

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 *Mandamus* under and in terms of the Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Writ Case No.308/2016

Dassanayake Mudiyanseelage Chaminda  
Dassanayake  
Olagama,  
Rambodagalle,  
Ridigama.

PETITIONER

-Vs-

1. A.H.K. Jagath Chandrasiri,  
Commissioner General,  
Department of Motor Traffic,  
P.O. Box No.533-341,  
Elvitigala Mawatha,  
Colombo 05.
2. Wijesingha Bandara,  
Chief Accountant,  
Department of Motor Traffic,  
P.O. Box No.533-341,  
Elvitigala Mawatha,  
Colombo 05.

3. Chathura Kumarathunga,  
Assistant Commissioner of New Registration of  
Motor Traffic,  
Department of Motor Traffic,  
P.O. Box No.533-341,  
Elvitigala Mawatha,  
Colombo 05.
4. Trade Finance & Investments PLC  
No.459, Union Place,  
Colombo 02.
5. The Director Customs,  
Sri Lanka Customs,  
No.40, Main Street,  
Colombo 11.
6. The Director,  
Criminal Investigation Department,  
Colombo 01.
7. Thalpavila Vidana Kangkanamlage Manjula  
Padmakumara,  
No.71/5, Pragathipura,  
Madiwela.Kotte.
8. Remington Weerasinghe,  
Marketing Manager,  
Trade Finance & Investments PLC,  
No.459, Union Place,  
Colombo 02.  
*And presently at No.62/C 25, Avissawella Road,  
Welvita, Kaduwela.*

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Upul Kumarapperuma for the Petitioner  
Nayomi Kahawita SC for 1<sup>st</sup> - 3<sup>rd</sup> & 5<sup>th</sup> & 6<sup>th</sup>  
Respondents  
Shehan Gunawardene with Dulanjana Gamage for  
the 4<sup>th</sup> Respondent

Decided on : 20.12.2019

A.H.M.D. Nawaz, J.

This application for judicial review seeks (a) a writ of *certiorari* to quash the registration of the Petitioner's vehicle in the name of the 7<sup>th</sup> Respondent, and (b) a writ of *mandamus* directing the 1<sup>st</sup> Respondent (the Commissioner-General, Department of Motor Traffic) to register the vehicle in the name of the Petitioner.

The Petitioner avers in several paragraphs of the petition as to how he became the owner of a Mitsubishi Outlander PHEV. He had secured financing for the importation of the vehicle from Japan through a loan facility from the Bank of Ceylon and the exporter/seller of the vehicle was paid by way of a letter of credit opened at the Bank of Ceylon. After the vehicle was released to the Petitioner from the Customs upon its arrival, he decided to sell the vehicle to the 7<sup>th</sup> Respondent who had entered into negotiations with him to buy the vehicle.

According to the petition, the 7<sup>th</sup> Respondent had requested the Petitioner to come along with him and submit documents pertaining to the vehicle to the 4<sup>th</sup> Respondent Leasing Company for the purpose of obtaining finance to purchase the vehicle.

It is at the premises of the 4<sup>th</sup> Respondent Leasing Company that the Petitioner alleges he met the 8<sup>th</sup> Respondent who was the Marketing Manager of Trade Finance and Investments PLC. On 9<sup>th</sup> December 2015, the 8<sup>th</sup> Respondent issuing a letter to the Petitioner promised a sum of Rs. 7.5 million as part of the purchase price which was leviable from the 7<sup>th</sup> Respondent.

The letter which is appended to the Petition as P4 states under the signature of the 8<sup>th</sup> Respondent that in connection with the purchase of the above vehicle by the 7<sup>th</sup> Respondent, which is financed by the 4<sup>th</sup> Respondent, the certificate of registration with the absolute ownership and the duplicate keys must be sent to them direct.

In response to P4, the Petitioner states that he signed an MTA 2 form in blank and handed over the original documents. Who is the transferee on the MTA 2 is not clear and to whom this MTA 2 was given is also not clear from the averments. As is understood in Motor Traffic law, an MTA 2 transfers title to a named transferee. The document marked P5 which is appended to the petition clearly shows that the vehicle has been registered in the name of the 7<sup>th</sup> Respondent. It is this document of registration that the Petitioner seeks to quash.

It has so happened that out of desperation this Petitioner had signed a blank MTA form and transferred the title. Upon a perusal of the document, it is patently clear that the Petitioner had signed a MTA form in blank on the strength of the promise given by the 8<sup>th</sup> Respondent, the Marketing Manager of Trade Finance & Investments PLC. The Petitioner had been promised a sum of Rs. 7,500,000 by way of a cheque. The Petitioner had been so naive as to be misled into parting with his title and documents because of the deception practiced upon him and it appears that the Petitioner, despite being a senior academic at the University, had not realized the consequences of signing a form in blank and this lapse on his part could be attributed to his desire to dispose of the vehicle. His version that he had been duped is to some extent conceded by the Finance

Company which has filed an affidavit through its Managing Director, wherein the following facts are asserted in paragraph 17.

A) P4 has been manufactured or forged on a discarded and outdated letterhead of the 4<sup>th</sup> Respondent-Company.

B) the documents indicate that a sum of Rs. 7,500,000/- was promised to the Petitioner whereas the lease finance facility provided by the 4<sup>th</sup> Respondent Company to the 7<sup>th</sup> Respondent, as indicated by paragraph 16 and 17 of the petition, is only Rs. 6,500,000/-.

Further the 4<sup>th</sup> Respondent avers in its affidavit that upon discovering the fraud committed on the Petitioner, it has dismissed the 8<sup>th</sup> Respondent from its employment. I would conclude that this is an admission that the employee had indeed practiced a fraud upon the Petitioner.

This admission clearly shows that there was a stratagem practiced by the dismissed employee who is the 8<sup>th</sup> Respondent in the petition before this Court. The MTA 2 is an application in terms of Sections 7 and 245 of the Motor Traffic Act for registration of a motor vehicle which has not been already registered.

It would appear that there is no averment in the petition to the effect that the Petitioner signed an MTA 6 which would evidence a transfer and change of possession of a Motor Vehicle in terms of Section 12(2)(a) and 12(3)(a) of the Motor Traffic Act.

Nowhere in the statement of objection filed by the Finance Company is there evidence as to who entered into the leasing contract with the 7<sup>th</sup> Respondent. Did the dismissed employee whom the Finance Company repudiates now as having committed a fraudulent activity enter into this contract?

In view of the fact that there is no statement of objection that has been filed on behalf of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> & 6<sup>th</sup> Respondents, it is quite clear that the assertions made by the Petitioner remains uncontroverted and even the suspicious circumstances of registration of the vehicle remain unexplained. It all boils down to the nitty gritty. The vehicle has been registered in the name of the 7<sup>th</sup> Respondent Thalpvila Vidana Kangkanamge Manjula Padmakumara even though upon the pleadings before this Court there is no evidence the Petitioner has transferred it to him voluntarily and for consideration. I bear in mind that I make no further conclusion on the facts as there is a dossier of investigation that has gone before the Attorney-General after complaints were made by the Petitioner on the injustice perpetrated against him in relation to the vehicle which he imported.

I do make the observation that since some of the averments in the petition remain uncontroverted the veracity of the averments in the petition has to be accepted.

It would then appear that the registration has been procured in the name of the 7<sup>th</sup> Respondent when there was no evidence to effect such a registration. When the import documents such as the bill of lading and subsequent release of the vehicle to the Petitioner unambiguously connote ownership in the Petitioner, it is plausible that the version of the Petitioner that he has been duped into parting with his proprietary rights on a promise of payment made by the 8<sup>th</sup> Respondent on behalf of the 7<sup>th</sup> Respondent represents the truth.

In this backdrop this Court called for information from the 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup>-6<sup>th</sup> Respondents respecting the 7<sup>th</sup> Respondent and the inquiry in relation to the registration of the vehicle bearing No. CAN 8078 and learned State Counsel filing a motion dated 17<sup>th</sup> December 2019 has stated the following:

- 1) The dossier of investigation notes submitted by the 6<sup>th</sup> Respondent is still under consideration by the Attorney-General.
- 2) The inquiry in relation to the registration of the vehicle bearing No. CAN 8078 is still pending.

As far as this application is concerned, grounds of *certiorari* such as no evidence have been made out for issuance of a writ of *certiorari* and I proceed to issue a writ of *certiorari* quashing the document marked as P5. In other words the registration in the name of the 7<sup>th</sup> Respondent is quashed. The 1<sup>st</sup>-3<sup>rd</sup> Respondents of the Department of Motor Traffic are directed to conclude the inquiry in relation to the registration of the vehicle as expeditiously as it should and take the right decision to effect the proper registration.

JUDGE OF THE COURT OF APPEAL