

**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  
Prohibition.

**Court of Appeal Case No:  
CA/WRIT/1043/2025**

Wickramage Lilani Wasantha Perera,  
No. 410/74, "Sihina Danawa",  
Kudaluwila,  
Hanwella.

**PETITIONER**

**Vs.**

1. Kolonnawa Wijaya Co-operative  
Society Limited,  
No. 04, Wijaya Road,  
Kolonnawa.
2. Jatila De Silva,  
Chairman,  
Kolonnawa Wijaya Co-operative  
Society Limited,  
No. 04, Wijaya Road,  
Kolonnawa.
3. W.B. Ariyapala,  
Secretary,  
Kolonnawa Wijaya Co-operative  
Society Limited,  
No. 04, Wijaya Road,  
Kolonnawa.

4. G.D. Anura Wickrama,  
Arbitrator/Adjudicator,  
No. 188/8,  
Koswatta,  
Kotalawala,  
Bandaragama.
5. M.A.P. Jayakody,  
The Commissioner and the Registrar  
of Co-operative Development,  
Department of Co-operative  
Development,  
Western Province,  
P.O. Box 444, Duke Street,  
Colombo 01.

### **RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Nilum Devapura with Chamalika Jayaneththi and Fathima Hajara  
instructed by Shyamali Liyanage for the Petitioner.  
Chamara Nanayakkara with Apoorwa Nanayakkara and Ridma  
Senarath for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
Avanthi Weerakoon, S.C. for the 5<sup>th</sup> Respondent.

**Supported on:** 04.03.2026.

**Order delivered on:** 30.04.2026.

**Mayadunne Corea J**

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

- “b) Issue a mandate in the nature of a Writ of Certiorari, quashing the decisions contained in the award/adjudication of the 4<sup>th</sup> Respondent dated 04.12.2022 marked as ‘A6’ and/or the decision of the 5<sup>th</sup> Respondent dated 18.08.2025 marked as ‘A11’*
- c) Issue a mandate in the nature of Writ of Prohibition preventing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from taking further steps based on the award/adjudication dated 04.12.2022 marked as ‘A6’ and the decision dated 18.08.2025 marked as ‘A11’”*

The facts of this case briefly are as follows. The Petitioner joined the 1<sup>st</sup> Respondent Cooperative Society in the year 2002, and her employment was made permanent in 2005. Thereafter, the Petitioner was promoted to the position of manager in January 2009 and remained in the said post until October 2017. During the Petitioner’s tenure as manager, due to an allegation of a fraud committed an auditor was appointed to investigate an alleged misappropriation of funds in the 1<sup>st</sup> Respondent Society. The Petitioner states that the auditor and the 2<sup>nd</sup> Respondent compelled her to take responsibility for the misappropriation of funds, and accordingly, the Petitioner deposited a sum of Rs. 3,500,000 on or about 31.10.2017.

Subsequently, in 2021, the Petitioner received a letter of demand requiring her to pay a further sum of Rs. 17,036,624 in order to recover the alleged misappropriated funds. The Petitioner states that upon denying the contents of the said letter, she received a further letter informing that the matter concerning the misappropriation of funds had been referred to an arbitrator/adjudicator and requiring her to be present at the arbitration/adjudication proceedings. The 4<sup>th</sup> Respondent was appointed as the arbitrator/adjudicator. Following the conclusion of the proceedings, the 4<sup>th</sup> Respondent delivered an award dated 04.12.2022, whereby the 1<sup>st</sup> Respondent was entitled to recover a sum of Rs. 8,549,841, together with a further sum of Rs. 8,486,783 as interest thereon, and costs of litigation (A6).

Aggrieved by the said award, the Petitioner preferred an appeal to the 5<sup>th</sup> Respondent. Following the submissions of both parties, the 5<sup>th</sup> Respondent, by his decision dated 04.12.2022, dismissed the appeal of the Petitioner and affirmed the award of the 4<sup>th</sup> Respondent. By the said decision, the Petitioner was required to pay a sum of Rs.

17,036,642 together with a sum of Rs. 20,500 as the costs of litigation (A11). Hence, this Writ application.

### **The Petitioner's contention**

The Petitioner challenges the acts of the Respondents on the following grounds:

- The 4<sup>th</sup> and 5<sup>th</sup> Respondents had failed to consider the relevant facts.
- The decisions of the 4<sup>th</sup> and 5<sup>th</sup> Respondents are contrary to the provisions of the Cooperative Societies Statute No. 3 of 1998 of the Provincial Council of the Western Province read together with the Cooperative Societies (Amendment) Statute No. 4 of 2011 of the Provincial Council of the Western Province.
- The decisions of the 4<sup>th</sup> and 5<sup>th</sup> Respondents are illegal, unlawful, ultra vires, unreasonable, mala fide, null and void, in violation of the legitimate expectations of the Petitioner and contrary to the principles of natural justice.

### **The Respondents' contention**

The Respondents raised the following objections:

- The Respondents contended that the Petitioner had admitted her guilt and repaid part of the money.
- The Petitioner was given a fair hearing but preferred not to give evidence before the Arbitrator.
- At all times during the arbitration the Petitioner's interest was looked after by the defence officer.
- The Petitioner had an alternate remedy which she has failed to resort to.

### **Analysis**

I will now consider the Petitioner's contention with the Respondents' objections.

It is common ground that the Petitioner was the manager of the 1<sup>st</sup> Respondent during the relevant period. Parties are not at variance that there was an allegation of financial

misappropriation of funds at the 1<sup>st</sup> Respondent society and that there had been an audit inquiry. The Petitioner also concedes that she has paid a sum of Rs. 3,500,0000.

It is also conceded by the parties that in most instances customers had deposited monies in fixed deposits and then have taken loan advances against the said fixed deposits. However, in order to obtain the said facility, the depositor has to make an application and the said application upon payment of money has to be signed by the Petitioner in her capacity as the manager.

The Petitioner at the support stage, mainly contended that she had not been given a fair hearing at the investigation stage and before the arbitrator. Hence, the contention that the inquiry process is in violation of rules of natural justice. Subsequent to a preliminary inquiry there had been an arbitration and subsequent to the award, the Petitioner had appealed to the registrar who has affirmed the award. The Petitioner in this application is impugning the said appeal decision and also is collaterally challenging the arbitrator's decision. In this instance, I am mindful that this is not an appeal and is a Writ application.

### **Did the Petitioner have a fair hearing?**

The Petitioner contends that while she was the manager she had been diagnosed with a medical condition and had to obtain leave. However, it is submitted by the Counsel for the Respondents that the alleged misappropriation under investigation had happened prior to the said time period, namely from around March 2002 to November 2020. It is also contended that the Petitioner's medical condition had developed only around 2017. Keeping it as it may, it appears that subsequent to the allegation of misappropriation, there had been a fact-finding preliminary audit inquiry. The Petitioner concedes that she was aware of the said inquiry but alleges that she had not been officially informed of the said inquiry. In response the Respondents' Counsel submitted that they had sent notices to the Petitioner's address and denied the allegation of Petitioner. It was the Respondents' contention that the notices were sent to the Petitioner's address that was informed to the 1<sup>st</sup> Respondent (page 21 of the brief). Upon inquiry by this Court, the learned Counsel for the Petitioner conceded that the Petitioner had changed her residence and also conceded that she had failed to inform of her change of address to the Respondents. It is also observed that the Petitioner has not tendered any material to demonstrate that the Petitioner had informed her employer of the new address. In any event, this Court observes that subsequent to the preliminary hearing, a formal arbitration had commenced and for the said arbitration the Petitioner had been present with her defense officer. The arbitration proceedings were marked and tendered as A1.

With the Petitioner being present at the arbitration with her defense representative, it is clear that she has had a hearing before the arbitrator. There is no allegation pertaining to the conduct of the arbitration. It is observed that at the arbitration, the 1<sup>st</sup> Respondent Society had led evidence and marked documents. The representative of the Petitioner had been afforded the opportunity to cross-examine the witnesses. Thereafter, at the conclusion of the 1<sup>st</sup> Respondent's case, the Petitioner had been given the opportunity to give evidence and also to call her witnesses. However, the Petitioner had decided not to give evidence but instead had presented a written statement and also had concluded her case by not calling witnesses.

Although the Petitioner's Counsel contended that no statement was obtained from the Petitioner at the preliminary audit inquiry, it is clear from the submissions of the Respondents' Counsel that this was due to the Petitioner's failure to appear and provide a statement after being duly informed. The reason being the Petitioner's change of residence without proper notice to her employer. However, it is sufficient to state that subsequent to the audit there had been an arbitration where all parties participated. Thus, a fair hearing has been afforded to the Petitioner prior to the grant of the arbitral award.

Subsequent to the arbitrator giving his award, which was against the Petitioner, she had appealed against the said order to the Commissioner by the document marked and tendered as A7 (page 749 of the brief). The appeal process has commenced with notices being sent to both parties A8(i)-(ii) and the appeal had been heard with the participation of both parties (A10), which culminated in the appeal decision marked and tendered as A11. This decision too has been communicated to both parties. The Petitioner does not impugn the appeal procedure. In the circumstances, in my view, the Petitioner's allegation of not having a fair hearing before the arbitrator and the 5<sup>th</sup> Respondent cannot be sustained.

**Has the 5<sup>th</sup> Respondent failed to consider the evidence and the contradictions before the arbitrator?**

The Petitioner in impugning the 5<sup>th</sup> Respondent's decision had contended that the 5<sup>th</sup> Respondent had failed to consider the contradictory nature of the evidence. Let me now examine the 5<sup>th</sup> Respondent's decision in order to determine whether he has considered the evidence. The arbitrator's award is marked and tendered as A11 and is found on page 760 of the brief. In paragraph 3 onwards the 5<sup>th</sup> Respondent has considered the allegation of insufficiency of evidence, the alleged contradictions where he has held that the burden of adducing evidence to establish the Petitioner's case rested with her and had observed that she was at liberty to discharge the burden by bringing in witnesses

and also if there were any contradictions, it should have been marked by the Petitioner. It appears that the Petitioner has failed to call any witnesses and has failed to mark any contradictions in the evidence.

It is observed that at the arbitration, the society too has called one witness and marked the statements of the witness who had alleged that they have been defrauded. However, it is also pertinent to note that at the arbitration, the Petitioner was present and represented. Hence, it was open to her to object to the marking of the statements of the customers without them being called. As per the proceedings before this Court there is no material to demonstrate that the Petitioner had taken up such an objection. There is no material to demonstrate that the Petitioner had objected to said statements being marked as evidence. The appellant authority has quite correctly observed this in the appeal order. Hence, the Petitioner's contention on the above-mentioned ground has to fail.

**The challenge on the impugned amount in the award**

It is pertinent to note that the Petitioner concedes that she has paid a sum of Rs. 3,500,000 to the 1<sup>st</sup> Respondent society. The Petitioner's above payment has been acknowledged by the 1<sup>st</sup> Respondent society and a receipt issued (page 32 of the brief). It is observed the said receipt clearly states that the money paid is the repayment of the misappropriated money. The Petitioner has failed to explain why she did not object to the wording of the receipt if it was not a repayment of the misappropriated money. I have also considered the Petitioner's statement especially the part contained in page 620 of the brief. In the said statement she has not denied the misappropriation of the money and has also conceded that the 1<sup>st</sup> Respondent had recovered a sum of nearly Rs. 8,300,000. To get a better understanding I will reproduce the said paragraph which states as follows;

ඉහත කරුණු සියල්ලම සලකා බැලූවිට මා විසින් හේතු සහිතව ප්‍රතික්ෂේප කරනු ලබන මුළු වටිනාකම  
, අපේ කරනු ලබන ප්‍රතික්ෂේප පත්‍රයේ සඳහන් කර ඇති විටකට පත්‍රයෙහි මෙහි සඳහන් වන පරිදි  
පැමිණිලිකාර ආර්ථික විසින් මුලු අවසානිතය 16 858 193/= ලෙස ගණනය කළද එතරම් විශාල  
මුදලක් මා විසින් පිළිපිටෙන්නේ අවසානිත ප්‍රකාශයක් නොවන බැවින් මෙහි සඳහන් කරන්නට නොහැකි  
සාක්ෂි අවශ්‍ය නොවේ යැයි සිතමි. ඒ අනුව සමිතිය වෙත මාගෙන් ලක්ෂ 83 කට අධික මුදලක් මේ  
වන විටත් අයවී ඇති අතර මා කට නොවිච්චි කවත් ඉතිරිව ඇති නිසි එය මුළු මුදලක් ප්‍රතිශ්‍රීත වී  
ලැබූය.

In this statement it is clear the Petitioner is not only conceding the misappropriation of the money but also is conceding that there is another amount that she owes the 1<sup>st</sup> Respondent.

The Petitioner have also failed to demonstrate with material as to how the impugned decision is contrary to the provisions of the Cooperative Societies Statute, No. 3 of 1999 of the Provincial Council of Western Province read together with the Cooperative Societies Amendment (Statute No. 4 of 2011 of the Provincial Council of the Western Province). Hence, the said contention has to fail.

Let me now consider the response of the Respondents.

### **The Respondents' contentions**

It is the contention of the Respondents that at all times the Petitioner was given a fair hearing. Substantiating this argument, the attention of the Court was drawn to the proceedings before the arbitrator as well as to the appeal hearing. As I have observed above the Court is inclined to accept this contention that the Petitioner had been afforded a fair hearing. It is also observed that even prior to the commencement of the audit inquiry, the Petitioner had been noticed and the Petitioner herself conceded that she had changed the address and the Counsel conceded upon inquiry that there is no material to demonstrate that the Petitioner had informed her employer about the change of address.

The Respondents' main contention that the Petitioner has accepted her misappropriation of the society's funds and had paid part of the misappropriated funds. This was not disputed by the Petitioner.

It is also pertinent to note that although the Petitioner submitted that the payment was made due to her mental state pursuant to an illness there is no medical evidence tendered to support the contention of the Petitioner pertaining to her mental state during the relevant time period. In any event, the Petitioner has tendered her lengthy written statement to the arbitrator and in the said statement too the Petitioner had not denied the misappropriation of funds and has conceded to her payment. In this statement, she has taken a step further and conceded that the balance outstanding ought to be minimal, having regard to the repayments already made.

## **Conclusion**

I have considered the material tendered to this Court and the submissions made. In my view, the Petitioner has failed to establish with material any illegality in the appeal hearing or the appeal decision. It is also pertinent to observe that the Petitioner has failed to demonstrate any illegality even in the arbitration proceedings and the said decision. This Court has constantly held that when a Petitioner invokes the Writ jurisdiction of this Court, the burden is on the Petitioner to prove her case.

In the case of *Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others* SC Appeal 10/2009 decided on 15.12.2014, the Supreme Court held,

*“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies.”*

It is also pertinent to note in the instant case that the Petitioner has failed to discharge the said burden. Accordingly for the above stated reasons, I am not inclined to issue formal notice on the Respondents and proceed to dismiss this application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**