

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

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

CA (Writ) Application No. 51/2021

Manodara Aacharige Chaminda Sugath,
Chairman,
Ampara Urban Council,
Ampara.

PETITIONER

Vs.

- 1) Anuradha Yahampath,
Governor, Eastern Province,
Governor's Secretariat,
Lower Road, Orr Hill,
Trincomalee.
- 2) N. Manivannan,
Commissioner of Local Government,
Department of Local Government,
Kanniya Road, Varothayanagar,
Trincomalee.
- 3) A.T.M.Rafee,
Regional Assistant Commissioner of Local
Government,
Office of the Assistant Commissioner of
Local Government,
Kachcheri Road, Ampara.
- 4) Dulip Lal Kumanayake,
Vice Chairman,

Urban Council, Ampara.

- 5) N.P.B. Pethiyagoda,
Secretary, Ampara Urban Council, Ampara.
- 6) Ampara Urban Council, Ampara.
- 7) Tyrrell Berenger.
- 8) D.L. Sudharshana Dahanayake.
- 9) D.M. Anura Bandara.
- 10) K.S.D. Gaya Chaminda Jayasundara.
- 11) Indika Nalin Jayawickrama
- 12) Saman Indika Moraes
- 13) Padmini Surasinghe.
- 14) H.G. Sriyani Pushpalatha
- 15) W.A. Chandralatha
- 16) K.A. Chaminda Krishantha
- 17) K. Kelum Kumara Fernando
- 18) Upatissa Wijewickrema

7th – 18th Respondents are members of the
Ampara Urban Council, Ampara.

- 19) Sagara Kariyawasam,
Secretary, Sri Lanka Podujana Peramuna,
Battaramulla.
- 20) Nimal G. Punchihewa,
Chairman,
Election Commission of Sri Lanka,
Sarana Mawatha, Rajagiriya.
- 21) Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street, Colombo 12.

RESPONDENTS

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

Counsel: Jagath Wickramanayake, P.C., with Keishara Perera for the Petitioner
Manohara Jayasinghe, Senior State Counsel for the 1st Respondent
Ruwantha Cooray for the 7th - 17th Respondents

Supported on: 18th February 2021, 3rd March 2021, 25th March 2021 and 30th March 2021

Written Submissions: Tendered on behalf of the Petitioner on 19th April 2021
Tendered on behalf of the 1st Respondent and 7th - 17th Respondents on 20th April 2021

Decided on: 10th June 2021

Arjuna Obeyesekere, J., P/CA

The issue in this application relates to the failure on the part of the Petitioner, the Chairman of the 6th Respondent, Ampara Urban Council, to have the budget of the 6th Respondent for the year 2021 passed by the members of the 6th Respondent (i.e. the 4th, 7th – 18th Respondents), and the consequences that should flow from such failure.

In terms of Section 2(1) of the Urban Councils Ordinance (**the Ordinance**), the Minister may, by Order published in the Gazette, declare any area, which by reason of its development or its amenities is urban in character, to be a town for the purposes of the Ordinance. Section 4 provides that, *“the Urban Council constituted for each town shall ... be the local authority, within the administrative limits of the town, charged with the regulation, control and administration of all matters relating to the public health, public utility services and public thoroughfares, and generally with the protection and promotion of the comfort, convenience and welfare of the people and the amenities of the town.”* It is observed that in addition to the above, the relevant Urban Councils are responsible for the maintenance of public drains, watercourses, public fairs, local markets, lighting of streets and public places etc.

Thus, an Urban Council plays a very important role in the day to day lives of the people living within its area. It is therefore paramount that an Urban Council has the necessary financial allocations in place in the form of its annual budget approved by its members to carry out and perform its statutory duties.

Members are elected by the People to the Urban Councils every four years, with an expectation that the members so elected would address the day to day issues of the Urban Council area in an expeditious and efficient manner. Not only should the elected representatives of the People be efficient, they should at all times ensure good governance, maintain strict financial discipline in respect of the funds of the local authority, refrain from any abuse of power and comply with the provisions of the Ordinance.

I shall at the outset consider the four provisions of the Ordinance, which are particularly relevant to the issue that has arisen for the determination of this Court, namely Sections 26(2), 178, 178A and the proviso to Section 178A.

I shall commence with Section 178, in terms of which:

“The Chairman of every Urban Council shall, each year, on or before such date as may be fixed by by-laws of the Council or by rules made under section 193, prepare and submit to the Council a budget for the next succeeding year in such form as may be prescribed by the Commissioner, and containing:

- (a) the details of the proposed expenditure set out in items under appropriate heads;*
- (b) an estimate of the available income of the Council from sources other than rates;*
- (c) an estimate of the rate or rates necessary for the purpose of providing for the proposed expenditure.”*

The necessity for an Urban Council to have a budget and the obligation of the Chairman of the Council to take responsibility for the preparation of the budget in

terms of the law and thereafter **submit** the said budget to the Council is clearly established by Section 178.

The ability of the Council to carry out its statutory functions in the following year is intrinsically linked to having a budget duly passed by the members of the Council, and demonstrates the ability of the Chairman to command the confidence of the majority of the Council and have the necessary finances to attend to the day to day operations and the vital developmental activities of the Council.

The next provision that is relevant to this application is Section 178A which reads as follows:

*“If the Urban Council **modifies** or **rejects** all or any of the items in any or supplementary budget or **adds** any item thereto and the **Chairman does not agree** with any **such decision** of the Council he shall re-submit the budget or supplementary budget to the Council for further consideration. Where a budget or supplementary budget is not **passed** by the Council within two weeks after it is re-submitted, the budget or supplementary budget shall, notwithstanding that it has not been passed by the Council, **be deemed to be the duly adopted budget** or supplementary budget of the Council.”*

The effect of Section 178A is that by operation of law, the budget **submitted** by the Chairman shall be considered as the duly adopted budget of a council, even though the said budget has not been passed by the Council and therefore does not have the support of the majority of the members of the Council. The law therefore has provided a concession to a Chairman of an Urban Council to function for a period of two years, notwithstanding that he may not have the support of the majority of the Council to pass the budget. It must be kept in mind that notwithstanding the above deeming provision, the obligation placed on the Chairman by Section 178 to submit the budget to the Council for its decision must still be complied with, and that the concession under Section 178A extends only to a Chairman who does so.

It must be noted that in terms of Section 26 (2) of the Ordinance:

“All matters or questions authorised by this Ordinance or by any other written law, to be decided by the members of an Urban Council shall be decided by the majority of members present and voting at any general or special meeting.”

Thus, wherever the Ordinance refers to a decision of the Council or requires a decision to be taken by the members of the Council, it is imperative that such decision is taken by way of a vote of the members present at a general or special meeting of the Council. This position is clearly reflected in Section 178A of the Ordinance which requires a decision of the Council (a) upon the submission of the budget and (b) upon re-submission.

Section 178A was amended by Section 12 of the Local Authorities (Special Provisions) Act No. 21 of 2012 by the insertion of the following proviso:

“Provided that, if the Council according to sections 178 and 178A of this Ordinance modifies or rejects all or any items in any budget or supplementary budget or adds any item thereto which was submitted to the Council at any time by the Chairman after a period of two years since the commencement of the term of office of the Council, and

if the Chairman does not agree to such decision of the Council,

he shall resubmit the said budget to the Council for further consideration.

Where a budget or supplementary budget is not passed by the Council within two weeks after it is resubmitted for the second time,

the Chairman shall be deemed to have been resigned from the office of Chairman at the end of the said period of two weeks.”

Thus, with the introduction of the proviso, the concession provided to a Chairman by Section 178A to continue in office notwithstanding his inability to have the budget passed by a majority of the members of the Council has been limited to the first two years of office. After the first two years, it is not only imperative that the budget is submitted to the Council, it is also imperative that the budget is passed by a majority decision. The law has provided a Chairman with two opportunities to do so. The

difference between the first two years and the next two years is that, in the latter two years, if the Chairman fails to submit or having submitted, fails to have the budget passed at least at the second opportunity, the Chairman shall be deemed to have resigned from his office.

In my view, Section 178A and the proviso contemplates two decisions of the Council which attracts the provisions of Section 26(2) and therefore requires a vote by the Council. The first is the **decision** of the Council to modify, add or reject the budget. The acceptance of a modification and/or an addition, or the rejection of the budget as a whole, should be by way of a majority vote of the Council. The second is the decision of the Council whether to pass the budget that has been re-submitted by the Chairman.

The above provisions can be summarised as follows:

- a) The obligation of preparing the budget is with the Chairman – vide Section 178;
- b) The obligation of submitting the budget to the Council is with the Chairman – vide Section 178;
- c) The budget must be passed by the Council and the obligation of having it passed by the Council is at all times with the Chairman – vide Section 178A;
- d) In the first two years however, even if the budget is not passed, by operation of law, the budget submitted by the Chairman is the duly adopted budget of the Council – vide Section 178A;
- e) After the first two years, the Chairman shall have the budget passed by the Council, for which he has been provided two opportunities – vide the proviso to Section 178A;
- f) After the first two years, the failure on the part of the Chairman to have the budget passed on the two occasions afforded to him would attract the consequences set out in the proviso to Section 178A – i.e. the Chairman is deemed to have resigned from office.

The learned Counsel for the 7th - 17th Respondents has correctly submitted that the provisions of the Ordinance with regard to the powers of the Chairman in relation to the budget including the passing of the budget must be considered bearing in mind that the Council must have a budget prepared in accordance with Section 178.

I shall now consider the facts of this application.

The Petitioner states that in June 2020, he commenced the process relating to the preparation of the budget of the 6th Respondent for the year 2021. He states that at the monthly meeting held on 11th June 2020, he submitted the timeline for the said process and obtained the approval of the members of the 6th Respondent. The Petitioner states further that he appointed a Budget Compilation Committee and sought and obtained the views of the members of the 6th Respondent, the trade associations and the people. He states that a further meeting was held on 18th August 2020 to prepare the relevant estimates.

The Petitioner states that by letter dated 5th November 2020 marked 'P5a' he forwarded a copy of the draft budget proposals marked 'P5' to all members and invited them to submit in writing any amendments that they may require to the budget. The Petitioner submits that by 'P5a' he had also informed the members that the adoption of the draft budget proposals would take place at the monthly meeting scheduled for 12th November 2020. The Petitioner states that in response he received proposals from three members, which have been marked 'P6a' – 'P6c'. I have examined 'P6a' submitted by the 17th Respondent and observe that apart from proposing two modifications, 'P6a' contains the complaints of the 17th Respondent that the proposed income is not realistic when compared with the previous year. 'P6b' submitted by the 12th Respondent does not contain any modifications but only points out certain errors.

The Petitioner states that a meeting of the Council was held on 12th November 2020, as intimated by 'P5a'. He claims that a majority of the members present at the said meeting were in agreement with the amendments proposed by 'P6a' – 'P6c', and that he too agreed with the said amendments. The minutes of the meeting have

been produced marked 'P8'. Item 5.1 thereof relates to the budget. After a brief introduction, the Petitioner had stated as follows:¹

“සභාපතිතුමා - අද දින, ඔබ වෙත මට පෙර මා විසින් ලැබීමට සැලැස්වූ 2021 වර්ෂයට අදාළ අයවැය කෙටුම්පත කියවා බලා ඇතැයි සලකා 2021 වර්ෂයට අදාළ අයවැය යෝජනාව සභා සම්මත කර ගැනීම සඳහා මේ අවස්ථාවේ මම සභාවට ඉදිරිපත් කරනවා

එස්. ටී. වාමර නිලංක මන්ත්‍රීතුමා - ගරු සභාපතිතුමනි එම යෝජනාව මම ස්ථිර කරනවා

සභාපතිතුමා - ඊලඟට යෙදී තිබෙන්නේ මෙම අයවැය කෙටුම්පත සභා සම්මත කරගැනීම. අයවැය සඳහා සංශෝධන කිහිපයක් ඉදිරිපත් කර තිබෙනවා. යම් සංශෝධනයක් කරන්න නම් බහුතර කැමැත්ත ඒ සඳහා තිබිය යුතුයි. එහෙම අවශ්‍ය නැත්නම් බහුතර කැමැත්තෙන් මෙම අයවැය අනුමත කරන්නෙ නම් යෝජනා සංශෝධන වලට යෑම අවශ්‍ය වන්නේ නෑ.

සභාපතිතුමා විසින් මන්ත්‍රී තුමන් විසින් ලබාදී තිබූ සංශෝධන සභා ගත කරන ලදී.”

'P8' thereafter contains the discussions that were held on the draft budget submitted by the Petitioner. Finally, the Petitioner has declared that he is in agreement with the amendments proposed and called for a vote, as evidenced by the following in 'P8':²

“අවසාන වශයෙන් ඔබතුමන්ලාගේ මතයට මා ගරු කරනවා. මේ අමපාර නගර සභාවේ 2021 වසරට අදාළව අයවැය කෙටුම්පත සඳහා මන්ත්‍රීවරුන් ලිඛිතව ලබා දුන් සංශෝධන සියල්ලට මා එකඟ බව මෙයින් ප්‍රකාශ කර සිටිනවා. ඊට ඔබගේ එකඟතාවය මා විමසනවා. අයවැයට පක්ෂව හෝ විපක්ෂව පන්දය භාවිතා කල හැකිය. ඒ සඳහා අවස්ථාව මම පුද්ගලිකව කාට හෝ ඉල්ලීම් කිරීම බලපෑම් කිරීම ආදිය කිසිවක් සිදු කලේ නැහැ. මේක සියලු දෙනාගේ අයවැයයි. මේක සභාපතිතුමාගේ අයවැයක් නෙවෙයි. නගර සභාව ලෙස පොදු ජනතාව වෙනුවෙන් අපි සියල්ලක්ම එකතු වී ඉදිරිපත් කරන අයවැයයි.

පන්දය විමසීමේදී අමපාර නගර සභාවේ 2021 වසරට අදාළව ලිඛිතව ලබාදුන් සියළු සංශෝධනයන්ට එකඟව ඉදිරිපත් කරන ලද අයවැයට පක්ෂව [names of the 6 members voting] පන්දය ලබාදුන් අතර

පන්දය විමසීමේදී අමපාර නගර සභාවේ 2021 වසරට අදාළව සියළු සංශෝධනයන්ට එකඟව ඉදිරිපත් කරන ලද අයවැයට විරුද්ධව [names of the 12 members voting] පන්දය ලබා දෙන ලදී

¹ Vide page 6 of 'P8'.
² Vide pages 22 and 23 of 'P8'.

ඒ අනුව අමසාර නගර සභාවේ 2021 වසරට අදාලව අයවැයට පක්ෂව ජන්ද 06 ලැබුන අතර ඊට විපක්ෂව ජන්ද 12 ලැබුණි

ඒ අනුව ඉදිරිපත් කර ඇති ලිඛිත සංශෝධන වලට අනුව සාකච්ඡා කල සභා ඉදිරිපත් කල කරුණු අනුව සංශෝධිත අය - වැය ලබන සභා වාරයට ඉදිරිපත් කරමි.”

The following are clear from ‘**P8**’:

- a) The Petitioner had submitted the budget of the 6th Respondent inclusive of the amendments proposed by ‘**6Ra**’ – ‘**6Rc**’ to the Council on 12th November 2020;
- b) The members have expressed their views at the debate that followed;
- c) A vote had thereafter been called by the Petitioner;
- d) The budget submitted by the Petitioner had been defeated with 12 members voting against the budget and 6 members voting for the budget.

Therefore, ‘**P8**’ reveals that the budget had been defeated by the members of the Council on its first submission. As discussed above, the law provides the Petitioner with another opportunity to have the budget passed by the Council. Accordingly, the next step as required by the proviso to Section 178A is that the Petitioner *shall resubmit the said budget to the Council for further consideration*. I will now consider if the Petitioner has done so, as undertaken by the Petitioner at the end of the meeting held on 12th November 2020.

The next meeting of the 6th Respondent has been held on 14th December 2020. The minutes of the meeting have been marked ‘**P9**’. Having discussed four other items on the agenda, the Chairman had made the following proposal:

“ගරු සභාපතිතුමාගේ යෝජනාව

5.1 - 2021 වර්ෂය සඳහා අමසාර නගර සභාවේ මන්ත්‍රී යෝජනා අනුව සංශෝධනය කරන ලද අයවැය ඉදිරිපත් කිරීමයි

අයවැය යටතේ ඔබතුමන්ලා තිදෙනෙක් පමණයි ලිඛිත සංශෝධන ඉදිරිපත් කෙරේ. එම සංශෝධන සියල්ලම නිසියාකාරයෙන් අයවැය ලේඛනයට ඇතුලත් කර තිබෙනවා. එම අයවැය ලේඛන ඔබතුමාට ලැබී ඇති බව මා ප්‍රකාශ කරන අතර 2020 නොවැම්බර් මස 12 වැනිදා

පැවති අමපාර නගර සභාවේ රැස්වීමේදී මා විසින් 2021 වර්ෂයට අදාළ අයවැය කෙටුම්පත සම්මත කිරීම සඳහා ඉදිරිපත් කලා. එම යෝජනාව වාමර නිලංක මන්ත්‍රීතුමා විසින් ස්ථිර කරා. අප මෙම අයවැය ලේඛනය පිළිබඳව සාකච්ඡා කලා. එහිදී මන්ත්‍රීවරු විසින් 2021 වර්ෂයට අදාළ අමපාර නගර සභා අයවැය කෙටුම්පත සඳහා ලිඛිතව ඉදිරිපත් කරන ලද සංශෝධන තිබුණා. එම සංශෝධන සඳහා සියලුම මන්ත්‍රීන්ගේ කැමැත්ත පල කරා. එසේ වුවත් ඔබ තුමන්ලා හට පන්දය විමසීම සඳහා අවස්ථාවක් ලබා දුන්නා. එහිදී පක්ෂව පන්ද 06 ක් සහ විපක්ෂව හේතුමක් නොමැතිව නොදැක්වා සංශෝදන කිරීමෙන් පසුවත් මට විරුද්ධව මන්ත්‍රීවරු 12 පන්දය ප්‍රකාශ කර තිබෙනවා.”

After several exchange of words between the Petitioner and the 17th Respondent, the Chairman had stated as follows:

“එබැවින් ඔබ විසින් ලිඛිතව ඉදිරිපත් කරන ලද අයවැය සංශෝධන මගේ එකඟතාවය මත සියළු සංශෝධන ඇතුළත් කර 2021 වර්ෂයේ අමපාර නගර සභාවේ අයවැය මා ඔබවෙත ලැබීමට සලස්වා තිබුණා. ඒ අනුව 2021 වර්ෂයේ අමපාර නගර සභා අයවැය ලේඛනය සම්මත වූ අයවැය ලේඛනයක් බවට මා ප්‍රකාශ කර සිටිනවා

සභාවේ කටයුතු අවසන් කරනවා”

Thus, it is clear that the Petitioner had re-submitted the *amended budget*, which *amended budget* is not before Court, at the meeting held on 14th December 2020. The purpose of resubmitting the budget to the Council is *for further consideration* by the Council.

As I have already noted, in terms of the proviso to Section 178:

“Where a budget or supplementary budget is not passed by the Council within two weeks after it is resubmitted for the second time,

the Chairman shall be deemed to have been resigned from the office of Chairman at the end of the said period of two weeks.”

It is clear from ‘**P9**’ that even though the Petitioner has re-submitted the budget on 14th December 2020:

- a) The Petitioner has not provided the members of the Council an opportunity of further considering the budget;

- b) The Petitioner has not called for a vote on the said amended budget;
- c) The budget has not been passed by the Council.

Instead, the Petitioner had declared that the *amended budget* has been duly adopted.

The effect of the above failure by the Petitioner to have the budget passed by the Council is that the Petitioner had failed in his duty in having the budget of the 6th Respondent for 2021 passed by the Council by the due date.

The refusal of the Petitioner to act in terms of Section 178A and its proviso had triggered a series of events culminating in the filing of this application. I shall now advert to these events.

On the same date – i.e. 14th December 2020 - the 3rd Respondent, the Assistant Commissioner of Local Government, Ampara - had served on the Petitioner a letter dated 10th December 2020 marked 'P10a' issued by the 2nd Respondent, the Commissioner of Local Government, Eastern Province informing the Petitioner that if he is in agreement with the amendments, he must incorporate same and re-submit to the Council for its approval. By 'P12' dated 22nd December 2020, the 2nd Respondent had informed the Petitioner that the budget of the 6th Respondent Council for 2021 has not been passed and that the 1st Respondent, the Governor of the Eastern Province has directed the Petitioner to re-submit the budget to the Council and to have it passed prior to 31st December 2020. The Petitioner has disregarded the above intimation.

In the absence of a valid budget for 2021, the 2nd and 3rd Respondents have informed the Petitioner that he cannot incur any capital expenditure – vide 'P13' dated 31st December 2021 and 'P14' dated 5th January 2021, respectively. The 3rd Respondent had also directed the Petitioner by letter dated 6th January 2021 marked 'P15' to refrain from carrying out the functions of the office of Chairman of the 6th Respondent.

By an Order made in terms of Section 184(1B) of the Ordinance and published in Extraordinary Gazette No. 2209/73 dated 8th January 2021, the 1st Respondent had suspended the Petitioner from office. This Order had however been revoked by a further Order published in Extraordinary Gazette No. 2212/21 dated 27th January 2021.

The 1st Respondent, claiming to act in terms of the powers vested in terms of Section 247 of the Ordinance had also published the following Order in Extraordinary Gazette No. 2212/23 dated 27th January 2021, marked 'P22':

"The Chairman of Ampara Urban Council within the Province of the East has submitted and failed to get adopted the Budget of the year 2021, as the power vested in him under Section 178 and 178A of the Urban Council Ordinance (Chapter 255) thus the said Chairman of the said Urban Council, as provided under Section 12 of the Local Authorities (Special Provisions) Act, No. 21 of 2012, is deemed to have been resigned from the office of the Chairman effective from 31.12.2020 and that the office of the Chairman of that Urban Council become vacant effective from that date."

Aggrieved by the above decisions of the 1st – 3rd Respondents, the Petitioner filed this application on 1st February 2021, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision in 'P10' directing the Petitioner to have the amended budget approved by the Council;
- (b) A Writ of Certiorari to quash the decisions contained in 'P14' and 'P15';
- (c) A Writ of Certiorari to quash the Order 'P22' made by the 1st Respondent.

Although fixed for support for 9th February 2021, this Court was not able to take up this matter for support as the Respondents were absent and unrepresented on that date. However, in order to prevent this application from being rendered nugatory, this Court, by an order delivered on 10th February 2021, directed the 2nd and/or 3rd Respondents to refrain from taking any steps in terms of 'P22' and/or call for the election of a new Chairman in terms of Section 66G of the Local Authorities Elections Ordinance.

It is clear that '**P10**', '**P14**', '**P15**' and '**P22**' have all been issued due to the failure on the part of the Petitioner to have the budget passed by the Council. In considering the legality of the decisions contained therein, the primary issue that arises for determination is whether the budget of the 6th Respondent has been passed in terms of the law, and if not, whether the Petitioner is deemed to have resigned from the office of Chairman as provided for by the proviso to Section 178A of the Ordinance.

The principal argument of the learned President's Counsel for the Petitioner was that where the Chairman agrees with the amendments or modifications proposed by the members, the necessity for him to re-submit the amended budget does not arise. He therefore submitted that the factual circumstances of this application do not fall within the proviso to Section 178A and that the deeming provision that the Chairman has resigned too does not apply.

By way of a motion dated 19th April 2021, the Attorney-at-Law for the Petitioner had brought to my attention *inter alia* a letter dated 15th January 2021 issued by the Secretary, State Ministry of Provincial Councils and Local Government Affairs issued to the Chairman of the Ambalangoda Urban Council relating to Section 178A. Quite apart from the letter by which advise has been sought not being tendered to this Court, the said letter in my view does not set out the correct legal position.

I shall now consider whether the Petitioner has complied with the several obligations cast on a Chairman by the Ordinance with regard to the budget. The first obligation is to prepare the budget, which the Petitioner has complied with. The second is to submit the budget to the Council, which too the Petitioner has complied with. The third obligation is to have the budget so submitted, passed by the Council. As I have noted, the Petitioner has two opportunities to have the budget passed. The Petitioner has faltered at the first opportunity as a result of the budget being defeated on 12th November 2020.

The Petitioner was thereafter required to re-submit the budget for further consideration of the Council, which the Petitioner had undertaken to do – vide '**P8**'. The Petitioner has partially complied with this obligation by re-submitting the budget on 14th December 2020. Having done so, the Petitioner has failed to afford the

members of the Council an opportunity of further considering the said budget. The Petitioner has also failed to have the budget passed by the Council. As submitted by the learned Senior State Counsel for the 1st Respondent and the learned Counsel for the 7th - 17th Respondents, the Petitioner has thrown all democratic norms out of the window.

It is not disputed that the concession granted by Section 178A to enable a Chairman of an Urban Council to function in office even where a duly submitted budget has not been passed by a majority comes to an end after two years of being elected as Chairman, and that the provisions contained in the proviso to Section 178A is applicable thereafter.

Once the budget is submitted to the Council and debated and whatever the modifications or additions that a Chairman may agree during or after such debate, the budget must be submitted by the Chairman to the Council for its **decision**. This is mandatory and is confirmed by the use of the word, '*decision*' in the proviso to Section 178A. In terms of Section 26(2), a decision would mean a vote. I am therefore of the view that the Chairman *agreeing* to any modifications or additions that may be proposed by one or more or even all members does not suffice in order to claim that the budget has been passed. The claim that the Chairman *agreed* with the modifications and amendments and therefore the budget has been passed is a red herring. The budget must be passed by a majority vote if the Chairman wishes to avoid the deemed resignation being triggered.

Where the Chairman re-submits the budget, he must provide the members an opportunity of further considering it and thereafter he must have the budget passed by a majority vote of the Council. In my view, the crux of the matter is that the Chairman must ensure that he has in place a budget duly passed by the Council by the due date. If he fails in this regard at whatever point of the process, he is deemed to have resigned from the office of Chairman by operation of law. A Chairman who does not take a vote cannot be in a better position than a Chairman who has re-submitted the budget and taken a vote, only to have the budget defeated by the Council.

The Petitioner has failed in his obligation to have the budget passed in terms of Section 178A and therefore the consequence set out in the proviso to Section 178A

has been triggered. The Petitioner is therefore deemed to have resigned from the office of Chairman of the 6th Respondent Council. The result is that there is a vacancy in the office of Chairman. This in my view is what was intended by the legislature when it introduced the proviso to Section 178A in 2012. I am therefore unable to agree with the submission of the learned President's Counsel for the Petitioner that the factual circumstances of this application are outside the scope of the proviso to Section 178A of the Ordinance.

The learned President's Counsel for the Petitioner submitted that in any event, the impugned Order 'P22' is *ultra vires* the powers conferred on the 1st Respondent by Section 247 of the Urban Councils Ordinance and Section 2 of the Provincial Councils (Consequential Provisions) Act No. 12 of 1989. To me, the series of events that followed the refusal by the Petitioner to place the re-submitted budget to a vote and have it passed by the Council reflects the desperation on the part of the Respondents to ensure that the provisions of Section 178A are complied with. Even if the argument of the learned President's Counsel for the Petitioner is accepted, nothing flows from 'P22' for the reason that 'P22' is only an intimation of a factual position that prevailed as at that date.

In the above circumstances, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal