

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

In the matter of an application in the nature of Writ of *Certiorari*, *Mandamus* and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.
CA/WRT/0461/2023**

2. **Mayakaduwa Gei Gamunu
Krishantha Mayakaduwa,**
344,
Pituwalahena,
Mayakaduwa,
Imaduwa.
6. **Manathunga Muhandirange
Dharma Sri Wickremasinge,**
C 54/2,
Makoora, Kotiyakumbura.

Petitioners

Vs.

1. **B. K. Prabath Chandrakeerthi,**
Commissioner General of Labour
Department of Labour
Colombo 5.
- 1A. **H.K.K.A. Jayasundara,**
Commissioner General of Labour (Acting)
Department of Labour
Colombo 05.

- 2. Maga Neguma Road Construction Equipment Company (Pvt) Ltd.,**
No.81/4,New Nuge Road,
Peliyagoda,
Sri Lanka.
- 3. Dr. Bandula Gunawardena,**
Hon. Minister of Transport and
Highways, Mass Media
9th Floor, "MaganegumaMahamedura",
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.
- 3A. Bimal Niroshan Rathnayake,**
Hon. Minister of Transport and Highway,
7th Floor, Sethsiripaya Stage II ,
Battaramulla.
- 3B. Appuhamilage Nalinda Jayathissa,**
Hon. Minister of Health and Mass Media,
163, Asi Disi Medura,
Kirulapone Mawatha,
Polhengoda,
Colombo 05.
- 4. Manusha Nanayakkara,**
Hon. Minister of Labour and
Foreign Employment
6th Floor, "Mehewara Piyesa",
Narahenpita,
Colombo 05.
- 4A. Anthonige Anil Jayantha Fernando,**
Hon. Minister of Labour,
6th Floor,"Mehewara Piyesa",
Narahenpita,
Colombo 05.

4B. **H. M. Vijitha Herath,**
Hon. Minister of Foreign affairs,
Foreign Employment and Tourism,
6th Floor, "Mehewara Piyesa",
Narahenpita, Colombo 05.

5. **Hon. Attorney General,**
Attorney General's Office,
Hulftsdorp, Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel: Nuwan Bopage with Chathura Wettasinghe, instructed by Ramzi Bacha Associates for the Petitioners.

Manoli Jinadasa with R. Abeygunawardena, instructed by Rasika Wellappili for the 2nd Respondent.

Rajika Aluwihare, S.C. for 1st, 3rd, 4th and 5th Respondents.

Written Submissions
of the Petitioner
tendered on : 21.05.2025

Written Submissions
of the 2nd Respondents
tendered on : 18.03.2025

Written Submissions
of the 1st, 3rd, 4th
and 5th Respondents
tendered on : 20.03.2025

Decided on: 29.05.2025

K. M. S. DISSANAYAKE, J.

The 1st to 10th Petitioners in the instant application have invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as the ‘Constitution’) seeking *inter-alia*, a mandate in the nature of writ of *certiorari* quashing the decision of the 1st Respondent dated 28th of July, 2023 made under and in terms of The Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971 granting permission to terminate 106 employees including the Petitioners marked as **X9**; for a mandate in the nature of writ of *prohibition* preventing the 2nd Respondent from terminating the 106 employees including the Petitioners, based on the 1st Respondent’s decision dated, 28th of July, 2023 marked as **X9** and/or any other scheme of retirement/termination; in the alternative, for a mandate in the nature of a writ of *mandamus* directing the 1st Respondent to hold a fresh inquiry in respect of the application made by the 2nd Respondent and for a kind of interim relief as prayed for in prayer in the petition of the Petitioners. It is to be noted that during the pendency of the instant application, the 1st and 3rd to 5th and the 7th to 10th Petitioners have withdrawn it and as a result, only, the 2nd and the 6th Petitioners are now, pursuing the instant application. Furthermore, during the pendency of the instant application, the substitution had taken for the original 1st, 3rd and the 4th Respondents. When the instant application came on before us on 13th of February, 2025 for support for formal notice and interim relief, the 2nd Respondent raised several preliminary objections as to the maintainability of the instant application and sought an order from this Court thereon. Furthermore, the 1st, 3rd, 4th and the 5th Respondents too, had raised several preliminary objections in paragraph 2 of their limited statements of objections as to the maintainability of the instant application. This Court then,

fixed the matter for inquiry into the preliminary legal objections so raised and the parties moved for an order thereon, on the strength of the written submissions. Hence, the inquiry into the preliminary legal objections was fixed for order on the strength of the written submissions as urged by respective Counsel.

The preliminary objections so raised by the 2nd Respondent may be reproduced *verbatim* the same as follows;

“3) By Way of Preliminary Objections, the 2nd Respondent states that Your Lordships' Court has no jurisdiction to hear and determine the present application and/or this application should be dismissed *in-limine* for the following reasons:

- a) The writ application is not in conformity with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 and the averments therein are not supported by a valid affidavit. The purported affidavit filed of record is undated.
- b) This writ application seeks to quash by way of a writ of certiorari, the order of the Commissioner of Labour made under the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (as amended), marked as X9 with the petition. The impugned order sought to be quashed in these proceedings have been made in-respect of 123 employees of the 2nd Respondent (vide: document marked as X9 with the petition) including the 10 petitioners. However, the Petitioners have failed and/or neglected to make the 113 employees to whom this order applies, parties to this writ application. In fact, approximately 77 employees, of the employees to whom this order relates, have already obtained the compensation in terms of this order and will be materially aggrieved/ prejudiced by any disturbance of this order, Accordingly, the petitioners have failed to name the necessary parties in this writ application which is a fatal irregularity

as per the prevalent law. As such this Petition should be dismissed *in limine*.

- c) Principles of estoppel and/or election and/or aprobate and reprobate apply to this application and the petitioners have by their own conduct disentitled themselves to relief. The 2nd Respondent respectfully states that 1st, 3rd, 4th, 9th and 10th Petitioners have already accepted the cheques from the Department of Labour, accepting the compensation awarded by the 1st Respondent. The 5th Petitioner too had signed the documentation by which he can secure compensation. Thus the 1st, 3rd, 4th, 5th, 9th and 10th Petitioners have accepted the order of the 1st Respondent and benefitted by the same and cannot challenge the same by these proceedings. As such this petition should be dismissed *in limine*.
- d) The Petitioners have failed and/or neglected to annex the entirety of the order made by the Commissioner of Labour dated 28.07.2023 in the application number: No. TE/12/2023 and is guilty of material suppression and representation. The schedule of the order which contained the computation of compensation and which is a part and parcel of this order, had been deliberately and/or intentionally suppressed by the Petitioners. The said schedule reveals that all of the employees have received the maximum compensation payable under the TEWA formula and is not entitled to any further compensation in terms of the law.
- e) The 2nd Respondent respectfully state that the Petitioners have failed to take any steps to challenge the Cabinet decision dated 20.03.2023 by any legal process. Therefore, the writ of Certiorari prayed against the order made by the 1st Respondent is futile as the Cabinet decision no: 23/0394/608/033 dated 23.03.2023 for the liquidation of the 2nd Respondent Company remains unchanged, the employees have received the maximum compensation payable under the TEWA

formula and there is no possibility to reinstate the employees due to the 2nd Respondent company being liquidated.

- f) The Petitioners have suppressed and/or misrepresented material facts as explained further below which does not entitle them to the exercise of writ jurisdiction of Your Lordship's Court.

4. By way of further preliminary objections, the 2nd Respondents state that the Petitioner,

- I. has not come before Your Lordships' Court with clean hands;
- II. has willfully suppressed and/or misrepresented material facts and documents with the intention of misleading Your Lordships' Court as explained above and further below.
- III. has instituted these proceedings for collateral purposes; and
- IV. the present application constitutes an abuse of due process of Your Lordships Court and or abuse of Writ Jurisdictions of Your Lordships' Court, The 2nd Respondents respectfully state that for one or more or all the reasons set out hereinabove, the Petitioner's application should be dismissed *in limine*."

Let me firstly, deal with the preliminary objection 3(b) as enumerated above for; it appears to me that it would if upheld, go to the root of the maintainability of the instant application entirely, deciding the fate of the instant application.

The Petitioners seek in prayer (b) of the instant application an order in the nature of a writ of *certiorari* quashing the 1st Respondent's decision dated 28th of July, 2023 made under and in terms of The Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971 granting permission to terminate 106 employees including the Petitioners marked as **X9**. Furthermore, they seek in prayer (c) of the instant application for a mandate in the nature of a writ of *prohibition* preventing the 2nd Respondent from terminating the 106 employees including the Petitioners, based on the 1st Respondent's decision

dated, 28th of July, 2023 marked as **X9** and/or any other scheme of retirement/termination.

Hence it clearly, appears from the relief prayed for in prayer (b) and (c) of the petition, the Petitioners in the instant application seek relief for a total number of 106 employees including the Petitioners.

However, it is significant to observe that from and out of the total number of employees, namely; 106 including the Petitioners-application for permission for termination of whose services from the 2nd Respondent had been so granted to the 2nd Respondent by the 1st Respondent by its decision (**X9**), only 10 employees namely; the original 10 Petitioners had instituted the instant application seeking relief as aforesaid not only for those 10 employees but also for those employees who are not parties to this instant application. Based on this premise, preliminary objection 3(b) had been raised by the 2nd Respondent.

The remaining 2nd and 6th Petitioners in paragraph 2(ii) of their statement of counter objections sought to counter the said preliminary objection so raised by the 2nd Respondent in paragraph 3(b) of the limited statement of objections as enumerated above by contending that, there is no necessity to name all the employees as parties since the employees will not be prejudiced by the orders sought by the Petitioners and rather, the employees will be benefited by those orders and even, the Petitioners have *locus standi* to maintain the instant application. Relying on the decisions cited in paragraphs 5, 6 and 7 of their written submissions, it was submitted by the remaining 2nd and 6th Petitioners in their written submissions that, a party become a necessary party to a writ application if the rights of that party is affected by the order sought by the applicant is given in his or her favour, hence, the beneficiaries of the impugned order must be named as Respondents as they would be adversely affected if the order is set aside.

In the light of the above, the pivotal question that would arise for our consideration would be, “**who should be a necessary party to applications for writs?**”[Emphasis is mine]

It may now, be examined.

It was held in **Hatton National Bank PLC Vs Commissioner General of Labour and Others. [CA (Writ)Application No. 457/2011; CA Minutes of 31st January 2020**; that, “It is trite law that any person whose rights are affected by an order that a petitioner is inviting a Court of law to make in his favour is entitled to be named as a party and is entitled to be heard, before Court makes any order adverse to such person. The rule is that all those who would be affected by the outcome of an application should be made respondents to such application.”

It was held in **Gnanasambanthan v Rear Admiral Perera and others [1998] 3 SLR 167 at 172** that "it is both the law and practice in Sri Lanka to cite necessary parties to applications for Writs of Certiorari and Mandamus".

In the decision in **Wijeratne (Commissioner of Motor traffic) Vs. Ven, Dr. Paragoda Wimalasena Thero and 4 others, [2011] (2) SLR 258 at page 267**, the following two rules were laid down by Court with regard to naming of necessary parties;

1. The first rule regarding the necessary parties to an application for a writ of *certiorari* is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. If the act sought to be impugned had been done by one party on a direction given by another party who has power granted by law to give such direction, the party who had given the direction is also a necessary party and the failure to make such party a respondent is fatal to the validity of the application.

2. The second rule is that those who would be affected by the outcome of the writ application should be made respondents to the application.

It was held in **Dominic V. Minister of Lands and Others**, (2010) 2 SLR 398, that, "In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings.....Persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh Derma v. State of Uttara Pradesh also see Encyclopedia of Writ Law By P. M. Bakshi) In view of the above authorities it is clear that the failure to name the necessary parties....as parties in this application is fatal.

In the case of **Abeywardane and 162 others vs. Stanley, Wijesundara, Vice Chancellor, University of Colombo and Another [1983] 2 Sri LR 267 at 291** it was held that, "The whole petition is directed against the 115 students of the North Colombo Medical College. Both the final relief and the Interim order asked for by petitioners are intended to achieve one object, namely, the exclusion of the 115 students from the 2nd MBBS examination. According to the affidavit of Dr. Ratnavale, who is the Director of the North Colombo Medical College, the 115 students have followed the approved courses of study, have applied to the University of Colombo to sit the 2nd MBBS examination, have paid the requisite examination fees, and have received their admission cards from the University of Colombo for the said examination. There is no doubt then, that if this Court were to issue a Mandamus as prayed for by the petitioners, the 115 students would be adversely affected. If as contended by learned Counsel for the petitioners, the 115 students have no legal right to sit the 2nd MBBS examination, this is all the more reason we should have them before us and hear them, before we make an order against them. To use the words of Cayley, C. J. in effect we are asked by the petitioners to pronounce an

opinion upon a disputed examination, without large section of the students, who propose to sit the examination, being parties to the proceedings or having had any notice on them. This we cannot do."We hold that the 115 students of the North Colombo Medical College are necessary parties and the failure to make them respondents is fatal to the petitioners' application".

It was held in **Rawaya Publishers and Others v. Wijedasa Rajapaksha and Others, [2001] (3) SLR 213, at page 216**, that, "In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings. In the case of Udit Narayan Singh v. Board of Revenue it has been held that where a writ application is filed in respect of an order of the Board of Revenue not only the Board itself is necessary party but also the parties in whose favour the Board has pronounced the impugned decision because without them no effective decision can be made. If they are not made parties then the petition can be dismissed *in limine*. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide **Prabodh Derma v. State of Uttara Pradesh** also see Encyclopedia of Writ Law By P. M. Bakshi)" (Emphasis is mine).

See also; **Jayawardena and Another Vs. Pegasus Hotels Of Ceylon Ltd. And Others [2004] 2 Sri. LR 39.**

It is trite law that, in the context of writ applications, a necessary party is one without whom no order can be effectively made; and that, a proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings and hence, persons vitally affected by the writ petition are all

necessary parties; and that, if their number is very large, some of them could be made respondents in a representative capacity.

As clearly, and unequivocally, manifest from the decision of the 1st Respondent (**X9**), he had granted permission to the 2nd Respondent at his request to terminate 123 employees including original 10 Petitioners to the instant application from the services of the 2nd Respondent by virtue of the Cabinet Decision (**X3**) to liquidate the 2nd Respondent-institution (**X3**).

It was submitted by the 2nd Respondent in the written submissions that, out of 123 employees-application for termination of whose services from the 2nd Respondent had been so granted to the 2nd Respondent by the 1st Respondent by its decision (**X9**), not even a single employee other than the original 10 Petitioners to the instant application, had sought to challenge the decision of the 1st Respondent (**X9**), instead, 77 employees out of 123 employees, had **on their own volition** already, obtained the compensation from the 2nd Respondent in terms of the order made by the 1st Respondent (**X9**) and that, even the 1st, 3rd, 4th, 5th, 7th, 8th, 9th and 10th Petitioners to the instant application too, had after the institution of the instant application before this Court by them, had obtained compensation from the 2nd Respondent in terms of the decision made by the 1st Respondent (**X9**) and proceeded to withdraw the instant application insofar as their challenge is concerned, in total abandonment of their challenge to the decision of the 1st Respondent (**X9**). However, it is significant to observe, that the Petitioners had either in their counter statement of objections or in their written submissions, never sought to challenge and/or controvert and/or repute the submissions so made by the learned Counsel for the 2nd Respondent as aforesaid, hence submissions so made by the learned Counsel for the 2nd Respondent would still, remain unchallenged and/or uncontroverted. [Emphasis is mine]

Hence, it clearly, and manifestly, appears from the unchallenged and/or uncontroverted submissions of the 2nd Respondent that, not even a single

employee other than the original 10 Petitioners to the instant application, had sought to challenge the decision of the 1st Respondent (**X9**), instead, 77 employees out of 123 employees, had **on their own volition** already, obtained the compensation from the 2nd Respondent in terms of the order made by the 1st Respondent (**X9**) and that, even the 1st, 3rd, 4th, 5th, 7th, 8th, 9th and 10th Petitioners to the instant application too, had after the institution of the instant application before this Court by them, had **on their own volition** obtained compensation from the 2nd Respondent in terms of the decision made by the 1st Respondent (**X9**) and proceeded to withdraw the instant application insofar as their challenge is concerned, in total abandonment of their challenge to the decision of the 1st Respondent (**X9**) [Emphasis is mine].

Moreover, it had never been the position of the Petitioners that, they had instituted the instant application in a representative capacity representing all the other employees subject to the decision of the 1st Respondent (**X9**). Besides, there has been no iota of evidence on record to suggest that it was so.

In those the circumstances, I am of the view that, the principles of Natural Justice absolutely, and essentially, demand that the rest of the employees out of 123 employees-application for termination of whose services from the 2nd Respondent had been so granted to the 2nd Respondent by the 1st Respondent by its decision (**X9**) and who had **on their own volition** obtained compensation from the 2nd Respondent in terms of the decision made by the 1st Respondent (**X9**), ought to have been afforded a reasonable opportunity to have been heard in opposition to the instant application of the Petitioners, before this Court would make a decision in granting or not granting mandates in the nature of writ of *certiorari* quashing the decision of the 1st Respondent dated 28th of July, 2023 made under and in terms of The Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971 granting permission to terminate 106 employees including the Petitioners marked as **X9** and in the nature of writ of *prohibition* preventing the 2nd Respondent from terminating the 106 employees including the Petitioners, based on the 1st Respondent's

decision dated, 28th of July, 2023 marked as **X9** and/or any other scheme of retirement/termination, otherwise, the rights of the rest of the employees who had **on their own volition** obtained compensation from the 2nd Respondent in terms of the decision made by the 1st Respondent (**X9**) would gravely, and prejudicially, be affected by a decision of this Court in the event of this Court opting to grant mandates in the writ of *certiorari* and *prohibition* prayed for in prayer (b) and (c) of the petition of the Petitioners.

In view of the facts and the law discussed and elucidated by me as above, I would hold that, the rest of the employees of the 2nd Respondent-application for termination of whose services from the 2nd Respondent had been so granted to the 2nd Respondent by the 1st Respondent by its decision (**X9**) are those without whom no order can be effectively, made by this Court in the instant application for writs in the nature of *certiorari* and *prohibition* thus, they should be necessary parties to the instant application and the Petitioners failure to make them parties is fatal, to the instant application as rightly, contended by the 2nd Respondent.

I would therefore, hold that the preliminary objection raised in paragraph 3(b) of the statement of limited objections of the 2nd Respondent is entitled to succeed both in fact and law and therefore, it ought to be upheld.

Hence, I would hold that the instant application should be dismissed *in-limine* on this ground alone as rightly, contended by the 2nd Respondent.

Next, I would propose to deal with the preliminary objection raised in paragraph 3(e) of the statement of limited objections of the 2nd Respondent and it is to this effect; **"The 2nd Respondent respectfully state that the Petitioners have failed to take any steps to challenge the Cabinet decision dated 20.03.2023 by any legal process. Therefore, the writ of Certiorari prayed against the order made by the 1st Respondent is futile as the Cabinet decision no: 23/0394/608/033 dated 23.03.2023 for the liquidation of the 2nd Respondent Company remains unchanged, the**

employees have received the maximum compensation payable under the TEWA formula and there is no possibility to reinstate the employees due to the 2nd Respondent company being liquidated.”

Hence, this preliminary objection is based on the doctrine of futility,

It is not in dispute that, the Cabinet of Ministers took a decision to liquidate the 2nd Respondent-institution as manifest from the document annexed to their petition by the Petitioners marked as **X3**. It is also, not in dispute that, the decision of the Cabinet of Ministers to liquidate the 2nd Respondent-institution as manifest from the document **X3**, had been duly, communicated by the Secretary to the Cabinet of Ministers to the Secretary to the Ministry of Transport and Highways. It is also not in dispute that, the Secretary to the Ministry of Transport and Highways had by its letter annexed to their petition by the Petitioners, marked as **X4**, duly, conveyed it to the Chairman of the 2nd Respondent-institution. It is also not in dispute that, the Chairman of the 2nd Respondent-institution had made an application to the 1st Respondent to grant him permission to terminate the services of 123 employees of the 2nd Respondents under and by virtue of the powers vested in him by the provisions of the Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971(as amended) as manifest from the document annexed to their petition by the Petitioners marked as **X5**. It is also not in dispute that, the 1st Respondent, had having held an inquiry into the said application made to him by the 2nd Respondent, granted permission to terminate the services of the said employees of the 2nd Respondent acting under the powers vested in him by the Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971 (as amended) as manifest from the document annexed to their petition by the Petitioners marked as **X9**.

Therefore, it clearly, appears to me that, the 2nd Respondent was thus, forced and bound to make an application to the 1st Respondent to grant him permission to terminate the services of the said employees of the 2nd

Respondent by virtue of the decision of the Cabinet of Ministers to liquidate the 2nd Respondent-institution. Hence, the decision sought to be impugned in the instant application had directly, derived from the direction and/or by virtue of the decision made by the Cabinet of Ministers to liquidate the 2nd Respondent institution.

However, it is significant to observe, that, the Petitioners in the instant application had not in any manner sought to impugn and quash the decision made by the Cabinet of Ministers to liquidate the 2nd Respondent institution by way of a writ of *certiorari* **X3**, and hence, the decision made by the Cabinet of Ministers to liquidate the 2nd Respondent institution would still, remain intact and unchallenged even, in the event of this Court opting to grant a mandate in the nature of a writ of *certiorari* quashing the decision of the 1st Respondent granting the 2nd Respondent permission to terminate the services of the 2nd Respondent-institution. In the result, granting of writ of *certiorari* by this Court quashing the decision of the 1st Respondent granting the 2nd Respondent permission to terminate the services of the 2nd Respondent-institution would no doubt, become futile insofar as the decision made by the Cabinet of Ministers to liquidate the 2nd Respondent institution remains intact and unchallenged.

I would therefore, hold that, in the absence of a specific prayer for quashing the decision made by the Cabinet of Ministers to liquidate the 2nd Respondent institution, by virtue of which the decision of the 1st Respondent directly, derives, granting of writ of *certiorari* by this Court quashing the decision of the 1st Respondent granting the 2nd Respondent permission to terminate the services of the 2nd Respondent-institution would no doubt be futile as rightly, contented by the 2nd Respondent.

I would therefore, hold that the preliminary objection raised in paragraph 3(e) of the statement of limited objections of the 2nd Respondent too, is entitled to succeed both in fact and law and therefore, it too, ought to be upheld.

Hence, I would hold that the instant application should be dismissed *in-limine* on this ground too, as rightly, contended by the 2nd Respondent.

In view of my aforesaid findings with regard to the preliminary objections raised in paragraphs 3(b) and (e) of the statement of limited objections of the 2nd Respondent, I would hold that, the instant application is liable to be dismissed *in-limine*.

In view of the above, I do not consider it necessary to deal with the rest of the preliminary objections so raised both by the 2nd Respondent as well as the 1st, 3rd, 4th and 5th Respondents in their respective limited statement of objections.

I would therefore, hold that the instant application is not entitled to succeed in both in fact and law.

In the result, I would refuse to grant relief to the Petitioners as prayed for in the prayer to their petition.

Hence, I would proceed to dismiss the instant application *in-limine* by upholding the preliminary objections so raised in paragraph 3 (b) and (e) of the limited statement of objections of the 2nd Respondent.

However, in view of all the above circumstances, I make no order for costs.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA).

I agree.

PRESIDENT(ACTING) OF THE COURT OF APPEAL