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

In the matter of an Application for Order in the nature of Writ of *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Abeykoon Mudiyanselage Mahinda Abeykoon,
No. 31, Lunuwella,
Bolepa, Kapuliyadda.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/384/23

1. Dinesh Gunawardena,
   Minister,
   Ministry of Public Administration,
   Home Affairs, Provincial Councils and Local Government,
   Independence Square,
   Colombo 07.

2. K.D.N. Ranjith Ashoka,
   Secretary,
   Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government,
   Independence Square,
   Colombo 07.

3. G.H.M.A. Premasinge,
   Chief Secretary of the Central Provincial Council,
   P.O. Box 07, Council Secretariat, Pallekele, Kundasale.

4. Lalith U. Gamage,
   Governor of the Central Province,
   Governor's Office, P.O. Box 06,
   Maligawa Square,
   Kandy.

5. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

Before:	S.U.B. Karalliyadde, J Mayadunne Corea, J
Counsel:	Lakshan Dias with Imasha Fernando instructed by Dayani Panditharathne for the Petitioner. Dilan Ratnayake, A.S.G., PC, for the 5th Respondent.
Supported on:	29.08.2024.
Decided on:	30.09.2024.

Mayadunne Corea J

The Petitioner filing this Application sought, among other things, the following reliefs:

> *"(b) Grant/issue an order in the nature of a Writ of Mandamus to the 1st to 5th Respondents directing them to pay compensation for due amount of Petitioner's salary.*
>
> *(c) Grant/issue an order in the nature of a Writ of Mandamus to the 1st to 5th Respondents directing them to reinstate the Petitioner as Chairman of the Central Provincial Council*."

Facts of the Petitioner's case are briefly as follows. The Petitioner, a politician in the District of Kandy was a member of the Provincial Council and held the position of Chairman of the Provincial Council. Subsequently, the Petitioner was charged in the High Court of Kandy for election related violence under the Penal Code and Parliamentary Elections Act, No. 1 of 1980, and was convicted for a period of two years and six months. Upon appeal, the Court of Appeal affirmed the conviction of the Petitioner but considering the duration of the case, the Appellant not having any previous convictions and his advanced age, reduced the Petitioner's sentence to two years and suspended the same for five years. The Petitioner contends that following the conviction, he had been removed from office in March 2015 and from that day he had been deprived of his salary. It was contended that his sentence was varied in appeal by reducing it to two years and suspended for five years. Accordingly, the Petitioner contends that he is entitled to his salary for the remainder of the term he was elected to the Provincial Council. Thus, this writ Application.

The 5th Respondent's objections

The 5th Respondent's objecting to this Application submitted several grounds as to why this Application should be dismissed without notice being issued**.** Among other grounds, the following objections were taken.

- Delay
- The Appellate Court has not varied his conviction but has affirmed it. However, on sympathetic grounds the Court had varied the sentence.
- No grounds urged and the Application is misconceived.
- Petitioner's Application cannot be maintained in view of Articles 89 and 91 of the Constitution.

This Court will now consider the objections with the Petitioner's submissions.

The learned Counsel for the Petitioner conceded on the second point namely, that the Appellate Court has not varied or set aside the conviction but in fact has affirmed it. Furthermore, on sympathetic grounds and considering the Petitioner's age the sentence was varied, whereby the sentence of two and a half years has been reduced to two years and has been suspended for five years. This is borne out by the judgement of the Court of Appeal marked as P1. It is also pertinent to note that the judgement of the Court of Appeal has been delivered on 02.12.2021. Hence, the Petitioner is currently within the operational period of the suspended sentence.

The Petitioner has pleaded that he could have been in the Provincial Council for his full-term period if not for the conviction and he further submits that he was the Chairman of the Central Provincial Council. It is further pleaded under Section 7(2) of The Provincial Councils Act, No. 42 of 1987 that even if the time-period for the Provincial Council has now expired, if he was a Chairman of the Provincial Council, he could have held that position until the next election. It was pleaded that, as a Provincial Council member, he could have held his position from October 2013 to the year 2018, if not for the conviction whereby he was removed from office on 30th March 2015. Hence, the argument is that he is lawfully entitled to the salaries from 30th March 2015 to 08th October 2018 and he has sought a Writ of *Mandamus* against the Respondents asking to pay the Petitioner compensation for the due amount of his salaries and further to reinstate him as the Chairman of the Central Provincial Council.

Delay

The objection of delay is based on the Petitioner's contention that his entitlement to the salary arises from the date of the suspended sentence. Even if this Court is to accede to this contention without conceding, this Court observes that the suspended sentence was given in the year 2021 but based on the said sentence the Petitioner is making this Application in 2023.

As per the Petitioner's submission, if he is relying on the outcome of the appeal whereby the sentence was suspended and contends that he became entitled to the salaries, then that purported entitlement arose upon the Court of Appeal delivering the judgment in 2021. However, the Petitioner has failed to plead any explanation as to why he failed to take any steps to recover the said salary until he came to this Court after one and a half years, which is a considerable delay. Hence, the objection on delay has to succeed.

In ***Dissanayake v. Fernando*** **(1986) 71 NLR 356** His Lordship Weeramantry J., enunciated that,

> *"Where there has been a delay in seeking relief by way of certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court".*

Even in the case of ***Gunasekera v. Weerakoon*** **73 NLR 262** His Lordship Sirimane J., held that,

"*the application should be refused because the Petitioner was guilty of undue delay in making the application. In the said matter, a delay of 7 months was considered to be "too long".*

A similar line of thinking was adopted in the ***Abdul Rahuman v. Mayor of Colombo*** **69 NLR 453*, and Wijegoonawardena v. Kularatne* 51 NLR 453.**

Reinstating the Petitioner as the Chairman

As per Section 7(1) of the Provincial Councils Act, No. 42 of 1987, a Chairman for the Provincial Council is appointed by election and subsequent to being elected as the Chairman, the said Section also contemplates situations as to how the Council should act if the Chairman's position should become vacant. Upon inquiry by Court both Counsel submitted that upon the Petitioner being disqualified, the Central Provincial Council had elected a new Chairman for the remainder of the tenure. It was conceded by all the Counsel that the so-elected Chairman under Section 7 can nevertheless hold the Chairman's position until the election of the next Council. Upon further inquiry by the Court, it was submitted that this procedure had been followed and a new Chairman has been elected and the provision of Section 7(3) is now in force. If that is so, the Petitioner has not sought this Court to quash that appointment. In the absence of quashing the said appointment there cannot be a vacancy for the post of the Chairman in the Provincial Council. Hence, as of a right, the Petitioner cannot seek a Writ of *Mandamus* to override the provisions of Section 7 of the Provincial Councils Act and obtain a Court order to appoint him as the Chairman when the said post is not vacant.

It is also observed that, as per Section 7, the Chairman is appointed on an election, and following 2015 with him being disqualified and a new Chairman being elected by a vote, the Petitioner cannot have a right to be the Chairman subsequent to a new Chairman being elected. Hence, the objection that this Application is misconceived has to succeed.

Has the Petitioner come with clean hands?

Perusing the Petition, this Court finds that the Petitioner has failed to disclose that in his absence a new Chairman had been appointed by operation of law and by way of an election, and until inquired by this Court the Petitioner failed to disclose that the said Chairman still holds office. Without disclosing this material fact, the Petitioner has

sought a Writ of *Mandamus* seeking him to be reinstated as the Chairman of the Provincial Council. This in our view, is a suppression of a material fact. It is trite law that suppression of material fact is detrimental to a writ Application.

In the case of ***W. S. Alphonso Appuhamy v. Hettiarachchi*** **(1973) 22 NLR 77** the Court's determination was that,

> "*when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberrima fides."*

Also, in **Namunukula Plantations Limited Vs Minister of Lands and others (2012) 1 SLR 376** it was *inter alia* held that,

> *"It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence*."

This Court observes that the Petitioner has failed to submit to this Court the indictment that was issued against him. The Petitioner has failed to submit to this Court the learned High Court Judge's order where he was convicted for violating the Parliamentary Elections Act. The Petitioner has failed to disclose to this Court any documents to prove whether he was an elected member of the Provincial Council and to substantiate his claim that he was elected as the Chairman of the Provincial Council. In the absence of such documentation, the Petitioner has failed to substantiate his claim. Furthermore, the Petitioner has failed to disclose to this Court when the alleged offence took place and it is observed that the Petitioner has failed to give an explanation as to why the Petitioner has failed to disclose this vital information for his Application. In the absence of any explanation for his failure to submit these documents, the only conclusion that this Court can arrive at is that the Petitioner has suppressed the said material which is vital for this Application, from this Court.

Thus, it is the view of this Court that the Petitioner's failure to disclose the facts regarding the election of the new Chairman and his failure to disclose whether another member succeeded to his post in the Provincial Council and about the matters referred to above and his failure to give an explanation and his failure to submit the above-mentioned documents amounts to the suppression of material facts from this Court.

Necessary parties

The Petitioner in this Application is seeking to be reinstated as the Chairman of the Provincial Council. As both the Counsel have already conceded, there is an already existing Chairman who has been elected. If the Petitioner is to succeed in this Application, the said elected Chairman will be affected. However, we find that the Petitioner has failed to name him as a party for reasons best known to him.

It is trite law that if an order of the Court will affect a party, that party becomes a necessary party to the Application. Hence, it is the view of this Court that the failure to name the necessary party is fatal to this Application.

In ***Rawaya Publishers v. Wijedasa Rajapakse and others*** **(2003) 3 SLR 213** Justice Asoka De Silva President of the Court of Appeal (as he was then) after considering the law relating to necessary parties, held as follows,

> "*In the context of writ applications as 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….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*."

In ***Ukwatte v DFCC*** **(2004) 1 SLR 164 t**he Petitioner sought to quash a resolution by the Board of Directors of a particular bank, Sripavan, J. observed as follows,

> "*It has been constantly held that the party or parties against whom the relief is sought must be identified clearly and no room left for uncertainty. In the case at hand, the resolutions sought to be quashed are that of the Board of Directors of the …… bank and one of the Directors have been made parties to the application*."

Accordingly, this Application has to fail for want of necessary parties.

Refusal to pay the salary

The Petitioner by this Application is seeking a Writ of *Mandamus* to get compensation for the due amount of his salary subsequent to the conviction and sentencing and furthermore for him to be reinstated as the Chairman of the Provincial Council. However, the Petitioner has failed to demonstrate any material to establish that he has sought these reliefs from the relevant authority and the said request has been refused before invoking the jurisdiction of the Court of Appeal.

In the absence of any evidence before this Court pertaining to the request to the Provincial Council seeking the reliefs sought from this Court, the only safe conclusion the Court can arrive at is that there has been no request made by the Petitioner before invoking the jurisdiction of this Court. This Court has constantly held that a writ Court will be reluctant to issue a Writ of *Mandamus* in the absence of a denial or a refusal of a right.

In ***S.I. Syndicate v. Union of India*** **AIR 1975 Sc 460,** the Supreme Court of India has adopted the following statement of law in this regard;

> "*As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that* ***that demand was met by a refusal*****"** (emphasis added)

In ***Rasammah & another v. A.P.B.Manmperi*** **65 NLR 77 at page 313** quoting **S.A.de Smith**, the Court held that,

> "*The general rule is that the applicant before moving for the order, must have addressed a distinct and specific demand or request to the Respondent that he perform the duty imposed upon him, and the Respondent must have unequivocally manifested his refusal to comply*."

Salary during the conviction

It is also observed, that the Petitioner in his prayer is seeking an order against the 5th Respondent directing them to pay compensation for the due amount of the Petitioner's salary. This Court will now consider when a person becomes entitled to a salary. According to Black's Law Dictionary "salary" is defined as

> *"a reward or recompense for services performed. In a more limited sense a fixed periodical compensation paid for services rendered; a stated compensation, amounting to so much by the year, month, or other fixed period, to be paid to public officers and persons in some private employments, for the performance of official duties or the rendering of services of a particular kind, more or less definitely described, involving professional knowledge or skill, or at least employment above the grade of menial or mechanical labor…".*

As correctly submitted by the learned ASG, for the Petitioner to claim a salary, he should have worked. In this instance, according to his own pleadings he has not worked as an elected member of the Provincial Council after the year 2015. Hence in the absence of work, he is not legally entitled to a salary, and there is no legal duty for the Provincial Council to pay a salary to a person who is not working as a Provincial Councillor. Therefore, it is the view of this Court that the Petitioner is not legally entitled to a salary as he had not been functioning as an elected member during the period he is seeking the salary to be paid for him.

Firstly, this Court observes that as per Section 3 of the Provincial Councils Act, No. 42 of 1987, upon his conviction the Petitioner became disqualified to be a member of the Provincial Council.

Further, it was submitted that when the Petitioner is so disqualified under the Provincial Councils Act, the next member whose name appears replaces him. In this instance, it is conceded that the Petitioner has ceased to be a Provincial Councillor from the year 2015 by operation of law. In such circumstances, whether another member was named or not was not addressed by the learned Counsel appearing for the Petitioner. If the next member in line was named as a Provincial Councillor, such an elected member has the right to serve the remaining period and has the right to obtain the salary. If that is so, even if the Petitioner's sentence is suspended and as the Petitioner argues that he no longer becomes disqualified, still he is not entitled to receive the salary as he is no longer a member of the Provincial Council. As to whether his seat in the Provincial Council

was kept vacant or not was not addressed by the Petitioner. Furthermore, for the Petitioner to seek compensation or salary, it is vital for him to establish that he would have earned that salary. However, if the seat was filled, he no longer becomes entitled to the salary as he has ceased to be a member of the Provincial Council. This aspect has not been addressed by the learned Counsel for the Petitioner. In a writ Application, it is incumbent on the Petitioner to prove his case.

In the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** **SC Appeal 10/2009 decided on 15.12.2014, at page 5**, it was provided that,

> "*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*"

As stated elsewhere in this order, the Petitioner is not seeking a writ of *Certiorari* to quash any appointment that may have been made to succeed him as a member of Provincial Council. In the absence of such relief, the Petitioner cannot claim his salary as there would be no vacancy for him to be even considered to be a Provincial Councillor. The same applies with regard to his contention pertaining to the appointment as the Chairman of the Council.

Further, it is observed that none of the Petitioner's claims will arise as per the document marked as P1, which is the judgment of the Court of Appeal. The said Judgement specifically states as follows:

> "*However, the incident in this case had happened twenty years ago. The appellant had to bear the torment of this case for the last twenty years. The appellant has no previous convictions and is at an advanced age. Taking these reasons into consideration, the sentences of two and a half years is reduced to two years and suspended for five years* ***with effect from the date of this judgement, that is 02nd of December, 2021."***

Accordingly, the two and a half years conviction period has been reduced to two years and has been suspended for five years with effect only from 02.12.2021. By that time, the Provincial Council term for which the Petitioner was elected and to which he states that he is entitled to salary has come to an end. Hence, he cannot be entitled to any payments until 02.12.2021. Therefore, the Petitioner's calculations depicted in the graph pleaded in paragraph 12 of the Petition becomes incorrect. Accordingly, the total claim for which he seeks to be paid also becomes erroneous. Hence, his Application for

a Writ of *Mandamus* compelling the Respondent to pay the salary based on erroneous facts and figures has to fail.

As per the pleadings and the submission of the learned Counsel appearing for the Petitioner, he has confined his claim for the period from 2015 to 2018. This period is not covered by the judgment marked as P1, which the Petitioner relies on to state that his sentence is suspended.

It is also pertinent to note that as per the submissions made and as per the material before this Court and for the reasons enumerated above, the Petitioner has failed to establish that he has any right to seek the reliefs claimed.

Has the Petitioner established grounds for a Mandamus?

The Petitioner has been charged for election related offences while contesting the Provincial Council elections. After a lengthy trial, he has been found guilty and convicted by the High Court. He had been imposed with a sentence of two and half years. Subsequently, he has filed an appeal and at the appeal the Appellate Court giving its reasons has affirmed the conviction. However, considering the lengthy duration of the trial, the Appellant's advanced age and considering that he had no previous convictions the Appellate Court had suspended the prison term to five years after reducing it to two years to run from the date of the Appellate Court's judgment delivered on 02.12.2021. The learned ASG submitted that the said leniency has been showed to the Petitioner on sympathetic grounds this position was not contradicted by the learned Counsel appearing for the Petitioner. Leaving the said submission as it is, this Court observes that the Petitioner as per his own submissions is a people's representative and was elected as a member of the Provincial Council. Furthermore, it was submitted that he was elected as the Chairmen of the said Provincial Council. A member holding such a high office should be an example to the people whom he governs. Despite his sentence being suspended, in appeal, the conviction has been affirmed. In this background, the Petitioner having obtained the suspended sentence is now pleading to receive/be given his salary for the period he was unseated as a result of the conviction.

Hence, as quite correctly submitted by the learned ASG by this Application the Petitioner is attempting to receive a salary for a period that he has not worked for. It also appears that the Petitioner is seeking a Writ of *Mandamus* to reinstate him in his position as the Chairman. It is trite law that a Writ of *Mandamus* cannot be sought by a party as of a right and it is a discretionary remedy the Court exercise.

In **Perera v. National Housing Development Authority (2001) 3 SLR 50** the Courts held,

> *"On the question of legal right, it is to be noted that the foundation of mandamus is the existence of a right. (Napier Ex parte). Mandamus is not intended to create a right, but to restore a party who has been denied his right to the enjoyment of such right. A "Mandamus" will lie to any person or authority who is under a duty (Imposed by statute or under common Law) to do a particular act, if that person or authority refrains from doing the act or refrains for wrong motives from exercising a power which is his duty to exercise. The Court will issue a Mandamus to do what he should do. (R v. Metropolitan Police Commissioner*"

A.M.Podihamine Vs T.P.A.Hemakumara and others CA (Writ) Application No 69/2013 decided on 31.1.2019 where Obeyesekere, J. held

> "*the foundation of Mandamus is the existence of a legal right to a statutory duty. Where the applicant has sufficient legal interest and the officials have a public duty but have failed to perform such duty. However, a writ of Mandamus is not intended to create a right but rather to restore a party who has been denied enjoyment of the said right.***"**

Considering all the facts submitted, this Court is of the view that this is not an instance the Court should grant its discretion in favour of the Petitioner.

<u>Application of Art 89 and 91 of the Constitution.</u>

The learned ASG contended that the Petitioner cannot have and maintain this Application in view of Articles 89 and 91 of the Constitution. This objection was based on the premise that the Petitioner on any event upon conviction becomes disqualified to be an elector. This Court has considered Section 3 of Act No. 42 of 1987. Section 3(a) states as follows;

"3. No person shall be qualified to be elected as a member of a Provincial Council or to sit and vote as a member of such Council

> *(a) if such person is subject to any of the disqualifications specified in paragraphs (a), (c), (d) (e), (f) and (g) of Article 91 (1) of the Constitution;"*

Accordingly, a person who becomes ineligible under Article 91 of the Constitution becomes disqualified to hold office as a Provincial Councillor. Article 91 of the Constitution states as follows.

"Article 91(1) No person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament-

> *(a) if he is or becomes subject to any of the disqualifications specified in Article 89;"*

Article 89 of the Constitution stipulates the disqualification to be an elector. Article 89(e) stipulates as follows;

***"89**. No person shall be qualified to be an elector at an election of the President, or of the Members of Parliament or to vote at any Referendum, if he is subject to any of the following disqualifications, namely –*

(e) if a period of seven years has not elapsed since –

> *(i) the last of the dates, if any, of his being convicted of any offence under section 52(1) or 53 of the Ceylon (Parliamentary Elections) Order in Council, 1946, or of such offence under the law for the time being relating to Referenda or to the election of the President or of Members of Parliament as would correspond to an offence under either of the said two sections.."*

The Sinhala version of the said Article in the Constitution reads as follows.

"(ඉ) (i)

…යම්කිසි වරදකට හෝ එකී වගන්ති දෙකින් කවර වගන්තියක් හෝ යටතේ යම්කිසි වරදකට අනුරූප වන්නා වූ ද, ජනමත විචාරණ හෝ ජනාධිපතිවරග තෝරා පත්කර ගැනීමේ ඡන්ද විමසීම හෝ පාලර්මේන්තු මන්ත්‍රීවරයන් තෝරා පත්කර ගැනීමේ මැතිවරණ හෝ සම්බන්ධයෙන් තත් කාලයේ බලපවත්නා නීතිය යටතේ වූ ද වරදකට හෝ වරදකරු කරනු ලැබුවහොත් අන්තිමවරට එසේ වරදකරු කරනු ලැබූ දින පටන් සත් වෂර්යක් ඉකුත් වී නැත්නම් ඒ තැනැත්තා ජනාධිපතිවරයා තෝරා පත් කිරීමේ ඡන්ද විමසීමක දී හෝ පාලර්මේන්තු මන්ත්‍රීවරයන් තෝරා පත් කිරීමේ මැතිවරණයක දී හෝ ඡන්ද හිමියකු වීමට හෝ ජනමත විචාරණයක දී ඡන්දය දීමට හෝ සුදුස්සෙක් නොවන්නේය"

The Ceylon (Parliamentary Elections) Order in Council was subsequently repealed by the Parliamentary Elections Act, No. 1 of 1981. The Corresponding section in the said Act to Section 52 of the Order is Section 66.

On a careful consideration this Court is of the view that the wording used in both paragraphs refers to the convictions and not the sentence. The English phrase used is "of his being convicted of an illegal practice." The Sinhala phrased used is "බලපවත්නා නීතිය යටතේ වූ ද වරදකට හෝ වරදකරු කරනු ලැබුවහොත්."

Hence, it is clear that once a person is convicted of a violation of Section 66 of the Parliamentary Elections Act, he becomes disentitled to be an elector or even to vote irrespective of the sentence. Hence in this, instance as per the Petitioner's own pleadings, he has been convicted of violations under the Parliamentary Elections Act which is borne out of the documents marked P1, the judgement of the Court of Appeal. Hence, it is the view of this Court that once there is a conviction, he is disqualified to be an elector or a voter in addition he becomes disqualified under Section 3 of the Provincial Councils Act as well. The said conviction in the High Court has not been set aside by the Court of Appeal. In fact, it has been affirmed and the Appeal dismissed. The Court of Appeal has only varied the sentence on sympathetic grounds and that too with effect from 2nd of December 2021.

Accordingly, as per the Constitutional provisions the Petitioner does not qualify to be an elector for the period in question. Accordingly, his contention to seek compensation for the salary for the said period is not tenable. Hence, the Petitioner's main contention cannot be sustained.

Is the Petitioner's Application premature?

It was brought to the attention of the Court that the Petitioner's conviction is affirmed in appeal but the said sentence has been suspended for a period of five years. As per the judgment of the Court of Appeal, the suspended period commences running from the date of the Court of Appeal judgement. The judgement specifically gives the operational period of the suspended sentence to commence from 02.12.2021. Hence, it is obvious that the Petitioner is still within the operational period of the suspended sentence. As per Section 303(7) of the Code of Criminal Procedure an offender who is sentenced to a suspended sentence of imprisonment is discharged from the sentence only at the end of the operational period. Without prejudice to the above, therefore this Court is of the

view that the objection on the basis of the application being premature too has to succeed.

Conclusion

For the above stated reasons, this Court is of the view that the Petitioner has failed to establish a *prima facie* case and therefore, this Application cannot succeed. Accordingly, this Court is not inclined to grant formal notice on the Respondents and proceed to dismiss this Application.

Judge of the Court of Appeal

S.U.B. Karalliyadde, J

I agree

Judge of the Court of Appeal