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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writ of Certiorari.

Ambalangoda Gurunnanselage Ganga Kumari,
No. 258/2,
Helekada,
Angunakolapelessa.

Appearing through her Power of Attorney holder, namely,
Hewagamage Ajith Priyantha,
No. 258/2,
Helekada,
Angunakolapelessa.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/0083/2022

1. Mahaweli Authority of Sri Lanka,
   No. 500,
   T.B. Jaya Mawatha,
   Colombo 10.

2. Director General,
   Mahaweli Authority of Sri Lanka,
   No. 500,
   T.B. Jaya Mawatha,
   Colombo 10.

3. S.A. Eranthika W. Kularathne,
Director (Lands),
Mahaweli Authority of Sri Lanka,
No. 500,
T.B. Jaya Mawatha,
Colombo 10.

3A. D.M.P.B. Dissanayake,
Director (Lands),
Mahaweli Authority of Sri Lanka,
No. 500,
T.B. Jaya Mawatha,
Colombo 10.

4. J.M. Priyantha,
Resident Project Manager – Walawa,
Mahaweli Authority of Sri Lanka,
Resident Project Manager's Office,
Embilipitiya.

4A. Mr. E.K.D. Thennakoon,
Resident Project Manager – Walawa,
Mahaweli Authority of Sri Lanka,
Resident Project Manager's Office,
Embilipitiya.

5. K.M.Nishantha Piyasena,
Block Manager –
Angunakolapelessa,
Mahaweli Authority of Sri Lanka,
Block Manager's Office,
Angunakolapelessa.

5A. Mr. S.P. Gunathilake,
Block Manager –
Angunakolapelessa,
Mahaweli Authority of Sri Lanka,
Block Manager's Office,
Angunakolapelessa.

6. S.M. Chandrasena,
Minister of Lands,
Ministry of Lands,
Mihikatha Medura,
Rajamalwatta Road,
Battaramulla.

6A. Harin Fernando,
Minister of Lands,
Ministry of Lands,
Mihikatha Medura,
Rajamalwatta Road,
Battaramulla.

6B. K.D. Lal Kantha,
Minister of Agriculture, Livestock, Lands & Irrigation,
Ministry of Lands,
Mihikatha Medura,
Rajamalwatta Road,
Battaramulla.

7. Wijamunige Siriyawathie,
258/1, In front of the Playground,
Helekada,
Angunakolapellessa.

8. H.A. Diwunawathie,
100/1, Diyawara Gammana Road,
Helekada,
Angunakolapellessa.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Chamara Nanayakkarawasm with Ridma Senerath for the Petitioner. Sehan Soysa, S.S.C. for the 1st to 7th Respondents. Chathura Weththasinghe for the 8th Respondent.
Written Submissions:	For the Petitioner on 17.12.2025. For the 1st to 5th Respondents on 09.07.2025. For the 8th Respondent on 02.10.2025.
Decided on:	27.02.2026.

Mayadunne Corea J

All parties at the commencement agreed before this Court for this writ application to be disposed by way of written submissions. Thereafter all parties were given the opportunity to file their written submissions and the respective parties have filed their written submissions.

The Petitioner in this Application sought, *inter alia*, the following reliefs:

> "*c) Grant and issue an order in the nature of Writ of Certiorari quashing the decision of the 1st to 6th Respondents or any one or more of them contained in P18 and P19 to cancel the Petitioner's permit for allegedly breaching conditions 8 and 10 of the said permit*
>
> *d) Grant and issue an order in the nature of Writ of Certiorari quashing P18*
>
> *e) Grant and issue an order in the nature of Writ of Certiorari quashing P19*
>
> *f) Grant and issue an order in the nature of Writ of Certiorari quashing P11*"

The facts of the case briefly are as follows. It is alleged by the Petitioner that in 2015, the Petitioner came into possession of a land in extent of 2 roods in Angunukolapelessa following an agreement entered into with one Wijamunige Latha, who was the permit holder of the said land. Thereafter, on the strength of being in possession, the Petitioner participated in a land kachcheri and was issued a permit for the said land. It is alleged that in April 2020, the 8th Respondent forcibly entered into occupation of a portion of the land occupied by the Petitioner. Subsequently, the Block Manager of the 1st Respondent for the Angunakolapelessa Division served a notice dated 24.07.2020

requiring the Petitioner to show cause as to why the permit issued to her should not be cancelled for failing to observed conditions 8 and 10 of the said permit. Subsequent to an inquiry, the Petitioner was served with an order of cancellation of the Petitioner's permit dated 27.10.2020 (P11). The Petitioner submitted an appeal against the said order. It is the contention of the Petitioner, that 1st to 3rd Respondents resolved to cancel the Petitioner's permit on the ground of alleged breaches of conditions 8 and 10, contained in the permit and to issue a fresh permit in respect of the portion of land, currently occupied by the Petitioner, in favour of the 8th Respondent, (P18 and P19). Hence, this Writ Application.

The Petitioner's contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The Petitioner had not breached the conditions of the permit and the cancellation of the permit was initiated for an ulterior purpose, namely, to facilitate a third party, i.e., the 8th Respondent.
- The Petitioner was not afforded a fair hearing
- The acts of the Respondents are illegal, arbitrary, irrational, unreasonable, tainted with mala fides, are in violation of the principles of natural justice and the legitimate expectations of the Petitioner.

The Respondents' contention

The 1st to 5th Respondents raised the following objections:

- The Petitioner is guilty of laches.
- The Petitioner has suppressed material facts.
- The Petitioner's application is devoid of merit and is misconceived in law.

Analysis

If I am to summarise the Petitioner's main ground in seeking for a Writ, as submitted at the hearing, the Petitioner alleges that at the inquiry conducted under section 106, she had not been given a fair hearing and therefore, the subsequent decisions become bad in law.

For a better understanding, let me now consider how the Petitioner came into possession of the land.

How the Petitioner came into possession of the land in dispute

It is common ground that the original permit holder of the particular land was one Wijemunige Kirihami. The said permit is marked as 1R1. The permit had been issued on 14.09.2004 and it appears that the lot described is in FVP 335 additional 02 and it appears that the words used in the permit to describe the land are as follows: "*part of lot no. 169*". It appears in Sinhala as "*169ඒ*", which undoubtedly is meant to be part of lot 169. The boundaries are given on the basis that the said permit has been issued without a proper survey. However, it is clear that the extent of land in the permit is 2 roods.

The said Kirihami had named her daughter, Wijemunige Latha, as the successor and the succession had been registered in the land ledger under reference no. 5053. Thereafter, it is alleged that the said Wijemunige Latha had parted with the possession of the said land in favour of the Petitioner in lieu of the Petitioner settling a loan that the said Wijemunige Latha had obtained. It is not clear whether Wijemunige Latha had succeeded to the land as a nominated successor or whether it was still in the possession of her mother at the time possession was passed to the Petitioner. It is not disputed that Wijemunige Latha had failed to obtain the permission of the 1st Respondent to transfer the possession of the land. This transfer had occurred pursuant to the parties entering into a private agreement marked and tendered as 1R3.

Subsequently, it is alleged by the Petitioner that in 2015 the Petitioner had come into possession. Thereafter, there had been a land kachcheri and it is alleged that the Petitioner has been selected and a permit issued. It is also pertinent to note that as submitted, the Petitioner had been selected on the strength of her being in occupation of the said lot, and the land kachcheri being held to formalise unauthorised occupants of state land. The said permit is marked and tendered as P1. I have considered the permit marked as P1 and find that the said document also refers to the final village plan 335 in no.2 lot no. 169 containing 0.245 which had been given to the Petitioner. Considering these two permits, I observe that the permit P1 through which the Petitioner obtained title is after a survey. However, it doesn't say whether 0.245 is hectares or acres but is merely depicted in the numerical form as 0.245. Further, it appears to this Court that lot 169 in its entirety has been dispossessed to the Petitioner. This permit has been issued on 23.05.2018.

It is also observed that the Petitioner concedes that another daughter of the original permit holder Kirihami is occupying a part of lot 169 in the extent of 20 perches on the strength of another permit and she possesses the land to the north of the Petitioner's land. A dispute had arisen subsequently as a result of the 8th Respondent, the daughter-in-law of Kirihami, allegedly encroaching on an old building that was also situated within the said land.

This dispute between the 8th Respondent in this case and the Petitioner resulted in numerous complaints lodged at the police and the Mahaweli authority, culminating in an inquiry held by the 1st Respondent. Subsequent to an inspection report called by the 1st Respondent and based on the facts elicited in the said inspection report, the 1st Respondent had issued a notice under section 106 of the Land Development Ordinance, No. 19 of 1935 (herein referred to as 'LDO') requiring the Petitioner to show cause as to why her permit should not be cancelled (P8). Keeping it as it may, let me now consider the inquiring officer's findings.

Section 106 inquiry

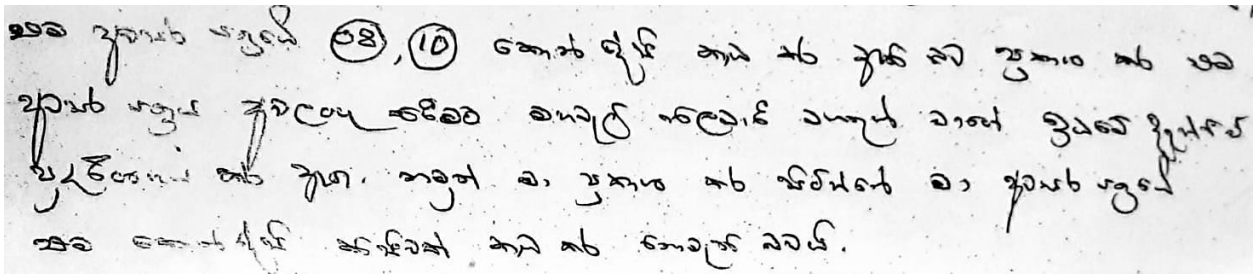
The Petitioner concedes that Petitioner had received a notice pursuant to section 106 of the LDO which is marked and tendered as P8. I have considered the contents of P8 and find that the Petitioner has been summoned for an inquiry under the above section for violation of conditions 8 and 10 of the permit marked as P1 and the said inquiry has been fixed for 02.09.2020 (P8). The Petitioner has replied to the said notice by her reply dated 31.08.2020 marked and tendered as P9. However, the Petitioner has not tendered the proceedings of the inquiry. Instead, she has tendered documents to submit that she had complained against the 1st Respondent to the office of the Parliamentary Commissioner for Administration (the Ombudsman) and the Ombudsman had sought a reply from the 1st Respondent (P10).

The Counsel for the 1st Respondent tendered the explanation given at the inquiry by the Petitioner marked and tendered as 1R6. At this stage it is pertinent to consider the two grounds on which the Petitioner had been asked to show cause, namely, conditions 8 and 10 of the permit:

> *"8. The permit – holder shall cultivate the land and effect other improvements to the satisfaction of the Government Agent. He shall plant trees and other crops as specified by the Government Agent.*
>
> *10. The permit – holder shall keep at his own expense the State land-marks which define the boundaries of the land in good repair."*

Hence, it is the contention of the Respondents that the Petitioner, as permit holder, should establish that she had cultivated the land and has maintained the State land marks and the defined boundaries as depicted in the permit.

I have considered the statement made under 1R6 by the Petitioner where she had answered the said allegation with a mere denial. The said answer contained in 1R6 is reproduced and states as follows:



In her statement, she had further stated that she is not objecting to the amendment of the permit that has been given to her without cancelation. It is common ground that the parties had participated at the inquiry and the Petitioner had asserted that she had not violated conditions 8 or 10 of the permit. It is the contention of the Counsel appearing for the 1st to 5th Respondents that the Petitioner has failed to demonstrate through evidence her non violation of the conditions alleged to have been breached. Instead, as per the answer reproduced above and reflected in 1R6 it appears the Petitioner had only reiterated her denial of breaching the conditions 8 and 10.

Thereafter, the decision on the said inquiry has been given. The said decision is tendered and marked as P11, whereby the Petitioner's permit had been cancelled. Being aggrieved by the said decision, the Petitioner has made an appeal against the said decision. The Petitioner does not deny the fact that she had participated at the inquiry held, nor does she impugn the procedure or the conduct of the inquiry with evidence. I have given due consideration to the submissions and observe that both parties are inviting the Court to answer two opposing positions taken by them (i.e., the Petitioner's contention that she had not been given a fair hearing and the Respondent's contention that she was afforded a fair hearing) without tendering the full proceedings of the inquiry to this Court.

It is trite law that the burden of proof in a Writ application lies with the Petitioner. It is her assertion that she had not been given a fair hearing and, in my view, it is the Petitioner who has to establish her contention. In the absence of the proceedings being tendered to Court the Petitioner has failed to establish her contention of not having a

fair hearing. Further, in the absence of the proceedings, and in view of the Respondents' contention of affording a fair hearing the Petitioner's contention of not having a fair hearing becomes a disputed fact.

However, it was not disputed that all parties concerned had taken part at the inquiry and all parties have been given the opportunity to make statements. At the conclusion of the inquiry the decision has been given by the inquiring officer (P11). In his decision the inquiring officer had come to the conclusion that the Petitioner was in breach of conditions 8 and 10 of the permit and decided to cancel the permit issued to her.

Appeal from the decision pursuant to the inquiry

It is the contention of the Petitioner that being aggrieved by the decision, she had appealed to the Director General of the 2nd Respondent by her letter dated 04.11.2020 (P12). It appears that the Petitioner's appeal too is based on her contention that she had not breached conditions 8 or 10 of the permit. Further, the Petitioner had alleged corruption on the part of the officers of the 1st Respondent. However, strangely, she had in conclusion requested the 1st Respondent to implement the very same recommendations of its officers that are being challenged in these proceedings. The said concluding paragraph reads as follows:

> *"එම නිසා ඔබතුමා මේ පිළිබඳ පරීක්ෂා කර බලා ඔබතුමාගේ කාර්-යාලයේ සහකාර අධ්‍යක්ෂක ඇතුළු පිරිසක් විසින් ගන්නා ලද තීරණය ක්‍රියාවට නංවන මෙන් කාරුණිකව ඉල්ලා සිටිමි."*

Upon the receipt of the said appeal, the 1st Respondent had fixed an appeal hearing and noticed all parties who took part at the preliminary hearing to be present for the appeal hearing on 17.02.2021 (P12A). It is common ground that the said appeal hearing had taken place and the parties have been heard. The Petitioner tendered the proceedings of the said appeal with her counter affidavit marked and tendered as C4.

In the said inquiry, it appears that the inquiring officer had given consideration to the fact that there are three families residing (namely, Wijemunige Siriyawathi, the Petitioner, and one Hewaanthonige Diyanawathi) in three buildings within lot 169 given to the Petitioner. Hence, it appears that he had come to the conclusion that on a permit given to the Petitioner, by allowing three people to reside, the Petitioner has breached condition 10. It was also contended on behalf of the Respondents that the Petitioner in her affidavit has failed to establish with any material evidence that the Petitioner has

cultivated the said land. Hence, I observe the inquiring officer after giving due reasons, had recommended to act under the LDO and to cancel the Petitioner's permit. In view of the said proceedings, as reflected in the document marked and tendered as C4, I am unable to agree with the Petitioner's submission that the Petitioner has not been afforded a fair hearing before arriving at the decision sought to be impugned. Hence, the Petitioner's main ground seeking to impugn the decision for the cancellation of her permit due the absence of a fair hearing, is not tenable.

The Petitioner in in paragraph 21 of her petition had pleaded that at the inquiry she had consented to the altering of the boundaries of her permit to accommodate the land area depicted in the permit marked as 1R2, which is also encompassed in the lot given to her. However, in my view this establishes that all parties have been called and a fair hearing had been given to all parties in the appeal. It is also observed that even for arguments sake, if I am to accept the allegation of the absence of a fair hearing at the inquiry held on 02.09.2020, the said contention is negated by the parties participating at the appeal hearing and as per the appeal proceedings (C4) tendered to this Court. The parties were not at variance that the final decision that is sought to be impugned is based on the outcome of the appeal reflected in C4.

However, it is also pertinent to note that it is the complaint of the Petitioner that she had not been informed of the outcome of the appeal until she had obtained the decision pursuant to a right to information request. The decision of the appeal and the conveyance of the said decision are marked and tendered as P18 an P19 which is sought to be quashed by the Petitioner.

Decisions conveyed by P18 and 19

Pursuant to the said report, the Director of Lands of the 1st Respondent had communicated her final recommendation to the 2nd Respondent, and sought the approval from the 1st Respondent to implement the same. The final decision of the appeal as conveyed to the resident project manager has been marked and tendered as P19. The Petitioner alleges that the said decision had been taken by the 6th Respondent at a mobile service and therefore, the said decision is bad in law and is an abdication of the power of the 2nd Respondent. However, this Court observes that the Petitioner has failed to establish the said contention through any material or independent evidence. The Petitioner failed to produce any evidence to substantiate the said contention. It is trite law as decided in the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** **SC Appeal 10/2009 decided on 15.12.2014, at page 5,** that

"the burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies".

In ***Handapangoda Mudalige Mahendra Gunasekara, and another v. Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue and 5 others*** **CAWRIT/313/24 decided on 29.08.2024** it was stated:

"Further, it is observed that though the Petitioners contend that they were not the directors as per the evidence submitted through their own pleadings, it is clear that this business entity had been in operation since 2006. It is also clear that the entity had been submitting its returns to the IRD which means it had been operating. Then there should have been a workforce under the entity and their salaries and statutory dues would have been paid. The profits of the entity would have been collected and some person would have been responsible for the losses if any. None of these facts were addressed by the Petitioners though the burden of proof in a writ application lies with the Petitioners."

Accordingly, the burden of proof in a Writ application lies on the Petitioner. In my view, the Petitioner has failed to discharge this onus pertaining to the afore-mentioned contention. Therefore, in my view the said contention has to fail.

The Petitioner also submitted in paragraph 31 of the Petition that cancellation of her permit was a façade to give effect to the illegal directions given by the Minister to the 6th Respondent. However, as observed the Petitioner has failed to establish this ground with any material evidence. With the finding of the inquiry, the Petitioner's contention that P8, P11, P18 and P19 are bad in law due to the said decision being *ultra vires* the powers granted, has to fail.

Although in paragraph 32 of the petition the Petitioner has averred that she has not breached conditions 8 and 10 of the permit, she has failed to establish this fact at the inquiry through independent evidence or even by producing photographic evidence to demonstrate cultivation of the land. The Petitioner could easily have discharged this onus by attaching an affidavit by the gramasevaka. It is also observed that although the Petitioner has averred that the cancellation of the permit is done with an ulterior motive, and the decision is irrational and tainted with *mala fides*, the Petitioner has failed to substantiate these allegations with any material or independent evidence. Hence, the said allegations are not tenable.

The Petitioner also alleges that the inquiry under sections 106 and 110 are only a façade to give effect to the direction by a Minister and by doing so the 1st and 2nd Respondents have abdicated and surrendered their powers and acted under dictation. The Petitioner has failed to establish any of these grounds with any material or independent evidence.

The Petitioner's allegation of breach of principles of natural justice by not affording a fair hearing is not tenable for the reasons I have mentioned above. The Petitioner also submits that the cancellation is in violation of her legitimate expectations and cannot stand, as by the Petitioner's statement she herself has conceded that the permit given to her is flawed, and has proposed to amend her permit. In the circumstances, a question arises as to whether a legitimate expectation can accrue on a document that the beneficiary herself concedes to be flawed and cannot stand. Hence, the Petitioner's contention that she has a legitimate expectation to possess the land that she had obtained under the permit marked as P1, has to fail.

In the absence of material tendered to impugned the allegation of violation of condition 8 and 10 in my view, the Petitioner has failed to establish that she has not breached the said conditions of the permit and thereby, has failed to impugn the decision sought to be quashed by prayer (c). Accordingly, in view of my above observation, prayers (c), (d), (e) and (f) have to fail.

Validity of a permit issued to several people for the same lot

It is observed that by 1R1 the original permit had been issued to Wijemunige Kirihami for an extent of 2 roods which contains a part of lot 169 on 14.09.2004. Thereafter, a further extent of 20 perches from lot 169 had been allotted to Wijemunige Siriyawathi by 1R2. Neither the Petitioner nor the Respondents have tendered to this Court any material to demonstrate the exact extent of lot 169. However, keeping it as it may the Court observes that the permit marked as P1 which has been issued to the Petitioner, contains lot 169 in its entirety. This permit has been issued on 23.05.2018 and the extent appears in numerical form as 0.245. In the absence of a unit of measurement, whether the extent is in acres or hectares is not clear. However, most importantly no material has been tendered to this Court to demonstrate that the permits marked as 1R1 and 1R2 have been cancelled before the issuance of the permit P1. Hence, the resulting position would be that while the permits 1R1 and 1R2 for a cumulative extent of 2 roods and 20 perches were in force, another permit had been issued to the Petitioner encompassing the said two allotments of land that have been dispossessed. There is no provision in the LDO that allows a land that has been alienated on a permit to be alienated to another person by another permit without a cancellation of the initial permit. I have considered

the document marked as 1R1. The said permit depicts the land that had been issued to the original permit holder Kirihami. There is an endorsement to state that the said permit had been annulled on 30.08.2022 pursuant to an inquiry under section 106 of the LDO. Hence, it is obvious that when the permit marked as P1 was issued to the Petitioner for the entirety of lot 169, there existed two more permits issued to Wijemunige Kirihami and Wijemunige Siriyawathi (1R1 and 1R2) pertaining to the same lot. A similar issue was considered in an appeal in ***Wimala Herath (deceased) Sarathchandra Rajapaksha and others v. Kamalawathie and another*** **(2013) 2 SLR 60**, which contained similar facts and where the Court held as follows:

> "*On the questions of law aforementioned I have viewed the judgment of the Civil Appellate High Court. The permit No. 156 was issued for 2A, 1R, 26P. The Appellants are holding under that permit and that fact was not an issue at any time. The permit No. 156 is admittedly legal and valid. The Govt. Agent issued permit No. 156A for 30P. which land is situated inside the land described in permit No. 156. According to the provisions of the Land Development Ordinance No. 19 of 1935 as amended, there is no way to expunge a portion out of this land already given on a permit. and grant a separate permit for that expunged portion, with or without the consent of the first permit holders. In fact no permit holder could agree to do so. according to the provisions of law. If at all, the 1st permit could be cancelled on lawful grounds and it is only thereafter that the land could be divided and separate permits be issued. The Govt. Agent at that time has issued permit 156A in the most wrongful way. He has neither considered the provisions of law nor the repercussions which could arise thereafter. In the case of Seenithambi vs. Ahamadulebbe(1) the Gal Oya Development Board issued one permit to A in 1954 and another to B in 1960 for the same allotments of land. The Supreme Court held that strict proof of due cancellation of the permit issued to A was necessary before his title could be defeated. The Learned Judges of the Civil Appellate High Court have interpreted the decision of this case in the wrong way and dismissed the plaint.* ***The ratio decidendi of that judgment is that once a permit is given for a particular allotment of land without a cancellation of that permit, no other permit granted for the same could be legally valid.*** *It goes without saying that no other permit granted for part of the same land could be legally valid. Therefore it is quite clear in this case that with the admission of both parties, that permit 156 is legally valid and prevailing from that time up to date, that a portion of part of the same land cannot be expunged and be given to another person on another permit, ie. 156A. Therefore I hold that permit 156A is illegal and void.*" (emphasis added)

This Court agrees with said *dicta*. Once a permit is issued in the name of one person, another permit for the said alienated portion cannot be issued to another person without cancelling the initial permit for the already alienated allotment. In this instance for the

contested lot 169, not one but two permits have been issued, namely to Kirihami and Siriyawathi, in the extent of 2 roods and 20 perches. However, without cancelling the said two permits a third permit had been issued to the Petitioner encompassing the land depicted in both the earlier mentioned permits. It is observed that when the said permit was issued, all the parties had been residing within the said allotments demarcated by their permits.

Conclusion

I have considered the written submissions and the material tendered. However, for the reasons stated above I am unable to agree with the contention of the Petitioner that the acts of the Respondents are bad in law. Accordingly, for the aforementioned reasons I am not inclined to grant the reliefs prayed for by the Petitioner and I therefore, proceed to dismiss this application without costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal