

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Certiorari* and
Mandamus.

**Court of Appeal Case No:
CA/WRIT/143/2022**

1. Welgamage Don Rohan Athula
Gunarathne,
Gunarathana Shopping Complex,
Barandhana Road, Mawathagama.\

Presently at:

149-37, 83rd Lane,
2nd Floor Howard Beach,
NY 11414, USA.

Appearing by his Power of Attorney
holder

Ahangama Withanage Theja
Swarnapali Inamaluwa of
Suhada Mawatha, Wanduragala,
Kurunegala.

2. Nawalage Michael Anil Cooray,
No. 291, Saint Anthony's Road,
Kurukulawa, Ragama.

PETITIONERS

Vs.

1. Hon. Lasantha Alagiayawanna,
State Minister of Cooperative
Services, Marketing Development
and Consumer Protection,
8th Floor, HQ Colombo Building,
No. 464 A, T.B. Jayah Mawatha,
Colombo 10.

2. Mr. K.D.S. Ruwanchandra,
Secretary of Cooperative Services,
Marketing Development and
Consumer Protection,
No. 330, Union Place,
Colombo 02.
- 2A. S.T. Kodikara,
Secretary to the Ministry of Trade,
Commerce and Food Security,
No. 330, Union Place,
Colombo 02.
3. Hon. Bandula Gunawardhana,
Minister of Trade,
No. 492, R.A. De Mel Mawatha,
Colombo.
- 3A. Hon. Nalin Fernando,
Minister of Trade,
No. 492, R.A. De Mel Mawatha,
Colombo.
4. Mrs. Gamani Liyanarachchi,
Commissioner of Cooperative
Development and Registrar of
Cooperative Societies,
No. 330, Union Place,
Colombo 02.
- 4A. Keerthi Gamage,
Commissioner of Cooperative
Development and Registrar of
Cooperative Societies,
No. 330, Union Place,
Colombo 02.

5. K.M.H.S.K. Jayalath,
Commissioner of Cooperative
Development/Registrar of
Cooperative Societies of North
Western Province,
1st Floor,
Provincial Council Office Complex,
Kurunegala.
6. Mrs. N.P.M. Kariyawasam,
Secretary,
Ministry of Cooperative
Development & Trade, Land,
Electricity & Energy, Sports & Youth
Affairs, Cultural & Arts Affairs and
Information Technology – North
Western Province,
2nd Floor,
Provincial Office Complex,
Kurunegala.
7. Mawathagama Multi-Purpose
Cooperative Society Ltd,
Barandhana Road,
Mawathagama.
8. K.G. Dissanayake,
Chairman,
Multi-Purpose Cooperative Society
Ltd,
Barandhana Road,
Mawathagama.
9. Jayasiri Mudiyanseelage
Dharmasena,
General Manager,
Multi-Purpose Cooperative Society
Ltd,
Barandhana Road,
Mawathagama.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sapumal Bandara with Vishni Abeywardena and Amanda de Moore for the Petitioners.
N. Kahawita for the 1st to 6th Respondents.
P.B. Herath with Nisansala Maduwanthi for the 7th, 8th, and 9th Respondents.

Argued on: 24.11.2026.

Written Submissions: For the Petitioners on 19.11.2026.
For the 7th, 8th and 9th Respondents on 13.01.2026.

Decided on: 27.03.2026.

Mayadunne Corea J

The Petitioners in this Application sought, *inter alia*, the following reliefs:

- “b) *Grant and issue a mandate in the nature of a Writ of Certiorari quashing the recommendation of the 5th Respondent as contained in P26, recommending the further utilization of the Petitioners’ property by the 7th Respondent Cooperative Society*
- c) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to make a derequisitioning order in terms of the provisions of section 10(4) of the Cooperative Societies (Special Provisions) Act, No. 35 of 1970, derequisitioning the Petitioners’ property, as more fully described in the schedule hereto; and to publish the same in the Gazette as required by law”*

The facts of this case in brief are as follows. In 1974, the Minister of Trade issued a requisition order under section 10(1) of the Cooperative Societies (Special Provisions) Act, No. 35 of 1970 (hereinafter referred to as ‘the Act’), enabling the 7th Respondent Cooperative Society to temporarily carry out its business activities on the Petitioners’ property. The said requisition order was published in the Extraordinary Gazette No.

121/3 dated 22.07.1974. Since then, the Cooperative Society has been in possession of the premises. Subsequently, in 1999, the Cooperative Society constructed a three-storey building in the Mawathagama town. Despite this, the Cooperative Society continued to utilise the Petitioners' property as its administrative office. The Petitioners state that no derequisitioning order was made in respect of their property, despite the lapse of a substantial period of time.

The 1st Petitioner wrote to the 4th Respondent regarding the failure to hand over possession of the property to the Petitioners. Thereafter, the 4th Respondent requested the 5th Respondent to inquire into the request of the 1st Petitioner. By a letter dated 20.01.2022, the 5th Respondent recommended that the Cooperative Society be allowed to utilise the Petitioners' property due to the fact that most of the premises on which the Cooperative Society conducts its business activities are held on lease (P26). Further, the 2nd Respondent informed the 4th Respondent that the Ministry could not release the Petitioners' property since the property is required for the administrative office of the Cooperative Society that is still functioning on the said property (P27). Hence, this Writ Application.

The Petitioners' contention

The Petitioners challenge the acts of the Respondents inter alia on the following grounds:

- According to section 10 of the Cooperative Societies (Special Provisions) Act, a requisition order is issued for the temporary use of a property. However, the Respondents have failed to issue a derequisition order although a period of 47 years have elapsed since the requisition order was made, thereby, acting in violation of the legitimate expectations of the Petitioners.
- The failure to derequisition the Petitioners' property when the Cooperative Society has a three-storey building with the required facilities, is *mala fide* and unreasonable.
- The Cooperative Society attempted to use the property for purposes contrary to which the property was requisitioned (i.e., by building a funeral parlour).
- The 5th Respondent's recommendation to allow the Cooperative Society to use the Petitioners' property following the lapse of 47 years since the requisition order was made and the lapse of 22 years since the new Cooperative Society building was constructed, is grossly unreasonable, arbitrary, *mala fides*, and contrary to the provisions of the Act.

The Respondents' contention

The 7th to 9th Respondents raised the following objections:

- The Petitioners have no title to the land since it is state land.
- The Petitioners have failed to disclose material facts.
- The Petitioners have failed to name the necessary parties to this Application.
- The Petitioners have failed to come to Court with clean hands.

Analysis

1st to 6th Respondents did not file objections. However, the learned SSC only made submissions on law at the hearing. The 7th to 9th Respondents filed their respective objections and in the said objections the said Respondents have taken up the position that the land in question is state land. It is common ground that the land is in the extent of 1 acre and 2 perches.

The Petitioners contend that they inherited the property from one Robert Gunaratne through the testamentary case no. 6300/T in the District Court of Kurunegala. It is the contention of the Petitioners that their ancestral home named "Gunaratne Walawwa" is situated in the said property and the said property had been with them for more than 100 years.

Was the Petitioners' property subject to acquisition or requisition?

The learned Counsel for the 7th to 9th Respondents strenuously contended that the land in dispute is state land. Their assumption is based on a letter sent to the chief valuer by the District Secretary dated 24.11.1996 marked and tendered as 7R1. It appears that in the said letter it is stated that the land belongs to the state and that it has been vested with the Cooperative Society. This assumption is based on the Gazette no.121/3 dated 22.07.1974 and the said letter states that under section 10(1) of Act No. 21 of 1970 the land in extent of 1 acre and 2 perches has been vested with the Cooperative Society. The said Gazette is marked and tendered by the Petitioners as P4. I have considered the said Gazette and I find that by this Gazette, the then Minister of Trade had acted pursuant to section 10 of the Act in publishing the Gazette Notification. The said Gazette states that the land in dispute has been acquired for the business purposes of the Cooperative Society Mawathagama with effect from 31.07.1974.

The learned Counsel for the 7th to 9th Respondents strenuously contended that the Petitioners' property was acquired by the State. Hence, they argued that this Writ application has to be dismissed. It appears that this position has been taken due to the wording in the Gazette which reads as follows;

“1970 අංක 35 දරන සමුපකාර (විශේෂ විධිවිදාන) පනතේ 10(1) වැනි වගන්තියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාර, විදේශීය හා දේශීය වෙළඳ ඇමති ටිකිරි බණ්ඩා ඉලංගරත්න වන මම මෙහි වූ උපලේඛනයෙහි නිශ්චිත දේපළ ලියාපදිංචි කිරීමේ අංක කු. 1404 දරණ) සීමාසහිත මාවතගම විවිධ සේවා සමුපකාර සමිතියේ යම් ව්‍යාපාරික කාර්යයන් සඳහා එකී සමිතිය විසින් ප්‍රයෝජනයට ගත හැකි වනු පිණිස 1974 ජූලි මස 31 වැනි දින සිට මෙම ආඥාව මගින් අත් කර ගනිමි” (emphasis added).

Let me now consider the Act pursuant to which the Gazette that has been published namely, the Cooperative Societies (Special Provisions) Act. As per the Gazette marked and tendered as P4, it was the contention of the Petitioners that the disputed land has been acquired under section 10(1) of the said Act. Section 10 of the Act reads as follows:

“10.

- (1) *The Minister may by Order (in this Act referred to as a "requisitioning Order ") published in the Gazette, requisition, with effect from such date as shall be specified in the Order, any immovable property in order that it may be temporarily used by a principal society for the purposes of any business of such society.*
- (2) *Before a requisitioning Order takes effect the Minister may from time to time, after consultation with the Registrar, alter, by Order published in the Gazette, the date on which such requisitioning Order takes effect.*
- (3) *A requisitioning Order shall have the effect of authorizing the Registrar, with effect from the date specified in the Order, to take possession of the property specified in the Order and to use such property temporarily for the purposes of any business of such principal society.*
- (4) *Where any property is requisitioned by a requisitioning Order, the Minister may, by Order (hereinafter in this Act referred to as "derequisitioning Order") published in the Gazette, derequisition such property with effect from such date as shall be specified in the derequisitioning Order.*
- (5) *Before a derequisitioning Order takes effect, the Minister may from time to time, after consultation with the Registrar, alter, by Order published in the Gazette, the date on which such derequisitioning Order takes effect.*
- (6) *Where, immediately before the date on which any property is requisitioned for any principal society, a person, other than the owner of such property, was entitled to possession of such property under the terms*

of a lease, that lease shall be deemed for all purposes to have expired on that date.

(7) Where any property is derequisitioned by a derequisitioning Order, such Order shall be deemed to have the effect of reviving any lease subsisting on the date on which the property was requisitioned, and any question which may arise as to any right, title or interest, in or over that property shall be determined accordingly.”

I have examined the provisions of section 10(1). Upon a plain reading of subsection (1) of section 10, it is clear the said subsection contemplates a requisition for a temporary period of time and not an acquisition. Hence, it is clear that, what took place is a requisition and not an acquisition. To be more specific, section 10(1) contemplates requisition orders to be published in the Gazette that enables the property named in the said requisition order to be temporarily used by the Cooperative Society for the purposes of any business of such Society. Hence, as the Gazette has been published pursuant to section 10(1) of the Act, in my view, the Petitioners' property has to be requisitioned and not acquired. Hence, the 7th to 9th Respondents' position that the land has been acquired by the above Gazette and therefore, becomes state land, is not tenable. Even though, Gazette P4 does not contemplate a time period for the requisition to be in effect, the enabling provision, section 10(1), pursuant to which the Gazette was published clearly stipulates that such a requisition order should be for a particular time period as the property depicted in the said order is taken for the temporary use by a Cooperative Society.

Pursuant to section 10(3) of the Act, upon the publication of the requisition order, the Registrar of the Cooperative Society is authorised to take possession of the property mentioned in the said order. Possession is taken over under section 11 of Act No. 35 of 1970. Pursuant to the said notice by letter dated 13.07.1974, possession of the said land had been taken over by the Cooperative Society (page 237 of the brief).

Thereafter, a valuation had been called for in respect of the said property, and as per the valuation, a sum of Rs.1,000 has been paid to the Petitioners. However, it is the contention of the Petitioners that even the said sum has not been paid regularly by the 7th to 9th Respondents. It appears that, as per the submissions and the Gazette notification marked and tendered as P4, the requisition had taken place in 1974. Hence, the 7th to 9th Respondents who had requisitioned the Petitioners' property have been in possession of the said property for nearly five decades.

In response to the allegation that the property was acquired by the State, the learned Counsel for the Petitioners brought to our attention the document marked as P8. The said document P8 is a deed of declaration dated 21.08.2017 by the former Chairman of the Cooperative Society, whereby the said Chairman had declared that the said property belongs to the Cooperative Society. The learned Counsel for the Petitioners, while stating that the deed is a forgery argued that, if it was state land, there is no necessity for the Chairman of the Cooperative Society to execute a deed of declaration to state that the property belonged to the Cooperative Society. It was further contended that as a result of the forged deed, the Petitioners were compelled to institute legal action against the Cooperative Society to quash the said forged deed. The case record of the said case bearing no. 8828/L in the District Court of Kurunegala is marked and tendered as P9.

Other properties owned by the 7th to 9th Respondents

It is common ground that the 7th, 8th and 9th Respondents had constructed a three-storeyed building in Mawathagama while in possession of the Petitioners' land. The Petitioners have marked and tendered the photographs of the building complex belonging to the 7th to 9th Respondents marked P7(a) to P7(f). It was the contention of the Petitioners that the premises in the said building complex have been rented out to private parties and therefore, are being used for purposes other than the purposes of the Cooperative Society. The Counsel for the 7th to 9th Respondents did not dispute the fact that they own a mini shopping complex and have pleaded the same in paragraph 6 of their objections. However, the said Respondents contend that the Cooperative Society has 30 rural banks, 13 boutiques, 1 medical centre, 1 insurance centre, 1 fuel station, 1 agricultural product marketing division and therefore, contended that the building in dispute too is needed for the Cooperative Society. However, the learned Counsel failed to demonstrate to this Court whether any of the above are situated in the disputed property. Hence, in the absence of any material it appears that none of the aforementioned banks, boutiques, medical and insurance centres are within the disputed property.

The said District Court case had concluded by parties entering into terms of settlement. The said terms of settlement have been marked and tendered as P11(b). As per the first condition of the settlement, the Cooperative Society had agreed to cancel the forged deed of declaration that had been made. It was also contended by the learned Counsel for the Petitioners that, as per term 4 of the terms of settlement, the Respondent Cooperative Society has consented not to claim compensation for any new constructions made on the requisitioned property on a day when the property is being derequisitioned. As correctly submitted by the learned Counsel that by these terms, it

appears that the 7th to 9th Respondents have admitted that the deed of declaration is erroneous and, also by term 4 of the terms of settlement, they have conceded that the title to the land is with the Petitioners and not with the 7th to 9th Respondents. Also, by the clause on disclaimer on compensation for improvements it appears that the Respondents have conceded that the said property would eventually be derequisitioned.

The Petitioners' request for derequisition

Subsequent to the Petitioners' litigation with the Cooperative Society, the Petitioners have made several requests to derequisition the Petitioners' land. The said requests have been marked and tendered as P12, P14, P19(a) and P19(b). It appears that the Petitioners have been making these requests from the year 2019 until year 2021. This Court also observes that on 02.07.2021, the Petitioners have written directly to the State Minister of the Cooperative Services seeking a derequisition of the property. By document marked and tendered as P23, the Cooperative Development Commissioner had replied to the Petitioners stating that, as the requisition had been made under section 10(1) of the Act, the derequisition will have to be done under section 10(4) of the Act by the Minister.

However, on 09.02.2022, the Secretary to the State Minister of Cooperative Services had written a letter to the Cooperative Development Commissioner with a copy to the Petitioners stating that, as the property has been in the possession of the Cooperative Society since 1974 and since the said building is used to house the head office of the said society, the building is necessary. It was also stated in the letter that they are not in a position to accede to the Petitioners' request to derequisition the Petitioners' land. In my view, this amounts to the Petitioners making an official request to derequisition their property but their request has now been refused by the Secretary to the Ministry.

Grounds urged by the Petitioners

The Petitioners contend that their main ancestral house which has been requisitioned temporarily for business activities of the Cooperative Society has been in the possession of the said society for nearly five decades. A property that contains 1 acre and 2 perches with the ancestral house of the Petitioners is now in the possession of the 7th to 9th Respondents. It is common ground that the Petitioners are paid only a poultry sum of Rs.1,000 for the said land which the Petitioners claim, is not even paid regularly. As established by the documents P7(a) to P7(f), the Respondents are possessing this land while they own a shopping complex at the heart of the Mawathagama town. The matter

is further aggravated as the Petitioners allege that several shops in the said premises have been leased out to private parties to conduct business and the 7th to 9th Respondents are obtaining an income from the said leased out premises. The learned Counsel for the 7th to 9th Respondents was silent on this allegation.

However, the Counsel for the 7th to 9th Respondents submitted that there are several entities belonging to the Cooperative Society and therefore, they need the premises in dispute too to house the Head Office of the Cooperative Society. Although this submission was made, I find that not a single document has been tendered to Court to establish that the Head Office of the Society is housed on the disputed property.

The Petitioners contend that a land that had been acquired on a temporary basis, being retained for nearly five decades is plausibly unreasonable and done with a *mala fide* intention, and the refusal to derequisition the said property when there is provision in the Act to do so, is an abuse of statutory power. Considering all the above facts, especially the fact that the Cooperative Society possesses a shopping complex and that the said requisition has been made on the basis for temporary use but the 7th to 9th Respondents have been in possession of the said building for nearly five decades at a rental of Rs. 1,000 a month, I am inclined to agree with the Petitioners' above contentions.

Let me now consider the objections raised by the 7th to 9th Respondents. The main objections appear to be that the Petitioners cannot have and maintain this application as the disputed land is state land. They assert their objection on the basis of a letter issued by the District Secretary marked 7R1. The said letter refers to requisition under section 10(1) of the Act and therefore, the Respondents are going on a mistaken pretext that the land was acquired and not requisitioned. I have already dealt with this issue elsewhere in this judgement. Hence, the said objections have to fail. The Respondents also raised an objection on the basis that the Petitioners have filed a District Court case and therefore, they are precluded from obtaining the reliefs prayed for. In my view, this objection too has to fail as the District Court application has been instituted to impugn a fraudulent deed that the 7th to 9th Respondents have made pertaining to the Petitioners' property. The Petitioners by this Writ application are seeking to quash the refusal to derequisition the land and, for a Writ of Mandamus compelling the Respondents to derequisition the land. Further, in the terms of settlement filed, the Petitioner in this case had reserved his right to agitate his title.

Although the Respondents submitted that the Petitioners have failed to disclose material facts and therefore failed to invoke the jurisdiction of this Court with clean hands, the

Respondents have failed to establish the two grounds. The Respondents have failed to establish the facts that have been misrepresented or undisclosed to this Court. Hence, the said contention has to fail.

The prayers of the Petitioners

The Petitioners are seeking a Writ of Certiorari to quash the document marked and tendered as P26, which is a letter written to the Secretary to the State Ministry of Cooperative Services Sales Development and Consumer Protection by the Cooperative Development Commissioner dated 20.01.2022. The Counsel for the Petitioner submitted that upon the request by the Petitioner to derequisition his ancestral property, observations had been called from the Cooperative Commissioner and it was his contention that by P26 the Commissioner had made his observations. As per the said letter, the Commissioner recommends that the property in question be further retained for the Mawathagama Cooperative Society to conduct its business. He makes this recommendation based on the fact that, *inter alia*, most of the business carried out by the Cooperative Society is being done on leased out premises and the said letter refers to 17 branches of the Cooperative bank being conducted on rented premises. Hence, the justification to retain the property. However, I observe that the said letter does not contemplate that all those businesses are situated in the disputed property or the building. Further, if the Respondents are in a financial position to lease out or rent out several business premises the need to retain this property is not answered in the said letter. Hence, in my view the recommendation to retain the property on these grounds contemplated in P26 cannot be sustained.

By prayer (c), the Petitioners are seeking a Writ of Mandamus requiring the Respondents to make a derequisition order in terms of section 10(1) of the Cooperative Societies Act. I have considered the provisions under section 10(4) of the Act, and the said provision gives a discretionary power to the Minister to derequisition the Petitioners' property. Under normal circumstances when there is a discretionary power given to the Minister, this Court is of the view that a Writ Court should not be involved in giving directions as to how the said discretion should be exercised. However, if discretion has been used in an unreasonable manner, the said decision is amenable to the Writ jurisdiction. As per the facts salient to this case, we find that a property that had been requisitioned on a temporary basis to conduct business activities of the Cooperative Society has been utilised for the purpose for five long decades. The property in the extent of 1 acre and 2 perches had been valued and as the Petitioners state that compensation of Rs. 1,000 has been made. The said property contains the Petitioners' ancestral home. I have also considered the fact that the 7th to 9th Respondents have now developed and are progressing their business by constructing a

three-storey shopping complex and have let out shops for private entities to conduct business. In the said circumstances that are particular to this case, in my view, the refusal to use the discretion afforded in the Act cannot be justified. In coming to this conclusion, I have considered the decision of this Court in ***Noordeen Lebbe Mohamed Raseek v. Mawanella-Hemmathagama Multi-Purpose Co-operative Society Ltd and 2 others*** CA Writ Application no. 445/2014, CA Minutes 04.04.2019.

Further, in the case of ***Rajeshwari Nadaraja v. Hon M Najeeb Abdul Majeed and Others*** SC Appeal no.177/2015, SC Minutes 13.08.2018 the Supreme Court held;

“The discretion vested in the Minister in this regard does not mean that he is empowered to withhold issuing the order as he pleases. Where circumstances warrant, in particular where the premises have been used for a period far exceeding the time frame contemplated in the enactment, the law imposes a duty to exercise that discretion in a particular manner- which in the present case is a derequisitioning order. Where there is a failure in this regard, that duty would be made enforceable by a mandamus.”

It is also pertinent to note that the act that led to the requisition of the Petitioners’ property was brought in during the initial stages of the Cooperative Society movement. It is observed that at the inception of the said movement, the act of requisition of private property was brought in to assist the purposes of the Statute. As per the wording in section 10, the purpose of requisition is to enable the Society to use the premises on a temporary basis for the purposes of the said Society. If I am to reiterate, section 10(1) of the Act reads as follows;

*“(1) The Minister may by Order (in this Act referred to as a “requisitioning Order”) published in the Gazette, requisition, with effect from such date as shall be specified in the Order, any immovable property in order that it may be **temporarily used** by a principal society for the purposes of any business of such society.”* (emphasis added)

Hence, in my view, the legislature did not contemplate a situation of requisitioning a property to be used for five long decades also when the said society has sufficient wealth, to construct and own a shopping complex and the ability to give several shops on lease to private entities and to earn an income. Section 10(4) of the Act is created, in my view, specifically to guarantee the rights of the owners so that when the purpose of the requisition is fulfilled, the Minister may derequisition the property back to the owners.

Conclusion

It appears that at the inception to develop the cooperative movement, legislation had been brought in to facilitate the temporary requisition of buildings. By the words used it is clear the said provisions are meant only as a temporary measure. By inserting section 10(4), the legislature had provided for derequisitioning of the property that has been temporarily requisitioned. In this instance I observe the procedure of requisitioning is meant to be used as a temporary basis. This is exacerbated by the words used when the legislature states it is for “temporarily use”. In the instant case after the expiry of five decades and after construction of a three storied building of its own and having several branches of banks in places obtained on rent the Respondents seem not be inclined to derequisition the property in question. Further, the Respondents tried to obtain the ownership of the said property by executing a false deed of declaration which compelled the Petitioner to resort to legal action to protect his property. Despite all these the property still remains as a requisitioned property. Hence, in the circumstances I am inclined to accept the submissions of the learned Counsel for the Petitioner that the Respondents’ act of failure to derequisition and making a recommendation to further retain the property is unreasonable, arbitrary, mala fide, and contrary to the provisions of the Act.

Therefore, this Court proceeds to grant the relief prayed for in prayer (c) of the petition, and issue a Writ of Mandamus directing the 1st Respondent to make a derequisition order in terms of the provisions of section 10(4) of the Cooperative Societies (Special Provisions) Act derequisitioning the Petitioners’ property as described in the Schedule and to publish the same in the Gazette as required by law.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal