

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

Court of Appeal Case No.
CA / TRF / 19 / 2025

DC Case No.
566 / MD

*In the matter of an application for a
Transfer of Case bearing No.
566/2025/MD in the District Court of
Kurunegala under section 10 of the Civil
Procedure Code, read with section 46 of
the Judicature Act. 02 of 1978.*

Dhammika Gamaarachchi,
No. 117, Greenwali Watta,
Ibbagamuwa.

Plaintiff

Vs.

Manamperi Koralage Lakshmi
Mahendrarathna,
No. 165, Greenwali Watta,
Bakmeegolla,
Ibbagamuwa.

Defendant

AND NOW BETWEEN

Manamperi Koralage Lakshmi
Mahendrarathna,
No. 165, Greenwali Watta,

Bakmeegolla,
Ibbagamuwa.

Defendant – Petitioner

Dhammika Gamaarachchi,
No. 117, Greenwali Watta,
Ibbagamuwa.

Plaintiff – Respondent

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

Counsel : Harith De Mel with Minul Muhamdiramge
instructed by the Legal Aid Commission for
the Petitioner.

Manohara De Silva, P.C. with Dilmini De Silva
Instructed by Gaithri De Silva for the Plaintiff –
Respondent.

Written Submissions on : 01.12.2025 for the Petitioner
01.12.2025 for the Respondent

Supported on : 10.11.2025

Decided on : 03.12.2025

K. Priyantha Fernando, J. (CA)

The Defendant-Petitioner (hereinafter referred to as the Petitioner), who was the Defendant in **Kurunegala DC Case No. 566/MD**, filed a Petition on September 26, 2025. The Petitioner's application was made pursuant to Section 10 of the Civil Procedure Code, seeking the transfer of Action No. 566/MD from the District Court of Kurunegala to a more suitable forum. The Plaintiff-Respondent (hereinafter referred to as the Respondent) was an Attorney-at-Law practising within the Kurunegala judicial zone and the Plaintiff in the said District Court action.

THE FACTUAL MATRIX:

The Respondent had filed the Complaint dated May 27, 2025, against the petitioner for malicious prosecution. The Respondent's Complaint alleged that the Petitioner resided and operated a small shop on her land, that the shop was an unlawful construction, and that the Petitioner had planted flowers and trees upon a common right of way. Following the Respondent's complaints, the Ibbagamuwa Divisional Secretariat issued a Quit Notice to the Petitioner dated November 9, 2020.

Subsequently, on or about November 21, 2022, the Petitioner lodged a complaint with the Gokarella Police, alleging that the Respondent and others unlawfully entered her land and damaged her shop. Pursuant to this complaint, a criminal case bearing 80548 PC/23 was filed by the Police before the Magistrate Court of Kurunegala against the Respondent under sections 433 and 410 of the Penal Code. The said criminal case was later dismissed, and the Respondent was acquitted by the Learned Magistrate by a Judgement dated December 5, 2024. The Learned Magistrate had observed that the criminal case was filed solely upon the Petitioner's suspicion arising from pre-existing conflicts between the parties. The Respondent claimed he was entitled to damages amounting to Rs. 10,000,000.00 for malicious prosecution, stating he had suffered mental distress

and damage to his professional reputation as a result of the criminal proceedings.

THE PETITIONER'S CONTENTION:

The Petitioner submitted that the continuation of the proceedings in the District Court of Kurunegala gave rise to potential bias, conflicts of interest, and lack of the appearance of fairness, which were prejudicial to her right to a fair trial. This concern arose because the Respondent was an Attorney-at-Law with a substantial and senior practice within the Kurunegala judicial zone, leading to a significant power imbalance. The Petitioner also stated that any Judicial Officer or Court Staff hearing the action would know the Respondent in his capacity as a practising Attorney-at-Law.

The Petitioner stated that after receiving summons on or around June 21, 2025, she made earnest efforts to secure legal representation from approximately forty (40) Attorneys-at-Law practising within the Kurunegala judicial zone, but every lawyer either refused or demonstrated reluctance to accept her brief due to the Respondent's standing. The Petitioner thus found herself gravely prejudiced and was compelled to appear in person on July 9, 2025. She was subsequently compelled to travel from Kurunegala to Colombo to obtain assistance from the Head Office of the Legal Aid Commission, **which agreed to provide her with legal aid on or around August 27, 2025.**

The Petitioner contended that her fundamental right to retain counsel had already been curtailed by the action being instituted in Kurunegala. She also noted that the Respondent himself had asserted in his Complaint that his professional reputation was damaged by being made an accused in the Magistrate's Court, where he regularly practised.

The Petitioner cited the relevant paragraph of the Complaint which included the following: "වර්ෂ 2024.12.05 වන දින ගරු මහේස්ත්‍රාත්තුමා එම නඩුවේ තීන්දුව ජර්කාශයට පත් කරන දිනය වන විට ඊට පෙර දින 05 ක පමණ කාලයක් මහේස්ත්‍රාත් අධිකරණයේ වූදිනයෙකු ලෙස පෙනී සිටීමට සහ විත්තිකරුවෙකු ලෙස විත්ති කුඩුවේ රැඳී සිටීමට පැමිණිලිකරුට සිදු වූ බවත්, එය හේතු කොට

තමන් නීතිඥවරයකු ලෙස ද කටයුතු කරන අධිකරණයකදී වූදිනයක ලෙස සිටීමට සිදු වීම නිසා වෘත්තිකයෙකු වශයෙන්ද සමාජයේ ජරසිද්ධ වෘත්තිකයෙකු වශයෙන් තමා දන්නා හඳුනා පිරිස් අතරද තම සහෝදර නීතිඥ ජරජාව අතරද අපහාසයට අපහසුතාවයට හා පහත් කොට සැළකීමට ලක් වීමට සිදු වූ බවත්, එය තමන්ට බලවත් මානසික පීඩාවක් ආතතියක් හා ආර්ථික වශයෙන්ද පාඩුවක් වූ බවත් පැමිණිලිකරු ජරකාශ කර සිටී".

The Petitioner submitted that even if actual bias did not exist, the appearance of bias was a very real concern. She relied on Section 10 of the Civil Procedure Code and Section 46(1)(a) of the Judicature Act No. 02 of 1978, which permitted a transfer if "a fair and impartial trial cannot be had in any particular court or place". She further drew attention to the case of Ratnayake Menike v. Dayananda and Others (2003) 3 SLR 57 at 59, stating the facts were materially similar as she was unable to find legal representation due to the Respondent's position as a senior member of the Kurunegala Bar. The Petitioner prayed for the transfer of Action No. 566/MD to a neutral forum.

The Petitioner presented Written Submissions, noting that Formal Notice had already been issued by the Court on October 3, 2025, and argued that the existing Interim Order staying proceedings should be extended until the final determination of the transfer Application.

The Petitioner pointed out that the Respondent had not filed a statement of objection or counter-affidavit, meaning the Petitioner's entire factual narration remained unchallenged and uncontested. The Petitioner stated that both parties had, in the course of submissions, admitted that it would not be in the best interest of either party to continue the action in the Kurunegala District Court.

The Petitioner reiterated that she was unable to find legal representation from the Kurunegala judicial zone and the surrounding judicial zones. She submitted that the Legal Aid Office in Kurunegala also refused to appear on her behalf due to a possible conflict of interest with the Respondent. The members of the Legal Aid Office expressed genuine concern that representing the Petitioner might

strain their professional relations with the Respondent or other practitioners within the same Bar.

Furthermore, the Petitioner stated that on the date of her personal appearance, July 9, 2025, there were corrections made to the pleadings of the Respondent, but she was not given a copy of the amended pleadings nor was she informed that she was entitled to one. The Petitioner submitted that the damages sought by the Respondent, Rs. 10 million, were an attempt to intimidate and seek revenge against the Petitioner, given her financial situation.

In the Legal Submissions, the Petitioner relied on Section 10 of the Civil Procedure Code and Section 46 of the Judicature Act. The Petitioner cited Ratnayake Menike v. Dayananda and Others (2003) 3 SLR 57 at 59 to emphasize the undue influence or perceived influence an Attorney-at-Law may wield and the inability of a litigant to retain counsel as elements affecting a fair trial.

She also referred to Joe Franko Fransisko v. Wijekoon Mudiyanseelage Kapurubanda and Others, where Justice Nawaz observed that the inability to find proper representation would vitiate the fair trial of a litigant, and further anchored the transfer ground on the 'expediency of the trial' as stipulated by Section 46(1)(d) of the Judicature Act.

The Petitioner submitted that the criminal case which was the genesis of the malicious prosecution suit, case bearing 80548, was conducted with overwhelming presence of counsel for the Respondent, including a President's Counsel and three other Attorneys-at-Law, which she deemed a clear intimidation tactic against the unrepresented Petitioner. She noted the journal entry reflecting that: "වුද්ධ වෙනුවෙන් ජනාධිපති නීතිඥ ජයනාග මහතා, නීතිඥ දුණු සිංහ මහතා, නීතිඥ නවුෂාඩ් මහතා, නීතිඥ විද්‍යාශ්‍රී රණවත මහතා පෙනී සිටී". She further alleged that objections by the Respondent's counsel led to significant portions of her evidence being stricken from the judicial record, as recorded by the phrase: "අධිකරණයෙන්:- එම සාක්ෂි කොටස් ඉදිරිපත් කිරීම පිළිබඳ වුද්ධගේ නීතිඥ මහතා විරෝධතාවය ජරකාශ කරයි. එකී කොටස් ජරවාදක බැවින් ඉවත් කරන ලෙස අයද සිටී. ඒ අනුව එම සාක්ෂි සඳහා අවසර ලබා නොදෙමි".

The Petitioner proposed Negombo, Colombo, and Gampaha as alternative courts where the Respondent did not have a significant practice, and opposed the Respondent's proposed courts, such as Kandy and Kegalle, stating that the Respondent actively practised in them. The Petitioner ultimately prayed for the transfer of the case to a neutral location.

THE POSITION OF THE RESPONDENT:

Attention of the Court was drawn to the fact that, when this matter came up before the Court on October 22, 2025, and again on November 10, 2025, the counsel for the Respondent proposed transferring the case to the District Court of Kegalle, Kandy, Wariyapola, or Matale, as a matter of cooperation and settlement, without conceding to the Petitioner's claims. Only the District Court of Wariyapola came under the Judicial Zone of Kurunegala. The counsel for the Petitioner refused these proposals and demanded a transfer only to the District Court of Colombo. The distance from the District Court of Kurunegala to the proposed stations was: Kegalle (39 Km), Kandy (42 Km), Wariyapola (29 Km), Matale (51 Km), and Colombo (106 Km).

The Respondent submitted that the demand to transfer the case to the District Court of Colombo, which was over 100 Km away, was grossly unreasonable and would be enormously expensive for witnesses and potentially cause difficulties for parties.

The Court has a duty to consider the difficulties the parties would have to undergo when transferring a case to a different court. The Respondent argued that the Petitioner's request to transfer the case to Colombo was not sought as relief in the Petition.

Citing *Manatunga vs Amarasinghe* (2004) 3 SLR 7 at page 12, the Respondent submitted that if the application was allowed, the Defendant-Respondent would have to incur heavy costs for travelling and retaining counsel from Colombo.

The Respondent submitted that the four stations he proposed were stations where he did not have any active cases pending. The Petitioner's contention for transfer was based on her inability to obtain legal representation from the Kurunegala Judicial Zone. However, the Respondent argued that the Petitioner failed to demonstrate any evidence of her failed endeavours. The Respondent noted that the Petitioner, who claimed to have approached approximately forty attorneys-at-law, failed to disclose the name of a single Attorney-at-Law who refused to represent her.

This was contrasted with the case of Rathnayake Menike vs Dayananda and Others (2003) 3 SLR 57 at 58, where the Petitioner had listed the names of eleven attorneys who had declined her brief. Furthermore, the Respondent noted that in the Manatunga vs Amarasinghe case, the Petitioner's application was dismissed because she had only made a mere statement that members of the Kurunegala Bar were refusing to appear for her.

The Respondent submitted that the Petitioner had already obtained legal representation through the Legal Aid Commission, as averred in paragraphs 21 and 22 of her Petition. The Respondent pointed out that there was a Legal Aid branch in Kurunegala, and the Petitioner had not submitted any document from the Legal Aid Commission confirming its legal officers were unwilling to appear for her.

The Respondent argued that the Petitioner failed to satisfy the criteria under Section 46(1)(a) of the Judicature Act, which required establishing that a fair and impartial trial could not be held. The Respondent submitted that the Petitioner failed to demonstrate any instances where the Learned District Judge had acted in a biased or partial manner, favouring the Respondent. The Respondent further submitted that when assessing bias, the Petitioner had to satisfy the Court, as judicial officers were trained officers and there was no reason for them to be biased. Citing Abdul Hasheeb vs Mendis Perera (1991) 1 SLR 243 at 257, the Respondent emphasized that suspicion must be based on reasonable grounds

and not on conjecture or flimsy grounds. The Respondent concluded that the matter was not a fit case for the Court to issue Formal Notice and prayed for the dismissal of the Petition.

CONCLUSION:

In the present case, it appears that the Petitioner is unable to retain a Lawyer from the Kurunegala Bar because of the fact that the Plaintiff-Respondent is a leading practitioner at the same Bar. It is a fundamental right of every litigant that he/she must have the liberty to be represented by an Attorney at the trial, which in this case, the Petitioner finds difficult to exercise because the case is taken up in Kurunegala District Court. Therefore, we find that a fair and impartial trial cannot be had in the Kurunegala District Court and it should be transferred to another District Court.

In deciding to which District Court the case to be transferred, there are two opposing views entertained by the parties.

- i. The Petitioner seeks to avoid Kandy and Kegalle, stating that the Respondent actively practising in said Courts. However, there is no evidence adduced as to how active the Respondent's practice in those stations. The Petitioner wants a "neutral" station, proposing Negombo and Colombo which are distanced from Kurunegala by 74Km and 103Km respectively.
- ii. Contrary to the above, the Respondent has proposed Kegalle, Kandy, Wariyapola, and Matale. Only the District Court of Wariyapola comes under the Judicial Zone of Kurunegala.

There is no document from the Legal Aid Commission confirming its legal officers were unwilling to appear for her. The Petitioner's proposals of Negombo and Colombo cannot be acceded due to the sheer distance from Kurunegala. It will cause immense hardship to the parties as well as the witnesses.

Regarding the adjoining judicial zone of Kandy, there is no proof as to the fact that the Respondent has an active practice in the District Court of Kandy. In any event, he is not a member of the Kandy Bar. There are several District Courts in Kandy and the Chief District Judge is able to decide to which Court this case should be assigned.

Moreover, no Judge is expected to look down upon Lawyers appearing in Legal Aid cases. As there are no privileged suitors, the Judges are duty bound to treat all parties equally, affording them fair trial.

Thus, it is ordered the Case No. No. 566/MD of District Court of Kurunegala to be transferred to the District Court of Kandy.

The Registrar of this Court is directed to inform the Registrar, District Court of Kurunegala, of this order by way of fax, telephone, and any other means of communication available.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal