

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

*An application in terms of Section 46
Of the Judicature Act No. 2 of 1978 and
Section 10 of the Civil Procedure Code.*

Dr. Chandrajith Ashuboda Marasinghe,

No. 117/36/4/1, Elvitigala Mawatha,

Colombo 08

Case No. CA TRF 0011/2024

DC Kaduwela Case No.

8570/M/2023

Petitioner

Vs.

Hirunika Premachandra,

No. 507/A/18, Privilege Homes,

Maharagama Road,

Arangala, Hokadara North.

Respondent

Before : **M.T.MOHAMMED LAFFAR J. (Act.P/CA)**
K. P. FERNANDO J. (CA)

Counsel : Dilrukshi Dias Wickramasinghe, P.C. with Dr.
Thashira Gunatileke instructed by Tharushika
Fernando for the Plaintiff-Petitioner.
Chandana Dias instructed by K.C. Govinnage
for the Defendant-Respondent.

Supported on : 25.03.2025

Decided on : 30.04.2025

K. P. FERNANDO, J.

The Petitioner is seeking an order to transfer the case No. 8570/M/2023 (hereinafter will be referred to as the matter) from the Magistrate Court of Kaduwela to the District Court of Colombo for the reasons alleged in the petition dated 9.9.2024.

THE FACTUAL MATRIX:

When the matter was called on 2.1.2024, a proxy was filed by Ms. Achini A. Suriyaarachchi , AAL on behalf of the Respondent and the District Court was informed that one Ashan Fernando, Attorney-at-Law who is the husband of the Learned District Judge (LDJ) of Kaduwela is appearing for the Respondent; following this discovery, the LDJ directed that instructions be obtained from the Judicial Service Commission (JSC) for the appointment of a new judge in her place and rescheduled the case for 31.05.2024; JSC by its letter dated 25.03.2024 appointed the Learned Magistrate of Kaduwela as the additional

District Judge to preside over the case in issue; accordingly, the case was transferred from the District Court to the Magistrate Court where the additional District Judge presides; when the matter was called on 31.05.2024, before the LDJ who is currently presiding over the Magistrate Court, the Respondent requested additional time to file an answer; consequently, the matter was fixed for the filing of the Answer on 28.06.2024; Respondent filed Answer on 28.06.2024 claiming a cross claim for a sum of Rs. 500 million; accordingly, the matter was fixed for 27. 09.2024 for the Replication.

THE REASONS GIVEN BY THE PETITIONER TO TRANSFER THE CASE TO ANY DISTRICT COURT OF COLOMBO:

- a. The learned Magistrate is burdened with a significant number of pending cases in the Magistrate Court and heavy caseload indisputably delays the timely and efficient resolution of the current matter;
- b. The present case involves intricate legal and factual issues pertaining to civil law rendering it a complex matter that requires the presiding judge to have thorough understanding and knowledge of the said discipline of law; since the learned Magistrate is more familiar with criminal law, it is essential that this case be heard before a Court with the necessary resources and expertise to adjudicate it efficaciously;
- c. The geographical location and the superior facilities of the District Court of Colombo provide a more accessible and accommodating environment for all parties, thereby enhancing the overall efficacy of the legal process

UNDER WHAT CIRCUMSTANCES AN ACTION COULD BE TRANSFERRED FROM ONE COURT TO ANOTHER?

Section 46(1) of the Judicature Act, insofar as relevant to this application, reads as follows: “*Whenever it appears to the Court of Appeal-*

- (a) *That a fair and impartial trial cannot be had in any particular court or place; or*
- (b) *That some questions of law of unusual difficulties are likely to arise; or*

(c) 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”

In terms of Section 46 of the Judicature Act No. 2 of 1978 and Section 10 of the Civil Procedure Code, an action could be transferred under following circumstances:

- a. A fair and impartial trial cannot be had in the particular court or place;
or
- b. Some questions of law of unusual difficulties are likely to arise; or
- c. 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. Any other expedient ground.

The power of the District Court has been described in Chapter IV and Chapter V read with Section 5(2) of the Judicature Act.

In terms of Section 6 and 8 of the Judicature Act, Judicial Service Commission has full powers to appoint judges and additional judges to all District Courts.

In terms of Section 8(2) of the Judicature Act, every additional District Judge shall exercise all the powers or jurisdiction vested in the District Court respectively of the district or the division as the case may be, for which such additional District Judge is so appointed.

It was the contention of the learned President’s Counsel for the Petitioner that the Additional District Judge appointed to hear the matter has less experience

in Civil Law. The Petitioner claims that the Additional District Judge lacks sufficient experience in civil law, as stated in paragraph 8(b) of the petition.

In response, the Respondent submitted the Seniority List of the Judicial Service of Sri Lanka as of 01.07.2024, highlighting that the Additional District Judge is ranked 24th.

Therefore, her experience cannot be reasonably challenged. Additionally, the Respondent emphasizes that a trial judge's experience cannot be a valid reason for transferring a case from one court to another.

In any event, the decision to appoint the said Judge by the Judicial Service Commission has not been challenged.

Moreover, experience and/or exposure to Civil Law of a trial judge shall not be a ground to transfer a case from one court to another court. The remedy lies with the appealing against any incidental order and/or judgment delivered by the Judge.

If this application is granted based on the Additional District Judge's lack of experience, it would set a precedent for numerous similar applications from parties dissatisfied with a judge or unhappy with the continuation of their case before them, seeking to have the case transferred elsewhere.

IS THERE ANY LIKELYHOOD THAT QUESTIONS OF LAW OF UNUSUAL DIFFICULTY TO BE ARISED?

The Petitioner submits that, (a) The plaint is grounded on three distinct causes of action, which involve complex legal principles concerning defamation, injury to dignity, and the right to privacy; The Petitioner's claim arises from the publication of doctored videos and photographs falsely alleging intimate conduct with a dog, thereby burdening the Petitioner with the responsibility to prove the allegations, including through expert evidence; (b) The issues raised in these causes of action require specialized expertise in civil law and necessitate a court equipped with the appropriate judicial resources to ensure an efficient and

thorough resolution. The Magistrate's Court of Kaduwela, however, is exclusively vested with jurisdiction to hear criminal matters under the Judicature Act. (c) to the best of his knowledge, this is the first case in Sri Lanka where causes of action based on delictual principles of "*dignitas*" and the "right to be left alone" are being contested in a District Court. This clearly falls under limb. "b" of Section 46 of the Judicature Act and Section 10 of the CPC, as it involves a question of law of unusual difficulty. (d) The potential prejudice in these proceedings would deprive him of a fair trial, thereby violating limb (a) of both Section 46 of the Judicature Act and Section 10 of the CPC, which safeguard the right to a fair and impartial trial, as guaranteed by Article 13(3) of the Constitution. (e) due to the complex legal issues involved, he is entitled to seek a transfer order by demonstrating sufficient grounds, as set out in Section 46 of the Judicature Act and Section 10 of the CPC.

It is presumed that all the judges are competent enough to hear any kind of case which come before them. The JSC has appointed the learned Magistrate to hear this case. Thus, there is no basis to transfer this case to another Court

If causes of action based on *delictual* principles of "*dignitas*" and the "right to be left alone" are being contested, it is the duty of the plaintiff's lawyers to raise correct issues on those lines and draw the attention of the Court to the relevant areas of law. Furthermore, it was not submitted as to alleged complex questions of law of which will be placed before the Court. Without such elaboration, it is speculative to decide that this case involves difficult questions of law which the appointed Judge is not competent to handle.

The Petitioner has provided no evidence comparing the caseloads of Colombo and Kaduwela courts, nor shown that Kaduwela courts lack the necessary legal expertise or resources. In this instance, it should be noted that if the Magistrate Court lacks any resources, it is always possible for the learned Magistrate to sit in the District Court bench provided that regular work of the District Courts is not hampered.

The Petitioner, through the counter affidavit/objection, contends that the matter should be re-transferred to the District Judge of Kaduwela. In response, the Respondent submits that, under Section 49 of the Judicature Act, once a District Judge has declined to hear a case due to personal reasons, and unless both parties consent, the District Judge is not competent to exercise jurisdiction over the case.

In the above circumstances, the Petitioner's stated reasons do not meet the legal threshold for a case to be transferred under Section 46 of the Judicature Act, No. 2 of 1978 or Section 10 of the Civil Procedure Code. Specifically, the Petitioner has not shown that a fair trial is impossible or that complex legal issues will arise, or that any other valid ground for transfer exists.

Accordingly, the Petition is dismissed without costs.

Judge of the Court of Appeal

M.T. Mohammed Laffar, J. (Act.P/CA)

I agree.

Judge of the Court of Appeal