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

In the matter of an Application for the grant of mandates in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 34/2020

Warnakulasuriya Joseph Nishantha Peiris,
No. 67, Poruthota, Kochchikade.

PETITIONER

Vs.

1. Commissioner General of Excise,
   Excise Department of Sri Lanka,
   No. 353, Kotte Road, Rajagiriya.

2. W.M.M.B. Chansuriya,
   Deputy Commissioner of Excise (Revenue),
   Excise Department of Sri Lanka,
   No. 353, Kotte Road, Rajagiriya.

3. Superintendent of Excise (for Ja-Ela),
   Office of Superintendent, Ja-Ela.

4. Officer-in-Charge Excise,
   Excise Office, Negombo.

5. R.A.R. Ranasinghe,
   Excise Inspector, Excise Office,
   Negombo.

6. A.U. Pathirana,
   Divisional Secretary of Negombo,
   Divisional Secretary's Office, Negombo.

7. Assistant Commissioner of Excise (for Gampaha), Excise Office, Gampaha.

8. Superintendent of Excise (for Gampaha), Office of Superintendent, Gampaha.

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

10. Sangeetha Perara,
    No. 18/2, Duwa, Negombo.

RESPONDENTS

Before: **Arjuna Obeyesekere, J / President of the Court of Appeal**
Mayadunne Corea, J

Counsel: Kamal Suresh Perera for the Petitioner

Dr. Charuka Ekanayake, State Counsel for the Respondents

Argued on: 19th January 2021

Decided on: 15th February 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner states that by a notice published in Gazette Notification No. 2136 dated 9th August 2019 marked '**P1**', the 6th Respondent, the Divisional Secretary, Negombo called for tenders for the *purchase of the exclusive privilege of selling toddy by retail* in respect of eleven Taverns situated in the villages referred to in the Schedule to '**P1**'. The period of such *privilege* was from 1st January 2020 to 31st December 2020.

The procedure for the calling of tenders and the issuance of licenses to operate Toddy taverns is contained in the Regulations published in Gazette No. 207 dated 20th August 1982, marked '**1R1**'. In terms of '**1R1**' and the procedure explained by

the Petitioner, the purpose of calling for tenders is to enable persons who are desirous of operating taverns in the specified villages to submit a bid seeking the *privilege to sell* toddy. The person who submits the highest bid for this *privilege* is awarded the tender to operate the toddy tavern for the specified period.

The Petitioner states that in response to '**P1**', he submitted a tender for the Toddy Tavern No. 12 situated in the village of Pitipana. He states further that at the bid opening meeting held on 24th September 2019, it transpired that the Petitioner had submitted the highest bid and accordingly, the Petitioner had been declared the *purchaser of the privilege* for the sale of toddy in Pitipana for the year 2020. It is admitted that the Petitioner deposited a sum of Rs. 1,501,000, being the value of two months rent, as required by '**1R1**', with the 6th Respondent on the same date.

The Petitioner states that he thereafter rented out a building situated at premises bearing assessment No. 162/A, Duuwa, Thelegahalanda for the purpose of carrying out the tavern. He states further that improvements were effected to the said building as advised by the Officials of the Excise Department. By letter dated 7th November 2019 marked '**P5**', the Deputy Commissioner of Excise had informed the 6th Respondent as follows:

> "2019 වර්ෂය සඳහා රා තැබෑරුම් ගොඩනැගිල්ල අනුමත කිරීම
> අංක. 12 පිටපන රා තැබෑරුම - ඩබ්.පෝෂප් නිෂාන්ත පීරිස් මහතා
>
> ඉහත සඳහන් රා තැබෑරුම අංක 67, පෝරුතොට, කොව්වකඩේ හි පදිංචි ඩබ්.පෝෂප් නිෂාන්ත පීරිස් යන අය වෙත 2020.01.01 දින සිට 2020.12.31 දින දක්වා වලංගු වන පරිදි බලපත්‍රය නිකුත් කිරීම අනුමත කර ඇත."

In terms of '**1R1**', the process of calling for tenders and selecting the successful bidder has been entrusted to the 6th Respondent. Regulation 18(a) thereof provides as follows:

> "18. තැබෑරුම පිහිටුවිය යුතු ස්ථානය අනුමත කිරීම හා නියම දවසේ දී තැබෑරුම විවෘතකිරීම
>
> (අ) ප්‍රදානලාභියා විසින් වරප්‍රසාදය වලංගුවීම ආරම්භ වන දවසේ දී තැබෑරුම විවෘත කළ යුතුය.
>
> (ආ) ප්‍රදානලාභියාට යම් තැබෑරුමක් පිහිටුවීමට ස්ථානයක් ලබා ගත නොහැකි වූ විට ඒ සඳහා ස්ථානයක් සොයා දීමට දිසාපති බැඳී නොසිටිය යුතුය.

(ඇ) දිසාපතිගේ අනුමැතිය ඇතිව මිස අන් ලෙසකින් ප්‍රදානලාභියා විසින් කිසිම ස්ථානයක තැබෑරුමක් විවෘත නොකළ යුතුය. වරප්‍රසාදය වලංගුවීම ආරම්භ වන දවසට අඩු වශයෙන් දවස් දහ හතරකට කලින් රජයේ දිසාපති ගෙන් එකී අනුමැතිය ලබා ගත යුතුය."

It was the position of the learned State Counsel that once the *privilege* has been purchased by the successful bidder, he needs to secure the premises in which the Tavern is to be carried out, and that as required by Regulation 18(c) of '**1R1**', the successful bidder must obtain the approval of the 6th Respondent to operate the tavern at the premises selected by the bidder.

The Petitioner states that by a letter dated 9th December 2019 marked '**P6**', the 6th Respondent had requested him to be present at an inquiry scheduled for 18th December 2019 to consider the *objections that had been received from the public* to the said premises being used as a Toddy tavern. The Petitioner admits attending the inquiry. By a letter dated 30th December 2019 marked '**P7**', the 6th Respondent had informed the 1st Respondent, Commissioner General of Excise that the Toddy tavern cannot be located at the aforementioned premises due to public objections and that the Petitioner would have to find an alternative location. '**P7**' has been copied to the Petitioner.

The Petitioner had thereafter sought approval in respect of alternative premises. The 6th Respondent had once again initiated an inquiry which was attended by the Petitioner, to decide on the suitability of the premises. By letter dated 23rd January 2020 marked '**P8**', the 6th Respondent had once again informed the 1st Respondent that having inquired into the public objections, the new premises too is not suitable to carry out a Toddy tavern. '**P8**' has been copied to the Petitioner.

The 6th Respondent had thereafter issued a notice on 5th February 2020, marked '**P11**' calling for fresh tenders for the *purchase of the privilege* to sell toddy in Pitipana for the year 2020. Aggrieved by this decision of the 6th Respondent to call for fresh bids in a situation where he had already been awarded that privilege for the year 2020, the Petitioner filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision contained in '**P11**' to call for fresh tenders;

b) A Writ of Mandamus directing the 6th Respondent to issue a license to operate a Toddy tavern at Pitipana for the period specified in '**P5**' – i.e. from 1st January 2020 to 31st December 2020.

c) An interim order preventing the 6th Respondent from opening the bids received in response to '**P11**'.

While I would advert to this fact later, I must note at this stage that the Petitioner has not sought to quash the refusal of the 6th Respondent to approve either of the premises proposed by him, as reflected in '**P7**' and '**P8**'.

This Court, having heard the learned Counsel for the Petitioner and the Respondents had directed that the process initiated by '**P11**' be stayed until this Court makes a determination on the merits.

The learned State Counsel, while explaining the circumstances that led to the issuance of '**P7**' and '**P8**' took up the position that this application is futile, as the aforementioned relief relates to the license that was to be granted for the year 2020, which period has now passed.

I shall first consider the position of the 6th Respondent that led to the issuance of '**P7**' and '**P8**', as it is these two decisions that culminated in '**P11**'. While admitting that the Petitioner has been selected as the highest bidder, the 6th Respondent has submitted very correctly that the Petitioner is required by '**1R1**' to obtain approval from the Divisional Secretary for the premises where the Toddy tavern is to be carried out. Although it is no fault of the 6th Respondent, the procedure set out in '**1R1**' of selecting the successful bidder first and thereafter approving the premises where the tavern is to be carried out can give rise to frivolous and vexatious objections in the guise of public objections, instigated by those who failed to secure the privilege, as evidenced by the facts of this application.

The request of the Petitioner for approval of the premises, marked '**1R3**' had initially been circulated among the Officers of the Excise Department. As borne out by the entries made on the reverse of '**1R3**', the building had met the requirements of the

Excise Department. The 6th Respondent has thereafter called for a report from the Grama Niladhari of Pitipana by her letter dated 31st October 2019. By letter dated 2nd November 2019 marked '**1R6**', the Grama Niladhari had reported that while there are no places of religious worship or schools situated around the said premises, there are nonetheless objections from members of the public, namely that the said premises is situated at a central place of the town which is frequented by school children, and that there can be congestion in the area as the access road is narrow. The 6th Respondent had thereafter conducted the aforementioned inquiry on 18th December 2019, where, in the face of objections from members of the public, the Petitioner had undertaken to find alternative premises.

Once the Petitioner proposed alternative premises, the 6th Respondent had followed the same procedure adopted with regard to '**1R3**' and requested the Grama Niladhari by her letter dated 13th January 2020 marked '**1R9**' to report to her if there are any public objections. By letter dated 15th January 2020 marked '**1R11**', the Grama Niladhari had replied that no objections have been received *as yet* and that there are no schools or places of religious worship close to the alternative premises. However, the people in the area had objected on the basis that there is a Home for Elders as well as several Government buildings in the vicinity and that the consumption of alcohol will affect the peace in the area.

Having conducted an inquiry on 23rd January 2020 in the presence of the Petitioner, the 6th Respondent had sent '**P8**' to the 1st Respondent, with copy to the Petitioner, informing as follows:

> "එහිදී පැමිණ සිටි විරෝධතාකරුවන් නියෝජනය කරමින් පළමුවෙන්ම මෙම රා තැබෑරුම ස්ථාපිත කිරීමට යෝජිත ඉඩමට ඉදිරියෙන් පිහිටා ඇති වැඩිහිට නිවාසයේ පාලකතුමිය වන කන්‍යා සොහොයුරිය විසින් තම අදහස් ප්‍රකාශ කරන ලදි. එතුමිය විසින් මෙම රා තැබෑරුම දැම්මෙන් වැඩිහිට නිවාසයේ වැඩිහිටියන්ටත් දේවමෙහෙයන් පැවැත්වීමටත් බාධාවක් වන බවත් පාරේ ගමන් ගන්නා පාසල් දරුවන් මෙම ස්ථානයේ ගමන් කිරීමේදී මෙම රා තැබෑරුම නිසා වැරදි මාර්ගයන්ට යොමුවීමේ අවධානම වැඩි බවත් දන්වන ලදි.
>
> අනතුරුව පැමිණ සිටි විරෝධතාකරුවන් නියෝජනය කරමින් තව තිදෙනෙකු විසින් තම අදහස් ප්‍රකාශ කරන ලද අතර ඔවුන් විසින් සඳහන් කරනු ලැබුවේ මෙම ස්ථානයේ දැනට ඉතා සාමකාමීව පිවත්වන පිරිසක් සිටින බවත් රාජ්‍ය නිලධාරීන්, විශ්‍රාමිකයින් වැඩි දෙනෙකු සිටින බවත් මෙම ස්ථානය ආසන්නයේම පිහිටා ඇති ජනසදර ආයතනයේ මාතෘ සායනයද, ග්‍රාම නිලධාරී කාර්යාලයද, ධීවර පරීක්ෂක කාර්යාලයද පිහිටා ඇති අතර ඒ ආසන්නයේම සමුපකාරයද, වැඩිහිටියන්ගේ රැස්වීම් ශාලාවද, සමෘද්ධි බැංකුවද පිහිටා ඇති බවත්ය. තවද රා

තැබෑරුමට පැමිණෙන මිනිසුන් අගෝහනව හැසිරෙන බැවින් පාසල් යන දරුවන්, මාතෘ ස්ථානයට පැමිණෙන අය මෙම මාර්ගයේ ගමන් කිරීමෙදි ඔවුන්ගේ ජන ජීවිතයට මහත් හානියක් සිදුවන බවත් පවසන ලදි.

ඉහත කරුණු අනුව මෙම ස්ථානය රා තැබෑරුමක් පැවැත්වීමට නුසුදුසු බවට පරීක්ෂණ කමිටුව නිර්දේශ කරන ලද අතර අදාල පරීක්ෂණ වාර්තාවේ සහ විරෝධතා ලේඛණයේ පිටපතක් මේ සමග අමුණා ඇති බව කාරුණිකව දන්වම්."

The complaint of the learned Counsel for the Petitioner is that the *premises* have been approved by the Officers of the Excise Department, and that he had a legitimate expectation that he would be given the license by the 6th Respondent. He submitted further that the 6th Respondent ought to have issued the Petitioner with a license, and inquired into objections, if there were any, thereafter.

I must note at this stage that what the Officers of the Excise Department have approved is *the suitability of the building to carry out the tavern*. The Regulations '**1R1**' has placed upon the 6th Respondent the obligation to decide the suitability of premises, or in other words the suitability of the locality, to operate a tavern. These are two different decisions. In any event, the 6th Respondent cannot abdicate the obligation placed on her by '**1R1**' to the Officers of the Excise Department. Thus, I am unable to agree with the submission of the learned Counsel for the Petitioner that he had a legitimate expectation that the 6th Respondent would grant her approval for the premises proposed by the Petitioner on the strength of the approval granted for the building by the Officers of the Excise Department.

The Regulations '**1R1**' does not specify the steps that must be taken by the 6th Respondent in granting approval. The 6th Respondent appears to have followed the same procedure that is laid down in the Regulations made under the Excise Ordinance when issuing liquor licenses, by ascertaining whether there are any schools or places of religious worship in the vicinity, or whether there are any objections from the members of the Public. I cannot fault the 6th Respondent for doing so. However, in the absence of any schools or places of religious worship in the vicinity, the 6th Respondent ought to exercise caution in considering objections of the Public. I say this for two reasons. The first is that a toddy tavern by its nature must be located at a place where there is easy access to the public who wish to consume toddy. Locating a tavern at a place where there is no human habitation will not be of

any use to the public, the Petitioner or to the Government, who receives part of the revenue. The second reason is the possibility that a public protest can be instigated by an interested party, which I have observed is something that seems to be increasingly happening with regard to the issuance of liquor licenses. It is in this background that the allegation of the Petitioner that an unsuccessful tenderer was instrumental in the public protests and was in fact present at the two inquiries, becomes significant.

I have examined the decisions of the 6th Respondent contained in '**P7**' and '**P8**', and observe that the 6th Respondent has not considered the nature of the objections raised at the inquiries before her and/or whether they are credible and genuine. She has merely set out the fact that there are objections and that she cannot therefore issue a license. That is not the role expected of a decision maker. There has not been a consideration whether such objections have merit and whether the license can be granted, subject to certain restrictions, especially since the tavern can only be kept open during 11a.m to 2p.m and 5p.m to 8p.m.

As was said in **Huang v Secretary of State for the Home Department**,[1] although the public authority is better placed to investigate the facts and test the evidence, the Court cannot abdicate its responsibility of ensuring that the facts are properly explored*, 'and summarised in the decision, with care, since they will always be important and often decisive'.*[2]

Had the Petitioner sought a Writ of Certiorari to quash the decisions reflected in '**P7**' and '**P8**', I would certainly have considered the reasonableness of such decision in the light of the tests laid down in **Associated Provincial Picture Houses, Limited v. Wednesbury Corporation**[3] and later in **Council of Civil Service Unions v Minister for the Civil Service**[4], in spite of the Petitioner having consented to find alternative premises. However, in the absence of a complaint to that effect by the Petitioner to this Court, and in the absence of a Writ of Certiorari to quash such decision, the

[1] [2007] UKHL 11.
[2] See Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* (8th Edition, Sweet & Maxwell 2018), page 649.
[3] [1948] 1 KB 223 at 229.
[4] [1985] AC 374 at 410-411.

necessity for me to consider the reasonableness of the decisions reflected in '**P7**' and '**P8**', does not arise.

This brings me to the aforementioned relief that has been sought by the Petitioner. The learned State Counsel submitted that this application is futile as the period for which the license has been sought has expired. He submitted further that as the Writ of Mandamus is a discretionary remedy, this Court would not exercise its discretion where it would be futile to do so or where it would be an exercise in vain.

In **Selvamani vs Dr. Kumaravelupillai and Others**[5] the Petitioner challenged the decision to demote him to the post of Sanitary Labourer from that of Project Operator. After being demoted, the Petitioner had been sent on vacation of post, which order had not been challenged by him. In this background, Sisira de Abrew J held as follows:

> "*Even if this application of the petitioner is granted, he is not entitled to resume his earlier office in view of the order of vacation of post. Therefore, issuing a writ of mandamus in this case would be futile...In the case of Samsudeen vs. Minister of Defence and External Affairs,*[6] *L.B. de Silva J too remarked that "A writ of Mandamus will not be issued if it will be futile to do so and no purpose will be served*."

In **Ratnasiri and others vs Ellawala and others**[7] what was sought to be quashed was the decision said to have been made by the Transfer Board, to whom the power of transfer has been delegated by the Public Service Commission. However, the Public Service Commission had approved and adopted the decision of the Transfer Board and no relief has been sought against that decision. Justice Saleem Marsoof, P.C., P/CA (as he then was) held that it would be futile to grant the reliefs prayed for since it would still leave intact the decision of the Transfer Board.

[5] [2005] 2 Sri LR 99.
[6] 63 NLR 430.
[7] [2004] 2 Sri LR 180 at 208.

In **Samastha Lanka Nidahas Grama Niladhari Sangamaya & Others v. D. Dissanayake Secretary, Public Administration & Ministry of Home Affairs and Another**,[8] the Supreme Court held as follows:

> "*It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile. See, P.S. Bus Company Ltd., v Members and Secretary of Ceylon Transport Board 61 NLR 491, Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd., 2005 (1) Sri LR 89. The writ of mandamus is issued to enforce a public duty, and the writ was sought in this case by the Appellants directing the Respondents to pay to them the salary scales set out in Public Administration Circular No.06/2006 dated 25th April 2006 (P5). However, I fail to see how the Appellants could have succeeded in their prayer for a mandate in the nature of mandamus without having 1R3, which is a purported amendment to P5, and 1R4, which is a clarification issued by the Salaries and Cadres Commission based on the amendment 1R3, quashed through certiorari, a relief which they have failed to pray for in the lower court*."

While the Superior Courts of our country have over the years upheld the said submission of the learned State Counsel[9], it has also been held that futility will not prevent a Court from issuing a Writ if the issue is of public importance or where laws delays have given rise to the objection of futility.

In **Centre for Policy Alternatives (Guarantee) Limited and another vs Dayananda Dissanayake, Commissioner of Elections and others**,[10] the appellant had filed two applications in the Court of Appeal challenging the appointment of the 2nd Respondent as the Chief Minister of the Uva Province on the basis that their nominations were not valid insofar as their names were not included in the nomination papers put forward by their respective parties or groups for the Provincial Council Elections in question and therefore could not be nominated to fill a vacancy in the membership of the Council that occurred subsequently. After argument, this Court had dismissed the said applications. On appeal, it was

[8] SC Appeal No. 158/2010; SC Minutes of 14th June 2013; per Saleem Marsoof, P.C., J
[9] See P.S.Bus Company vs Ceylon Transport Board 61 NLR 491 at 495.
[10] [2003] 1 Sri LR 277 at 294.

contended that the 2nd Respondent had ceased to hold office as Chief Minister and that it would be futile to hear and determine the appeals. It was argued by the Appellants that if the objection of futility is now upheld, the Court of Appeal judgment will be regarded as authoritative and binding, in respect of all future vacancies in any Provincial Council, and the Commissioner would be bound to act on the basis of that judgment, thereby giving rise to fresh litigation.

Mark Fernando, J having considered the issue of futility, held as follows:

> "*In this case we are not faced with a situation in which the impugned decision or declaration had ceased to be operative before the litigation commenced (as in Punchi Singho v Perera,[11]) or where an order for relief might be futile because the official to whom it was directed had lawful authority to revoke it (as in Ramaswamy v Moragoda[12]). On the contrary, it is the law's delays which have given rise to the objection of futility. In Sundarkaran v Bharathi,[13] the petitioner prayed for certiorari to quash the refusal to issue him a liquor license for 1987 and for mandamus to grant him that license. In September 1987 the Court of Appeal dismissed the application. In November 1988 - long after the end of the relevant year - this Court set aside the judgment of the Court of Appeal, quashed the decisions of the respondents, and ordered that the* ***Respondents should make due inquiry upon its merits in regard to any future application*** *which the Petitioner might make for a liquor license. Amerasinghe, J, observed that the Court would not be acting in vain, and that quashing the decision not to issue him a license for 1987 and requiring that he be fully and fairly heard before a decision is arrived at with regard to any future application would not be a useless formality*."

Mark Fernando, J held further that "*this Court would not be acting in vain in setting aside the judgment of the Court of Appeal, as it is in the public interest that the*

[11] 53 NLR 143; An application for a mandate in the nature of a Writ of quo warranto does not lie where the respondent to the application has already resigned from the office in respect of which the application is made and no advantage will be gained by the issue of the Writ.

[12] 63 NLR 115. A Writ of mandamus directing that a visa be granted will not be issued where the Controller of Immigration and Emigration has the power to cancel the visa as soon as it has been issued. The respondent is thus able to render ineffective any mandate requiring him to issue a visa, and for that reason, it would be futile to issue the Writ.

[13] [1989] 1 Sri LR 46.

Commissioner, political parties, independent groups, candidates and voters should know with certainty the procedure for the filling of vacancies in Provincial Councils."[14]

It is clear from the above judgments that the facts and circumstances of each case have been taken into consideration in deciding whether a Writ should issue or not, and that it is difficult to lay down a general rule. I must say that while I am reluctant to exercise the discretion vested in this Court where it would be futile to do so, it would be open to this Court to grant relief in any case in which the facts and circumstances warrant such a course of action.[15]

During the course of the argument, it was submitted that fresh bids have been called to issue licenses for 2021. Hence, quashing the notice '**P11**' by which fresh bids were called, for the year 2020, is futile. Similarly, a Writ of Mandamus directing that the license for 2020 be issued is also futile. Hence, I agree with the submission of the learned State Counsel that granting of any relief would be an exercise in vain. On this ground too, the Petitioner's application must fail.

I must reiterate that had the Petitioner sought a Writ of Certiorari to quash the decision of the 6th Respondent reflected in '**P7**' and '**P8**', I would certainly have considered the reasonableness of the decision of the 6th Respondent in the light of the failure on the part of the 6th Respondent to consider the nature of the objections and act objectively.

The failure to do so on the part of the Petitioner however does not prevent me from following the judgment of Justice Amerasinghe in **Sundarkaran v Bharathi**,[16] although with a slight variation. I accordingly direct that should the Petitioner make an application in the future seeking approval for premises to locate a toddy tavern, and assuming there are objections from the members of the public, the 6th Respondent shall consider such objections upon its merits and thereafter arrive at a decision which is reasonable.

[14] The above decision has been cited with approval by Marsoof, J in University of Peradeniya vs. Justice D.G. Jayalath, Chairman University Services Appeals Board and Others 2005 (3) Sri LR 337.
[15] Vide Mendis, Fowzie and Others Vs. Goonawardena and G.P.A. Silva 1978-79 (2) Sri LR 322 at page 357; Yatawara vs Sarath Ekanayake and Others [CA (Writ) Application No. 691/2009; CA Minutes of 1st February 2019].
[16] [1989] 1 Sri LR 46.

There is one final matter that I must advert to. The Petitioner has complied with Regulation 10 of '**1R1**' and made the deposit. As the failure to operate the Toddy tavern cannot be attributed to the Petitioner, the deposit made by the Petitioner by '**P3**' shall be refunded by the Respondents within three months from today.

Subject to the above, the application of the Petitioner is dismissed, without costs.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal