

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

CA Transfer 15 / 2025

In the matter of an application for transfer
of Case No. 370/24/Maintenance from the
Magistrate's Court of Pillessa under and in
terms of Section 46 of the Judicature Act.

Tennakoon Mudiyanseelage Dhanuka
Dhananjaya Sri Meegolla
No.600/53,
Miyanadeniya,
Pihibuwa.

Petitioner

Vs.

1. Galbada Arachchige Mayomi Shanika
Wijesena
No. 60/B, Delgolla Watta,
Mawathagama.
2. Attorney General
Attorney General's Department,
Hulftsdorp,
Colombo 12.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Manohara De Silva, PC with Dilmini De Silva
instructed by Gaithri De Silva for the Petitioner.

Sapumal Bandara with Amanda De Moore
instructed by Thavisha Hettiarachchi for the 1st
Respondent.

Written Submissions : 1st Respondent filed on 30.09.2025
Petitioner filed on 30.09.2025

Supported on : 17.09.2025

Decided on : 21.10.2025

K. Priyantha Fernando, J.(CA)

This matter pertains to an application for the transfer of a Maintenance Case, No. 370/24/Maintenance, currently pending before the Magistrate's Court of *Pillessa*. The Petitioner sought the transfer on the grounds that he would not receive a fair and impartial inquiry before the Learned Magistrate. The 1st Respondent opposed the application, submitting that the criteria for transfer under Section 46 of the Judicature Act were not satisfied.

THE PETITIONER'S POSITION:

The Petitioner, a Lieutenant Colonel, sought an order to transfer the Maintenance Case No. 370/24/Maintenance from the Magistrate's Court of Pillessa, citing a lack of judicial impartiality. The Petitioner had been voluntarily paying Rs. 20,000/- monthly for his daughter since 2021, a fact the 1st Respondent admitted in her application, where she sought an enhanced amount of 40,000/- per month.

The Petitioner alleged that the 1st Respondent failed to properly serve summons due to his frequent military assignments. Despite this, upon the Petitioner's first appearance in Court on November 8, 2024, the Learned Magistrate was reportedly hostile and threatened to remand him. The Magistrate dictated an order alleging the Petitioner had not appeared despite notice being sent in March 2024: "මේ තැනැත්තාට ලියාපදිංචි තැපැල් මගින් නොතිසි යවා තිබින්නේ 2024 මාර්තු මාසයේ. මේ වන තෙක් අධිකරණයට පැමිණ නැහැ" (Notice has been sent to this person via registered post in March 2024. He has not appeared up to now).

On the same day, the Magistrate issued an interim maintenance order of Rs. 30,000/- and granted bail on the condition of furnishing two sureties of Rs. 100,000 each. Subsequently, the Magistrate has rejected the Petitioner's elderly parents as sureties because they were above 60 years of age, a condition not stipulated in the original order.

Furthermore, an *ex parte* travel ban has been imposed on April 4, 2024, based solely on an unverified Affidavit claiming the Petitioner intended to migrate. When the Petitioner's counsel later applied to rescind the ban on December 6, 2024, the Magistrate has refused on the grounds that the request was not a "විධිමත් ඉල්ලීමක්" (formal application) under the Maintenance Act. The Petitioner has also submitted a complaint regarding the Magistrate's conduct to the Judicial Services Commission (JSC) on November 29, 2024.

THE POSITION OF THE 1st RESPONDENT:

The 1st Respondent sought the dismissal of the Transfer Application, arguing that the Petitioner failed to satisfy the criteria under **Section 46** of the Judicature Act for a transfer.

The 1st Respondent submitted that the Learned Magistrate of *Pillessa* did not act with bias but issued Orders that were duly considered and reasoned.

The 1st Respondent asserted that even if the Orders were erroneous in law or procedure, this did not constitute bias, relying on the precedent set in *Abdul Hasheeb vs. Mendis Perera and Others* [(1991) 1 SLR 243] by G. P. S. de Silva, J.

The 1st Respondent justified the Magistrate's actions, noting that the travel ban was necessary to secure the Petitioner's attendance after he came before the Court only 8 months after the case was supported.

The Magistrate was correct to direct the Petitioner to make a "විධිමත් ඉල්ලීමක්" (formal application) regarding the travel ban, as the Court could not proceed on mere oral applications. The 1st Respondent cited the Magistrate's order: "ඉදිරිපත් කරනු ලබන විදේශ ගමන් තහනම පිළිබඳව කරනු ලබන ඉල්ලීම නඩත්තු පනත ප්‍රකාරව කරනු ලබන විධිමත් ඉල්ලීමක් නොවන බැවින්... ඒකී ඉල්ලීම මේ අවස්ථාවේදී ප්‍රතික්ෂේප කරමි" (The application regarding the travel ban is not a formal application in accordance with the Maintenance Act, and since a mere verbal request does not satisfy the Act, it is rejected at this instance).

Furthermore, the 1st Respondent noted that the Petitioner failed to utilize the available statutory remedies, such as filing an appeal under Section 14(1) of the Maintenance Act No. 37 of 1999 or a Revision Application to the High Court. It was further submitted that allowing a transfer would open "floodgates" for similar applications.

CONCLUSION:

Section 46(1) of the Judicature Act, insofar as relevant to this application, reads as follows: “*Whenever it appears to the Court of Appeal-*

(a) That a fair and impartial trial cannot be had in any particular court or place;
or

(b) That some questions of law of unusual difficulty are likely to arise; or

(c) That a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) That it is so expedient on any other ground,

The court may order upon such terms as to the payment of costs or otherwise as the said court thinks fit, for the transfer of any action, prosecution, proceeding, or matter pending before any court to any other court.”

The Petitioner contended that a fair trial could not be held due to the Learned Magistrate's conduct, which created a reasonable suspicion of bias, a test recognised in Abdul Hasheeb vs Mendis Perera and Others [(1991) 1 SLR 243] and Metropolitan Properties Co. (F.C.C) Ltd. Vs. Lannon [(1968) All ER 304].

Thus, this Court must consider whether the conduct amounts to bias towards one party (1st Respondent) against the other party (Petitioner).

The Petitioner submitted that the Magistrate's statement on November 8, 2024, regarding the lack of appearance was factually incorrect, ignoring the multiple lapses by the 1st Respondent in serving summons.

When perusing the summary of the journal entries, it is seen from the 1st journal entry dated 14th March 2024 that the Court has ordered to issue notices to the Respondent by way of registered post returnable on 4th April 2024. It was the Petitioner's position that he did not receive such notice, but if notices had been sent, then it may have been most probably to the address given in the caption to

the Respondent's application made to the Magistrate's Court of *Pillessa*, where the Petitioner's parents reside. Therefore, the inference can be drawn that the Applicant has taken proper steps to serve notices to the given address in the caption, which is most probably the address given even in the divorce action pending in the District Court. Moreover, the Respondent (who is the Petitioner) has confirmed his permanent residence only on 6th December 2024.

The second journal entry dated 4th April 2024 indicates that the notices have been issued by registered post to the Respondent. This journal entry further shows that the Court has ordered to issue notice by the Fiscal and issue notice by way of registered post to the address submitted on that day.

Thus, it is clear that the notice has been issued by way of registered post to the Respondent by the 2nd calling dated, i.e., 4th April 2024. The impression or the inference drawn by the learned Magistrate as to registered post service of notices/summons reached the Respondent should not be, in my view, held against her as a factor leading to bias.

However, subsequent journal entries indicate that although several correct addresses have been provided by the Applicant, the summons could not have been served because the Respondent has been transferred.

The journal entry dated 23rd August 2024 indicates that the summons could not be served by the fiscal since the Respondent has been transferred to a different camp. On the same date itself, the Court has ordered to serve through the Commanding Officer after providing the correct address.

According to the journal entry dated 2nd October 2024, a motion has been supported to serve **summons on the Respondent at his office. Only upon such service, the Respondent has appeared for the first time in Courts on 8th August 2024.**

When the Petitioner appeared on 08.11.2024, the learned Magistrate has remarked that,

“වගඋත්තරකරු සිටි. විවාහය හා පිත්තෘත්වය පිළිගනී. ඒ බවට වගඋත්තරකරු නඩු වාර්තාව අත්සන් තබන්න. වගඋත්තරකරුගේ නීතිඥ තර්ජනී ලක්ෂණ මිය වගඋත්තරකරු වෙනුවෙන් කරුණු දක්වමින් විමසීමට අයදී. ඉල්ලුම්කාරිය වෙනුවෙන් කරුණු දක්වයි. දෙපාර්ශවය දක්වන කරුණු සලකා බලමි. ඒ අනුව දෙපාර්ශවය පවුල් උපදේශනයට එකඟ නොවන බව දන්වා සිටින බැවින් නඩුව විමසීමට තබමි. වගඋත්තරකරුට රුපියල් ලක්ෂ 01 ගරීර ඇප 02 නියම කරමි. වගඋත්තරකරුගේ ස්ථිර පදිංචිය ඉදිරි දිනට සනාථ කල යුතුය. කරුණු සලකා බලා නඩත්තු ඉල්ලුම්පත්‍රයේ දින සිට දරුවා වෙනුවෙන් රු. 30000 ක අතුරු දීමනාවක ගෙවීමට නියම කරමි. හිඟ සමග වාරික ගෙවීමට කැඳවන්න.”

It is apparent that notices/summons have been sent by registered post to the available address/address given in the caption in the Maintenance application. It is pertinent to note that the Petitioner has not explained or clarified his permanent residence **until 06.12.2024**. Furthermore, it cannot be ignored that a divorce action is also pending concurrently with these maintenance proceedings.

Under these circumstances, making an interim order in the sum of 30,000/- and proceeding to grant bail upon two sureties does not, in my view, amount to prejudicial or biased conduct towards the Petitioner. Moreover, the said orders have been made only after hearing both sides.

The Petitioner further submitted that the interim maintenance order, which increased the payment from Rs. 20,000 to Rs. 30,000 on his first day of appearance, and the immediate threat of remanding him for non-payment of arrears, were unwarranted, as payment could have been secured under **Section 6** of the Maintenance Act No. 37 of 1999 by attaching his salary. These orders are appealable, and if unsatisfied, the Petitioner could have made a proper application to a Higher Court.

The rejection of the Petitioner's parents as sureties based on their age (above 60) was also cited as evidence of unfair treatment. However, this act of accepting proper sureties is a routine practice of every Magistrate's Court, which is carried out by the Registrar under the supervision of the presiding Magistrate with a view to ensuring the presence of the relevant party. Acceptance of persons under

60 and non-acceptance of persons above 60 cannot per se be taken as an act of bias on the part of the Judge since it appears to be a routine act practiced in the Court.

Regarding the travel ban, the Petitioner argued the Magistrate's refusal to rescind the ban because the request was not a "විධිමත් ඉල්ලීමක්" (formal application) under the Maintenance Act was irrational, as the Maintenance Act did not empower the Magistrate to impose such a ban in the first place. However, the learned Magistrate has rightly stated that the Court cannot proceed merely based on oral applications made by the counsels. It was submitted that at the time of making the said application, no material was placed before the Court by the Petitioner to establish his service record, his overseas duties, etc. Therefore, it is the view of this Court that the learned Magistrate has merely directed the Petitioner to make a proper application which would enable the Court to duly consider the same and pronounce an order.

DOES THE HOSTILE REMARKS OF THE LEARNED MAGISTRATE AFFECT HER IMPARTIALITY?

Finally, the Petitioner argued that the Magistrate's hostile remarks and warning to report both his Senior and Junior Counsel to the Supreme Court for seeking to correct the court record led to doubt her impartiality.

The Petitioner and his Counsel both have already lodged formal complaints with the Judicial Services Commission (JSC). Thus, the Petitioner has taken steps against the Magistrate.

“ නමුත් නඩු වාර්තාවේ සඳහන් වන්නේ ඉල්ලුම්කාරිය වෙනුවෙන් කරුණු දක්වයි යන්නයි. එසේ හෙයින් එදින කාර්ය සටහන ඉල්ලුම්කාරිය කරුණු දක්වයි යනුවෙන් නිවැරදි කරන මෙන් ගෞරවයෙන් අයදා සිටිනවා..... ”

“ අනෙක් කරුණු නම් 2024.11.08 වන දින ඉල්ලුම්කාරිය වෙනුවෙන් නීතිඥ නියෝජනයක් නොතිබූ බවත්, “ වෙනුවෙන් ” යන වචනය කාර්ය සටහනේ ඉවත් විය යුතු බවටත් වේ.

ඒ අනුව මෙම අධිකරණය විසින් එදින භාවිතා කරන ලද විද්‍යුත් රෙකෝඩ්‍ය පරීක්ෂා කර බැලීම්. එම විද්‍යුත් රෙකෝඩ්‍ය පරිගන වී ඇති සටහන් ඒ අයුරින්ම පිටපතක් අධිකරණ රෙජිස්ට්‍රාර් භාරයේ සේප්පුගත කිරීමට අද දින නියම කරමි. පිටපත නඩු වාර්තාවට ගොනු කිරීමට නියම කරමි.

පොරොන්දු නීතිඥවරයකු වශයෙන් කනිෂ්ඨ නීතිඥවරයකුගේ ප්‍රකාශය මත පමණක් පිහිටා අද දින කරුණු ලබන ඉල්ලීම පිළිබඳ අධිකරණය ඉතාම කණගාටුවට පත්වන බවට විවෘත අධිකරණයේදී ප්‍රකාශයට පත් කරමි. අදාළ දිනයේදී ඉල්ලුම්කාරියගෙන් අධිකරණය තුළදී හෝ පිටත දී උපදෙස් නොලද බවට නීතිඥ ඒකනායක මහතා විසින් විවෘත අධිකරණයේ කරුණු දක්වා ඇති අතර ඉල්ලුම්කාරිය වෙනුවෙන් නීතිඥවරයා විසින් දක්වන ලද එකී කරුණු මත පිහිටා අනතුරුව ඉල්ලුම්කාරියට කරුණු දැක්වීම සඳහා ඒ අනුව අධිකරණය විසින් අවස්ථාව ලබා දී ඇති බවට නිරීක්ෂණය කරමි.

එකී කරුණු මත ඉල්ලුම්කාරිය “ වෙනුවෙන් ” වශයෙන් අධිකරණය සටහන් කර ඇති අතර ඒ අනුව එකී “ වෙනුවෙන් ” යන වචනය ඉවත් කිරීමට කිසිසේත්ම අවශ්‍යතායක් පැන නොනගී.

කණිෂ්ඨ නීතිඥවරයාගේ සේවා කාලය සලකා බලා පමණක් අද දින මෙම කරුණු දැක්වීම ගරු ශ්‍රේෂ්ඨාධිකරණයට යොමු නොකිරීමට තීරණය කරන බවත්, නැවත මෙවන් ආකාරයට අධිකරණය අපහසුතාවයට පත්වන ආකාරයට කටයුතු කළහොත් පොරොන්දු නීතිඥවරයා සම්බන්ධයෙන් සහ කනිෂ්ඨ නීතිඥවරයා සම්බන්ධයෙන් ගරු ශ්‍රේෂ්ඨාධිකරණයට වෙත වාර්තා කිරීමට කටයුතු කරන බවටත් පහදා දෙමි.”

When considering whether her remarks about the conduct of Counsel do impute bias, it is seen that,

- a. The learned Magistrate, after having listened to the submissions of both parties, proceeded to secure a transcript of the electronic recording of the proceedings dated 08.11.2024.
- b. After listening to the recording and verifying the accuracy of the submissions, only she has proceeded to pronounce the order dated 06.12.2024.
- c. The learned Magistrate has advised the Counsel not to act in a manner that would hamper the functions of the Court, only after careful consideration and perusal of the recording.
- d. Had the learned Magistrate acted arbitrarily and/or maliciously, there was no necessity for her to peruse the proceedings of the previous date.

The learned President's Counsel submitted that expressing disappointment at the application, implying impropriety on the part of the Senior Counsel for relying on the information received from his Junior Counsel and particularly the statement of not reporting to the Supreme Court considering the Junior Counsel's length of practice suggests that the Learned Magistrate had already formed a negative impression of the Senior Counsel without any justifiable reason.

It is my view that the Magistrate could have refused the application to correct the record if she was not inclined to do so. In any event, there appears to be nothing improper in the application to correct the record, as the Applicant has been allowed to appear in person, having been informed by her Counsel that he was not being instructed inside or outside the Court. Nevertheless, this application to correct the record should have ideally been made by the Applicant's Counsel since he is the one who has informed the Court that he did not receive any instruction on 6th December 2024 to appear on behalf of the Applicant.

The Learned Magistrate has clearly stated in her order that, upon being relied on the said submission of the Applicant's Counsel on 08.11.2024, the Court has allowed the Applicant to make submissions on her own.

Be that as it may, the refusal to correct the record and the comments on the conduct of the Respondent's Counsel has not *per se* suggest that the Magistrate has formed a negative impression as clearly borne out by the last paragraph of the proceedings of the same date, i.e. where she has been inclined to grant a convenient date for the Senior Counsel of the Petitioner changing the inquiry date from 14.02.2025 to 05.03.2025.

Moreover, the Learned Magistrate has been unhesitant to correct the record regarding the amount of arrears of maintenance from Rs. 270,000 to Rs. 90,000/- as agreed by both parties.

The Petitioner has sought transfer of the Maintenance Case on the basis (vide paragraphs 15 and 17 of the Petition)

“....aforementioned proceedings are grossly irregular, arbitrary, unlawful, and unreasonable and demonstrate that the Petitioner would not be able to legitimately expect a fair trial and in any event, it would be expedient to transfer this case in view of the impropriety of the orders made against the Petitioner and the comments made against his Attorney-at-Law”.

“.....he fears that he, unless the Court intervenes into this matter, severe prejudice would be caused to the Petitioner and that a fair and impartial inquiry would not be held in respect of the Petitioner and the Petitioner’s liberty would be unjustly and unfairly infringed due to the conduct of the proceedings before the learned Magistrate of Pillessa”.

With regard to the alleged acts of the Magistrate amounting to biased conduct against the Petitioner in this case, it is important to apply the criterion endorsed in the case of Abdul Hasheed v. Mendis Perera and Others-(1991) 1 Sri LR. 243, where on page 257, His Lordship G.P.S. De Silva (as His Lordship then was) stated as follows:

“It is of course, not necessary to prove that the judicial officer was in fact, biased. However, even on the application of the test of reasonable suspicion, it must be shown that the suspicion is based on reasonable grounds-grounds which would appeal to the reasonable, right-thinking man. It can never be based on conjecture or on flimsy, insubstantial grounds. Adopting the words of Lord Denning in Lannon’s Case (supra), Mr. Pullenayagam submitted that “bias” in this context mean, a tendency to favour one side unfairly at the expense of the other – a submission with which I agree.....In this view of the matter, it seems to me that the facts set out in the petition are too remote and too tenuous in character to found an allegation of bias on the part of a judicial officer, who it must be remembered is one with a trained legal mind. As submitted by Mr. Pullenayagam, it is a serious matter to allege bias against a judicial officer and this court would not lightly

entertain such an allegation. The several orders made by the judge in the three cases, which Mr. H.L. de Silva complained **were clearly erroneous in law and indicative of bias, are to my mind, at most instances of a wrongful or improper exercise of a discretion.** Whatever may be the relationship between Sergeant Austin and the Munasinghe brothers, **yet it is not sufficient to impute bias to the Judge. The totality of the circumstances relied on by the petitioners, do not show that the Judge has extended favours to one side “unfairly at the expense of the other”** and I accordingly hold that the allegation of bias has not been established.” (the emphasis was added)

In the instant case, the orders complained of can be viewed as an improper exercise of discretion at most, yet it is not sufficient to impute bias to the judge.

I turn now to the alternative ground relied on by the Learned President’s Counsel, Mr. Manohara de Silva – that the transfer is “expedient on any other ground”.

In the judgment of Abdul Hasheed v. Mendis Perera and Others (supra), it is stated that, “The expression ‘expedient’ in the context means, advisable in the interest of justice. Indeed, the purpose of conferring the power of transfer as provided for in section 46 of the Judicature Act is to ensure the ‘due administration of justice’.

The term “expedient on any other ground” has been interpreted in Joe Franco Fransisko vs. Pannipitiya Malani Dayaratne Manike-CA TR 295/2014 (CA minutes of 05.06.2015) as follows:

“[...] the word “expedient” would also connote a judgment that the Court of Appeal would reach in the end that it would be beneficial not only for the petitioner but also for all litigants in the trial or proceedings to order a transfer”.

Considering the background of the case, which is a maintenance matter where the Applicant-wife and her 15-year-old daughter seeking enhancement of maintenance from the Respondent-husband who was paying Rs. 20,000/- per month to the Applicant, an interim payment of 10,000/- has been already made,

I cannot find a single reason which it would be beneficial to the Applicant in the proceedings to order a transfer.

On the other hand, if dissatisfied or prejudiced by an Order of the learned Magistrate, the Petitioner has ample opportunity to resort to Section 14 (1) of the Maintenance Act No. 37 of 1999, where it is provided as follows:

“Any person who shall be dissatisfied with any order made by a Magistrate under section 2 or section 11 may prefer an appeal to the relevant High Court established by Article 154P of the Constitution in like manner as if the order was a final order pronounced by Magistrate’s Court in a criminal case, and sections 320 and 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, mutatis mutandis, apply to such appeal”.

Thus, in all the circumstances, I am not inclined to grant relief to the Petitioner and accordingly dismiss this application. I make no order as to costs.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal