

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

In the matter of an application to transfer Case No. D/2605/2024 from the District Court of Mount Lavinia under and in terms of Section 46 of the Judicature Act.

Court of Appeal Case No.
TRF 01/2025

DC Mount Lavinia
D/2605/24

Benedict Paul Bright

No. 12-3/4, Spring Court,

Samudra Mawatha, De Seram Road,

Mount Lavinia.

Plaintiff

Vs.

Joseph Mariyanayagam Lourdes Poorani

No. 4/1/10,

Milan Square,

37th Lane,

Wellawatta.

And

No. 18,

2nd Cross Street, Hospital Road,

Jaffna.

Defendant

AND NOW BETWEEN

Joseph Mariyanayagam Lourdes Poorani

No. 4/1/10,

Milan Square,

37th Lane,

Wellawatta.

And

No. 18,

2nd Cross Street, Hospital Road,

Jaffna.

Defendant – Petitioner

VS

Benedict Paul Bright

No. 12-3/4, Spring Court,

Samudra Mawatha, De Seram Road,

Mount Lavinia.

Plaintiff – Respondent

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

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Shantha Perera, P.C. with Nimedha Kulathunga
for the Petitioner.

M.A. Sumanthiram PC with Jerusha Thambiah
instructed by Charika Wanigabaduge for the
Respondent.

Written Submissions on : 18.08.2025 for the Plaintiff.
05.02.2026 for the Defendant.

Decided on : 02.04.2026

K. Priyantha Fernando, J.(CA)

1. The Defendant-Petitioner, namely Joseph Mariyanayagam Lourdes Poorani has filed the Petition dated 17th January 2025 and sought inter alia, to make an order transferring Case No. D/2605/24 in the District Court of Mount Lavinia to the District Court of Jaffna.

FACTUAL BACKGROUND:

2. The Petitioner and Respondent have been married since 11th February 2022. They set up their matrimonial home at No. 12/3, Central Tower, No. 174, Lafeer Mawatha Colombo 12 and subsequently at No. 4/1, No. 10, Milan Square, 37th Lane, Wellawatta. The Petitioner then became pregnant on or around September 2022 and gave birth to their son, Luke Mahilan Benedict on 21st April 2023. The Respondent stated that the Petitioner was violent towards the baby and refused to breastfeed the child or administer medicine to the child, whilst threatening to kill the baby. Moreover, the Respondent submitted that the Petitioner then became verbally and physically abusive towards him and has been acting in such a manner since November 2023.
3. In relation to the alleged domestic abuse faced by the Respondent at the hands of the Petitioner, he filed a complaint on **10th February 2024** at the Wellawatte Police station under complaint number CIB II 65/74 seeking intervention to compel the Petitioner to

obtain medical assistance for the post-partum depression she was diagnosed with. Although the Petitioner agreed to receive medical treatment, the Respondent contended that she continued to abuse him and their baby and so he filed a subsequent complaint under complaint reference number CIB II 215/812. The Respondent having set out his reasoning in the complaint, then left the matrimonial home with the child, which the Petitioner contended was an abduction. The Petitioner stated that she was only able to reunite with her child after 8 days upon the issuing of an arrest warrant. The Petitioner subsequently filed an abduction case bearing no. B/32188/2024.

4. The Respondent then on **13th June 2024**, filed for divorce on the ground of *vinculo matrimonii* and supported the Plaint filed in the District Court of Mount Lavinia. Following the same, on the **09.10.2024**, the Learned District Judge of Mount Lavinia delivered an Order on interim injunctions restraining the Defendant from taking the child, Luke Mahilan Benedict outside the jurisdiction of the District Court of Mount Lavinia. An appeal was furthered against the Order dated 09.10.2024 in the case bearing no. WP/HCCA/MT/87/2024/LA where a settlement had been reached on 20th December 2024 which reads as follows:

*“The parties agree that as decided by the District Court access will be given Saturday or Sunday, with the Plaintiff giving 24 hours to 48 hours notice to the Defendant which day he seeks access. For that particular day, the Defendant will be confined to the Colombo and the Mt. Lavinia District Court Jurisdiction and that during access for the 03 hours that there be no interference and the Defendant will hand over the child and leave or stay at the Gate and the Plaintiff will not leave the church premises during access. According to the settlement, the Petitioner seeks to withdraw this matter within one month observing the performance of the parties. Counsel for the Respondent retains right to object if case is not withdrawn in a month. Both parties have signed the case record. Matter is fixed for mention on **23/01/2025**”*

POSITION OF THE PETITIONER:

5. The Petitioner first contended that she is faced with difficulties due to travelling every weekend from Jaffna to Colombo. She submitted that making the 9 – 10 hour journey is strenuous with a young child. Moreover, the cost of arranging such transport with the limited financial resources possessed by the Petitioner is a strain on the Petitioner and the child.
6. Secondly, the Petitioner argued that the primary language used for judicial proceedings in the District Court of Mount Lavinia has resulted in her facing a language barrier and being placed in a position of disadvantage.
7. Finally, the Petitioner submitted that she was of the view that a fair and impartial trial could not be held in the District Court of Mount Lavinia. The Petitioner listed several reasons which led her to believe that the Honourable Judge of the District Court of Mount Lavinia did not sufficiently take into account the submissions made on behalf of her.

POSITION OF THE RESPONDENT:

8. The Respondent in response to the arguments of the Petitioner firstly contended that the Petitioner initially resided in Colombo but then deliberately changed her place of residence to harass the Respondent. Following the Petitioner's enrollment to Sri Lanka Law College, her family has shifted to Colombo in 2018. The Petitioner was also enrolled in University of Colombo and Open University of Sri Lanka and the payment receipts made by the Respondent is attached in proof of the same (marked as X8).
9. Additionally, the Curriculum Vitae of the Petitioner (submitted to the Attorney General's Department) states that she is able to understand Sinhala and hence the Respondent put forth the argument that the Petitioner even despite having been allowed to use translators during the proceedings in the District Court of Mount Lavinia did not

take the opportunity to do so and as such has not presented a proper ground for the transfer of the case.

10. Furthermore, the Respondent argued that the Petitioner has deliberately suppressed material facts before this court in relation to the leave to appeal application filed by the Petitioner. The Respondent submitted that the leave to appeal application was **settled on or around 20.12.2024**. However, in the Petition, there was no mention of this fact and it was only acknowledged once the same had been addressed in the Respondent's objections. Moreover, the Respondent contended that the Petitioner had now breached the terms of the settlement by filing of this transfer application.
11. The suppression of material facts was fatal to any application as it violates the clean hands doctrine and the application is liable to be dismissed *in limine*; *Sipkaduwa Anthony – Dhanwathie and another v Senaka Palliyagaru and others* CA/WRIT/799/2023 decided on ...; *Moosajees Ltd v Eksath Engineru Saha Samanya Kamkaru Samithiya* 79 (1) NLR 285. The Respondent submitted that in the case of *Alphonso Appuhamy v Hettiarachchi* 77 NLR 131 it was held that the requirement for full disclosure was so rigorous that in the event such was not complied with, the Court would decline to go into the merits of the case.
12. It was revealed that the Petitioner never cited the bias of the District Court Judge in proceedings prior to that of the matter at hand, not even in the leave to appeal application. The Respondent went as far as to say that the Petitioner has failed to establish that there was bias on the part of the District Court Judge.
13. The Respondent relied on the case of *Wanninayake Mudiyanalage Premachandra v Chief Inspector Officer-in-Charge Special Crime Investigating Section Section Nikawaratiya* bearing case no. CA/TRF/21/2024 decide don 28.01.2025 in submission of the argument that the burden is on the Petitioner to prove an allegation of bias.
14. Finally, the Respondent submitted that the Petitioner is under a duty to comply with the existing court ordered injunctions dated 13.06.2024 and to enforce the performance of the Petitioner, contempt proceedings have been filed in the District Court of Mount

Lavinia. The Respondent cited the case of *Regent International Hotels Ltd v Cyril Gardiner and Others* (1978-79-80) 1 SLR 278 wherein it was held that if an interim injunction order has not been varied, it is required for such to be complied with and obeyed and a failure to do so highlighted the Petitioner's lack of *bona fide*. The principle is 'comply and complain'.

HAS THE DEFENDANT-PETITIONER SUPRESSED MATERIAL FACTS?

15. The Petitioner in answering this question submitted that following the filing of this application for transfer on 17th January 2025 and the obtaining of certified copies of the proceedings in the leave to appeal application preferred by the Petitioner, the same was filed in this court by way of motion dated 29th January 2025. The reasons for the delay being the inability to obtain them during court vacation was fully explained to this court at the initial stage. Thus, the Petitioner contended that no willful or deliberate suppression of material facts had been done at the hands of the Petitioner.

ANALYSIS:

16. Section 46(1) of the Judicature Act, insofar as relevant to this application, reads as follows:

*“Whenever **it appears** to the Court of Appeal-*

(a) That a fair and impartial trial cannot be had in any particular court or place; or

(b) That some questions of law of unusual difficulty are likely to arise; or

(c) That a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or

*(d) That **it is so expedient on any other ground, the court may order upon such terms as to the payment of costs or otherwise as the said court thinks fit, for the***

transfer of any action, prosecution, proceeding, or matter pending before any court to any other court.” (the emphasis was added)

17. The main contention of the Defendant-Petitioner seems to be that the settlement entered into at the High Court of the Civil Appeal of Mount Lavinia required her to travel nearly eight hundred (800) kilometers in order to facilitate access of the minor child to the Plaintiff-Respondent father. She had filed an affidavit before the High Court of Civil Appeal stating that she wished to withdraw from the said settlement on the basis that she was compelled to sign it and had no reasonable alternative at the time. For travelling 800 Km per week has costs her 21,000 and she had spent 84,000/- per month from **June 2024 to December 2024** for such travelling. She has pawned her ‘thaliya’ gold chain and pendant, wedding ring and the wedding ring of her mother for a total sum of Rs. 1,187,425/- as proved by documents marked and produced as X1, X2, X3 and X4. She has exhausted said money for travelling, food medicine and for her father, who is bedridden and suffering from urinary incontinence (unable to control urination) and has to provide with pampers and medicine. She has compared her income of 30,000/- per month with the Plaintiff’s monthly income of Rs. 400,000/- and prays that this Court order the Plaintiff Respondent to have access to the 18-month-old child in Jaffna.

18. It is revealed that subsequent to entering into the settlement before the Civil Appellate High Court, the Petitioner has acted in breach thereof and has deprived the Respondent of access to the minor child for a period of approximately one and a half years, contrary to the terms agreed upon. The Petitioner has breached the enjoining order dated 13.06.2024 issued by the District Court of Mount Lavinia and contempt proceedings are presently pending before the said Court. In Regent International Hotels Ltd. V. Cyril Gardiner and Others (1978-79-80) 1 Sri L.R. 278, the Court has held that where a party is aggrieved by an enjoining order, the proper course is to move the court that issued the order to dissolve or vary the same, and that until such time, the order remains in force and is required to be obeyed. It was further emphasized that so long as an enjoining order subsists, a party is not entitled to disregard or act in defiance of the same, and compliance therewith is mandatory. In the present case, the Petitioner has neither sought to purge the alleged contempt nor complied with the subsisting orders of the District Court and continues to remain in breach thereof. (vide R6 and R7).

