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

In the matter of an application for mandates in the matter of *Writ of Mandamus and Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application No: 0336/2022

1. K.A.T. Kumara
   Benthara Niwasa, Maha Kanda, Hidagala

2. B.R. Dissanayake
   Panawa Gedera, Aulegama, Wariyapola

3. M.G. Vijitha Kumara,
   No.502/A, Wisithune Kanuwa, Jayanthipura, Polonnaruwa

4. H.M.W. Bandara
   Isanwaththa, Thalahinna, Ibbagamuwa

5. B.R.S. Pushpa Kumara
   No. 369/1 Demalussa, Maspotha

6. S.M.L. Wickkramasingha
   No. 430/2, Waddagama, Kurunegala

7. H.M.S.S.T.K. Deshapriya
   Panawa Gedara, Aulegama, Wariyapola

8. B.M. Premadasa
   Panawa Gedara, Aulegama, Wariyapola

9. H.M.A.N.K. Herath
   Manel Waththa Para, Wegolla, Maspotha

10. W.M.S.R. Wijesingha
    3rd Lane, Mavidalupotha, Yanthampalawa

11. T.A.G.J. Wimalasiri
Badabaddegama, Aulegama, Wariyapola.

12. D.M.P.P. Bandara
No.31/2,Halmillawa, Aulegama, Wariyapola

13. S.M.D.R. Senadeera
Waduressa, Aulegama

14. W.M.R.M. Kumara
Dalupothagama, Katupotha

15. K.M.S. Jayaweera
No. 60, Narammala Road, Katupotha

16. R.M. Piyadasa
No. 316/1, Hindurangala Road, Kiriella

17. H.H.H. Jayakodi
Punchi, Neimagama, Minuwangate

18. P.A.B. Jayasingha
Kibulwana Janapadaya, Aulegama

19. K.T.U.P. Wijayasena
No. 346/1, Weerapola, Wariyapola

20. D.M. Rathnayake
Dunakeanga, Koswaththa,
Eethanawaththa, Kurunegala

Petitioners

Vs.

1. Atapattu Mudiyanselage Dammika
Kumara Atapattu
Saman Kekula,
Ambalawa, Demataluwa,
Kurunegala

2. Eyon Lanka Investment and Film Production
International Company (Pvt) Ltd
Saman Kekula, Ambalawa,
Dematagoda, Kurunegala.

3. Dr. P. Nandalal Weerasinghe
The Governor of the Central Bank
Central Bank
Janadhipathi Mawatha, Colombo 01.

4. R.M.C.H.K. Jayasinghe
Director of Department of Supervision of
Non-Bank Financial Institutions
Central Bank of Sri Lanka,
Janadhipathi Mawatha
Colombo 01.

5. K.M.M. Siriwardana
Member

6. Sanjeeva Jayawardena
Member of
The Governing Board of the Central Bank

6a. Anushka S. Wijesinha
Member of
The Governing Board of the Central Bank

7. Dr. (Mrs) Ranee Jayamaha
Now Member of
The Governing Board of the Central Bank

7A.Vish Govindasamy
Now Member of
The Governing Board of the Central Bank

8. Nihal Fonseka
Now Member of
The Governing Board of the Central Bank

8A. Mr Anushka Wijesinghe
Now Member of
The Governing Board of the Central Bank

(Added Respondent)

8B. Dr. Ravi Rathnayake
Now Member of
The Governing Board of the Central Bank

The 6th to 8b Respondents all of:

The Governing Board of the Central Bank
Central Bank of Sri Lanka
Janadhipathi Mawatha,
Colombo 01.

9. The Monetary Board of Sri Lanka
Central Bank of Sri Lanka
Janadhipathi Mawatha
Colombo 01

(Now abolished by statute)

9A. Governing Board of the Central Bank
Sri Lanka
Central Bank of Sri Lanka,
Janadhipathi Mawatha
Colombo 01.

(Substituted in place of the 9th Respondent)

10. Chandana D. Wickramaratne
Inspector General of Police
Sri Lanka Police Department,
Colombo

10 a. Deshabandu Tennakoon
Acting Inspector General of Police
Sri Lanka Police Department
Colombo

(Added Respondent)

11. Hon. Attorney General
Attorney General's Department
Hulftsdorp,
Colombo 12.

Respondents.

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Dr. Wijedasa Rajapakshe, P.C., with
Kuvera de Zoysa, P.C., Dasun Nagasena,
R. Rajapakshe and Harsha Liyanaguruge
for the Petitioners

Charitha Minipuraarachchi instructed by
Dhanuka Lakmal
for the 1st Respondent

Manohara Jayasinghe D.S.G.,
for the 3rd to 11th Respondents

Argued on : 24-06-2025

Decided on : 28-08-2025

JUDGMENT

R. Gurusinghe, J.

The petitioners filed this application seeking, *inter alia* for the following reliefs:

(e) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision of the 3rd to 9th Respondents or one or more of them, reflected in P7, refusing to take action and/or

issue directions on the 1st and 2nd Respondents for the repayment of deposit liabilities;

(f) Grant and issue a mandate in the nature of Writ of Mandamus directing the 3rd to 9th Respondents and/or one or more of them to consult with all the relevant stakeholders and to formulate a repayment plan to the petitioners as well as to the victims and/or depositors of the 1st and 2nd Respondents referred to in the annexure marked P1, considering frozen assets and/or undisclosed assets of the 1st and 2nd Respondents;

(g) Grant and issue a mandate in the nature of Writ of Mandamus directing the 3rd to 9th respondents and/or one or more of them to consult with all the relevant stakeholders and to formulate a repayment plan to the Petitioners as well as to the victims and/or depositors of the 1st and 2nd Respondents referred to in the annexure marked P1 under and in terms of the Finance Business Act, No. 42 of 2011;

(h) In the alternative prayer (c), grant and issue a mandate in the nature of Writ of Mandamus directing the 3rd to 10th Respondents and one or more of them to commence an investigation in respect of the undisclosed assets (if any) of the 1st and 2nd Respondents or more of them to commence an investigation in respect of the undisclosed assets (if any) of the 1st and 2nd Respondents and to report back to Your Lordships' Court with regard to the manner in which the undisclosed assets of the 1st and 2nd Respondents can be utilised in respect of the repayment of the victims;

The petitioners state that the 1st and 2nd petitioners are the President and Secretary of an unregistered association called "අසාධාරණයට ලක්වූ ඉයෝන් ලංකා සාමාජිකයන්ගේ සංගමය", which consists of thousands of victims who got defrauded by the 1st and 2nd respondents. They further state that it is practically impossible to add each and every affected person as a party to this application. Petitioners state that they invoked the decision of this Court on behalf of/and in the interest of other depositors of the 1st and 2nd respondents as well. Petitioners further state that they are now aware that the 1st respondent and the 2nd respondent company are collectively responsible for initiating an unlawful finance business and ultimately defrauding thousands of depositors, including the petitioner.

The 3rd respondent is the Governor of the Central Bank; the 4th to 8th respondents are members of the Monetary Board of Sri Lanka; the 9th respondent is the Monetary Board of Sri Lanka; the 10th Respondent is the Inspector General of Police, and the 11th respondent is the Attorney General.

The petitioner states that thousands of people, including the petitioners, deposited their money with the 1st and 2nd respondents, being enticed by the promise of 8% monthly return on their deposits. The 1st and 2nd respondents were engaged in the said business for nearly seven years. On or around June 23, 2020, an investigative radio program exposed that the business conducted by the 1st and 2nd respondents was illegal. The petitioner further states that they have now become aware that the 1st and 2nd respondents have unlawfully and wrongfully accepted deposits, running into billions of rupees, from more than ten thousand people around the country.

The officials of the 3rd respondent visited the business premises of the 1st and 2nd respondents and conducted investigations in terms of Section 42 of the Finance Business Act No. 42 of 2011 (hereinafter referred to as the Act). The investigations revealed that the 1st and 2nd respondents accepted deposits from the public and carried on a finance business without obtaining a license, as required by Section 2 of the Act. The 4th respondent, acting in terms of Section 44 (1) of the Act, issued a freezing order, freezing the accounts and assets which belong to the 1st and 2nd respondents and subsequently instituted proceedings in the High Court of Colombo, under Section 45 of the Act, in case bearing no. HC/SPL/10/2020 and sought confirmation of the said freezing orders. The petitioners believe that, as a result of the orders made by the High Court of Colombo, the 3rd and 4th respondents have managed to freeze approximately two billion rupees worth of assets belonging to the 1st and 2nd respondents, effectively shutting down the unlawful finance business. The High Court case is still pending.

By letter dated 14 December 2020, the 1st respondent presented a purported payment plan to the Monetary Board, agreeing to pay off his victims, subject to lifting the freezing orders issued by the High Court. The Monetary Board did not consent to the aforesaid purported repayment plan presented by the 1st respondent, and he was directed to devise a more detailed and effective mechanism for repaying his victims. The petitioner further states that they believe that, thereafter, the 1st respondent submitted a payment plan and, during a meeting held with the Monetary Board and the petitioner, the 1st respondent verbally stated that he had undisclosed assets running into Five Billion Rupees and the same could be utilized for the repayment of the victims. However, the said proposal was also rejected by the 3rd, 5th, and 9th

respondents. The petitioners further stated that in January 2022, the victims of the 1st and 2nd respondents wrote to the then Minister of Public Security, complaining of the fraud committed against them by the 1st and 2nd respondents. As a result, the then Minister of Public Security made inquiries of the 4th respondent regarding a pre-payment mechanism for the victims of the 1st and 2nd respondents. The 4th respondent replied to the then Ministry of Public Security, stating, *inter alia*, that the 4th respondent had refused the repayment plan presented by the 1st respondent. The 3rd respondent had also constantly reminded the Attorney General to initiate legal action against the 1st and 2nd respondents. Furthermore, the 4th respondent is not in a position to repay the victims of the 1st respondent, and repayment should be made through a judicial process. A copy of that letter was produced with the petition marked P7. The petitioners state that after receiving the report from the 4th respondent, the 3rd, 5th to 9th respondents are under a statutory obligation in terms of Section 42 (6) of the Act to do one or all of the stipulated acts therein, including issuing directions to the persons and/or entities, who has carried finance business legally to repay the deposit liabilities. The petitioners state that the 3rd, 6th to 9th respondents, in the letter marked P7, have taken the position that they were not legally empowered to formulate a repayment plan and/or direct the 1st and 2nd respondents to repay the deposit liabilities. In terms of Section 42 (6) of the Act, the 3rd, 6th to 9th respondents have given discretion to make necessary orders or directions in respect of the deposits accepted without legal authority. The petitioners further state that the 3rd, 6th to 9th respondents have failed to direct the 1st and 2nd respondents to come up with a mechanism to adequately repay the depositors/victims of the 1st and 2nd respondents or institute legal action against the same. The petitioners further state that the 1st and 2nd respondents are able to carry on the said illegal finance business, accepting the deposits from the public legally with licenses from the Monetary Board, due to the failure on the part of the 3rd to 9th respondents to supervise and regulate as set out in the Act. The petitioner states that in totality of the aforesaid circumstances, the decision reflected in the letter marked P7 refusing to take action or issue a direction on the 1st and 2nd respondents for the repayment of deposit liabilities is;

a) Illegal;

b) Wrongful, unlawful, arbitrary, capricious, unfair, unreasonable, irrational, irregular;

c) Contrary to the legitimate expectation entertained by the petitioner;

d) And *ultra virus* the Finance Business Act No. 42 of 2011;

e) Contrary to the Rule of Law and the doctrine of public trust, and these actions have been motivated by totally extraneous and/or irrelevant considerations and ulterior motives;

f) Amounts to a wrongful abdication of the statutory duties/obligations of the 3rd to 9th respondents under the Act.

(After pleading the above facts, the petitioners have sought the reliefs prayed for in the prayer to the petition.)

The 1st and 2nd respondents have not filed objections to the petitioner's application. The 3rd, 4th, 8th, 10th and 11th respondents filed objections, including some preliminary objections.

The 3rd to 11th respondents have stated the following facts.

On a complaint received by the Central Bank of Sri Lanka (CBSL) regarding unauthorized deposits taken by the 1st and 2nd respondents in contravention of the Finance Business Act, a team of officers of CBSL visited the company on 23-06-2020 and 10-07-2020, and collected documents/ information required and commenced investigations in terms of Section 42 of the Act. Considering the findings of the investigation, the Director of the Department of Supervision of Non-bank Financial Institutions (DDSNBFI) issued freezing orders prohibiting the 1st and 2nd respondents and other related companies, soliciting and mobilizing deposits or funds in any other form, disposing/alienating assets entering into any transactions in relation to any account, property or investment. The freezing orders were confirmed and extended by the High Court of Colombo. After inquiry, the Monetary Board determined that the 1st and 2nd respondents carried on finance business or accepted deposits in contravention of the provisions of the Act. The Monetary Board, by letter dated 22 September 2020, directed the 1st and 2nd respondents to submit a time-bound repayment plan acceptable to the Monetary Board to settle the depositors in full. The 1st and 2nd respondents submitted a repayment plan dated 2nd October 2020, to repay depositors in four phases, which was to take approximately six and a half years. Further, the repayment plan excluded the interest to be paid to the depositors, and there was a considerable mismatch of the assets and liabilities. Moreover, one of the conditions of the repayment plan was for CBSL to issue a license to the 1st and/or 2nd respondents to operate a finance company as well. Considering the non-feasibility of the repayment plan due to the mismatch of assets and liabilities and other non-acceptable conditions, such as the long period of time to repay, non-payment of interest and the inability of CBSL to grant a license to the 1st and 2nd respondents, the Monetary Board rejected the payment plan submitted by the 1st and 2nd respondents. Furthermore, it

was decided to proceed with instituting criminal proceedings. The decision to reject the repayment plan submitted by the 1st and 2nd respondents was made, taking into account the best interests of the depositors/public.

Thereafter, considering a request of the depositors' association, the Governor chaired a meeting attended by the 1st respondent and the members of the said association on 08-12-2020. Following this meeting, the first respondent submitted another repayment plan on 14-12-2020. Copies of the 1st repayment plan are marked R7, and the 2nd repayment plan is marked R11. The CBSL was compelled to reject the second repayment plan, as it too was not feasible. Factors such as non-payment of interest, mismatch of assets and liabilities and the inability of CBSL to grant a license as proposed by the 1st respondent, played a vital role in the decision of CBSL to reject the said repayment plan. It is reiterated that the above decision was taken by the CBSL considering the best interest of the depositors. Furthermore, CBSL, giving due consideration to the interest of the depositors, informed the 1st respondent that there is no objection from the CBSL for him to repay depositors using funds from any other sources.

Thereafter, the Honorable Attorney General filed an indictment in the High Court of Kurunegala, against the 1st and 2nd respondents, bearing Case No. HC 13/2022, which is presently pending, before the said High Court. If the 1st and 2nd respondents are found guilty in the above High Court case, the 1st and 2nd respondents would have to repay the depositors in terms of section 56 (1) of the Act, which reads as follows:

> *56. (1) Any person who is guilty of an offence under subsection (4) of section 2 of this Act shall be liable on conviction after trial before the High Court to imprisonment of either description for a term not exceeding five years or to a fine not exceeding five million rupees or to both such imprisonment and fine and to settle liabilities of such person to depositors and other creditors under the supervision of court:*
>
> *Provided however, that any person who is found guilty of an offence under subsection (4) of section 2 by application of the provisions of subsection (2) of section 53 of this Act shall settle the liabilities of the relevant body corporate or the unincorporate body as the case may be, in such manner and in such extent as the Court may direct:*
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> *Provided further, that the court may direct the debtors of such person or of the relevant body corporate or the unincorporate body as the case may be, to repay their debts in such manner and within such time as the court may direct.*

The 3rd to 11th respondents denied having acted illegally, unlawfully, unreasonably, irrationally, maliciously, in a disproportionate manner with respect to any transaction, dealing, correspondence, order, determination or any other matter affecting the petitioner or any persons claiming under them. They further stated that they have acted in good faith and in accordance with the law. They further stated that the respondents have, at no stage, pursued a collateral purpose or acted with an improper motive.

The respondents further submitted that CBSL continuously engaged in conducting awareness programs at the national and regional levels to educate the public on the risk of depositing money with unauthorized entities/persons. A list of institutions authorized by CBSL to accept public deposits is given on the website of the CBSL. Therefore, as responsible citizens, the petitioners have failed to act in their social obligation and have sponsored an unauthorized finance business. According to section 55 of the Act, any person who abets, conspires, or attempts to commit an offence under the Act shall be guilty of an offence and shall be punishable in the same manner as for the substantive offence under the Act.

The respondents have further stated that the petitioners have not come to court with clean hands as they have acted irresponsibly in depositing money in the 1st and 2nd respondents for obtaining high level of interest rates (by taking a high risk) instead of depositing such money in licensed banks or licensed finance companies which are listed by CBSL as the institution which are having authority to accept deposits from the public.

In addition to the above objections at the hearing, Learned Counsel for the 3rd to 11th respondents argued that there are nearly ten thousand depositors, while the petitioners represent only eighteen depositors. It was further submitted on behalf of the respondents that, in terms of the provisions of section 58 of the Act, this court has no jurisdiction to determine the petitioner's application.

There are 18 petitioners in this application. Petitioners state that they are representing the members of an unregistered association called "අසාධාරණයට ලක්වූ ඉයෝන් ලංකා සාමාජිකයන්ගේ සංගමය". Petitioners have attached a list of 3,480 names of their members. However, petitioners have not submitted any evidence to show that they represent all those 3,480 members of the said informal association. The 1st and 2nd respondents themselves have represented that there are 9,449 depositors. Paragraph 15 of the petition states as follows: "The petitioner states they have now become aware that the 1st and 2nd respondents have unlawfully and wrongfully accepted

deposits running into billions of rupees from more than 10,000 people around the country." Except for the 1st and 2nd respondents, the other respondents have taken up the position that the petitioners represent only 18 depositors out of about 10,000 depositors. Therefore, the petitioners cannot represent the other depositors.

The petitioners require the court to make an order directing the Central Bank officials to take steps to recover their money. A Writ of Mandamus is issued imposing the performance of a public duty by a public authority. In this case, if there is any public duty to be performed by the officials of the Central Bank, such duty should arise out of the Finance Business Act. The petitioners have not specifically stated the duties imposed on the Central Bank officials that they failed to perform.

In *H. K. D. Amarasinghe and others vs. Central Environmental Authority and others, CA/Writ/132/2018 decided on 03.06.2021,* His Lordship Justice Arjuna Obeysekere J., P/CA (as His Lordship then was), considering the respondent's submissions and the relief prayed for by the petitioners against the respondents, said that *". I am therefore of the view that the relief sought is vague and this Court is not in a position to grant any relief to the Petitioners. In the above circumstances, I am of the view that this application is liable to be dismissed in limine."*

The Court held that *"A petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is sought must be specific and should address the concerns of the petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the petitioner. The fact that the relief is vague is an indication that the petitioner is unsure of the allegations that he/she is making against the respondents and makes the task of Court to mete out justice that much harder."*

The petitioners seek a Writ of Certiorari quashing the decision of the 3rd to 9th respondents, as reflected in P7, for refusing to take action or issue directions on the 1st and 2nd respondents regarding the repayment of deposit liability. P7 was a reply letter to the Public Security Minister, in response to an inquiry he had made. The 3rd to 9th respondents, in fact, directed the 1st and 2nd respondents to submit a repayment plan. The 1st and 2nd respondents submitted a repayment plan, which was not acceptable according to the officials of the Central Bank. The officials of the Central Bank once again directed the 1st and 2nd respondents to submit a viable

repayment plan. The 1st and 2nd respondents again submitted a repayment plan with conditions. One of the conditions of the repayment plan was for the CBSL to issue a license to the 1st and 2nd respondents to operate a finance company, which the CBSL was unable to agree to. Furthermore, the 1st and 2nd respondents require more than six years to settle the depositors, and they are willing to pay the depositors only around 10% of what they are entitled to.

The officials of the Central Bank conducted investigations under Section 42 of the Finance Business Act and issued several orders pursuant to that section. Paragraphs 31 to 37 of the petition refer to section 42 of the Finance Business Act. Actions taken by the officials of the Central Bank under section 42 of the Finance Business Act cannot be challenged under the jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution. Section 58 (1) and (2) of the Finance Business Act is as follows:

Section 58(1) *No person aggrieved by any determination or decision made, direction issued, requirement imposed or purported to have been made, issued, or imposed under section 5 or section 12 or subsection (2) of section 25 or paragraph (b) of subsection (5) or sub section (6) of section 31 or section 34 or section 36 or section 37 or section 42 or section 51 or who apprehends that he would be affected by any act or any step taken, or proposed to be taken or purporting to be taken under any such section shall be entitled to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining, or impeding the Board from giving effect to such order.*

Section 58(2)(a) *The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall in relation to any determination, decision, direction, or requirement or purported determination, decision, direction, or requirement under sections referred to in subsection (1), be exercised by the Supreme Court and not by the Court of Appeal.*

Section 58(2)(b) *Every application invoking the jurisdiction referred to in paragraph (a) shall be made within one month of the date of commission of the act in respect of which or in relation to which, such application is made* and *the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.*

Accordingly, this court has no jurisdiction with regard to any determination, decision, direction, or requirement under sections referred to above.

It is difficult to believe that the petitioners were not aware that the 1st and 2nd respondents were engaged in finance business without a license from the Central Bank which is illegal. The petitioners were not provided with a passbook, but were only issued promissory notes under the guise that they were taking loans from the depositors. The agreed interest rate was 6%-8% per month, i.e., 72%-96% per year. Such interest rates are unbelievably excessive, and the petitioners should have realized that such a proposition was not viable, given the representations made by the 1st and 2nd respondents, before depositing their money with the 1st and 2nd respondents. This implies that the petitioners assisted the 1st and 2nd respondents in conducting the illegal finance business.

Section 8 of the Finance Business Act requires "every finance company shall exhibit its license at all times in the principal office or place of business of such finance company and a copy of such license at each of its branches." The petitioners, however, failed to take notice of the absence of such a license.

The petitioners can be considered accomplices to the illegal activities of the 1st and 2nd respondents. If not, it can at least be said that they acted recklessly and irresponsibly by depositing money with the 1st and 2nd respondents, thereby taking a high risk instead of depositing their funds with licensed banks or licensed finance companies. A Writ of Mandamus is a discretionary remedy. The above-mentioned conduct of the petitioners negates their entitlement to the discretionary remedy.

The Honorable Attorney General has already filed an indictment in the High Court of Kurunegala against the 1st and 2nd respondents under Case No. HC 13/2022, which is presently pending, before the said High Court. As per the provisions of the Finance Business Act, carrying on finance business and accepting deposits without authority is an offence. Accordingly, if the 1st and 2nd respondents are found guilty in the above High Court case, the 1st and 2nd respondents would have to repay the depositors in terms of section 56 (1) of the Act.

Furthermore, the Finance Business Act does not impose a duty on the Central Bank to formulate a repayment plan for the depositors of unauthorized finance institutions.

For the reasons stated in this judgment, the application is dismissed. We make no order for costs.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.