

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

**CA/REV No. 0002/2019
WA/CH/T/ 05/2018**

**In the matter of an Application in the nature
of Revision in terms of Article 138(1) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka read with Section 753
of the Civil Procedure Code as amended by
Act No.7 of 1988**

M. N. M Abdul Haseeb
Khadijah Salih Trust Fund,
No. 53/1, Nelson Place,
Colombo 06.

Petitioner.

Vs

Attorney- General
Attorney- General's Department,
Colombo 12.

Respondent.

Before: **M. T. Mohammed Laffar, (President C/A)- Actg.**

P. Kumararatnam, J.

Counsel: H. Ghazali Hussain with Nishaath S. Riza for the Petitioner.
Nayomi Kahawita, S. S. C. for the Respondent.

Written Submissions on: 20.12.2024 by the Petitioner

Decided on: 26.03.2025

MOHAMMED LAFFAR, J. (President, Court of Appeal- Acting)

The Petitioner, the Trustee of the Khadeja Salih Trust Fund, aggrieved by the Order dated 21.09.2019 issued by the Wakfs Tribunal, has sought the revisionary jurisdiction of this Court to revise and set aside the said Order.

The Khadeja Salih Trust Fund was established on 11.12.1996 by Hameed Hussain, Marikkar Mohamed, and Salih Marikkar, through instruments attested by Hussain Ahmed, Attorney-at-Law and Notary Public. The Trust Deeds were registered at the Puttalam Land Registry, empowering the Trustees to submit accounts, purchase or sell Trust property with the District Court's permission, and retain the proceeds as part of the Trust.

The Petitioner received a notice on 24.12.2018, directing him to appear before the Tribunal on 05.01.2019. He informed the Tribunal via tele-mail and letter that he would be unavailable until after 20.01.2019 due to a planned Umra pilgrimage. Despite this, the Tribunal proceeded and granted him one month to submit accounts, with the case adjourned to 16.03.2019. The Petitioner submitted accounts for 2016-2018 on 16.04.2019 and informed the Tribunal accordingly. However, on 22.06.2019, the Tribunal inquired about the Petitioner's representation in a related case (WT/202/2012) and adjourned the matter to 06.07.2019.

On 06.09.2019, the Petitioner's Attorney appeared before the Tribunal and was informed that the Petitioner had been removed as Trustee on 08.06.2019. The Tribunal directed the Petitioner to file proper papers within one month to vacate the removal order, failing which a formal order would be issued.

The Petitioner filed a motion on 15.08.2019 to vacate the removal order, and the Tribunal refused on 21.09.2019, also rejecting objections to its jurisdiction. The Petitioner argues that the Tribunal erroneously interpreted the Trust Deed and the Wakfs Act, particularly Sections 9 and 35, and acted beyond its jurisdiction by attempting to appoint a new Trustee, a power reserved for the District Court.

As the supreme authority overseeing Muslim charitable trusts, the Tribunal bears a fundamental responsibility to ensure the proper administration of trusts, and thereby Section 9E of the Wakfs Act confers broad powers on the Wakfs Tribunal which includes powers to remove Trustees;

"(1) The powers of the Tribunal under this Act shall include the power to hear and determine any application made in respect of a Muslim charitable trust or wakfs for the order providing for all or any of the following purposes:

- (a) removing from office any trustee of the trust or wakfs;*
- (b) appointing where necessary, a trustee or trustees for the trust or wakfs ;*
- (c) directing the submission of statements of accounts to the Tribunal or the board;*
- (d) declaring what proportion of the property of the trust or wakfs or of the interest therein shall be allocated to any specified object of the trust or wakfs ;*
- (e) settling a scheme for the management of the trust or wakfs;*
- (f) directing the specific performance of any act by the trustee or trustees of the trust or wakfs;*
- (g) declaring any trustee of the trust or wakfs guilty of any misfeasance, breach of trust or neglect of duty;*
- (h) ordering the payment by any trustee of the trust or wakfs of any sum to the funds of the trust or wakfs by way of damages in respect of any misfeasance, breach of trust or neglect of duty; and*
- (i) granting such further or other relief arising from the matters specified in paragraphs (a) to (h)."*

In this case, the Petitioner's conduct has been inconsistent with these principles. Furthermore, Section 35 of the Wakfs Act explicitly requires

trustees to furnish annual statements of accounts to the Board by the first day of June each year.

"(1) It shall be the duty of the trustee or trustees of a Muslim charitable trust or wakf to furnish to the board before the first day of June in each year a statement of accounts in such form as may be prescribed relating to all moneys received and expended in respect of that trust or wakf during the period of twelve months ending on the thirty-first day of March of that year:

Provided, however, that where the board is satisfied that such trustee or trustees will be unable to furnish such statement before the first day of June in that year, the board may allow such trustee or trustees further time for the purpose of furnishing such statement.

(2) Every statement of accounts furnished under this section shall be signed by the trustee or trustees by whom the statement is furnished and shall contain a declaration that the particulars set out therein are true and accurate. Such declaration shall be free of stamp duty.

(3) Every statement of accounts furnished under this section shall be in the language in which the accounts of the trust or wakf are usually kept."

The Petitioner has repeatedly neglected or wilfully suppressed the submission of accounts, thereby violating this statutory obligation. His failure to comply with the Tribunal's notices and directives, including his reliance on letters rather than appearing in person, is tantamount to contempt of court.

The Petitioner's conduct, including his failure to appear and his delayed submissions, demonstrates a disregard for the Tribunal's authority and the legal obligations of a trustee. Such behaviour undermines the integrity of the trust and the confidence of its beneficiaries.

In light of the above, it is evident that the Petitioner has failed to fulfil his duties as Trustee in accordance with the Wakfs Act and the directives of the Tribunal. The Tribunal's decision to remove the Petitioner as Trustee and its

refusal to vacate the removal order were justified given the Petitioner's repeated non compliance and neglect. The Petitioner's conduct has not only violated statutory provisions but has also undermined the proper management of the Khadeja Salih Trust Fund. Therefore, the revisionary jurisdiction of this Court should not be exercised in favour of the Petitioner, as his actions do not warrant such relief.

The application is dismissed. The implunged order of the wakf tribunal is affirmed.

No cost.

**PRESIDENT OF THE COURT OF APPEAL,
ACTING**

P. KUMARARATNAM, J.

I agree.

JUDGE OF THE COURT OF APPEAL