19. It is revealed to this Court that the Petitioner was resident in Colombo for several years since 2018 up until June 2024, where she completed her higher education and applied for jobs in Colombo. She had also given birth to the child in Colombo. She filed abduction action in the Magistrate Court of Mt. Lavinia.
20. In the instant case, it was argued by the Respondent that her sudden shift to Jaffna has been orchestrated purposely to refuse access to the Respondent. The Petitioner has continued to disregard both interim and enjoining orders given by the District Court of Mt. Lavinia that restrains her from taking the child abroad and/or out of the jurisdiction of Colombo without the leave of the court. It is apparent that on the **27th August 2024**, the District Court of Mt. Lavinia has directed the petitioner to comply with the previous order given on 16th July 2024.
21. From the above sequence of events, it is important to note that the petitioner has started violating court orders very much prior to filing of instant transfer application. If she had a genuine grievance due to distance and difficulty of travel, those facts should have been assailed to the notice of the Civil Appellate High Court and/or the District Court of Mt. Lavinia itself and get the access order vacated or adjusted accordingly. On the other hand, she could have asked/moved the Civil Appellate High Court /District Court of Mt. Lavinia to let the Plaintiff travel to Jaffna and get access to the child in expense of the Plaintiff. Instead of attempting such basic alternative moves or applications and making simple but vital adjustments which the Petitioner could have attempted to so easily, she had reached this Court seeking transfer of the whole case to District Court of Jaffna. Without resorting to such common-sense applications, she has reached this Court in January 2025, violating court orders which were subsisted at that time.
22. The events of entering into marriage, residing in a matrimonial house in Wellawatte, the birth of the child, the institution of the divorce case, entering into a settlement and the access orders have all occurred in the judicial zone of Mt. Lavinia. However, there is no evidence adduced to show that the Petitioner was residing in Jaffna after 2018 until June 2024. It is surprising as to why the Petitioner entered into a settlement to give the access in Colombo knowing that it was practically impossible. She along with her counsel could have easily requested the court to consider the possibility of letting the plaintiff- father to get access to the child by travelling to Jaffna. These are normal

adjustments which could have been easily dealt with by the same Court if the parties to the settlement having real difficulties to perform such terms.

23. The Petitioner has alleged that she has no accommodation in Colombo. In paragraph 3(b) of the counter objections, she maintained that **it is the Respondent who terminated the lease agreement for the premises bearing No. 4/1, 10, Milan Square, 37th Lane, Wellawatte and deprived her of accommodation in Colombo thereby compelling her to leave on the 15th June 2024.** Nevertheless, the letter which has been sent to the landlord by the three month notice as per the agreement to vacate the house. The Respondent has informed the Petitioner that the lease agreement for the house was valid until 08th August 2024 and the Petitioner could reside there until alternative accommodation was found. It was contended by the respondent that since the Petitioner was in possession of the original lease agreement, she had legal standing to reside in the premises until August 2024. **However, it was not revealed to this Court that whether alternative accommodation has been provided to the petitioner in Colombo by the respondent and/or whether rent is being paid by the respondent for petitioner's stay in Colombo after August 2024.**

24. The Petitioner has alleged language barrier in respect of settlement entered into before the Civil Appellate High Court. This argument cannot hold water as it has been explained in both English and Tamil, and the Petitioner, being an Attorney-at-Law, knowing and voluntarily signed the record. At no point during the appellate proceedings, the Petitioner has alleged judicial bias, coercion, or lack of understanding. It is untenable for an Attorney-at-Law to now contend that she would sign a judicial record without understanding its contents, particularly after having benefited from the settlement and thereafter breaching it.

WHETHER FAIR AND IMPARTIAL TRIAL CANNOT BE HELD IN THE DISTRICT COURT OF MOUNT LAVINIA?

25. The Petitioner alleged following in the Petition:

- i. At no point has she acted in a manner infringes upon the rights of the respondent; she duly complied with the directives of the District Court

regarding the access and provided access exceeding the number of days allocated by the Court.

- ii. Even on days when she was required to travel to Jaffna due to her father's serious health issues, she duly informed the District Court by way of motion such eventuality. On the contrary, interim injunction issued violating her fundamental right of freedom of movement.
- iii. Interim injunction was unjustly granted without considering any of Petitioner's submissions.
- iv. Learned District Judge has stated in her order dated **09.10.2024** that it is unreliable for the Petitioner to claim that she has no place to stay in Colombo, particularly when she attended an interview at the A.G.'s Department on 20.02.2024 and concluded that there was no reasonable necessity for her sudden departure to Jaffna with the child and her father. It was Petitioner's stand that at that time she was residing with the Respondent at No. 4/1, 10, Milan Square, 37th Lane, Wellawatte; **only after attending the interview did the Respondent take the child and leave the residence; following this incident, both began living separately, and she was subsequently asked to vacate the premises at Wellawatte by the Landlord at the Respondent's request. The learned District Judge has failed to consider these facts.**
- v. By the order dated **09.10.2024**, the learned DJ of Mt. Lavinia issued an order restraining the defendant from taking the child abroad and/or outside the jurisdiction of the Mt. Lavinia Court which differs from the original order dated 13.06.2024.
- vi. Said order not only imposes further restrictions on her movement but also contradictory to the **order dated 13.06.2024**, which grants the Respondent legal access to the child at St. Paul's Church, Milagiriya located in Bambalapitiya, outside the jurisdiction of Mt. Lavinia Court.
- vii. On **27th August 2024**, during the proceedings at the District Court of Mt. Lavinia, since Petitioner's Counsel was on his way from Hulftsdorp, he has

sent two junior lawyers to represent her; President's Counsel Mr. Sumanthiran appeared and objected for keeping the matter down for Petitioner's Counsel.

viii. The learned District Judge then decided to proceed with the matter and read out the charge sheet of the contempt of court application and asked whether petitioner is guilty or not guilty.

ix. During the hearing, junior lawyers of the Petitioner has not been given an opportunity of a fair hearing. The petitioner being overwhelmed and emotionally distressed, tried to explain to the learned District Judge that she had no place to stay in Colombo, that her 76 year old father was alone in Jaffna and that she lacked financial means to remain in Colombo. However, she alleged that her concerns were dismissed

x. She submitted that the learned District Judge of Mount Lavinia has failed to adequately consider her side of the story, leading to unjust orders that have significantly impacted her rights and well-being.

26. With regard to the orders delivered on 13.06.2024 and 09.10.2024, the Petitioner has had the opportunity of appealing to the Civil Appellate High Court and get relief. However, it apparent that the Petitioner has no permanent place of residence of her own in Colombo after she has been asked to vacate the premises at Wellawatte.

27. It is also not disputed that she has not been provided for alternative residence after August 2024 by the Respondent. There was no evidence adduced with regard to her permanent stay in Colombo after June/July 2024. In the circumstances, it is quite clear to this Court that the Petitioner has faced real and genuine concerns with regard to her stay in Colombo especially in a time of distress of having being able to face a highly contentious divorce trial and looking after her child while supporting her ailing father in Jaffna.

28. If I advert to the relevant provision of law relating to transfer of cases from one court to another Section 46 of the Judicature Act has a very important limb of "*Whenever it appears to the Court of Appeal....that it is so expedient on any other ground, the court*

may order upon such terms as to the payment of costs or otherwise as the said court thinks fit for the transfer of any action, prosecution, proceeding, or matter pending before any court to any other court.” the Court of Appeal can use its discretion to transfer such case.

CONCLUSION:

29. In the circumstances, I am of the considered view that this is a fit and proper case to use said provision (d) of Section 46 and thus, I am inclined to transfer the case No. D/2605/24 of District Court of Mt. Lavinia to the District Court of Jaffna.
30. With regard to terms which this order should be subjected to, I direct all the proceedings in the District Court of Mt. Lavinia, along with contempt proceedings led up to the date of transfer, should be adopted and continued before the District Court of Jaffna.
31. The parties should bear their own costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal