

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

1. Sipkaduwa Anthony-Dhanwathie
2. S.K Dulani Abeychandra

CA (Writ) application No: 799/2023

both are No 37, Seenigoda,  
Wathugadara

**PETITIONERS**

**-Vs-**

1. Senaka Palliyagaru,  
Provincial Land Commissioner,  
Southern Province,  
No. 211, Wakwella Road,  
Galle.
2. R.M.I.B.M.C.B Jayasinghe,  
Divisional Secretary,  
Divisional Secretariat Office,  
Balapitiya.
3. K.D Bandula Jayasinghe,  
Land Commissioner,  
Land Commissioner's General Department,  
Mihikatha Madura,  
No 1200/6, Rajamalwaththa road,  
Battaramulla.
4. S.A. Eda Wimalasooriya,  
No 19, Sinigoda,  
Wathugadara.

**RESPONDENTS**

**Before: S. U. B. Karalliyadde, J.**

**Dr. D. F. H. Gunawardhana, J.**

**Counsel:** Sandamal Rajapakse with Kalpanee Dissanayake for the Petitioners.

Abigail Jayakody, SC for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

Chanaka Kulathunga with Ama Jayaweera for the 4<sup>th</sup> Respondent.

**Supported on:** 25.07.2025

**Order delivered on:** 06.08.2025

**S. U. B. Karalliyadde, J.**

This Order pertains to the issuance of formal notices of this Writ Application on the Respondents. The 1<sup>st</sup> Petitioner's father, one Anthony Odiris Wimalasuriya, had obtained a permit under the Land Development Ordinance for Lot No. 68 depicted in plan No. A 975 marked as P1. After the 1<sup>st</sup> Petitioner's father's demise, her mother, one Henda Hewa Salpinona, had succeeded to the rights of the land and her rights were registered under the Land Ledger No. 25085 marked as P3. Thereafter, three Roods each from the said Lot 68 were equally allocated among the three daughters of Salpinona (out of nine children), and land permits were duly issued under the Land Ledger Nos. 54920, 54921, and 54922. The Petitioners state that, according to the Ledger marked as P3, Salpinona had nominated the 1<sup>st</sup> Petitioner as her successor. However, the name of the 1<sup>st</sup> Petitioner has been unlawfully and fraudulently removed from the said Ledger. After the demise of Salpinona in 1971, the remaining six children

of Salpinona who did not receive a block of land from Lot 68 had sought the intervention of the Divisional Secretary of Balapitiya (the 2<sup>nd</sup> Respondent) on several occasions to get their share of the land. The 2<sup>nd</sup> Respondent, by letter dated 15.11.1995 marked as P4, had referred this matter to the Provincial Land Commissioner of the Southern Province, the 1<sup>st</sup> Respondent, for an inquiry.

The Petitioners state that by letter dated 13.02.1996 marked as P5, the 1<sup>st</sup> Respondent had informed the 2<sup>nd</sup> Respondent that the 1<sup>st</sup> Petitioner had been nominated as the successor of Salpinona and if there is no settlement, Temapala Wimalasuriya, who is the brother of the 1<sup>st</sup> Petitioner to make an application to the Court to obtain the possession of the land. However, this Court observes that in the letter marked as P5, it is stated that no successor has been nominated in the permit No. L L 25085 and S. A. Temapala should be considered the lawful holder of the land in terms of Rule 1 of the Third Schedule read with Section 72 of the Land Development Ordinance. The said letter further directs that the 1<sup>st</sup> Petitioner be informed to vacate the land, and in the event a settlement cannot be reached, S. A. Temapala should be advised to initiate legal proceedings to obtain possession of the land. Subsequently, the 2<sup>nd</sup> Respondent, by the letter dated 07.11.1996 marked as P6 informed the Additional Land Commissioner that it has been stated in the Ledger marked as P3 that Salpinona had nominated the 1<sup>st</sup> Petitioner as her successor and according to the 1<sup>st</sup> Respondent's decision, Temapala Wimalasuriya has been instructed to initiate legal proceedings to obtain possession of the land. Thereafter, on several occasions, Temapala had made complaints to the

Governor of the Southern Province, and after Temapala's demise, his daughter, the 4<sup>th</sup> Respondent, has made complaints to the 2<sup>nd</sup> Respondent. Thereafter, an inquiry was held by the Southern Provincial Petition Committee on 27.06.2011 and by the letter dated 03.08.2011 marked as P13, the Secretary to the Southern Provincial Council had informed the 2<sup>nd</sup> Respondent that the Petition Committee accepted the recommendations made by the 2<sup>nd</sup> Respondent and therefore to act accordingly. The 1<sup>st</sup> Petitioner, by letter dated 06.09.2011 marked as P14, had inquired from the 2<sup>nd</sup> Respondent about the recommendations made by the 2<sup>nd</sup> Respondent before the Petition Committee.

The Petitioners state that the said recommendations were contained in the letter dated 23.04.2014 marked as P15, issued by the 2<sup>nd</sup> Respondent and addressed to the Attorney General. Accordingly, the recommendation made by the 2<sup>nd</sup> Respondent mentioned in P13 was to give the remaining shares of Lot 68 to Temapala Wimalasuriya and apart from the three sisters who received a portion of the land the remainder of the land be distributed among the other children of Salpinona, according to the wishes expressed by Temapala Wimalasuriya. The Petitioners argue that, in terms of Section 72 of the Land Development Ordinance, the remaining portion of Lot 68 should go to the eldest brother and Temapala, who is the second son of Salpinona, impersonated himself as the eldest son to obtain title to the share of the land. Being aggrieved by the said recommendations mentioned in P13, the 1<sup>st</sup> Petitioner has instituted the case No. CA/Writ/47/2014 and by the Order dated 29.07.2018 marked as P26, this Court has

dismissed the said application. Thereafter, the 2<sup>nd</sup> Respondent decided to divide the remaining portion of the land in accordance with the recommendations mentioned in P13. By letter dated 12.10.2020 marked as P17, the 2<sup>nd</sup> Respondent has informed the 2<sup>nd</sup> Petitioner, who is the daughter of the 1<sup>st</sup> Petitioner, that the land will be divided among the heirs of Salpinona, in a manner in which each heir would get 10 Perches. But the 2<sup>nd</sup> Petitioner has objected to the surveying of the land for the purpose of such division among Salpinona's heirs. As a result, the 2<sup>nd</sup> Respondent notified the 2<sup>nd</sup> Petitioner to appear for an inquiry to address the issues raised concerning the survey. The said inquiry was held on 19.10.2023. Thereafter, by the letter dated 09.11.2023 marked as P24, Land Commissioner, the 3<sup>rd</sup> Respondent informed the 2<sup>nd</sup> Respondent that a decision had been made at the inquiry to the effect that the land to be handed over to the original heir, who expressed the willingness to divide the land among the other heirs who had not been issued with permits. It was further decided to allocate 10 perches to the 2<sup>nd</sup> Petitioner, as she had constructed her house on that portion of the land.

Being aggrieved by the aforesaid factors, the Petitioners have invoked the Writ jurisdiction of this Court seeking the following substantive reliefs, *inter alia*,

- (b) Issue a mandate in the nature of a Writ of Certiorari quashing the decision dated 09/11/2023 taken by the 3<sup>rd</sup> Respondent violating the Land Development Ordinance marked as P24.
- (c) Direct the 1<sup>st</sup> to 3<sup>rd</sup> Respondent to grant a permit for entire land in dispute as depicted in the plan marked as P1, to the 1<sup>st</sup> Petitioner

In the alternative direct the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to grant permits for Lot Nos 31 and 28 of the plan marked as P1A which is the subdivision of Lot No 68 in the plan marked as P1 to the 2<sup>nd</sup> Petitioner

(d) Issue a mandate in the nature of a Writ of Mandamus compelling to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to held impartial inquiry to determine rights of the heirs to the land in dispute

(e) Issue a mandate in the nature of a Writ of Mandamus compelling to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to allocate the entire land in dispute to the Petitioners

In the instant Application, the Petitioners' contentions are as follows,

1. The 1<sup>st</sup> Petitioner's name has been removed illegally from the Ledger marked as P3 without following the cancellation of nomination of successor under Section 58(1) of the Ordinance.
2. Temapala Wimalasuriya and other children of Salpinona have no right to complain to the 2<sup>nd</sup> Respondent after twenty-two years regarding the inheritance of the land, as they have failed to obtain possession of the said land within six months from the demise of Salpinona in terms of Section 68(2) of the Ordinance.
3. The 3<sup>rd</sup> Respondent has failed to take a proper decision regarding the Petitioners' right to the land, and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have failed to hold an impartial inquiry to determine the rights of the heirs to the land

The Respondents have taken up the preliminary objection that the Petitioners have suppressed the material facts and documents of this action and have not come before this Court with clean hands. This Court observe the fact that even though the Petitioners argue that the 1<sup>st</sup> Petitioner has been nominated as the successor of Salpinona in the Ledger marked as P3 and her name has been illegally removed from the said ledger, they have only produced the land Ledger marked as P3 and has failed to produce the permit which was issued under the name of Salpinona. In view of the fact that the 1<sup>st</sup> Petitioner's name appears to have been struck off from the Ledger marked as P3, the permit issued in the name of Salpinona constitutes a material document that ought to be produced before this Court. The production of the said permit is necessary to determine whether the 1<sup>st</sup> Petitioner had been nominated as the lawful successor therein, and whether the subsequent removal of her name was unlawful. The said permit issued under the name of Salpinona has been produced to this Court by the 4<sup>th</sup> Respondent, marked as 4A2. In the said permit marked as 4A2, the 1<sup>st</sup> Petitioner's name has not been nominated as a successor. Furthermore, the 1<sup>st</sup> Petitioner has previously invoked the Writ jurisdiction of this Court in the case No. CA/Writ/47/2014 seeking to quash the recommendations stated in the letter marked as P11, which is produced in this Application as P13. However, Mahinda Samayawardhena, J., in his Order dated 29.07.2018, has dismissed the said writ application (P26) for the reason that the 1<sup>st</sup> Petitioner has failed to prove that she was the nominated successor to the land to the satisfaction of the Court. Mahinda Samayawardhena, J., in his Order, has held that,

*“Be that as it may, the Petitioner who challenges the deletion of her name as the nominated successor in P5 on the basis that no proper procedure has been followed, in the first place, shall explain how her name came to the Land Ledger as the nominated successor of her mother, Salpinona. It is not clear, who made that entry and when it was made. P5 is in relation to a Permit No. 2645 dated 10.01.1947 issued in the name of Salpinona. But P2 Permit in the name of Salpinona is dated 26.06.1967.”*

His lordships went on to hold that,

*“Under section 56, the nomination of a successor shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a Divisional Assistant Government Agent, or a Notary, or a Justice of the Peace if the nomination is not done on the Permit itself as stated in section 87.*

*The Petitioner, who speaks of failure to follow the provisions of the Land Development Ordinance for cancellation of a nomination, has, in the first place, not proved nomination as above. Nomination of the Petitioner has not been done on the Permit. Nor has it been done in the prescribed form in triplicate either.”*

This Court can observe that the permit marked as 4A2 has been produced to this Court in the case No. CA/Writ/47/2014 by the 1<sup>st</sup> Petitioner marked as P2. However, the Petitioners have failed to produce the said permit before this Court when filing the

instant Application. Furthermore, in a situation where this Court has already decided in CA/Writ/47/2014 that the 1<sup>st</sup> Petitioner has not proven to the satisfaction of this Court that she is the nominated successor, not producing the permit marked as 4A2 appears to be an attempt of the Petitioners to misdirect this Court in believing that the 1<sup>st</sup> Petitioner is the rightful successor to the said permit. Hence, it is the view of this Court that the Petitioners have suppressed a material fact and have not come before this Court with clean hands. Suppression of material facts is fatal to an application.

In the case of *Sarath Hulangamuwa v. Siriwardena, Principal, Vishaka Vidyalaya and others*,<sup>1</sup> Siva Selliah, J. held that,

*“Petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to this court, bare every material fact so that the discretion of this court is not wrongly invoked or exercised.”*

In *Moosajees Ltd v. Eksath Engineru Saha Samanya Kamkaru Samithiya*,<sup>2</sup>

*“The pleadings in their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the petitioner has not observed the utmost good faith and has been guilty of a lack of uberrima fides by suppression of material facts in the pleadings. It was neither fair by this court nor by his counsel that there was no full disclosure of material facts.”*

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<sup>1</sup> (1986) 1 SLR 275 at 282.

<sup>2</sup> 79 (1) NLR 285 at 288.

Jayasuriya J, in the case of *Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & Others*,<sup>3</sup> held that,

*“In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose uberrima fides and disclose all material facts to this Court for the purpose of this Court arriving at a correct adjudication on the issues arising upon this application. In the decision in Alphonso Appuhamy v. Hettiaratchi<sup>4</sup>, Justice Pathirana, in an erudite judgment, considered the landmark decisions on this province in English Law and cited the decisions which laid down the principle that when a party is seeking discretionary relief from this Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court.”*

In the case of *Fonseka v. Lt. General Jagath Jayasuriya and Five Others*,<sup>5</sup> a divisional bench of this Court held that,

*“Material facts are those which are material for the judge to know in dealing with the application as made; materiality is to be decided by court and not by*

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<sup>3</sup> (1997) 1 SLR 360

<sup>4</sup> 77 NLR 121

<sup>5</sup> [2011] 2 Sri LR 372

*the assessment of the applicant or his legal advisers; ... one must make proper inquiries before making an application for a discretionary remedy and his duty to disclose all material facts and refrain from misrepresenting like facts, therefore, applies not only to material facts known to him but also to any additional facts while he would have come by his knowledge had he made proper inquiries.”*

Saleem Marsoof, J. in *Namunukula Plantations Ltd. v. Minister of Lands and Others*,<sup>6</sup> observed that,

*“If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”*

Furthermore, in the case of *Dahanayake and Others v. Sri Lankan Insurance Corporation Ltd. and Others*,<sup>7</sup> Janak De Silva J. also upheld the position that if there is no full and truthful disclosure of all material facts, the Court would dismiss the application without going into the merits of it.

Considering the aforementioned facts and legal authorities, this Court is of the view that the Petitioners have willfully suppressed a material document and have attempted to mislead this Court into believing that the 1<sup>st</sup> Petitioner was the duly nominated

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<sup>6</sup> [2012] 1 Sri LR 365.

<sup>7</sup> (2005) 1 SLR 67

successor under the permit marked as 4A2. Accordingly, the Court finds that the Petitioners are guilty of lack of *uberrima fides* by failing to disclose material facts in their pleadings. As the Petitioners have not approached this Court with clean hands, this Application is liable to be dismissed *in limine*, without proceeding to a determination on its merits.

Furthermore, upon a careful examination of the documents placed before this Court, it is evident that while the Petitioners assert that the 1<sup>st</sup> Petitioner is the lawful successor under the permit marked as 4A2, the Respondents contend that one Temapala Wimalasuriya is the rightful successor in respect of the remaining portion of the land covered by the said permit. Furthermore, the Petitioners contend that the remaining portion of the land should devolve upon the eldest brother, and not upon Temapala, who is the second son of Salpinona. However, the Respondents' position in this regard is that Temapala is the eldest son who has succeeded to the rights. This gives rise to a clear and substantive dispute regarding the question of succession. It is well established that when material facts are in dispute, writ courts are generally reluctant to exercise their jurisdiction. In the circumstances, this Court is of the view that the issues in question are more appropriately adjudicated upon by a District Court, where parties will have the opportunity to lead oral and documentary evidence, rather than by way of affidavit evidence in a writ proceeding.

In addition to the foregoing, this Court observes that the Petitioners' claim arises in relation to the permit issued for Lot 68 of the Plan marked as P1, which is presently

being divided among the remaining heirs of Salpinona. Apart from naming the 4<sup>th</sup> Respondent, who is the heir of Temapala, the Petitioners have failed to make the other heirs of Salpinona, parties to this Application. It is the view of this Court that, as the land is being divided among the heirs of Salpinona, all such heirs have a claim to the subject matter and are therefore necessary parties to this Application. It is trite law that all persons who are likely to be affected by the outcome of a writ application should be made Respondents. Accordingly, this Court is of the view that the Petitioners have failed to name the necessary parties to this Application.

Therefore, considering all the above-stated facts and circumstances, the Court refuses to issue formal notices on the Respondents. The Application is dismissed *pro forma* with costs.

*Application dismissed*

**JUDGE OF THE COURT OF APPEAL**

**Dr. D. F. H. Gunawardhana, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**