of the interim order, when in fact, such is false. Learned President's Counsel for the petitioner says that in the photograph "X-10(I)", which is similar to "R3" the building is not plastered or painted, and as far as the water tank structure is concerned, only one set of pillars are constructed above the slab level of the 1<sup>st</sup> floor supported by a slab and reinforcement bars atop. However, the photograph "X-10(II)" depicts a plastered and painted building with two levels of pillars atop the water tank structure and reinforcement bars.

The petitioner submits that the water tank structure depicted in "R3" is completely different to the structure shown in the 3<sup>rd</sup> photograph marked as "X-10(II)", in as much as the photograph submitted by the petitioner clearly shows a completed structure, whereas "R3" only depicts a half-built structure. The petitioner has also annexed to the petition the photographs ["X-11"] taken on 09.05.2016, which depicts the fully completed structure of the water tank;

The petitioner submits that if the position of the respondent is that the photograph "R3" depicts the status of the building prior to the grant of the interim order, on his own showing the said water tank structure was an incomplete structure prior to the grant of the interim order. This Court did not allow further construction of the building other than to complete the finishing touches of the building, which did not include the completion of the water tank structure. The petitioner further argued that the respondent by completing the said structure of the water tank, acted in blatant violation of the orders granted by this Court.

The respondent has also sought to elaborate on his allegation of suppression by alleging that the photograph marked as "X-10(I)" and the two photographs marked as "X-10(II)" are undated and that there is no proof as to when the photographs were taken, and that there is no affidavit from the photographer as to the admissibility or genuineness of the photographs. The petitioner cannot deny that the said photographs are undated. However, the petitioner submits that "X-10(I)" depicts the status of the building prior to the interim order and that photographs marked as "X-10(II)" depict the gradual construction of the water tank structure, for the following reasons;

- a) "X-10(I)" depicts a building with unplastered walls together with a half-built water tank structure, which is similar to "R3" annexed to the statement of objections of the respondent filed in the said writ application dated 02.02.2015.
- b) The petitioner as pleaded above, moved to support the application for interim order prayed for in the petition of the said writ application, by motion dated 22.01.2015 photographs depicting the construction work carried out by the respondent at that time, prior to the grant of an interim order.
- c) Court attention is specifically drawn to pictures shown on pages 5 and 7 of the documents annexed to the motion marked as "X-6", copies of which are reproduced.
- d) The said pictures clearly depict a building with unplastered walls, covered with safety nets and with a half-built water tank structure, that is identical or very similar to "X-10(I)".
- e) The petitioner accordingly submits that the similarities as mentioned earlier in the pictures are sufficient to prove that the photograph marked as "X-10(I)" was in fact taken prior to the issuance of the interim order.
- f) Pursuant to filing the said pictures and supporting the application for an interim order, by order dated 19.06.2015, the respondent was prevented from carrying out any further construction and development work until the final determination of the said writ application.
- g) It is only upon the variation of the interim order on 05.11.2015, that the respondent was permitted to carry out the finishing touches of the building including painting work, fixing of window panes and other permitted items of work.
- h) Accordingly, pictures with plastered walls could only exist after 05.11.2015.
- i) Even if the said photographs marked as "X-10(I) and (II)" are disregarded, on the respondent's own showing, "R3" depicts the status of the building prior to the grant of interim order and photographs marked as "X-11" which have not been objected to by the respondent depict the status of the building as at 09.05.2016, while the orders granted by this Court were still in operation.
- j) Ex facie, "R3" depicts a half-built water tank structure whereas "X-11" depicts a completed water tank structure.
- k) Placement of scaffoldings around the structure further strengthens the position that the construction and development work was ongoing at the time the photographs were taken, namely on 09.05.2016.
- l) The petitioner also submits that the petitioner's affidavit annexed to the petition confirms the veracity of the photographs produced therewith, as does the affidavit marked as "X-12" which supports the averments of the petition with regard to the continued construction work carried out by the respondent.

The petitioner submits that the petitioner has not suppressed any material facts pertaining to this application from this Court, in fact, it is the respondent who is in an attempt to mislead the court by inferring a wrongful interpretation to the photograph marked as "R3" and by attempting to create confusion in the minds of this Court. It is not set out in the statement of objections of the respondent that the Learned President's Counsel for the respondent also raised an objection in open court on a previous occasion that a charge sheet is not annexed to the petition and that a charge sheet was not served on the respondent.

However, as evinced by order dated 03.10.2016 of these proceedings, upon the application being supported by the petitioner, this Court directed the Registrar to issue summons on the respondent, and in pursuance of such order, the summons was served on the respondent, which specifies clearly that the respondent is required to answer to a charge of contempt committed against the authority of the Court by departing from and acting in violation of an order issued by the Court of Appeal. The details of the order which was violated by the respondent are also specified therein.

In Nawagamuwage Mahimhiratna Perera vs. Moragodage Sriyawathie Pinto C.A. Revision application No. 963/2002 (unreported) it was held by the Court of Appeal that "In contempt proceedings a formal charge as such is not necessary and what is required is that the gist of the accusation should have been made clear to the appellant... In case of contempt, the accuser is the court. The court has the power to issue a summons which shall state shortly the nature of the offence which may be regarded as the charge."

The petitioner further submits that summons served by the Registrar of this Court along with the petition, affidavit and documents annexed thereto clearly explains the nature of the offence and therefore, as per the aforesaid judgment, a formal charge sheet is not required to be tendered.

In a recent judgment, in V. Y. Sabaratnum vs. Ruwani Dharmawardena and Another CA/COC/0009/2019 decided on 14.12.2021, held that "A complainant is only required to tender the summons and the charge sheet if and when the Court decides to proceed with the application of a complainant in terms of Article 105 (3) of the Constitution. Therefore, it is not a pre-requisite that the summons and the charge sheet shall be filed along with the complaint. The petitioner submits that filing or serving a charge sheet is not a pre-requisite to the application and that the petitioner has followed the correct procedure and has at all times followed the orders given by this Court. "

The power of the Court of Appeal to punish for contempt of itself, whether committed in the court itself or elsewhere, as well as its power to punish for the contempt of any other court, tribunal or institution referred to in Article 105(1)(c) of the Constitution is enshrined in Article 105(3) of the Constitution.

Samarakoon, C.J., observed in Regent International Hotels Ltd. vs. Cyril Gardiner and Others [1978-79-80] (1) SLR 278 at page 286 as follows;

"The Supreme Court being the highest and final Superior Court of Record in the Republic and the Court of Appeal being a Superior Court of Record with appellate jurisdiction have all the powers of punishing for contempt, wherever committed in the Island *in facie curiae* or *ex facie curiae*."

The said writ application has been decided by this Court and by judgment dated 24.11.2022, reliefs prayed for by the petitioner have been refused by this Court. The petitioner further submits that the petitioner being aggrieved thereby has preferred an appeal to the Supreme



Court seeking to impugn the said judgment of the Court of Appeal. However, this contempt of court application was filed by the petitioner on 05.08.2016 when the interim order granted by the Court on 19.06.2015 and as varied by order dated 05.06.2015 was still in operation.

In the Regent International Hotels Ltd. (*supra*) judgment, it was held on pages 290 and 291 that "The fundamental rule is that an injunction remains operative until dissolved by the Court and the duty of obedience to it continues till it is dissolved. Until the enjoining order is dissolved on a proper application to the Court the duty of obedience exists. Any party who disregards it does so at his peril. Every act done in contravention of the enjoining order as long as it is operative constitutes a breach of it and therefore learned counsel for the petitioner submits that a contempt of court. No doubt there may be a series of such acts after the initial disobedience but this is a matter that may be taken into account in mitigation of sentence. As long as the enjoining order exists the party who has obtained it is entitled to make successive attempts to have it obeyed and obstructions of each of such attempts constitute an offence. To hold otherwise would in effect be, to hold that the enjoining order ceases to have any force after the initial disobedience and thereby the law and the Court that issue it will be brought to nought. If the contemnor is doubly vested, he has only himself to blame."

In Silva vs. Appuhamy 4 NLR 178, it was held that "an injunction granted by a competent court must be obeyed by the party whom it affects until it is discharged, and that disobedience can be punished as for a contempt of court, notwithstanding that it was irregularly issued."

It is important to note that in terms of Rule 2 of the Court of Appeal (Appellate Procedure) Rules, 1990, the Court of Appeal has the power to grant, in appropriate circumstances, a stay order, interim injunction or other interim relief, after notice and inquiry, and in cases of urgency even without such notice, provided the duration of the relief does not exceed two weeks.

Accordingly, the learned counsel for the petitioner argued that the said interim order as varied, was granted by a competent court and thus the respondent was duty bound to comply with and obey the said orders to the letter and his failure thereto amounts to contempt of this Court.

In Allianz Insurance Lanka Limited vs. K.A.N.W. Chathurangani and Another CA/COC 01/2021, the Court of Appeal emphasizes the importance of such obedience as maintaining the court's proper authority and efficiency since the credibility and efficiency of the entire judicial system is at stake."

In a recent judgment of Kahapola Arachchige Prabath Anurada Nilupul Fernando vs. Urban Council, Kesbewa & Others CA contempt 05/2018 decided on 08.11.2019:

"The law of contempt as a whole is concerned with the upholding of the due administration of justice, and perceptions the public ought to have regarding Courts of law. It is obvious that disregarding a court order not only deprives the other party of the benefit of that order but also impairs the effective administration of justice. The need for society to preserve the rule of law and protect the rights of its citizens as well as those of the State lies at the heart of contempt...."

In Upali Dharmasiri Welaratne vs. Wesley Jayaraj Moses SC Appeal No. 65/2003 decided on 27.05.2009, his Lordship Marsoof J. laid down the following as being the required elements for a finding of civil contempt; (1) the existence of an undertaking or order; (2) knowledge of the

undertaking or order; (3) ability to comply with the undertaking or order; and (4) wilful or contumacious disobedience of the undertaking or order.

The petitioner submits further, that as at the time of filing this application, an interim order granted by this Court preventing the respondent from engaging in further construction was in existence and was in operation. The respondent has had complete knowledge of the said interim order as he was a party to the said writ application who was legally represented in Court on all court hearings. The respondent was able to comply with the said interim order as he was in complete control of the said construction and as demonstrated above, he wilfully acted in a manner that is contumacious to the authority of this Court. The petitioner submits that it is an established principle of law that the rights of parties are determined as at the date of institution of action and accordingly the petitioner states that the petitioner is entitled to maintain this application as well as to the reliefs as prayed for in the petition.

The petitioner has presented a *prima facie* case of disobedience to an order of this Court and upon being satisfied therewith, the Court by order dated 03.10.2016 directed to serve summons on the respondent.

The learned President's Counsel for the petitioner argued that contrary to the false allegations of the respondent, the petitioner has not suppressed or misrepresented any material facts to this Court, in as much as the photograph marked as "R3" is annexed to the brief of this application and as elaborated above, photograph "X-10(I) 16 and (II)" in fact depicts the nature of the building as it was prior to the issuance of the interim order and other subsequent orders.

It is the respondent who is in an attempt to mislead this Court by making wrongful inferences to documents produced before this Court. The attention is specifically drawn to the variation order issued by this Court marked as "X-9", whereby, the Court was gracious to vary the interim order in a manner that allowed the respondent from carrying on his business and by placing utmost reliance on the fact that the respondent had not as at that time acted in violation of the interim order granted by Court. Therefore, the petitioner states that the respondent has completely abused the process of court by disregarding the authority of this Court.

The petitioner further submits that the preliminary objections raised by the respondent are nothing but false accusations, steeping with mala fide, with a view to avoiding pleading guilty for the charges of contempt and ought not to be entertained by this Court for being wholly frivolous and baseless. Therefore, the petitioner urges this Court to overrule the preliminary objections raised by the respondent and fix the matter for Inquiry. The petitioner also requests to grant costs to the petitioner.

Learned Counsel for the 3<sup>rd</sup> respondent on 03.10.2016, when the said matter was supported *ex parte*, believing the truth of the materials placed before this Court by the petitioner, the Court decided to issue summons on the 3<sup>rd</sup> respondent returnable on 23.11.2016. On that day namely, 23.11.2016, the 3<sup>rd</sup> respondent appeared before the Court and obtained time till 01.12.2016 as

he was not given sufficient time to plead. On 01.12.2016, the 3<sup>rd</sup> respondent submitted that a summons had been obtained by the petitioner by fraudulently, suppressing material facts and sought leave to raise preliminary objections and this Court allowed the 3<sup>rd</sup> respondent to file an objection on 30.01.2017.

The 3<sup>rd</sup> respondent filed on 24.08.2017 its objection together with documents marked "R 1" to "R 3" and the substance of the said objection was as follows;

- i. The petitioner has *ex parte* obtained summons in the nature of contempt of court by fraudulent material suppression and misrepresentation.
- ii. *Ex-facie*, the contempt petition that there was no *prima facie* material or evidence to have issued a contempt of court charge.

On 30.01.2017, the petitioner sought to file counter objections to the same and the Court granted time. On 16.03.2017, the petitioner filed his counter-objection in respect of the contempt matter. This Court, at the request of the 3<sup>rd</sup> respondent, fixed the matter for inquiry on the preliminary objection. The main application CA (Writ) 155/14 was argued and the application of the petitioner was dismissed by judgement dated 24.11.2022.

As the petitioner insisted that the contempt inquiry should proceed, this matter was taken up for inquiry on the preliminary objection of the 3<sup>rd</sup> respondent on 07.06.2023 and the parties agreed to file written submissions on the said matter and conclude the said inquiry by way of written submissions.

On 02.02.2015, the 3<sup>rd</sup> respondent filed his statement of objection in CA (Writ) application No.155/14 together with the affidavit and annexures and the 3<sup>rd</sup> respondent has produced a certificate of conformity issued by the local authority marked "3R16 " to confirm the completion of the construction of the building and also produced coloured photograph marked "3R15[e]" showing the building and its environment. This coloured photograph produced to this Court on 02.02.2015 shows the building and the water tower constructed by the 3<sup>rd</sup> respondent prior to 02.02.2015. Learned Counsel for the respondent submits that this is the same water tower which the petitioner alleges is a construction in violation of the interim order dated 19.06.2015 in this contempt proceedings.

The said tower is said to have been in construction from April 2015 until August 2016. On 22.01.2015, the petitioner made an application for an interim order preventing the 3<sup>rd</sup> respondent from doing any construction or occupying the building in the said writ application No. 155/14. The petitioner supported the application for the interim order. On 19.06.2015, this Court issued the interim order partially, preventing the 3<sup>rd</sup> respondent from making any further constructions but refused the interim order against the occupation of the building. On 14.09.2015, the 3<sup>rd</sup> respondent by way of motion, affidavit and documents sought a variation of the interim order, permitting him to make certain essential finishing work, with notice to the petitioner.

The learned counsel for the respondent says that it may be pertinent to point out that if as the petitioner alleges in its contempt petition the 3<sup>rd</sup> respondent from constructing a water tower from April 2015 onwards this would have been the opportune moment to say so. The petitioner did not take up the position that the 3<sup>rd</sup> respondent was acting in breach of the interim order. On 05.11.2015 this Court, having heard submissions of the petitioner and the 3<sup>rd</sup> respondent, made a variation by order marked "X9" and permitted the 3<sup>rd</sup> respondent to carry out certain constructions specifically mentioned in the order.

The Court in the inquiry pertaining to variation of the interim order has after hearing both parties made an order on 05.11.2015 marked "X9" that;

- a) the 3<sup>rd</sup> respondent has obeyed the decision of the Court (interim order dated 19th June 2015)
- b) there is no complaint of a violation of the interim order thereafter by the petitioner.

It is pertinent to note that the application for contempt dated 05.08.2016 in Paragraph 12 therein along with annexures `X10' to `X12' makes the allegation that the water tower construction in issue was constructed from April 2015 until 05.08.2016 being the date of the petition for contempt. On 08.02.2016, the petitioner filed his counter objections in CA Writ 155/14 and the petitioner has not made any complaint of violation of the interim order issued by this Court, in the said counter objections. This Counter affidavit is a part of the contempt application, without a marking.

On or about 03.08.2016, (14 months after the date of the interim order) the petitioner made this application for contempt of court against the 3<sup>rd</sup> respondent on the basis that the 3<sup>rd</sup> respondent was carrying out construction and development work, including the construction of a new structure atop of the existing building-water tower in violation of the interim order issued on 19.06.2015, from 02.04.2015.

In paragraph 12 of the petition for contempt of court, the petitioner pleaded that "The petitioner states that the 3<sup>rd</sup> respondent is, in fact, carrying out construction and development work including the construction of a new structure atop the existing building on the pretext of carrying on his "permitted business".

Thus, the material relied on by the petitioner is as follows;

- a) 3 undated photographs marked "X10[i]", "X10[ii] ", and "X10[iii]" showing the construction of the water tower as the photographs taken at the time the interim order was issued (i.e 19th June 2015) taken by "unknown" and "undisclosed" photographer.
- b) 2 photographs dated 09.05.2016 marked "X11" as the water tower constructed "later", said to have been taken by an "unknown" and "undisclosed" photographer.
- c) an affidavit marked "X12" from one Rajive Soyza, an employee of the petitioner at "Saffron & Blue Resort" owned by the petitioner, stating that “3 වන වගන්තියට, 2015 අප්‍රේල් 12 දින හෝ ඊට ආසන්න දිනක සිට එකී ගොඩනැගිල්ල මත කුළුණක් ඉදිකරමින් සිටින බව”

It was argued by the Learned President's Counsel for the 3<sup>rd</sup> respondent that he has been constructing a water tower from 02.04.2015 (prior to the interim order) till the date of the contempt charge made in August 2016. It is for a period of one year and 4 months. Which is unbelievable for a water tower. On 03.10.2016, when the said matter of contempt of court was supported, this Court was compelled to issue a summons for contempt of court on the 3<sup>rd</sup> respondent given the fraudulent misrepresentation of material facts. On 24.01.2017, the 3<sup>rd</sup> respondent filed its preliminary objection together with documents marked "R1" to "R3" and brought to this Court that the petitioner obtained the summons by fraudulent suppression of material facts and misleading the Court and moved to recall the summons and reject the contempt petition.

The said water tower was already constructed on or before 02.02.2015 as shown in the photograph marked "3R15(c)" to the statement of objections dated 27.01.2015 and also as 'R2' & "R3" to the statement of objections dated 02.02.2017 filed in respect of the contempt Inquiry.

Though the petitioner has produced the statement of objection of the 3<sup>rd</sup> respondent on 02.02.2015 in CA writ application No. 155/14 marked as "X5" together with his application for contempt, he has intentionally and fraudulently suppressed the said annexures to the statement of objection inclusive photograph marked "3R15[c]" from and the certificate of conformity marked "3R16" from this Court in the contempt application and falsely and fraudulently alleged that the 3<sup>rd</sup> respondent commenced the construction of the water tower from 02.02.2015 and continued construction after 19.06.2015. The interim order was issued by this Court when such a water tower is clearly shown in the photograph marked "3R15(c)" filed on 02.02.2015.

The learned counsel for the respondent submits that the water tower constructed by the 3<sup>rd</sup> respondent prior to 02.02.2015 is clearly shown in the photograph marked "3R15[c]" (Now marked "R2"/"R3"), submitted to this Court on 02.02.2015 and thus, the allegation that the 3<sup>rd</sup> respondent commenced the construction of the water tower from 02.04.2015 and continued after 19.06.2015 after the interim order is not true.

The falsehood of the allegation of contempt of the petitioner is more fully when one examines at face value the material presented with the contempt petition marked 'X10' to 'X12'. The petitioner has fraudulently suppressed the said photograph marked "3R15[c]" showing the water tower from this Court when he made this application for contempt of court and when he supported the application for contempt summons against the 3<sup>rd</sup> respondent on the basis that the 3<sup>rd</sup> respondent constructed the water tower after the interim order issued on 19.06.2015.

Whilst the main application proceeded the contempt of court application did not proceed with the consent of the parties and the main application was argued at length. On 24.11.2022 this Court dismissed the application for Writ No. 155/14, with costs. Accordingly, this Court fixed this matter for written submissions of both parties and reserved the order on the preliminary objection on 20.07.2023.

One main contention of the "3<sup>rd</sup> respondent is that the petitioner has materially suppressed and misrepresented facts in obtaining *ex parte* the contempt summons.

In the case of Alphonso Appuhamy Vs. Hettiarachchi 1973) NLR at 131,135 Justice Pathirana held that; rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination"

In the case of Walker Sons & Co. Ltd Vs. Wijayasena 1997 (1) SLR 293 the Court of Appeal dissolved an interim injunction obtained by the plaintiff upon finding that the plaintiff had suppressed material facts. Ismail J held as follows;

"A party cannot thereafter plead that the misrepresentation was due through inadvertence or misinformation or that the applicant was not aware of the importance of certain facts which he omitted to place before the court".

In the case of Namunukula Plantations Limited Vs Minister of Lands and Others 2012 (1) SLR 365 (SC), the Court held that; it is interesting to note that the Supreme Court of India has recently lamented in the course of its decision to in Dalip Singh Vs State of Uttar Pradesh (2010 (2) SCC 114, it was stated;

"on the increase in the number of cases in which parties have attempted to misuse the process of Court by making false or misleading statements or by suppressing the relevant facts or by trying to mislead the Court in passing an order in their favour. Making a pertinent observation on the state of affairs in India, the Court observed that for many centuries Indian society cherished two basic values of life. That is "satya "(truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily lives. Truth constituted an integral part of the justice delivery system which was invoked in the pre-independence era and the people used to feel proud to tell the truth in the Courts irrespective of the consequences. However, the post-independence period has seen drastic changes in our value system. Materialism has overshadowed all ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter from falsehoods misrepresentation and suppression of facts in the Court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means to achieve their goals, in order to meet the challenge posed by these new creed of litigants, the Courts have from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

"The above observation is not only of relevance to India, as it may apply with equal force to other nations, neighbouring as well as more distant, where there is a great need for the Courts to be more vigilant in their quest to ascertain the truth and to deal more strictly than they may have done in the past, with litigants whose deception or fraudulent conduct is detected. If any party invoking the discretionary jurisdiction of a Court of Law is found wanting in the discharge of its duty to disclose all material facts or is shown to have attempted to pollute the pure stream of justice, the Court not only has the right but a duty deny relief to such persons. It is, therefore, my considered opinion that this Court need not, and should not, answer any of the questions of which special leave to appeal is granted"

It is regrettably now a trend for certain litigants to invoke the contempt jurisdiction of courts on frivolous and malicious bids to impose pressure upon their adversary. When an innocent person is subject to a contempt charge, he is under tremendous pressure, and mental agony and his fundamental right to freedom and travel is curtailed as he is required to be present in Court personally at every hearing.

The learned President's Counsel for the 3<sup>rd</sup> respondent submitted that the petitioner is guilty of this very same tactic and in doing so has suppressed from Court material facts. On behalf of the 3<sup>rd</sup>

Respondent learned President's Counsel indicated that on 02.02.2015, prior to the interim order issued on 19.06.2015, the 3<sup>rd</sup> respondent filed his statement of objection dated 02.02.2015 in CA (Writ) application No.155/14 together with annexures and the 3<sup>rd</sup> respondent has produced a coloured photograph marked "3R15[c]" showing the water tower constructed by him prior to that date.

The 3<sup>rd</sup> respondent by his objections dated 27.01.2017 filed in this application for contempt, has drawn the attention of this Court by annexure -R2- and 'R3- therein to the clear fact that water tower construction had at least been completed by 02.02.2015. Although the petitioner has

produced the statement of objection of the 3<sup>rd</sup> respondent marked as "X5" together with his application for contempt, he has intentionally suppressed the said annexures, particularly the photograph marked "3R15 [c]" [R2 &R3] from this Court when he made contempt Charge against the 3<sup>rd</sup> respondent.

The water tower constructed by the 3<sup>rd</sup> respondent prior to 02.02.2015 is clearly shown in the photograph marked "3R15[c]"(now marked "R2" and "R3") submitted to this Court on 02.02.2015, which date is prior to the interim order dated 19.06.2015;

It was argued on behalf of the 3<sup>rd</sup> respondent that the petitioner has fraudulently suppressed the said photograph marked "3R15[c]" showing the water tower from this Court when he made this application for contempt of court and when he supported the application for contempt Summons against the 3<sup>rd</sup> respondent and went on to make false representation that the 3<sup>rd</sup> respondent commenced such construction from 12.04.2015 and continued with the construction even after the Interim order made on 19.06.2015. In the wake of the photograph marked 3R15(c) which was filed with the statement of objections dated 02.02.2015, this Court will take note of the false averments and suppression and misrepresentation of facts by the petitioner in paragraph 12 of his petition and affidavit for contempt and the photographs marked 'X10' and 'X 1 1 ' as well as the affidavit marked ' X I 2.' Thus, the petitioner has misled this Court when it supported *ex parte* for summons in the nature of contempt by misrepresentation and suppression of material facts.

The petitioner has also suppressed the fact that this Court in the order dated 05.11.2015 marked "X9" with the petition, this Court has specifically held that;

"....it is understood that the 3<sup>rd</sup> respondent had obeyed the decision of the Court and stopped constructing any work until to date. There is no complaint of any violation thereafter";

Thus, the petitioner in obtaining *ex parte* summons in the nature of contempt on the 3<sup>rd</sup> respondent has failed to draw this Court's attention to the fact that this Court has already made a finding by order dated 05.11.2015 that there is compliance of the interim order and there has been no complaint of any violation as at that date. It is common ground that though the petitioner alleged that the 3<sup>rd</sup> respondent continued with construction in violation of the interim order in the contempt petition, no such complaint was made when the 3<sup>rd</sup> respondent sought variation of the interim order by his Motion dated 14.09.2015 marked "X8".

Learned President's Counsel for the 3<sup>rd</sup> respondent further argued that the petitioner had enough opportunity to complain of any violation of the interim order when the 3<sup>rd</sup> respondent supported the motion dated 14.09.2015 marked "X8" and for obvious reasons, the petitioner did

not make any complaint. This is a material suppression of fact as the allegation of contempt in the contempt petition dated 05.08.2016 is that the 3<sup>rd</sup> respondent has been acting in violation of the order of the Court from April 2015 to August 2016. Thus, this material fact should have been drawn to the attention of this Court which heard the application for issuance of summons of contempt.

A further aspect of suppression and misrepresentation is as to the counter objections of the petitioner dated 08.02.2016, a copy of which was filed with the contempt petition, without

marking. What has been suppressed is the fact that the petitioner made no complaint whatsoever in the counter affidavit dated 08.02.2016 that the 3<sup>rd</sup> respondent was acting in violation of the interim order dated 19.06.2015.

The fact that the petitioner himself in the counter objections dated 08.02.2016 responds to photograph 3R15(c). The water construction tower photograph as of 02.02.2015 is now marked R2 and R31. The petitioner denies the photographs marked 3R15(a), 3R15(b) and 3R15(c) to the statement of objections, and states that the petitioner has placed considerable and abundant evidence before this Court which shows the adverse effects of the development activities carried out by the 3<sup>rd</sup> respondent in the area and to its natural habitat. Thus, this Court will take note and cognisance of the fact that the petitioner only made a bare denial of the 3<sup>rd</sup> respondent's photograph 3R15(c) and apart from that it can only be deemed that the petitioner did not deny the existence of the condition of the building as shown in the photograph as at 02.02.2015.

Thus, the petitioner himself does not in his pleadings in the main matter deny that the water tower was constructed at least by 02.02.2015 and the photograph was a "fabricated" one. It is gross fraudulent suppression and misrepresentation of facts to *ex parte* support for summons in the nature of contempt and state that the water tower construction commenced in April 2015 and continued until August 2016.

The learned counsel for the respondent says that the petitioner who is guilty of suppression or misrepresentation of material facts, is not entitled to any relief from the Court and the summons obtained by him must be recalled and the contempt application must be dismissed, *in limine*.

"If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty deny relief to such persons."

If a party to a suit is charged with contempt, as the contempt charges are essentially criminal in nature, such charges will entail adverse consequences to an accused person and therefore the court has to be very careful and mindful before issuing summons on contempt charges.

In the case of Jyaratne Vs Sirimavo Bandaranaike 69 NLR 184, the Supreme Court was called upon to consider an application for "Rule Nisi" for contempt of court against late Mrs. Sirimavo Bandaranaike and in the said case H.N.G.Fernando S.P.J. (as he was then) held that;

"The learned Deputy Solicitor-General appearing on notice from this Court has referred to the fact that for a long period, the practice of the Court has been that a Rule Nisi for contempt of Court is only issued if there is available evidence which can lead the Court to conclude that an offence appears to have been committed. In the instant case, the only

material which might lead to the opinion that the first respondent made the statements attributed to her is the newspaper report of a speech alleged to have been made by her."

The Supreme Court as far as back 1966 has held that it is the practice of the court to issue summons in contempt of court matters, if there is available evidence which can lead the court to conclude *ex-facie* that an offence appears to have been committed. In the circumstances, the court will not issue summons on the accused in contempt of court matters, unless there is cogent evidence which can lead the court to conclude that "offence appears to have been committed".



In the case of Media Image Vs Dissanayake 2006 (3) SLR 215, His Lordship Wimalachandra J. having considered several previous judgments and the applicability of the said judgments to contempt proceedings under the Civil Procedure Code held that;

"Considering the aforesaid judgments, it appears that, in contempt proceedings too, as in any other criminal case instituted in a Magistrate's Court, before issuing summons, the court has to be satisfied that the petitioner has disclosed sufficient grounds to proceed against the respondents."

"I am of the view that the principle laid down in the aforesaid cases shall apply to contempt proceedings. Therefore, the court, before issuing summons, must form an opinion as to whether sufficient grounds exist to issue summons under Section 793 of Civil Procedure Code"

"In the circumstances, I am of the view that the learned Judge erred when he held that whether the petition and affidavit disclose a contempt charge will be decided after the inquiry. The learned Judge by making the aforesaid order deviated from the legal position laid down in the above-mentioned cases."

The summons on contempt of court curtails the freedom of movement of the accused in that he is required to be personally present before the court every day of the hearing and in certain cases, the court has the power to impose bail on the respondent to secure his personal presence before the court. Thus, summons on contempt matters cannot be taken lightly and it will not be issued as a matter of course, merely because there is a complaint.

Also, in the case of Malani Gunarathne, Additional District Judge of Galle Vs Abeyasinghe 1994(3) SLR 196, the Court of Appeal held that when a private plaint is filed, section 139(1) of the Criminal Procedure Code requires a Magistrate to form an opinion as to whether there is "sufficient grounds" for proceeding against a person who is not in custody. At page 199, S.N.Silva J, P/CA (as he was then) held that;

"As regards the first ground urged by the learned President's Counsel it is seen that section 139(1) of the Code of Criminal Procedure Act empowers a Magistrate to proceed against a person not in custody against whom proceedings are instituted by way of a "private plaint" only where he is of opinion that there is sufficient ground for such action. The opinion has to be formed on verifiable material that is adduced before the Magistrate and which should be assessed objectively. It is obvious that the learned Magistrate required the complainant to give evidence given the need to form his opinion on the matter"

"Section 139 (1) requires a Magistrate to form an opinion as to whether there is sufficient ground for proceeding against some person who is not in custody. I am of the view that the opinion to be formed should relate to the offence the commission of which is alleged in the complaint or plaint filed under section 13 6(1). The words "sufficient ground" embraces both, the ingredients of the offence and evidence as to its commission. The use of the word opinion does not make the action of the Magistrate a purely subjective exercise. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the Magistrate should withstand an objective assessment. I am of the view that the proper test is to ascertain whether, on the material before the court, *prima facie*, there is sufficient ground on which it may be

reasonably inferred that the offence as alleged in the complaint or plaint has been committed by the person who is accused of it."

In the case of Dayawathie and Peiris v Dr S.D.M. Fernando 1988 (2) SLR 314, the Supreme Court held per Dr A.R.B.Amarasinghe J. that "This is also -the view of the Supreme Court of India, Hidayatullah, C.J., speaking for the Court. in Debabrata Bandopadhyay State of West Bengal said that;

"The question of whether there is contempt of court or not is a serious one the court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished .... Punishment under the law of contempt is called for when the lapse is deliberate and is in disregard of one's duty and defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."

In the case of Kahapola Arachchige Prabath vs Urban Council Kesbewa CA, contempt 5/18 decided on 06.09.2019 by His Lordship Justice Arjuna Obeysekera J held that;

"A charge of contempt of court is a very serious allegation to be made against a person, and once this Court issues summons, such person is treated as an 'accused' and penal sanctions follow if this Court finds such person 'guilty' of the charge. Hence, it is important that this Court exercises great caution prior to issuing summons on any person accused of being in contempt of court. The caution that should be exercised prior to taking action for contempt is reflected in the following passage from The Law of Contempt:

"Even if the contempt powers are sought to be invoked the courts will be reluctant to exercise their powers and namely, where an offender, having had proper notice of the order, has been shown beyond all reasonable doubt to have committed the contempt. In most cases, this will mean that the offender will have been shown to have deliberately or wilfully disobeyed the court order. So far as English law is concerned it is established that the standard of proof is that applicable to criminal cases, so that the breach must be proved beyond all reasonable doubt."

The attention of this Court is drawn to the objections dated 27.01.2017 raised by the 3<sup>rd</sup> respondent seeking that the contempt summons be recalled where the 3<sup>rd</sup> respondent pleaded that;

- a) the said photographs marked "XI ", "X101-ii J" and "XI °Big " are un-dated and there is no proof whatsoever that when the said photographs were taken and no affidavit from the photographer as to admissibility or genuineness of the photographs or the date the photograph were taken has been produced;
- b) however, when the purported application for contempt was supported on 03.10.2016, the petitioner falsely submitted that "the said construction carried out by the 3<sup>rd</sup> respondent as at the time the interim order was issued, is shown by document marked X10(1)",

- c) Rajive Zoysa, the deponent of the affidavit marked "X12" who is a paid employee of the petitioner has not made any complaint to the police or the Coastal Conservation Department at least from 19.06.2015. The date of the interim order marked "X7" alleging the construction in violation of the interim order;
- d) Rajive Zoysa, gave the purported affidavit on 03.08.2016, after a period of more than 14 months from the interim order of 19.06.2015.
- e) A purported affidavit of a paid employee of the petitioner made for the first time 14 months after the interim order, without any independent evidence to support his version cannot be valid admissible evidence to establish a contempt of court charge against the 3<sup>rd</sup> respondent.
- f) The petitioner's version is that from 02.04.2015, the 3<sup>rd</sup> respondent continued with the construction of the water tower and continued with the same even after 19.06.2015 while the application of the 3<sup>rd</sup> respondent was pending.
- g) The petitioner has not made such complaint of the alleged violation of the interim order when the 3<sup>rd</sup> respondent sought a variation of the interim order on 14.09.2015 and when this Court made a variation by order dated 05.11.2015 marked "X9" wherein this Court specifically held that;
 

"...it is understood that the 3<sup>rd</sup> respondent had obeyed the decision of this Court and stopped constructing any work until to date. There is no complaint of any violation thereafter";
- h) the petitioner did not make any such complaint of violation of the interim order when he filed his counter objection in CA Writ Application No. 155/14 on 08.02.2016; if the 3<sup>rd</sup> respondent had violated the interim order issued by this Court, the petitioner would have definitely pleaded that.

In this light, the attention of this Court is drawn to the fact that even if one considers the contempt petition of the petitioner *ex facie* there is insufficient material to *prima facie* be satisfied so as to issue a charge of contempt for the following reasons:

- a) Three photographs produced are not produced by the author or the photographer of the photographs and even the photographer was neither named nor disclosed.
- b) Thus, there is no evidence whatsoever of when the photographs were taken.
- c) The petitioner himself does not say he took the photographs. Neither does Rajive Zoysa the proponent of the affidavit marked X12 say that he took the photographs.
- d) In the said context the photographs bear no evidentiary value such as to satisfy the issuance of a contempt charge.

- e) There is no evidence, therefore, that can satisfy this Court that the water tower construction was carried on from April 2015 onwards on the material presented by the petitioner.
- f) The affidavit marked X12 of Rajeev Soysa is filed in support of the contempt petition in August 2016 and it merely states that the water tower construction was happening from April 2015 until August 2016, without producing any collaborative evidence as such as a police complaint.
- g) He said that the affidavit is clearly from an employee of the petitioner given in support of the petitioner's application for contempt of court summons and is not supported by any independent evidence.
- h) However, there is not one credible verification of that bare statement in the affidavit.

Any reasonable person would at least bring such a drastic allegation of contempt of court to some independent authority such as the police or the relevant local authority. The allegation in the petition is that from April 2015 to August 2016 the 3<sup>rd</sup> respondent violated the interim order of this Court and commenced and continued construction of a water tower. But no such complaint has been made within the said period of 14 months. In the said background it is drawn to the attention of this Court that there is no evidence *ex facie* that the petitioner to consider a charge of contempt against the 3<sup>rd</sup> respondent and the petitioner has failed to establish "sufficient grounds" *prima facie*, to proceed with the contempt charge.

Therefore, the 3<sup>rd</sup> respondent's request to discharge the 3<sup>rd</sup> respondent from the contempt proceedings and to recall the summons issued on one or more of the following grounds substantiated:

- a) That the petitioner is guilty of suppression and misrepresentation in obtaining *ex parte* summons in the nature of contempt of court.
- b) That the petitioner in any event has failed to establish at an acceptable threshold on its contempt petition that a charge should be issued and maintained against the 3<sup>rd</sup> respondent for contempt of court.

In these circumstances, this Court is of the view that the preliminary objection raised by the 3<sup>rd</sup> accused-respondent has merit and the petitioner has failed to make out a *prima facie* case against the 3<sup>rd</sup> respondent.

Therefore, the 3<sup>rd</sup> accused-respondent is discharged from the contempt proceedings and this Court directs the Registrar of the Court of Appeal to recall the summons issued against the 3<sup>rd</sup> respondent.

The preliminary objections are upheld and the 3<sup>rd</sup> accused-respondent is discharged from these contempt proceedings.

No order for cost.

**President of the Court of Appeal**

**M. Ahsan R. Marikar J.**

**I agree.**

**Judge of the Court of Appeal**