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

In the matter of an Application for mandates in the nature of Writs of *Certiorari* and Prohibition under and in terms of Article 140 of the Constitution.

Court of Appeal Case No:
CA/WRIT/558/2024

1. Golden Links International (Pvt) Ltd,
   No. 221/J,
   Green Wood Terrace,
   2nd Lane, Kerawalapitiya Road,
   Hendala Wattala.

2. Hewagama Liyanaralalage Renaud Martinus Charitha Perera,
   No. 221/J,
   Green Wood Terrace,
   2nd Lane, Kerawalapitiya Road,
   Hendala Wattala.

3. Kanaththewewe Gurunnehelage Nalinda Mahesh Kumara,
   Ginipendegama,
   Wariyapola.

PETITIONERS

Vs.

1. Hon. Magistrate,
   Chief Magistrate's Court,
   Colombo 12.

2. Officer-In-Charge,
   Secret Intelligence Unit,
   Commission to Investigate Allegations of Bribery or Corruption,
   No. 36,
   Malalasekara Mawatha,
   Colombo 07.

3. Commissioner General,
   Department of Motor Traffic,
   Elvitigala Mawatha,
   Narahenpita,
   Colombo 05.

4. Director General of Customs,
   Sri Lanka Customs,
   Customs House,
   Colombo 01.

5. Commission to Investigate Allegations of Bribery or Corruption,
   Bandaranaike Memorial International Conference Hall,
   Office of the Bribery and Corruption Commission,
   No. 36,
   Malalasekara Mawatha,
   Colombo 07.

6. Hon. Attorney General,
   The Hon. Attorney General's Department,
   Colombo 12.

<u>RESPONDENTS</u>

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Shavindra Fernando, P.C. with Rikas Riffard instructed by Amila Kumara for the Petitioners. Anusha Sammandapperuma, ADL for the 2nd and 5th Respondents. Wasantha Perera, D.S.G. for the 1st, 2nd, 4th and 6th Respondents.
Supported on:	19.06.2025, 04.09.2025 and 17.10.2025
Decided on:	03.12.2025

<u>Mayadunne Corea J</u>

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

"*(m)* *Issue a mandate in the nature of a Writ of Certiorari quashing the Order made by the 1st Respondent (Hon. Magistrate), dated 5th of April 2024 in case No. B14992/1/2024 marked as P-ll(a)*

(n) *Issue a mandate in the nature of a Writ of Certiorari quashing the Order made by the 1st Respondent (Hon. Magistrate), dated 5th of April 2024 in case No. B14990/1/2024 marked as P-12(a)*

(o) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision dated 6th of August 2024 marked as P-13 and P-14 made by the 1st Respondent the Hon. Magistrate issued to the 2nd Petitioner and 3rd Petitioner in cases no. B14992/1/2024 and B 14990/1/2024 to deliver the vehicles which are in their possession to the 2nd Respondent*

(p) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision dated 6th of August 2024 marked as P-13(a) and P-14(a) made by the 1st Respondent the Hon. Magistrate directing the 4th Respondent or his agent to be present at the premises of the 2nd Respondent on 23rd of August 2024 and to take the said vehicles to its custody in cases no. B14992/1/2024 and B 14990/1/2024*

(q) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision dated 23rd of August 2024 marked as P-13(b) and P-14(b) made by the 1st Respondent the Hon. Magistrate against the 2nd and 3rd Petitioners in relation to the handing over of the vehicles to the 2nd Respondent in cases no. B14992/1/2024 and B 14990/1/2024*

(r) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision dated 23rd of August 2024 marked as P-13(c) and P-14(c) made by the 1st Respondent the Hon. Magistrate directing the 4th Respondent to be present on 18th of September 2024 and to take the said vehicles to its custody in cases no. B14992/1/2024 and B 14990/1/2024*

(s) *Issue a mandate in the nature of a Writ of Prohibition, preventing the 2nd Respondent and 5th Respondent from conducting any further investigation against the Petitioners in relation to the facts pertaining to this matter or facts pertaining to cases no. B14992/1/2024 and B 14990/1/2024*

(t) *Issue a mandate in the nature of a Writ of Prohibition, preventing the 2nd Respondent and 5th Respondent from making any arrest on the Petitioners in relation to the facts pertaining to this matter or facts pertaining to cases no. B14992/1/2024 and B 14990/1/2024*"

The facts of the case briefly are as follows. On behalf of the 1st Petitioner company, the 2nd Petitioner purchased a vehicle bearing no. GX-8999 from a third-party vendor. It is alleged that the vendor was the legal owner of the vehicle which was registered under the name of one Mr. Pushpakumara. The 2nd Petitioner states that he diligently examined all the relevant documents prior to the purchase. Upon purchase of the vehicle by the 2nd Petitioner the vendor issued a receipt confirming that the vendor had made all the necessary payments to the registered owner and that the relevant documents were handed over to the 2nd Petitioner. Thereafter, the 2nd Petitioner submitted all the relevant documents to the Department of Motor Traffic for the registration of the vehicle under the name of the 1st Petitioner company and the certificate of registration was issued.

Subsequently, a letter dated 08.05.2024 marked as P6 was issued by the 2nd Respondent in terms of the powers vested in him under section 49 (1) of the Anti-Corruption Act, No. 09 of 2023, requiring the manager of the 1st Petitioner company to be present with documents pertaining to the said vehicle at the premises of the 2nd Respondent in order to record a statement.

The 3rd Petitioner purchased a vehicle bearing number GV-9748 from the same vendor and experienced a similar chain of events. A similar letter dated 12.06.2024 marked as P9 was issued by the 2nd Respondent to the 3rd Petitioner. At the inquiry the 2nd and 3rd Petitioners informed the 2nd Respondent that they were neither the importers nor first owners of the vehicles.

Thereafter, the 2nd Respondent had reported facts before the 1st Respondent with regard to the two vehicles through two separate B-reports marked as P11 and P12. The B-reports stated that the vehicles were registered under the name of the 3rd Respondent and had been imported without payment of the relevant customs duties. The 1st Respondent issued orders under section 124 of the Code of Criminal Procedure Act marked as P11(a) and P12(a) preventing the 3rd Respondent from transferring the said vehicles. The 1st Respondent also directed the Petitioners to hand over the vehicles to the 2nd and 4th Respondents by orders marked as P13, P13(a), P13(b), P13(c), P14, P14(a), P14(b) and P14(c).

The Petitioners' contention

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

- The decisions are *ultra vires* the provisions of the Anti-Corruption Act and the Customs Ordinance.
- The B-reports do not reveal any evidence of an offence committed by the Petitioners, nor have they been named as suspects.
- The 2nd Respondent has failed to specify the purposes for which the transfers of the vehicles should be suspended.
- The 2nd Respondent has failed to specify how the handing over of the vehicles would assist the investigation.
- The Petitioners are *bona fide* purchasers/owners of the vehicles. Thus, the Petitioners have a legitimate expectation to enjoy quiet and peaceful possession of the vehicles free from encumbrances.
- The vehicles were imported 20 years ago. Therefore, criminal action is prescribed.

The Respondents' contention

The Respondents raised the following objections:

- The Writ jurisdiction in relation to the Commission to Investigate Allegations of Bribery and Corruption is to be exercised by the Supreme Court.
- The Petitioner has not complied with the Supreme Court Rules.
- The availability of an alternative remedy.
- Delay.
- Lack of *uberrima fides.*

Analysis

I will now consider the Petitioners' arguments with the Respondent's objections. The Counsel appearing for the Respondents took an objection that the Court lacks jurisdiction to have and maintain this Application.

The Petitioners contend that they are *bona fide* purchasers of the vehicles and further submit~~s~~ that they are not the original owners of the said vehicles. However, in denying this, it is the contention of the Respondents that the Petitioners are involved in an alleged crime, depriving the State of revenue by having two vehicles which are not imported nor registered legally. At the commencement, as per the submissions the Court observes, the 2nd Petitioner is an employee of the 1st Petitioner and has purchased the alleged vehicle no. GX 8999 from a third-party vendor called A.J.P. Kulasekara in the year 2022. It is also pertinent to note that the said vehicle had been registered under the name of one D.G.S. Pushpakumara. The 3rd Petitioner also has purchased a vehicle bearing no. GV 9748 from the same third-party vendor A.J.P. Kulasekara in the year 2016. However, as per the submissions, the learned Counsel did not submit any connection between the 2nd and 3rd Petitioners, though they have purchased the vehicles from the same third-party vendor and have been joined as Petitioners in this case. The 3rd Petitioner's vehicle had been registered under the name bearing D.M.A. Prabath. Both vehicles have been the subject matter of an investigation by the 2nd and 5th Respondents. The 2nd and 5th Respondents have filed B-reports P12 to P13(b) pertaining to the said vehicles. It is alleged that both vehicles have not been registered legally and have no trace of any importation documents.

Vehicle bearing no. GX 8999

The Respondents further submitted that as per their investigations they had observed the names and addresses of the first registered owners of the two vehicles are fictitious (regarding vehicle GX 8999), and it is also observed as per document R2 whereby the Sri Lanka Customs had informed that the chassis number for the vehicle GX 8999 is not available within the computers of the 4th Respondent. Hence, it is argued that the said vehicles have been imported illegally. It is also observed that on a subsequent inquiry by the 2nd and 5th Respondents, it has come to light that the number plate for the above-mentioned vehicle was not printed until the year 2019 (R3 and R5). Hence, the 2nd and 5th Respondents contend that the registration of the vehicle, as submitted by the Petitioners, on 11.12.2018 is false. It is observed as per P2, the Petitioner has been registered as the owner and his predecessor in ownership had been one A.G. Susantha Pushpakumara.

Vehicle bearing no. GY 9748

This vehicle too had been purchased by the 3rd Petitioner from the same third-party vendor. The learned Counsel for the 2nd and 5th Respondents submitted that upon inquiry it has been revealed that the material pertaining to the first registered owner of the vehicle was fabricated and the address given for the second registered owner does not exist. Hence, it is submitted that the said vehicle too had not been imported to Sri Lanka legally. In corroboration, the learned Counsel submitted to Court that the first number plate pertaining to the said vehicle had been only issued in 2017 (R11).

Thereafter, the said 2nd and 5th Respondents had submitted facts to the 1st Respondents by way of B-reports marked as P11, P11(a), P12, P12(a), P13, P13(a), P13(b), P14(a) to P14(c). Upon filing of facts before the learned Magistrate the said Respondents have made a request to prevent further transfer of the vehicles until the inquiry is concluded (P11(a) and P12(a)) and also has made an application to obtain an order to take into custody the two vehicles to which the 1st Respondent had acceded to and issued orders P13 and P14. It is the contention of the Respondents that the two vehicles in question are productions in a criminal inquiry. Aggrieved by the said decisions the Petitioners have sought the intervention of this Court. The main ground for the Petitioners' is that they are *bona fide* purchasers and therefore, that the orders are *ultra vires*. However, the Petitioners concede that the 2nd and 5th Respondents have the right to investigate and conduct inquiries pertaining to the registration of the aforementioned vehicles.

The jurisdiction of this Court

The Petitioners are impugning the orders made by the learned Magistrate to restrain the Petitioners from transferring the vehicles and to restrain the orders made to hand over the vehicles to the 5th Respondent. The learned DSG and the learned Counsel appearing for the 1st to 6th Respondents contended that this Court lacks jurisdiction to grant the reliefs for which the Petitioners have prayed for. On perusing the documents filed, it is clear that the 1st Respondent had registered the case numbers B14992/01/2024 and B14990/01/2024 with the filing of B-reports by the 2nd Respondent on the instructions of the 5th Respondent. The impugned orders have been made pursuant to the filing of the said B-reports. As per the reliefs prayed, especially the interim relief as well as the substantive reliefs are directed against the 1st Respondent who has issued the impugned orders on the application of the 2nd Respondent filed under the provisions of Act, No. 20 of 1994 and Act, No. 9 of 2023. Further, the Court observes that prayer (s) and (t) which seeks the substantive relief are directly seeking Writs of Prohibition to prevent the 2nd and 5th Respondents from making any arrest on the Petitioners and also to prevent further investigations on the Petitioners.

This Court will now advert to the provisions of Anti-Corruption Act, No. 9 of 2023 as the pivotal question before this Court is whether this Court has jurisdiction to grant the reliefs the Petitioners have prayed for. The reliefs prayed for by the Petitioners are in terms of Article 140 of the Constitution, which empowers the Court of Appeal to issue prerogative Writs. Article 140 states as follows:

> "*Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First Instance or tribunal or other institution or any other person*"

As per the plain reading of the said Article The provisions empower the Court to issue orders in the nature of Writs of *Certiorari* and Prohibition which the Petitioners are seeking. However, the Court has also taken into consideration the proviso to Article 140. The said proviso reads as follows:

> "*Provided that Parliament may by law provide that in any such category of cases as may be specified in such law, the jurisdiction conferred on the Court of Appeal by the preceding provisions of this Article shall be exercised by the Supreme Court and not by the Court of Appeal*."

Hence, as per the proviso, the drafters of the Constitution have excluded the exercise of Writ jurisdiction by the Court of Appeal on certain cases and have vested the power in the Supreme Court to exercise that jurisdiction.

Now I would consider section 160 of the Anti-Corruption Act.

> "*160.*
>
> *(1) The jurisdiction vested in the Court of Appeal by the Court of Appeal by Article 140 of the Constitution shall, in respect of applications in which relief is sought against the Commission be exercised by the Supreme Court and not by the Court of Appeal.*
>
> *(2) Subject to the provisions of subsection (1), no injunction or enjoining order shall be granted by any court restraining or staying, or having the effect of restraining or staying, the Commission, from commencing or continuing, the conduct of an investigation under this Act or from exercising any of the powers conferred on it by this Act or from giving any direction under this Act.*"

Under section 160(1) of the Anti-Corruption Act, it clearly ousts the Writ jurisdiction of the Court of Appeal, and vests the jurisdiction with the Supreme Court.

To counter this objection, the Petitioners argue that they are praying for a mandamus and prohibition against the 2nd Respondent, who is an officer of the 5th Respondent. Consequently, section 160 of the Anti-Corruption Act would not be applicable, citing the Supreme Court judgement in ***Jeevan Thondaman v. Returning Officer, Maskeliya Pradhesiya Sabha and others*** **SC Writ 33/2025 decided on 04.04.2025** in support of the argument. The preliminary objection before the Supreme Court was based on the ground that the Court of Appeal was the correct forum to adjudicate on matters relating to the decisions of Returning Officers as opposed to the decisions of the Election Commission itself.

The Supreme Court in its judgement, taking into cognizance the judgement in ***Ghany v. Dayananda Dissanayake, Commissioner of Elections and others*** **[2004] 1 SLR 17**, held that

> *"As it is amply clear from the above judgment, acts of the Commissioner of Elections himself—let alone that of his subordinate officers—are not always referable to the Commission itself."*

Be that as it may, in the Petitioners' prayers (s) and (t), they are seeking Writs of *Mandamus* and Prohibition against the Officer of the 5th Respondent as well as the 5th Respondent Commission itself. Therefore, the facts and circumstances before this Court differs from that of the above case.

Hence, in my view, in this instance the ouster clause in the proviso to Article 140 is applicable. As stated above, in view of the said ouster clause, prayers (s) and (t) of the Petition have to fail. Further, as observed by this Court, the 1st Respondent had issued the impugned orders pursuant to B-reports filed by the 2nd Respondent where the investigations are conducted by the 5th Respondent. The B-reports clearly reflect that they have been filed pursuant to the provisions of the Anti-Corruption Act. It is upon that application that the 1st Respondent issued the impugned orders. Hence, in my view, the orders that are sought cannot be granted by the Court of Appeal. This Court on numerous occasions has held that this Court has no jurisdiction pertaining to applications against the 5th Respondent, and also of the 2nd Respondent. This was elaborated in the following judgements.

In the case of ***Maldeniyage Don Upali Gunaratne and another v. Commission to Investigate Bribery or Corruption*** **CA/CPA/77/2022 decided on 04.04.2023** where it was held that:

> "*… the decisions of the Commission cannot be questioned by any entity except by the proper action at the proper forum. Such proper action is indicated in section 24(1) of the Act which states that 'the jurisdiction vested in the Court of Appeal by Article 140 of the Constitution shall, in respect of applications in which relief is sought against the Commission be exercised by the Supreme Court and not by the Court of Appeal'*".

With regard to actions against the Commission, and the powers of the Court of Appeal, the Court of Appeal in ***Maldeniyage Don Upali Gunarathne Perera and another (supra)*** it was held that:

> "*this Court is of the observation that pertaining to the forum chosen by the petitioners to address the defectiveness of the indictment, this Court lacks the jurisdiction to canvass such objections as per the law set out in a plethora of cases such as the following:* Director General of Commission to Investigate Allegations of Bribery or Corruption vs Lalith Kumara LTA 06 of 2016 dated 23.02.2022, B.A. Ranjan Somasinghe vs Director General of Commission to Investigate Allegations of Bribery or Corruption CPA 02/2022 dated 11.01.2022, D.M. Rohini Ekanayake vs Director General of Commission to Investigate Allegations of Bribery or Corruption CA PHC APN 76/21 dated 05.04.2022 and Amarawansha Abeysiri Munasinghe Vs Director General of Commission to Investigate Allegations of Bribery or Corruption CA-HCC 308/2019 dated 31.01.2023. *In the above instances, this Court has repeatedly established that an act of the Commission has to be challenged by way of writ application to the Supreme Court as mandated in section 24(1) of CIABOC Act.*"

The Court of Appeal in ***Sujeewa Arjuna Senasinghe v. P.G.R. Sumendra and another*** **CA Writ 40/2020 decided on 29.08.2024**, held that:

> "*… the Writ jurisdiction vested in the Court of Appeal by Article 140 of the Constitution shall, in respect of applications which reliefs are sought against the Commission be exercised by the Supreme court and not by the Court of Appeal*."

Further, in the case of ***Parana Palliya Gururge Roshan and another v. Gunasekara and 4 others*** **CA Writ 39/2025 decided on 04.04.2025**, the Petitioners sought a Writ of Prohibition against two investigation officers of the Commission to Investigate Allegations of Bribery or Corruption. The Court of Appeal dismissed the Writ Application on the following grounds:

> "*… it is clear that the investigations carried out by the 1st and 2nd Respondents are done by the Commission through the said Respondents. In our view, the Petitioner by trying to obtain a Writ of Prohibition against the 1st and 2nd Respondents are attempting to achieve indirectly what they cannot achieve directly.*
>
> *If we are to accede to the submissions of the Counsel for the Petitioner and issue a restraining order against the 1st and 2nd Respondents, who are authorized officers of the 3rd Respondent, the resulting position would be to curtail the investigation*

power of the 3rd Respondent by this Court which the legislature has intentionally excluded.

In coming to the said conclusion, this Court considered the effect the 3rd Respondent will have if we are to hold with the submissions of the learned President's Counsel appearing for the Petitioners. In doing so this Court also wishes to draw a parallel with what is contemplated in the Interpretation Ordinance, though it will have no effect in this instance. Section 24(2) of the Interpretation Ordinance contemplates a similar situation which would arise if the Court is inclined to accept the submissions of the Petitioners' Counsel. The legislature in its wisdom has provided for such a situation in subsection (2). It is to be noted that this Court considers this section merely for the purposes of a comparison. The said subsection reads as follows:

> *"(2) No court shall upon any ground whatsoever grant any injunction or make any order against a state officer, if the effect of the granting of such injunction or the making of such order would be, whether directly or indirectly, to restrain the State, a Minister or a Deputy Minister of any matter or thing."*

Hence, if we are to adhere to the submission of the learned President's Counsel for the Petitioners and hold that this Court will have jurisdiction to issue a prerogative Writ of Prohibition and restraining orders detaching the acts of the 1st and 2nd Respondents from the 3rd Respondent, this Court will indirectly restrain and impede the functions of the [Commission] in carrying out its statutory duties envisage under the Anti-Corruption Act and assume a jurisdiction that has been specifically excluded and vested with the Supreme Court."

Hence, in my view, the objection pertaining to the jurisdiction of this Court has to succeed, and on that ground alone, this Application cannot succeed.

The learned Counsel appearing for the Respondents also submitted that the Petitioners have failed to exercise the alternative remedies against the order of the learned Magistrate, namely invoking the revisionary or appellate jurisdiction of the High Court. This Court observes that the Petitioners have failed to give a valid explanation or any explanation at all pertaining to why the Petitioners have failed to invoke the jurisdiction of the High Court before filing this Application. It is trite law that when there is an alternate remedy available, the Writ Court is reluctant to use its discretionary powers of it in exercise of its Writ jurisdiction.

In the case of ***Mohammad Ismail Abdul Majeed v. M.L.M.H.M. Mohideen Hussain*** **CA Writ 511/2025 decided on 16.06.2025**, it was stated that

> "*… it is trite law that when an alternative remedy is provided by statute, parties are generally required to exhaust such remedy before invoking the writ jurisdiction of this Court. The writ jurisdiction, particularly the issuance of prerogative writs such as certiorari or mandamus, and prohibition is a discretionary remedy. It is not conferred as of right but is to be exercised by courts with caution, circumspection, and only when no efficacious alternative mechanism is available to address the alleged grievance. Alternative remedies are statutory mechanisms provided by the legislature such as appeals, revisions, reviews, or representations to higher administrative authorities, which offer aggrieved parties a structured process to ventilate and redress their grievances*."

In ***Ishak Vs Lakshman Perera, Director General of Customs and others*** **2003 (3) SLR 18** as follows:

> *"……. Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the court is coming to a discretionary decision. Where there is a choice of another separate process outside the courts, a true question for the exercise of discretion exists. For the court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with judicial review being properly regarded as being a remedy of last resort. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the court will attach importance to the indication of Parliament's intention …*"

In the instant case, the Petitioners have failed to give an explanation as to why they failed to exercise and exhaust the alternative remedy that was available to them.

Conclusion

Accordingly, for the above-stated reasons, in my view, the objection raised on jurisdiction of this Court to have and maintain this application and the lack of jurisdiction to grant the reliefs prayed by the petitioners have to succeed. Since I have now held that this Court lacks the jurisdiction to grant the reliefs prayed for this Court is 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