

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

Court of Appeal Case No:
CA(Writ) No: 0054/26

In the matter of 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.

KST EVERGREEN (PVT) LTD,

No.71, Negombo Road,

Kandana.

Petitioner

Vs

1. **HON. K. D. LAL KANTHA,**

Minister of Agriculture, Livestock, Land

and Irrigation and Chairman, Food

Policy and Security Committee,

Ministry of Agriculture, Livestock, Land

and Irrigation,

No. 80/5, 'Govijana Mandiraya',

Rajamalwatta Lane,

Battaramulla.

2. **D. P. WICKRAMASINGHE,**

Secretary, Ministry of Agriculture,

Livestock, Land and Irrigation Ministry

of Agriculture, Livestock, Land and

Irrigation,

No. 80/5, 'Govijana Mandiraya
Rajamalwatta Lane,
Battaramulla.

3. **HON. WASANTHA SAMARASINGHE,**
Minister of Trade, Commerce, Food
Security and Co-Operative
Development, and Chairman, Food
Policy and Security Committee Ministry
of Trade, Commerce, Food Security and
Co-Operative Development,
No. 492, R. A. De Mel Mawatha,
Colombo 03.
4. **K. A. VIMALENTHIRARAJAH,**
Secretary, Ministry of Trade,
Commerce, Food Security and Co-
Operative Development,
No. 492, R. A. De Mel Mawatha,
Colombo 03.
5. **HON. DR. NALINDA JAYATISSA,**
Minister of Health and Mass Media and
Cabinet Spokesperson, Ministry of
Health and Mass Media, Suwasiripaya,
No. 385, Rev. Baddegama
Wimalawansa Thero Mawatha,
Colombo 10.
6. **DR. ANIL JASINGHE,**

Secretary, Ministry of Health and Mass
Media Suwasiripaya, No. 385, Rev.
Baddegama Wimalawansa Thero
Mawatha, Colombo 10.

7. **HON. DR. ANIL JAYANTHA**

FERNANDO,

Deputy Minister of Finance and
Planning Ministry of Finance, Planning
and Economic Development, The
Secretariat, Colombo 01.

8. **HON. U. D. NISHANTHA**

JAYAWEERA,

Deputy Minister of Economic
Development Ministry of Finance,
Planning and Economic Development,
The Secretariat, Colombo 01.

9. **DR. HARSHANA SURIYAPPERUMA,**

Secretary. Ministry of Finance,
Planning and Economic Development,
Ministry of Finance, Planning and
Economic Development,
The Secretariat, Colombo 01.

10. **T. T. UPULMALEE PREMATHILAKA,**

Controller General Department of
Imports and Exports Control,

No. 75 1/3, 1st Floor, Hemas Building,
York Street, Colombo 01.

11. **D R. W.A.R.T. WICKRAMAARACHCHI,**

Director General of Agriculture
Department of Agriculture No. 01, Old
Galaha Road, Peradeniya.

12. **K. D. S. RUWANCHANDRA,**

Chairman, Standing Cabinet Appointed
Procurement Committee and Former
Secretary, Ministry of Port, Shipping and
Aviation, No. 19, Chaithya Road,
Colombo 01.

13. **J. M. THILAKA JAYASUNDARA,**

Member, Standing Cabinet Appointed
Procurement Committee, and Former
Secretary, Ministry of Education,
Isurupaya, Battaramulla.

14. **R. M. P. RATHNAYAKE,**

Member, Standing Cabinet Appointed
Procurement Committee, and
Former Deputy Secretary to the
Treasury, Ministry of Finance, The
Secretariat, Colombo 01.

15. **J. P. R. KARUNARATNE,**

Member,

Standing Cabinet Appointed
Procurement Committee, and Former
Deputy Governor, Central Bank of Sri
Lanka, No. 30, Janadhipathi Mawatha,
Colombo 01.

16. **K. P. A. DE SILVA,**

Member, Standing Cabinet Appointed
Procurement Committee, and Former
Chief Financial Officer, Ministry of
Trade,
No. 492, R. A. De Mel Mawatha, Colombo
03.

17. **PRADEEP SAPUTHANTHRI,**

Secretary to the Prime Minister, and
Member, Food Policy and Security
Committee,
Prime Minister's Office No. 58, Sir Ernest
De Silva Mawatha, Colombo 07.

18. **KAPILA JANAKA BANDARA**

GUNARATNE,

Senior Additional Secretary to the
President and Member, Food Policy and
Security Committee,
Presidential Secretariat, Galle Face,
Colombo 01.

19. **N. S. WANASINGHE,**

Additional Secretary to the President,
Presidential Secretariat, Galle Face,
Colombo 01.

20. **SRI LANKA THRIPOSHA LIMITED,**

No. 17, Negombo Road,
Kapuwatta, Ja-Ela.

21. **AMAL ATTANAYAKE,**

Chairman,
Sri Lanka Thriposha Limited,
No. 17, Negombo Road,
Kapuwatta, Ja-Ela.

22. **DEEPTHI KULARATNE,**

Former Chairman,
Sri Lanka Thriposha Limited,
No. 17, Negombo Road,
Kapuwatta, Ja-Ela.

23. **SEEVALI ARUKGODA,**

The Director-General of Customs,
Sri Lanka Customs, Customs House,
Colombo 11.

24. **SRI LANKA PORTS AUTHORITY,**

Level 7, HQ Colombo,
No. 464, T.B. Jaya Mawatha,
Colombo 10.

25. **HON. DR. HARINI AMARASURIYA,**
Minister of Education, Higher Education
and Vocational Education, Ministry of
Education, Higher Education and
Vocational Education, Isurupaya,
Battaramulla.

26. **HON. VIJITHA HERATH,**
Minister of Foreign Affairs, Foreign
Employment and Tourism, Ministry of
Foreign Affairs, Foreign Employment and
Tourism, Republic Building,
Colombo 01.

27. **HON. BIMAL RATNAYAKA,**
Minister of Transport, Highways and
Urban Development, Ministry of
Transport, Highways and Urban
Development, 7th Floor, Sethsiripaya
Stage II, Battaramulla.

28. **HON. SUNIL HANDUNNETHTHI,**
Minister of Industry and
Entrepreneurship Development, Ministry
of Industry and Entrepreneurship
Development,
No. 73/1, Galle Road, Colombo 03.

29. **HON. RAMALINGAM
CHANDRASEKAR,**

Minister of Fisheries, Aquatic and Ocean Resources Ministry of Fisheries, Aquatic and Ocean Resources, New Secretariat, Maligawatta, Colombo 10.

30. **HON. PROF. ANIL JAYANTHA**

FERNANDO,

Minister of Labour, Ministry of Labour, 6th Floor, Mehewara Piyesa, Narahenpita, Colombo 05.

31. **HON. SAMANTHA VIDDYARATHNA,**

Minister of Plantation and Community Infrastructure, Ministry of Plantation and Community Infrastructure, 11th Floor, Stage II, Sethsiripaya, Battaramulla.

32. **HON. ANURA KARUNATHILAKA,**

Minister of Ports and Civil Aviation, Ministry of Ports and Civil Aviation, No. 19, Chaithya Road, Colombo 01.

33. **HON. PROF. A. H. M. H.**

ABAYARATHNA,

Minister of Public Administration, Provincial Councils and Local Government, Ministry of Public Administration, Provincial Councils and Local Government,

Independence Square, Colombo 07.

34. **HON. HARSHANA NANAYAKKARA
(ATTORNEY-AT-LAW)**

Minister of Justice and National
Integration Ministry of Justice and
National Integration No. 19, Sri
Sangaraja Mawatha, Colombo 10.

35. **HON. SAROJA SAVITHRI PAULRAJ,**

Minister of Women and Child Affairs,
Ministry of Women and Child Affairs, 5th
Floor, Sethsiripaya Stage II,
Battaramulla.

36. **HON. DR. UPALI PANNILAGE,**

Minister of Rural Development, Social
Security and Community Development,
Ministry of Rural Development, Social
Security and Community Development,
1st Floor, Stage II, Battaramulla.

37. **HON. K. M. ANANDA WIJEPALA,**

Minister of Public Security and
Parliamentary Affairs, Ministry of Public
Security and Parliamentary Affairs, 18th
Floor, Suhurupaya, Battaramulla.

38. **HON. DR. HINIDUMA SUNIL SENEVI,**

Minister of Buddhasasana, Religious and Cultural Affairs, Ministry of Buddhasasana, Religious and Cultural Affairs, No. 135, Sreemath Anagarika Dharmapala Mawatha, Colombo 07.

39. **HON. SUNIL KUMARA GAMAGE,**

Minister of Youth Affairs and Sports, Ministry of Youth Affairs and Sports, No. 09, Philip Gunawardana Mawatha, Colombo 07.

40. **HON. DR. CHRISHANTHA ABEYSENA,**

Minister of Science and Technology, Minister of Science and Technology, 03rd Floor, Sethsiripaya Stage I, Battaramulla.

41. **HON. ENG. KUMARA JAYAKODY,**

Minister of Energy, Ministry of Energy, No. 437, Galle Road, Colombo 03.

41A. HON. ANURA KARUNATHILAKA,

Minister of Energy, Ministry of Energy, No. 437, Galle Road, Colombo 03.

Substituted-41st Respondent.

42. **HON. DR. DAMMIKA PATABENDI,**

Minister of Environment, Ministry of Environment, 'Sobadam Piyasa', No. 416/C/1, Robert Gumawardana Mawatha, Battaramulla.

43. **HON. DR. SUSIL RANASINGHE**,
Minister of Housing, Construction and Water Supply, Ministry of Housing, Construction and Water Supply 2nd Floor, Sethsiripaya, Stage I, Battaramulla.

44. **W. M. D. J. FERNANDO**,
Secretary to the Cabinet of Ministers, Lloyd's Building, Sir Baron Jayathilaka Mawatha, Colombo 01.

45. **THE HON. ATTORNEY GENERAL**,
The Attorney General's Department, Colombo 12.

Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Kuvera de Zoysa, PC with Kevin Dias instructed by Sanjay Fonseka for the Petitioner.

Rajin Gooneratne, SC for the Respondents
except the 22nd and 41st Respondents.

The 22nd and 41st Respondents absent and
unrepresented.

Preliminary objection of the
Petitioner raised on : 30.04.2026

Written Submissions
of the Petitioner
tendered on : 07.05.2026

Written Submissions
of the 1st to 21st, 23rd,
25th to 45th Respondents
tendered on : 18.05.2026

Written Submissions
of the 22nd and 41st
Respondents tendered on : Not tendered.

Decided on : 27.05.2026.

K. M. S. DISSANAYAKE, J.

This is an application made to this Court by the Petitioner under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as “the Constitution”.) for mandates in the nature of Writs of *Certiorari* of kind as prayed for in prayer ‘d’, ‘e’ and ‘f’ of the petition as well as for mandates in the nature of Writs of *Mandamus* of kind as prayed for in prayer

‘g’, ‘h’, ‘i’, ‘j’ and ‘k’ of the petition and for a mandate in the nature of a Writ of *Prohibition* of kind as prayed for in prayer ‘i’ of the petition together with an array of interim orders of kind as prayed for in paragraph ‘m’ to ‘s’ of the petition.

This Court had having heard respective Counsel on the question of the issuance of notices, made order issuing notices of this application on all the Respondents named in the petition (hereinafter called and referred to as “the 1st to 45th Respondents”.) and the joint statement of objections were filed by and on behalf of all the Respondents except the 21st and 41st Respondents.

This matter had then, been fixed for argument and at the outset of the argument, the learned President’s Counsel Petitioner had raised a preliminary legal objection as to the sustainability and/or legal validity of the statement of objections filed by and on behalf of all the Respondents except the 21st and 41st Respondents and moved that the statement of objections be accordingly, rejected.

The preliminary legal objection so raised to Court by the learned President’s Counsel for the Petitioner is two-fold, namely;

- i) The purported statement of objections filed on behalf of the Respondents is bad in law as there are no corresponding affidavits before Court on behalf of the Respondents other than the 10th Respondent, hence the purported statement of objections is in contravention of Rule 3 (7) of the Court of Appeal (Appellate Procedure) Rules 1990; and
- ii) The purported affidavit of the 10th Respondent dated 07.04.2026 is bad in law as there is no averment affirming that the contents of the affidavit are of the 10th Respondent's own/personal knowledge.

It may now, be examined.

1) The purported statement of objections filed on behalf of the Respondents is bad in law as there are no corresponding affidavits

before Court on behalf of the Respondents other than the 10th Respondent, hence the purported statement of objections is in contravention of Rule 3 (7) of the Court of Appeal (Appellate Procedure) Rules 1990.

While clearly, and unequivocally, conceding that **the purported statement of objections filed on behalf of the Respondents is bad in law as there are no corresponding affidavits before Court on behalf of the Respondents other than the 10th Respondent supporting the averments of fact contained therein, and hence the purported statement of objections is in contravention of Rule 3 (7) of the Court of Appeal (Appellate Procedure) Rules 1990**, as contended by the learned President's Counsel for the Petitioner in the preliminary legal objection, it was nevertheless, sought by the learned State Counsel for the Respondents except the 21st and 41st Respondents, to resist it on the footing that the admitted defect in the statement of objections is a formal defect and therefore it is a mere technicality and as such, it is curable. In the circumstances, learned State Counsel for the Respondents except the 21st and 41st Respondents sought the indulgence of this Court to rectify the same by furnishing to Court a valid statement of objections of the Respondents in the shape of a rectified and/or amended statement of objections in compliance with Rule 3 (7) of the Court of Appeal (Appellate Procedure) Rules 1990 (hereinafter called and referred to as 'the CA Rules 1990'.) which was vehemently, objected to by the learned President's Counsel for the Petitioner on the premise that, the compliance of Rule 3 (7) of CA Rules 1990 is mandatory and non-compliance thereof, is fatal and accordingly, the said rule does not provide for this Court with the latitude to grant the Respondents to file amended statement of objections as urged.

Hence, the position maintained by the learned President's Counsel for the Petitioner was that the compliance of Rule 3 (7) of CA Rules 1990 is mandatory and non-compliance thereof, is thus, fatal and accordingly, the said rule does

not grant this Court power to permit the Respondents to file amended statement of objections as urged, whereas, the position maintained by the learned State Counsel for the Respondents except the 21st and 41st Respondents was that although the compliance of Rule 3 (7) of CA Rules 1990 is mandatory, nevertheless, non-compliance thereof, is not fatal but curable and accordingly, the said rule grants this Court power to permit the Respondents to file amended statement of objections as urged, in compliance with Rule 3 (7) of CA Rules 1990.

In view of the preliminary legal objection so raised by the learned President's Counsel for the Petitioner and the manner in which it was sought to be resisted by the learned State Counsel for the Respondents except the 21st and 41st Respondents as enumerated above, the pivotal question that would now, arise for our consideration is whether or not the compliance of Rule 3(7) of the CA Rules 1990 to be read in conjunction with Rule 3(4)(b)(i) thereof, is mandatory; and if so whether or not non-compliance thereof, is fatal.

It is an admitted fact that the purported "objections" of the Respondents except the 21st and 41st Respondents was by way of joint statement of objections with the averments of facts containing therein being supported only by the affidavit of the 10th Respondent in as much as no affidavit as such by and on behalf of the rest of the Respondents except 21 and 41 Respondents had been furnished to this Court in support of the averments of fact admittedly, contained in their joint statement of objections as required by Rule 3(7) of the CA Rules 1990.

Hence, the issue that is before us for our determination is whether filing of an affidavit only by the 10th Respondent along with the joint statement of objections of the Respondents except the 21st and 41st Respondents, is sufficient compliance with the said Rule 3(7) of the CA Rules 1990 read together with Rule 3(4)(b)(i) thereof.

It is in this context, let me now, examine Rules 3(4)(b)(i) and 3(7) of the CA Rules 1990.

Rule 3(4)(b)(i) of the CA Rules 1990 reads thus;

“(b) the Court shall fix the dates for the filing of statements of objections by the respondents, for the filing of counter affidavits by the petitioner, and for the hearing of the application; if any of such dates is not fixed by the Court, the following provisions shall apply: -

(i) **a statement of objections shall be filed by each respondent within four weeks of the date of service of notice;-**” [Emphasis is mine]

Rule 3(7) of the CA Rules 1990 reads thus;

“(7) Upon an application being registered, the respondent shall be entitled to take notice of it, and file a statement of objections at any time before the date fixed by Court for filing objections. **A statement of objections containing any averments of fact shall be supported by an affidavit in support of such averments.**” [Emphasis is mine]

A plain reading of Rule 3(4)(b)(i) of the CA Rules 1990 in conjunction with Rule 3(7) thereof, as reproduced above, makes it abundantly, clear without an iota of doubt that a statement of objections shall be filed by each Respondent within 4 weeks of the date of service of notice; and that, **a statement of objections containing any averments of fact shall be supported by an affidavit in support of such averments.** [Emphasis is mine].

It is to be observed that the learned State Counsel for the Respondents except the 21st and 41st Respondents did not in any manner, seek to dispute the fact that the joint statement of objections of the Respondents except the 21st and 41st Respondents do contain averments of facts instead he opted to admit that it was so when he clearly, and unequivocally concedes that the statement of objections of the Respondents except the 21st and 41st Respondents is defective for the very

reasons stated by the learned President's Counsel for the Petitioner in the preliminary legal objection.

Hence, learned State Counsel had clearly, and unequivocally, admitted that Rule 3(7) of the CA Rules 1990 make it mandatory that a statement of objections as such containing any averments of facts "**shall be**" supported by an affidavit in support of such averments. [Emphasis is mine]

It is in this context, let me now, examine the phraseology used both in Rule 3(4)(b)(i) of the CA Rules 1990 as well as Rule 3(7) thereof. The phraseology used therein, is "**shall be**" and it is canon in rules of interpretation that the phrase "**shall be**" is used to denote something mandatory.

For the foregoing, I am of the my view, that the phrase "**shall be**" has deliberately, been used both in Rule 3(4)(b)(i) of the CA Rules 1990 as well as Rule 3(7) thereof, to denote that compliance of Rule 3(4)(b)(i) of the CA Rules 1990 as well as Rule 3(7) thereof, is mandatory and non-compliance thereof, is fatal and hence, not curable in any event. [Emphasis is mine]

The view taken by me as aforesaid is fortified and well supported by the decision of this Court in **Gita Fonseka V. The Monetary Board of the Central Bank of Sri Lanka [2004] 1 SLR 149** where, this Court had occasion to examine the legal effect of the Rule 3(4)(b)(i) of the CA Rules 1990 and Rule 3(7) thereof, and this Court had having carefully, considered and analysed the legal effect of the Rule 3(4)(b)(i) of the CA Rules 1990 and Rule 3(7) held that specially, in view of Rule 3(7) of the CA Rules 1990, it is abundantly, clear that **the rules envisaged the filing a statement of objection and affidavit supporting averments of fact as two distinct documents.**[Emphasis is mine]

It is in this backdrop of the case, let me now, examine the position so adverted to by the learned State Counsel for the Respondents that non-compliance of the Rule 3(7) of the CA Rules 1990 is a mere technicality and therefore, is curable and hence, this Court exercising its discretion in favour of the Respondents,

should grant the Respondents permission to file amended statement of objections in compliance with Rule 3(7) thereof, specially, considering the fact that shutting out of the Respondents' case over a mere technicality would deprive this Court of the evidentiary context required to determine whether the decision marked 'P3' was made *intra vires* or *ultra vires*. Hence, the contention of the learned State Counsel appears to be that if the Respondents are not permitted to oppose the instant application, this Court has greater burden on it.

It may now, be examined.

Contention similar to that of the one raised by the learned State Counsel before us as enumerated above, was raised by the learned Deputy Solicitor-General before this Court in the decision in **Gita Fonseka V. The Monetary Board of the Central Bank of Sri Lanka (Supra)** in that it was contended by the learned Deputy Solicitor-General that if the Respondents are not permitted to oppose the application, the Court has greater burden on it. Dealing with the contention so advanced by the learned Deputy Solicitor General, it was held by this Court that "*Gravity of the burden of court is no reason to dispense with or ignore rules of court. The discretion of court considered in Kiriwanthe's case does not exist any longer after the promulgation of the Court of Appeal (Appellate Rules) 1990. This aspect of the discretion is adequately dealt with by the Supreme Court in the case of K. Shanmugavadivu v J. M. Kulatilakd considering the ambit of rule 3 of the Court of Appeal (Appellate Rule) 1990, observed that,*

" In such circumstances, the only kind of discretion that could be exercised by court is to see whether and how much time could be permitted for the filing of papers in due course.

The several cases cited by the learned Deputy Solicitor General were on matters related to the rules that were repealed and as commented by the Supreme Court in the aforesaid case of Shanmugavadivu, "The new rules (of 1990) indicate that the objectivity of exercising judicial discretion, as intended in Kiriwanthe's case

has been incorporated as it enables an applicant to submit to court the relevant documents at a later stage,...”

Rule 3 (4) (b) (i) read with rule 3 (7) however leaves no discretion to the court in the case of filing of statement of objections to dispense with either the statement of objections or the affidavit in support of averments of fact.

*Accordingly this court has no discretion to dispense with the requirement of a statement of objection to be filed by a respondent in terms of the rules of the court. There is no *cursus curiae* or the practice of the court to permit non-compliance by a respondent of rules requiring him to file statement of objection and a practice specially of the Attorney General's Department cannot override or supercede the provisions of the Rules of Court which are held to be mandatory by the Supreme Court as well as this court as referred to by the teamed Deputy Solicitor General in all the cases cited in his written submissions.”*

Hence, I would hold that since Rule 3(7) of the CA Rules 1990 is mandatory in nature and its non-compliance is fatal and therefore, incurable and as such this Court has been vested with no amount of discretion in permitting any amendment of pleadings under Rule 3(8) of the CA Rules 1990 for the reason that when there is no valid pleading, there is nothing to amend for; the statement of objection of the Respondents is not in compliance with Rule 3(7) of the CA Rules 1990 to be read with rule 3(4)(b)(i) thereof, as enumerated above and therefore, there was no valid statement of objection of the Respondents.

The learned State Counsel appeared to have sought to place heavy reliance on a number of authorities cited in the written submissions in resisting the preliminary legal objection so raised by the learned President’s Counsel for the Petitioner under this head. However, it is to be observed that all of them are distinct and therefore, have if I may say so respectfully, no relevance to the issue

at hand for; none of them had in any manner, dealt with the legal effect of Rule 3(7) of the CA Rules 1990 to be read with Rule 3(4)(b)(i) thereof, with special reference to its non-compliance as well as its legal effect that would derive from non-compliance thereof.

In view of the above, I would uphold the first preliminary objection so raised by the learned President's Counsel for the Petitioner.

Let me now, examine the second preliminary legal objection so raised by the learned President's Counsel for the Petitioner.

ii) The purported affidavit of the 10th Respondent dated 07.04.2026 is bad in law as there is no averment affirming that the contents of the affidavit are of the 10th Respondent's own/personal knowledge.

It may now, be examined.

While conceding, so called defect in the affidavit of the 10th Respondent, it was contended by the Learned State Counsel for the Respondents resisting the preliminary legal objection as enumerated above, that the admitted omission in the affidavit of the 10th Respondent was purely, inadvertent and is entirely, curable under section 9 of the Oaths and Affirmation Ordinance No. 9 of 1895 as amended (hereinafter called and referred to as "the Ordinance"); and that the absence of this boilerplate phrase does not mean that the 10th Respondent lacks personal knowledge for; the 10th Respondent being the very official who issued the impugned decision annexed to the petition of the Petitioner marked **P30** and submitted documents marked **R1** to **R7** directly, from the said Respondent's official custody.

It is in this context, let me now examine section 9 of the Ordinance with special reference to its scope and the legal effect.

Section 9 of the Ordinance reads thus;

“No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.”

However, upon a careful scrutiny of section 9 of the Ordinance, it clearly, appears that it only provides for a kind of omissions, substitutions, or irregularities contained in an affidavit which shall not invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth and as is discernible therefrom, they can be itemized as follows;

- a) no omission to take any oath or make any affirmation,
- b) no substitution of any one for any other of them,
- c) and no irregularity whatever in the form in which any one of them is administered.

However, it is significant to observe that section 9 of the Ordinance does not in any manner, contemplate and/or provide for a kind of omission and/or defect and/or irregularity with regard to the statements that an affidavit may contain and hence, the section 9 of the Ordinance contains no provision dealing with a kind of omission and/or defect and/or irregularity that would arise from the absence of a statement that an affidavit ought to contain and therefore, the section 9 of the Ordinance has not in any manner, made provisions dealing with a situation as such.

Hence, the contention so raised by the learned State Counsel that the admitted omission of the affidavit of the 10th Respondent is curable under section 9 of the Ordinance cannot in any, manner sustain in law and as such it should be rejected *in-limine*.

However, Civil Procedure Code as amended makes provisions for the statements that an affidavit ought to contain and they may now, be examined.

Section 181 of the Civil Procedure Code as amended, reads thus;

“Affidavits shall be confined to the statement of such facts as the declarant is able of his own knowledge and observation to testify to, except on interlocutory applications in which statement of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit.”

Section 183A of the Civil Procedure Code as amended, reads thus;

“Where any person is required under the provisions of this Code, or under any other law for the time being in force, to make an affidavit, then-

(a) where the action is brought by or against the Attorney-General, any officer of the State, and

(b) where the action is brought by or against a corporation, board, public body, or company, any secretary, director or other principal officer of such corporation, board, public body or company; and

(c) where any party to the action is absent from Sri Lanka, his attorney duly authorized to bring, conduct or defend the action, as the case may be; and

(d) where any party to the action, or where there is more than one party to the action such of the parties as are in Sri Lanka, or when such attorney of the parties as is just above mentioned, is or are unable, for want of personal knowledge or bodily or mental infirmity, to make the required affidavit, any recognized agent of such party,

may make an affidavit in respect of these matters, instead of the party to the action:

Provided that in each of the foregoing cases the person who makes the affidavit instead of the party to the action, must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained and shall be liable to be examined as to the subject-matter thereof at the discretion of the Judge, as the party to the action would have been, if the affidavit had been made by such party.”

Upon a careful analysis of section 181 in conjunction with section 183A of the Civil Procedure Code as amended, it becomes manifestly, clear that the law thereby, stipulates that affidavits shall be confined to the statement of such facts as the declarant is able of his own knowledge and observation to testify to, except on interlocutory applications in which statement of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit; and that where any person is required under the provisions of this Code, or under any other law for the time being in force, to make an affidavit, then where the action is brought by or against the Attorney-General, any officer of the State, may make an affidavit in respect of these matters, instead of the party to the action: Provided that in each of the foregoing cases the person who makes the affidavit instead of the party to the action, **must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained** and shall be liable to be examined as to the subject-matter thereof at the discretion of the Judge, as the party to the action would have been, if the affidavit had been made by such party. [Emphasis is mine]

It is common ground that the 10th Respondent to the instant application is the Controller General of Department of Imports and Exports Control and therefore, is an officer of the State within the meaning of section 183 (a) of the Civil Procedure Code as amended and she had therefore, made the affidavit in

question not in her personal capacity but as a State officer holding the position of the Controller General of Department of Imports and Exports Control.

Hence, the 10th Respondent is bound by the provisions contained both in sections 181 and 183A of the Civil Procedure Code as amended in making her affidavit in question in that 10th Respondent must in her affidavit in question, have sworn or affirmed that she had deposed from her personal knowledge of the matters contained therein.

However, it is regrettable to observe that, the 10th Respondent had observed the statutory obligation so cast upon her by sections 181 and 183A of the Civil Procedure Code as amended, in total breach when she had failed to swear or affirm that she had deposed from her personal knowledge of the matters contained in her affidavit in question.

This is particularly, so when considering the matters of facts affirmed to by her in paragraph 16 of her affidavit in question for; most of the averments which contains facts, pertains to the decisions (**R1 to R6**) not made by herself on her own but, by the Cabinet of Ministers and therefore, matters contained therein, are something that is not within her personal knowledge and therefore, amount to hearsay evidence, admission of which these two provisions of the Civil Procedure Code as amended, namely; sections 181 and 183A thereof, intended to prevent.

Hence, the affidavit of the 10th Respondent is not in conformity with the provisions contained in sections 181 and 183A of the Civil Procedure Code as amended, and therefore, it is in total contravention of those two provisions contained therein, and as such affidavit of the 10th Respondent in question is bad in law and in the circumstances, cannot be acted upon by this Court as rightly, contended by the learned President's Counsel for the Petitioner and therefore, it should be rejected *in-limine* as rightly, urged by learned President's Counsel for the Petitioner.

The view taken by me as aforesaid is fortified and well supported by the decisions of this Court in **Umma Anina Vs. Jawahar 2004[2] SLR 1**, **Jayasundera Vs. Tilakeratne and Another 2006 [1] SLR 309** and **International Dresses (PVT) Ltd Vs. Municipal Council of Moratuwa 2006[2]203**.

For the reasons stated above, I would if I may say so respectfully, hold that the decisions cited to us in the written submissions of the learned State Counsel in this regard are distinct and therefore, have no relevance to the facts of the instant case in as much as none of them had dealt with the provisions concerning the responsibility of the declarant to affirm that the declarant had deposed from his own personal knowledge of the matters contained in his affidavit as provided for by section 181 and 183A of the Civil Procedure Code as amended.

In view of the above, I would uphold both of the preliminary legal objections so raised by the learned President's Counsel for the Petitioner.

Hence, this Court rules that the Respondents referred to above, which failed to comply with the mandatory applicable Rules 3(7) of the CA Rules 1990 to be read with Rule 3(4)(b)(i) thereof, and sections 181 and 183A of the Civil Procedure Code as amended, are deprived of their right to appear in these proceedings in opposition to the petition.

In the result, the instant application is fixed for argument on a day appointed by this Court.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL