<u>IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</u>

In the matter of an application under 140 of the Constitution for mandates in the nature of Writs of Certiorari and Prohibition.

CA Writ Application No. 449 / 2023

Sammu Arachchige Nilani Keerthika Edirisinghe
No. 42/25/A, Thappawatha Road,
Godigamuwa, Maharagama.

Presently at
No. 1, Goyal Lane, Pakuranga, Auckland, New Zealand.

<u>Petitioner</u>

Vs.

1. The Learned Magistrate,
   Magistrate's Court of Nugegoda,
   Nugegoda.

2. Officer in Charge,
   Special Criminal Investigation Unit,
   Police Station,
   Mirihana.

3. IKO Credit Company (Pvt) Ltd.
   No. 221/A/2, Mahayaya Place, Pahathgama,
   Hanwella.

4. Nugadeni Arachchige Bhathiya Anuruddha Kumarasinghe

No. 417, Shiromini Mawatha, Piliyandala Road,
Maharagama.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

Before	:	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Waruna Nanayakkara and Kalana de Silva instructed by Suneetha Nanayakkara for the Petitioner.
		Shanaka Wijesinghe, ASG for the 1st, 2nd and 5th Respondents.
		S.L. Bulathsinhalage instructed by H.K. Hettige for the 3rd Respondent.
		Jagath Abeynayake with Mahesh Dissanayaka for the 4th Respondent.
Written Submissions on	:	13.10.2025 for the 3rd Respondent.
		15.10.2025 for the Petitioner.
Supported on	:	16.09.2026
Decided on	:	20.07.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner namely Nilani Keerthika Edirisinghe has invoked the jurisdiction of this Court by Petition dated 21.07.2023 seeking inter alia a writ of prohibition against the 1st Respondent Magistrate of Nugegoda), preventing the Learned Magistrate from taking further steps in the Nugegoda Magistrate Court case bearing No. 89707 (B425/11), a writ of *certiorari* quashing the Learned Magistrate's decision to commence proceedings and/or issue summons in the said case and a writ of certiorari quashing the order of the 1st Respondent to continue the case against the Petitioner, dated **16.10.2020** and under Section 192(1) of the Criminal Procedure Code.

FACTUAL MATRIX:

2. The 4th Respondent (Bhathiya Anuruddha Kumarasinghe) mortgaged the disputed land to the 3rd Respondent Company (IKO Credit Company Pvt Ltd.) executing a Deed of Transfer No. 12852 dated **09.10.2007** for Rs. 1 million (vide page 189). A further sum of Rs. 500,000/- was taken by the 4th Respondent upon executing a Deed of Transfer No. 13006 dated **19.03.2008** in favour of the 3rd Respondent (vide page 193). The 4th Respondent by a document titled as "receipt of acknowledgment of money" (vide at page 197) had given the possession of his land to the Petitioner on **01.02.2010.**

3. Furthermore, the impugned Power of Attorney No. 8627 was executed by the 4th Respondent on **09.03.2010** in favour of the Petitioner (vide page 199). By this document, the 4th Respondent has given the express right to enjoy, rent and sell the land until the transfer is completed in favour of the Petitioner.

4. The 4th Respondent by way of a letter executed by two witnesses, intended to sell his plot of land in Maharagama in extent of 8.80 perches to the Petitioner for Rs. 3,500,000/-. However, since the property had been mortgaged to the 3rd Respondent (IKO Credit Company Pvt. Ltd), the 4th Respondent executed a power of attorney bearing No. 8627 and executed before Notary Deepti H. Liyanage on **09.03.2010** in favour of the Petitioner and **promised to release the**

deeds of transfer between the 3rd and 4th Respondent and transfer the property to the Petitioner. Subsequently, the Petitioner had moved into the property on 09.03.2010 and has resided in the property for over 15 years. It is important to note that the paper title of the land is on the 3rd Respondent Company.

5. The 3rd Respondent is a registered company engaged in real estate business. The 3rd respondent lodged a complaint with the 2nd Respondent OIC, Mirihana. It was the 3rd Respondent's position that the 4th Respondent, who owned an 8 perch land in Maharagama sold/transferred the said land to the 3rd Respondent and registered a Deed of Transfer. The Petitioner had entered the subject land and got a third party to occupy the building situated therein.

THE ALLEGED BASIS FOR WRIT:

6. The Petitioner stated that the filing of the case in the Magistrates Court by the 2nd Respondent (OIC - Special Criminal Investigation Unit - Mirihana) against the Petitioner **on a false complaint of the 3rd Respondent is** wrongful, unlawful, unfair, malicious and without any base.

7. It is the view of this Court that if a false complaint has been lodged with the Mirihana police, it is up to the OIC Mirihana to inquire into that. This court is not in a position to decide whether the alleged complaint is false or not. It is up to the magistrate court to decide on that.

8. In the case currently being heard in the Nugegoda Magistrate Court case bearing No. 89707 (B425/11), the Petitioner and 4th Respondent (namely Bhathiya Anuruddha Kumaasinghe) have been charged under Sections 454, 457 and 459 of the Penal Code as the 1st, 2nd and 3rd counts respectively in relation to an alleged forged Power of Attorney.

9. The charges are as follows:
   - 1st Count: Committing forgery by making a **false Power of Attorney**, punishable under Section 454 of the Penal Code.
   - 2nd Count: Using a forged Power of Attorney for the **purpose of cheating punishable under Section 457** of the Penal Code.

- 3rd Count: Using as a genuine Power of Attorney a false Power of Attorney punishable under Section 459 of the Penal Code.

10. The relevant sections of the Penal Code are reproduced below,

> *"454. Whoever **commits forgery** shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.*
> *…*
> *457. Whoever commits forgery, intending that the document forged **shall be used for the purpose of cheating**, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
> *…*
> *459. Whoever **fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged** document shall be punished in the same manner as if he had forged such document."* (the emphasis was added)

11. However, it remained the Petitioner's position that the executed power of attorney was a genuine document and she has merely been dragged into the Magistrate Court case. In paragraph number 10 of the Petition, the Petitioner has admitted that at the time of entering into the deal with the 4th Respondent, she knew the land was owned by the 3rd Respondent. This itself shows that the Petitioner herself is aware that the title of the land is rested with the 3rd Respondent Company.

12. The 3rd Respondent detailed the complaint made against the Petitioner and 4th Respondent which resulted in the B Report (425/2011). It was stated that in haste, the 2nd Respondent (OIC of Special Criminal Investigation Unit, Mirihana) without taking steps to refer the Power of Attorney to the EQD instead discharged the Petitioner. After having later referred the document to the EQD, the report confirmed that the power of attorney was a forgery (marked Pa7). The 3rd Respondent even pointed out that M. Susantha Kumara testified that he never attested the purported power of attorney and denied his signature.

13. Furthermore, the Respondents submitted that the Petitioner's application lacks uberrima fides and that the Petitioner is guilty of laches and delay as she is seeking to quash an order made in 2020.

WHETHER THE PETITIONER'S APPLICATION SHOULD FAIL DUE TO LACHES?

14. The OIC of Mirihana Police (2nd respondent) has reported facts on **05.02.2011** to the 1st Respondent (Magistrate) resulting of issuance of notices on the Petitioner and the 4th Respondent (vide order P6). The Journal Entry dated **25th February 2011** clearly evince that the 4th Respondent and the Petitioner had been named as suspects and the Magistrates' Court has issued notices on them.

15. The Petitioner has appeared before the Magistrate on **14th March 2011** and she has been granted Rs. 100,000/- surety bail. It is seen from the proceedings filed of this Court that the Petitioner has been represented by her lawyer in the Magistrates' Court up until 3rd December 2021. An order has been made on 3rd December 2021 by the learned Magistrate to try the Petitioner in her absence under Section 192(1) of the Criminal Procedure Code.

16. The Petitioner filed the present writ application only on **21st July 2023** which is after more than 12 years from the date she first appeared before the Learned Magistrate. There is not a single averment in the petition explaining the reasons for such inordinate delay.

17. The main reliefs prayed for are as follows:

   - Writ of *Certiorari* quashing the order of the 1st respondent Magistrate of Nugegoda wherein he/she decided to **commence proceedings and/or issue summons** in case no. 89707 (B 425/11) - P8
   - Writ of *Certiorari* quashing the order and/or decision dated 16.10.2020 of the Learned Magistrate of Nugegoda wherein he/she decided to continue the case against the petitioner under Section 192(1) of the Criminal procedure Code - P9
   - Writ of *Prohibition* preventing the 1st respondent from taking any steps in the case.
   - Writ of *Prohibition* prohibiting the 1st respondent from proceeding against the Petitioner in case no. 89707 (B 425/11).

18. The 1st *certiorari* is to quash the decision of issuing summons on 1st of December 2014 which is more than 9 years before this application is filed. The delay to make such application is not explained and this amount to *laches* which is one of the main impediments of granting writs. It is clearly seen that the petitioner has only got agitated when the Learned Magistrate decided to proceed with the trial in her absentia under section 192(1) of the Criminal procedure Code. Nevertheless, even the said order has been made on **16th of October 2020** (vide proceedings marked as P9) which was nearly three years before this writ application was filed. The reason for such delay also not been explained in the Petition.

19. With regard to delay, the Petitioner has drawn the Court's attention to the following case law and urged that delay be excused because no substantial prejudice has been caused to the respondents; especially the order challenged is a nullity; the nature of the error in the proceedings.

> *Ceylon Electricity Board v. Hon. W.D. Seneviratne, Minister of Labour and others* – CA/WRT/0125/2016 decided on 01.10.2025: "*The Respondents in their joint affidavit have asserted that the application of the Petitioner should be rejected on the grounds of undue delay and misrepresentation of facts. It is true that the remedies under judicial review cannot be invoked by those who are guilty of laches, misrepresentation and suppression of material facts. Likewise, the fact that the question of inordinate delay does not arise, where there is a blatant violation of the law or unless there are extraordinary reasons to justify such a delay. However, as I mentioned earlier, the award of the Arbitrator is manifestly erroneous in light of the rules of the Pension Fund. In such circumstances, the court is reluctant to allow public authorities to continue their unlawful practices simply because of a delay in filing the application. Therefore, with regard to the preliminary objection, it is my considered view that* ***no substantial prejudice has been caused to the Respondents by considering the date of filing this application***"

> *Biso Manika v Cyril de Alwis* – [1982] 1 Sri L. R. 369, Justice Sharvananda: "*When the Court has examined the record and is satisfied the Order complained of manifestly erroneous or without jurisdiction the Court would be loathed to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless*

there are very extraordinary reasons to justify the rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically".

<u>*R.M.D. Wasantha vs. Nimal Abeysisri*</u> – CA/WRT/0497/2019 decided on 22.09.2025; "*The Respondents alleged that the petitioner is guilty of laches or delay. It has been held that delay by itself not prevent the exercise of the Court's writ jurisdiction in judicial review. In Biso menika vs. Cyril de Alwis…the above was followed and cited with approval in Paudgalika Kamhal Himiyange Sangamaya also known as Private Tea factory Owners Association vs. H.D. Hemaratna, Tea Commissioner and Others SC Appeal 47/2011, decided on 09.03.2015, where Sripavan C.J. held,*

> *"The Court may therefore in its discretion entertain an application in spite of the fact that a petitioner comes to court late, especially where the order challenged is a nullity. The conduct of the petitioner cannot be branded as unreasonable to dis-entitle it to a Writ especially when the decision contained in the letters P12 and P13 are ultra vires the powers of the Tea Commissioner". "There has undoubtedly been great delay in challenging the validity or legality of the said circulars. However, the rule of laches or delay is not a rigid rule which can be cast in a straightjacket formula, for there may be cases where despite delay and creation of third-party right, the Court may still in the exercise of its discretion interfere and grant relief to the petitioner".*

*In Pathirana vs Victor Perera (DIG Personal training Police) 2006 (2) SLR 281, it was held that while the petitioner had technically disentitled himself to the discretionary relief of certiorari due to his own conduct, including undue delay and laches, the delay was ultimately **excused because of the nature of the error in the proceedings**".*

20. <u>**In the instant case,**</u> I must state that there is no error in the Magistrates Court proceedings and the Learned Magistrate has not acted without jurisdiction. From the date that the notice was issued on the Petitioner 25.02.2011 up to the date that order delivered to try in absentia against

the Petitioner, the Magistrate has acted within the jurisdiction bestowed on the Magistrate under the Criminal Procedure Code.

21. It was further revealed by the 3rd Respondent that the Learned Magistrate (1st Respondent) after hearing PW1, PW2, PW4, PW5 and PW 6 has called for the defence of the 4th respondent and the Petitioner and the case is at the virtual end of its conclusion. **Thus, substantial prejudice has been caused to the Respondents by the time lapse/delay between the date of filing the writ application and the date of delivering this order, which is three years as of now. Therefore, this application should be dismissed.**

22. Moreover, it is revealed in the Petition that the 3rd and 4th Respondents have come to a settlement in the District Court case no. M/2176/15 on **24.06.2022** in to the effect that the 3rd Respondent will transfer the property back to the 4th Respondent on payment of Rs. 1.2 million to the 3rd Respondent on the condition that the case 89707 (B425/11) in the Magistrates Court will be withdrawn by the 3rd Respondent. (vide P10). It is further stated that the Petitioner has recently became known that the 3rd Respondent has transferred the Deed to the 4th Respondent for a sum of Rs. 8.8 million by Deed no. 232 dated **27.06.2022** (vide P11).

23. It now seems that the 4th Respondent has become the owner of the property in dispute by virtue of Deed P11. Now, it is up to the 4th Respondent to act according to his promise given to the Petitioner by transferring the property to her. Even after the lapse of 4 years from the date of 4th respondent became the owner, it is not revealed as to why the property has not been transferred to the Petitioner yet. Nevertheless, this Court cannot resolve such disputes and it is up to the Magistrate court to take cognizance of the same. The criminal aspect of the alleged forged Power of Attorney has to be dealt with by the learned Magistrate in the 89707 (B425/11) pending before the Magistrates' Court of Nugegoda.

24. As such, no basis has arisen for the Petitioner to take writs against 2nd Respondent OIC or the 1st Respondent-Learned Magistrate. If it is a false complaint, that should be gone into during the trial and the Petitioner can get acquitted from the Charges.

25. If the Petitioner got acquitted at the end of the trial, then only arise a cause of action to her of 'malicious prosecution' against the OIC Mirihana - 2nd Respondent. That is the only alternative

remedy available to the Petitioner. Thus, it is premature to decide on the alleged false complaint in this application.

26. An issue of similar circumstance was heard before this Court and the Court of appeal in the case bearing number CA/WRT/168/2025 decided on 17.03.2025 held as follows:

> *"In the instant case, in terms of the law, the Petitioner has every right to challenge the impugned order of the learned Magistrate before the High Court. As observed in Linus Silva's Case (supra),* ***the Petitioner can obtain adequate remedies before the High Court by way of appeal or revision. Instead of invoking the alternative remedy provided by law,*** *that is invoking the High Court's jurisdiction, the Petitioner has chosen to invoke the discretionary Writ jurisdiction of this Court, which is not justifiable.* ***Where the law provides a right to appeal or revisionary jurisdiction to an aggrieved party, that party is precluded from invoking the discretionary jurisdiction without first exhausting the available remedies****. In the instant application, the Petitioner has entirely failed to satisfy this Court as to why he opted to not invoke the High Court's jurisdiction as provided by law. Thus, it is the view of this Court that, on this basis as well, this application cannot be maintained and is liable to be dismissed."*

27. In the circumstances, I dismiss this application subject to a cost of Rs. 75,000/-.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal