

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

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

K.H.M. Munasinghe,  
No.19,  
Sri Pagnananda Road,  
Massala,  
Beruwela.

**Court of Appeal Writ  
Application No.742/2024**

**PETITIONER**

**Debt Conciliation Board  
Application No.45862**

**Vs.**

1. Piyasena Ranasinghe,  
Chairman.
2. Padma Palihakkara,  
Member.
3. Milton Marasinghe,  
Member.
4. Sarath Chandrasena Vithana,  
Member.
5. Somapala Karunathilake,  
Member.

All at:  
Debt Conciliation Board,  
No.35A,  
Dr. N.M. Perera Mawatha,  
Colombo 08.

6. Jagath Amaraweera,  
No.100, Bentota,  
Pitaramba.

## **RESPONDENTS**

**Before:** **R. Gurusinghe J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel:** Nishadi Wickramasinghe for the Petitioner.  
Respondents are absent and unrepresented.

**Written Submissions:** By the Petitioner on 03/03/2026.  
By the Respondents – Not filed.

**Argued On:** 29/01/2026.

**Judgment On:** 31/03/2026.

### **Dr. Sumudu Premachandra J.**

1] The backdrop of this application is as follows: the case centers on a 2011 transaction where the Petitioner's late father mortgaged a 4-perch land in Beruwala to the 6th Respondent (alleged to be a money lender) for a loan of Rs. 400,000. Crucially, the Petitioner argues that while the transaction was a mortgage, it was executed via a "pro-forma" Deed of Transfer (deed bearing No. No. 1097), an outright sale, a common but predatory practice where lenders hold title deeds as security for high-interest loans (6% per month in this case).

2] Following the father's death in 2016, the Petitioner and her family continued making payments totaling Rs. 1,325,000 to the 6th Respondent's agents, despite being denied receipts (Annexure Z, Z1). In 2020, the 6th Respondent allegedly admitted in a recorded conversation (Annexure Z2) that he was still awaiting the disbursement of the original mortgage funds. Furthermore, the Petitioner claims she was coerced into paying an additional Rs. 1,000,000 to the lender's agents under threat, following the sale of another property in 2020 (Annexures Z3, Z4, Z5). Despite these payments, the 6th Respondent reportedly demanded a total of over Rs. 3,000,000 to settle the debt.

3] The Petitioner initially sought relief from the Debt Conciliation Board in 2021 (Annexure Z6). However, the Board dismissed the application in August 2023 (Annexure Z10) and subsequently rejected a review application in September 2024 (Annexure Z13). The Board's primary reasons for dismissal included the Petitioner's failure to provide documentary evidence of the informal payments and its refusal to accept that the 2011 Deed of Transfer was a "pro-forma" document intended as security for a loan. The Petitioner contends that the Board ignored the fact that her family remained in continuous possession of the property (Annexures Z7, Z9), which strongly indicates the transaction was a mortgage rather than an outright sale.

4] In her grievance, the Petitioner argues that the Board failed in its statutory duty to perform "substantial justice" by ignoring overwhelming circumstantial evidence of the money lending arrangement. She asserts that the Board's refusal to consider late-submitted evidence—especially given the 6th Respondent's repeated absence from hearings—was unreasonable. The petition concludes that the Board's orders should be set aside because they protect a predatory lender at the expense of a debtor who has already paid back more than three times the principal amount.

5] The Petitioner, by her amended petition, prays to;

- a) Issue notice on the respondents;
- b) Issue a mandate in the nature of a Writ of Certiorari quashing the decision of the 1<sup>st</sup> to 5<sup>th</sup> respondents, dated 03/09/2024, marked Z14;
- c) Issue a mandate in the nature of a Writ of Certiorari quashing the decision of the 1<sup>st</sup> to 5<sup>th</sup> respondents, dated 28/08/2023, marked Z11;
- d) Issue a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> respondents and/or their successors to grant the relief sought by the petitioner in his application marked Z6 and/or in the application for review, marked Z12;

Or in the alternative to prayer (d)

- e) Issue a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> respondents and/or their successors to consider all the circumstances of the case including the evidence presented to the Debt Conciliation Board in the application for review, marked Z12;

f) Grant costs;

g) Grant such other and further relief as Your Lordships' Court deems fit.

6] The Petitioner seeks a judicial review of the Board's decisions dated 28/08/2023 and 03/09/2024, arguing they are illegal, arbitrary, and ultra vires. When considering the evidence adduced before the Board, the core of grievance lies in a 2011 transaction in which the Petitioner's father mortgaged property for a loan of Rs. 400,000 at a high interest rate of 6% per month. While the legal document was framed as a "Deed of Transfer" (No. 1097, Annexure Z), the Petitioner maintains it was always a mortgage, supported by a valuation report (Annexure Z1) showing the property's market value was significantly higher (Rs.1.4 million) than the purported sale price. The Petitioner admitted that they knew from the beginning that the impugned deed (E1) was drawn as an outright transfer.

7] Following the death of the Petitioner's father in 2016, the Petitioner and his family continued to pay the 6th Respondent's agents, totaling approximately Rs. 1,325,000.00 (Annexures Z2-Z5). Despite these payments, which far exceeded the original capital, the 6th Respondent allegedly used intimidation and threats to demand further sums, including an additional Rs. 1 million forced from the Petitioner during a separate land sale in 2020. Throughout this period, the 6th Respondent and his agents reportedly refused to provide receipts for any payments made. The Petitioner further highlights that they remained in continuous possession of the property (Annexure Z7), which contradicts the claim that a genuine transfer of ownership had occurred via the 2011 deed.

8] The Petitioner initially sought relief from the Debt Conciliation Board (Application No. 45862, Annexure Z6), but the Board dismissed the application on 28/08/2023. The Board's reasoning was that the Petitioner failed to provide evidence of payments and that the 2011 Deed of Transfer could not be ignored (Annexure Z11). A subsequent application for review was filed in November 2023 (Annexure Z12), during which the Petitioner submitted written arguments (Annexure Z13). However, the Board issued a final order on 03/09/2024 (Annexure Z14) upholding its previous dismissal, citing that the Petitioner failed to produce evidence during the initial hearing and that considering late evidence would set a "bad precedent."

9] I now consider the merit of this application. The Petitioner's main grievance is that the Board has failed to apply section 21A of the Debt Conciliation Board Act in its correct perspective.

10] At the very inception, it should be noted that the Board had acted on the provision of section 19A(1A), on considering the Petitioner's possession, a belated application was entertained after 3 years of execution of the impugned deed. Section 19A(1A) of the Debt Conciliation Ordinance No. 39 of 1941, as amended by Act No. 29 of 1999 reads as follows:

*"The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as is a mortgage within the meaning of this Ordinance, unless that application is made within three years of the date of the notarially executed instrument, effecting such transfer:*

*Provided that nothing in this subsection shall be read or construed as preventing the Board from entertaining, after the period referred to in that subsection, **an application by a debtor who is in possession of the property transferred;**" [Emphasis is added].*

11] By order dated 09/03/2023, considering the documents produced ¶1 to ¶21, the Board has decided that the Petitioner has the possession and although the application was delayed, it could be entertained under the provision of section 19A(1A).

12] It is to be noted that despite several notices issued to the 6<sup>th</sup> Respondent, the alleged transferee, the transferee has not disputed the application of the Petitioner. Thus, the matter was heard ex parte before the Debt Conciliation Board. However, the Board held that the Petitioner had failed to prove that the impugned ¶1 was a mortgage.

13] In the above premises, the ambit of the Debt Conciliation Board is to be considered. It is to be noted that the objective of the Board is to deliver substantial justice. Though the preamble of the Act does not specifically state any purpose, the objective of the legislature is clearly made out by section 49. Section 49 says;

*"49. It shall be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form."*

14] The matters to be considered when arriving at a decision are clearly stipulated in section 21A of the Act. It says;

*“21A. (1) In any proceedings under this Ordinance in regard to an application relating to a transfer or conditional transfer of immovable property, the Board shall, notwithstanding anything to the contrary in section 2 of the Prevention of Frauds Ordinance (Chapter 70), or sections 91 and 92 of the Evidence Ordinance (Chapter 14) and for the purpose of deciding whether or not such transfer or conditional transfer is in reality a mortgage, take into consideration all the circumstances of the case and in particular the following matters:-*

*(a) the language of the notarial instrument of transfer and where provision in regard to the right of the transferor or any other person to redeem or purchase the property transferred is contained in any other notarial instrument, the language of that other instrument;*

*(b) any difference between the sum received by the transferor from the transferee and the value of the property transferred;*

*(c) the continuance of the transferor's possession of the property transferred; and*

*(d) the existence of any agreement in whatever form between the transferor and the transferee whereby the transferor is bound to pay the transferee interest, or any sum which may reasonably be considered to be interest, on the sum received by the transferor from the transferee.*

*(2) The burden of adducing evidence to show that a transfer of immovable property is in reality a mortgage shall be on the transferor.”*

15] It should be noted that none of these factors has been considered by the Board when arriving at the decision, making the decision illegal and irrational.

16] The celebrated notion of Lord Brightman in the House of Lords in **Chief Constable of North Wales Police v Evans**, [1982] 1 WLR 1155 at 1174;

*“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power” ... “Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made...”*

17] In **Naiduwa Hannadi Jayanthi Mallika Samarasinghe vs Malini Abeywardhana Ranathunga and others**, CA (Writ) Application No: 161/2018, Decided on: 21/05/2021, His Lordship Arjuna Obeyesekere, J., P/CA; held as follows;

*“The Debt Conciliation Ordinance was introduced in 1941 as a piece of welfare legislation by the Colonial Legislature to address a pertinent social issue involving civil debts that particularly affected rural and economically disadvantaged communities. Those who required financial assistance were compelled to mortgage immovable property in order to obtain loans, and keep paying interest at exorbitant rates until such time as they were able to redeem their properties. These instruments were usually executed as outright transfers, due to the disparity in bargaining power between the creditors and debtors, and because debtors are often desperate to obtain financial assistance and did not have the benefit of access to legal advice to execute a mortgage which protects their rights. This practice led to the eventual loss of property which further widened the gap in society and drove the poor to the depths of poverty... (quoting the case of Debt Conciliation Board v R.D. Hector Jayasiri [CA/APN/MISC 01/2011; CA Minutes of 9th October 2012; Deepali Wijesundera, J].”*

18] Further, His Lordship went on saying:

*“The primary submission of the learned Counsel for the Petitioner is that the Board failed to consider the totality of the evidence presented to it, and that the decision of the Board is irrational and unreasonable. In considering this argument, I am mindful that this Court is exercising its Writ jurisdiction as opposed to its Appellate jurisdiction, and that this Court is not concerned with the rights and wrongs of the decision sought to be impugned but only whether the said decision is legal or not...”*

*While I am mindful that it is not my duty to analyse the facts as would be done when exercising appellate jurisdiction, I am also mindful that, as stated by Lord Bingham, that ‘they (judges) are auditors of legality; no more, but no less.’<sup>9</sup> If a decision has been influenced by considerations which either expressly or implicitly cannot lawfully be taken into account, a Court may hold that such discretionary power has not been exercised validly. In doing so, Courts can consider to what degree the decision maker has been influenced by such considerations and in order to determine the degree of influence, Courts may be guided by the reasons provided by the decision maker. The reasons provided for a decision would allow Courts to effectively scrutinize the decision and detect what factors have influenced the decision maker.”*

19] In the case in hand, the case was heard ex parte and all documents were marked without any objections. However, the learned members of the Debt Conciliation Board have been reluctant to accept the evidence as untested and have required further proof, thereby placing an additional burden on the Petitioner, which does not do substantial justice under section 49 of the Act.

20] Section 2(1) of the Evidence Ordinance says;

*“This Ordinance shall apply to all judicial proceedings in or before any court other than courts martial, but not to proceedings before an arbitrator.”*

21] Thus, the Debt Conciliation Board, as quasi-judicial (since members are appointed by the Minister, not by the Judicial Service Commission), should adopt the rules of evidence when trying a matter.

22] In line with rules of evidence, where no objection is taken when the document is sought to be tendered in evidence, and the document is not forbidden by law to be received in evidence, any objection to its receipt as evidence is deemed to have been waived. [See ***Kenakal v. Velupillai*** (2 N.L.R. 80); ***Muttuya Chetty v. Appu*** (4 N.L.R. 184); ***Silva v. Kindersly*** (18 N.L.R. 85); ***Siyadoris v. Danoris*** (42 N.L.R. 311)]. This matter went ex parte. It is evident that the members of the Debt Conciliation Board, without clarifying the documents marked at the proceedings, blatantly refused to accept them.

23] In ***R v Madhub Chunder*** (1874) 21 WL Cr 13, Birch J held, *“For weighing evidence and drawing inferences from it there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited.”*

24] The refusal to act on available documentary evidence has not been reasoned. In ***Goonewardene v. De Saram*** [64 N.L.R. 145 at 147] H. N. G. Fernando, J. held that there is no requirement of law that it is only by the evidence of the person who has made a report that its authenticity can be proved [See also ***Rex v. Jinadasa*** (51 N.L.R. 529 at 538)]. Two valuation reports have been marked along with the oral evidence, and the disparity of the value of the property is clearly seen and proves the Petitioner’s version.

25] It is my considered view that the Board has failed to apply the test of credibility and test probability. On perusal, it is clearly seen that the Board has

ignored the guidance laid down by Justice F.N.D. Jayasuriya, in **Wickremasuriya vs Dedoleena and Others** [1996] 2 SLR 95, wherein it was held that;

*"A Judge, in applying the Test of Probability and Improbability relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate."*

26] The Board failed to assess why the transferee had not taken possession and allowed Petitioners to be in possession since 2011. If the 6th Respondent is the true owner? Why has he not come to the Board and disputed the claim of the Petitioner? Why did the 6th Respondent evade the proceedings? Has he filed a *rei-vindicatio* action against the Petitioner to claim the title and possession?

27] The 6th Respondent, as a prudent man, should have come and challenged the evidence of the Petitioner. It is the golden rule that the evidence is not tested and challenged by cross-examination is deemed to be admitted and proved facts against the person who slept over his rights.

28] In **Ajith Samarakoon v. The State** [2004] 2 SLR 209 at 230, Justice F.N.D. Jayasuriya held that *"Evidence not challenged or impugned in cross examination can be considered as admitted and is provable against the accused"*. Though this principle applies in a criminal matter, it equally applies to tribunals such as the Debt Conciliation Board.

29] In **Dharmaratne v Dassanaik** [2006] 3 SLR 130, His Lordship Andrew Somawansa (P/CA) clearly clarified the judicial discretion in admitting evidence as;

*"Discretion given to a judge must be exercised according to the rules of reason and justice, not according to private opinion, according to law and not humour, its exercise must be uninfluenced by irrelevant consideration must not be arbitrary, vague and fanciful but legal and regular, and it must be exercised within the limit to which an honest man competent to discharge his office ought to confine himself."*

30] In the above circumstances, we hold that the Board failed to properly apply Section 21A of the Ordinance, which requires an inquiry into whether a transfer is in substance to a mortgage, particularly where there is a significant disparity

between the stated consideration and the actual market value. In the present case, the evidence demonstrates that the property was valued at approximately Rs. 5,100,000 whereas the purported transfer price was Rs. 275,000. Additionally, the Petitioner and family have continuously remained in possession of the property, as evidenced by voter registration and municipal records marked at the inquiry, which strongly indicate that the transaction was not a bona fide sale.

31] Thus, we hold that the impugned orders (Z11 and Z14) are tainted by error of law, unreasonableness, and procedural unfairness, thereby warranting judicial review by way of a Writ of Certiorari, particularly as the dismissal has caused grave prejudice under Section 19A of the Ordinance.

32] The impugned deed 91 is subject to constructive trust. In **Hambanage Don Ishan Eranda Manohara vs Mrs. Malani Abeywardena Ranathunga and others**, CASE NO: CA/WRIT/244/15, Decided on: 06/10/2021., MOHAMMED LAFFAR, J. held as follows;

*“The possession of the property in dispute is a most important factor to be considered in deciding the question of constructive trust. The fact that after the execution of the deed of transfer, the transferor remained in possession of the land would be an attendant circumstance. It would show that the transferor did not intend to dispose of the beneficial interest, although he signed the deed of transfer. Vide **Ehiya Lebbe v. Majeed** [1947] 48 NLR 357, **Thisa Nona and Three Others v. Premadasa** [1997] 1 Sri LR 169 and **Carthelis v. Ranasinghe** [2002] 2 Sri LR 359...*

*True it is that the valuation of the land in dispute is another significant aspect to establish the claim of constructive trust. Vide **Jayanthi Chandrika Perera v. D. Don Chandrakumara** (SC Appeal No. 83/2014, SC Minutes of 24.03.2017) and **W.M. Chandralatha v. H.M. Punchi Banda and Another** (SC Appeal No. 185/2015, SC Minutes of 04.12.2017). As per the deed marked P1, a sum of Rs. 50,000/- was paid by the Petitioner to the 6th Respondent for an extent of 52.13 perches. According to the evidence of the 6th Respondent, the value of a perch was of Rs. 40,000/- (vide page 20 of the case record).”*

33] The above factors are well-suited for the instant case. The Board primarily based its decision on the Petitioner’s alleged failure to provide sufficient proof of payment and its refusal to accept that the deed of transfer was merely a pro forma security for a loan. If the evidence is not tested by the 6<sup>th</sup> Respondent,

why didn't the Board members accept the evidence which was untested? If the Board cannot rely on the adduced evidence, they would have put questions and got it cleared then and there, which was not done in this case. In this case, there is cogent evidence to accept the version of the Petitioner.

34] We say under established principles of administrative law, a decision-maker's failure to consider relevant factors or reliance on irrelevant considerations renders a decision unreasonable and legally void.

35] Accordingly, the Court issues a Writ of Certiorari quashing the Orders dated 03/09/2024, marked as Z14 and 28/08/2023, marked as Z11; and issue a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> respondents and/or their successors to grant the relief sought by the Petitioner in his application marked Z6 and/or in the application for review, marked Z12.

36] Thus, this application is allowed; however, no costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL