

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

*In the matter of an application for transfer
under and in terms of Section 46 of the
Judicature Act No. 02 of 1978*

CA / TRF / 23 / 2025

MC Case No. 8270 / 18

A.R.L.R. Senavirathna,

No. 242/1, Thiththapajjala, Warallagama.

APPLICANT

Vs

P.W.W.D.P. Rajapaksha

No. 147, Yatihalagala, Kandy.

RESPONDENT

NOW BETWEEN

P.W.W.D.P. Rajapaksha

No. 147, Yatihalagala, Kandy.

RESPONDENT- PETITIONER

Vs

A.R.L.R. Senavirathna,

No. 242/1, Thiththapajjala, Warallagama.

APPLICANT-RESPONDENT

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

Counsel : Petitioner appears in person.
Iranga Perera for the Respondent.

Written Submissions on : 04.03.2026 for the Applicant - Respondent.

Supported on : 20.01.2026

Decided on : 11.03.2026

K. Priyantha Fernando, J.(CA)

1. The Respondent-Petitioner filed above three applications seeking inter alia the following reliefs:
 - (a) An order to inquire whether the Chief Magistrate Court can hold fair and reasonable court proceeding regarding the case No. 9401/25, 9897/25 and 8270/18,
 - (b) An order to transfer case Nos. 9401/25, 9897/25, 8270/18 **from the Chief Magistrate Court of Kandy to the Additional Magistrate Court of Kandy,**
 - (c) A stay order staying the proceedings of the case Nos. 9401/25, 9897/25 and 8270/18 until the final determination of this application.

THE POSITION OF THE RESPONDENT-PETITIONER:

2. The Petitioner has admitted in his Petitions that these three matters were initially transferred by the Chief Magistrate Court of Kandy to the Additional Magistrate Court No. 1 of Kandy, on the request of the Petitioner himself. (vide paragraph 3 of the Petition).
3. All three cases have been called before the Chief Magistrate of Kandy on **19.09.2025** whereupon, the matters were fixed for inquiry **14.11.2025**. However, on the **24.10.2025**, the Respondent has

filed motions to get the inquiry date changed to a different date which is **31.10.2025**. The Learned Chief Magistrate has refused to allow the said motion. It was Petitioner's position that due to the said refusal, he is in a difficulty of appearing for another case in the Chief Magistrate Court.

THE POSITION OF THE APPLICANT-RESPONDENT:

4. It was submitted by the Applicant-Respondent that, when the Learned Magistrate makes an Order refusing any application made by the Petitioner, he habitually files transfer application to transfer the matter to another Court; by continuously filing transfer applications. The Petitioner has delayed the Maintenance cases without making interim payment granted by the Magistrate Court.
5. If the Petitioner is not satisfied with the order of the Learned Magistrate, he may have filed appeal to the High Court under the Maintenance Act; instead of proper appellate remedy against the order delivered by the learned Magistrate, the Petitioner has filed transfer application which amounts to complete abuse of process of court; the Petitioner has failed to annex the purported motion dated 24.10.2025 filed in the Magistrate Court of Kandy and the Learned Magistrate has not delivered any adverse orders against the Petitioner.
6. The Petitioner has appeared before the Magistrate Court in person on 24.10.2025, and obtained a date for the inquiry. Since he appeared in person before the Magistrate Court, it was his responsibility to take a convenient date for inquiry from the Court. The Petitioner is the Respondent in the Maintenance Case No. 9401/25 and there are allegations against the Petitioner and therefore he can't decide the date on which the inquiry should be held. Mere refusal by the Learned Magistrate to allow the motion filed by the Petitioner cannot lead to the conclusion that the learned Magistrate acted partially and in favour of the Respondent.
7. It was submitted that in the Petition, the Petitioner has not clearly disclosed the reasons why this Court should transfer these three cases, to another division of the Magistrate Court of Kandy; this is not the first instance in which the Petitioner has submitted a transfer request.

8. In fact, the Petitioner has acknowledged in his petition that he had previously filed for a transfer application, resulting this Court ordering to transfer Case Nos. 9401/25 , 9897/25, 8270/18 from the Additional Magistrate Court to the Chief Magistrate Court. Subsequently, the Petitioner presented the current applications to transfer the same three cases back to the Additional Magistrate Court resulting in the reverse of the earlier order.

THE LAW RELATING TO TRANSFER OF CASES:

9. **Section 46(1)** of the Judicature Act No. 2 of 1978 lays down the following:

“Whenever it appears to the Court of Appeal,

*(a) that a **fair and impartial trial cannot be held** in any particular court or place;*

(b) or that some questions of law of unusual difficulties are likely to arise;

(c) or 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.”*

ANALYSIS:

10. In the case of Ronald Michael Stanley vs. Officer in Charge, Kirulapane and Others- CA/TRF/24/23 decided on , B. Sasi Mahendran J. has stated that,

*“If this Court as to consider the grounds on which the present application is in favour of the Petitioner, **there should be materials or valid reasons** for this Court to come to a conclusion that a fair and impartial trial cannot be had. We note that, none of the*

Counsels who represented the Petitioner have given any affidavits that they were abused or humiliated in the said Magistrates Court". (the emphasis was added)

11. It is apparent that the Petitioner has pursued transfer applications consecutively. It was not revealed in the Petition the reason of initial transfer of the three maintenance applications from the Additional Magistrate Court to the Chief Magistrate Court. This fact is of utmost important since the three cases have been transferred upon an application of the Petitioner himself. However, the Plaintiff has failed to explain this factor.
12. Secondly, the reason given for the transfer of these three cases back to the Additional Magistrate Court is vague and suspicious. Although the Petitioner had stated that another case is pending in the same Court on 14th November 2025, he had neither revealed the case number nor the nature of the said fourth case. It again gives rise to the question as to why the Petitioner initially wanted to transfer the three maintenance cases from the Additional Magistrate Court to the Chief Magistrate Court if another fourth case is pending in the Chief Magistrate's Court.
13. If another fourth case was pending in the Chief Magistrate Court at that time, the Petitioner would not have transferred these three Maintenance cases to the same Court as he could have been aware of the difficulty of preparing for four cases. On the other hand, he could have easily made an application to re-fix the fourth case to a different date instead of the three instant cases. These factors warrant an explanation which the Petitioner has failed to provide.
14. The Petitioner has suppressed the fact of how long the other fourth case has been pending in the Chief Magistrate Court and the nature of the said case. All these facts become relevant since the Petitioner has categorically stated in **paragraph 7 of the Petition that he would find it difficult to appear in another case pending in the Chief Magistrate's Court due to the refusal of his application** for re fixing the Maintenance cases by advancing the date.

15. Since the Petitioner has failed to annex a copy of the purported motion dated 24.10.2025 filed in the Magistrate Court of Kandy, this Court is not in a position to verify as to the proper reason urged by the Petitioner before the Chief Magistrate for re-fixing of three Maintenance cases to .
16. On the other hand, if the fourth case was also fixed for the same date, the Petitioner could have easily made an application to the Learned Magistrate to consider granting a different date for the other fourth case. It could have been achieved without filing a motion to re-fix the three Maintenance cases. The Petitioner could have easily opted for the said alternative when the application for re-fixing of inquiry date was refused by the Court.
17. Moreover, allowing litigants, the power to choose the judges for their cases could undermine the independence of the judiciary.
18. It was submitted by the Respondents that in case Nos. 9401/2025 and 8270/2018, the Petitioner had failed to provide any interim maintenance payments to the Respondents. Although the Maintenance case 8270/18 has been filed in 2018, the inquiry has not reached a conclusion due to the acts of the Petitioner.
19. In case No. 82790, the Petitioner has provided Rs. 6000/- as interim payment. The Respondents have emphasized that the primary aim of the Petitioner is to delay the inquiry in the maintenance case No. 9897/25. This contention has not been countered by the Petitioner and the facts of the cases also support the said contention of the Respondents.
20. In the case of **Abdul Hasheeb v. Mendis Perera and Others**-(1991) 1 Sri L.R. 243, it was held by G.P.S. De Silva J. (as His Lordship then was) as follows:

*“It is of course not necessary to prove that the judicial officer was, in fact, biased. However, even on the application of the test of reasonable suspicion, it must be shown that the suspicion is based on reasonable grounds-grounds which would appeal to the reasonable, right-thinking man. **It can never be based on conjecture or on flimsy, insubstantial grounds.** Adopting the words of Lord Denning in Lannon’s case (1968) 3*

All ER 850, Mr. Pullenayagam submitted that 'bias' in this context would mean 'a tendency to favour one side unfairly at the expense of the other' - a submission with which I agree." (emphasis added)

21. In the said backdrop of law, it is my considered view that in the instant three applications, the grounds urged by the Petitioner to transfer the three Maintenance cases **are too flimsy and based on mere conjecture.**

22. The totality of circumstances relied on by the Petitioner, did not show that the Learned Chief Magistrate of Kandy had extended favours to one side unfairly at the expense of the other and I accordingly hold that any allegation of bias has not been established. Thus, the basis or ground on which the transfer is sought (section 46(1)(a) of the Judicature Act) fails.

23. In all the circumstances, I dismiss these three transfer applications without costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal