

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

In the matter of an application for Writs of Mandamus under and in terms of Article 140 of the Constitution.

1. Adam Bawa Assia Umma  
No. 81, Paranagama,  
Manikkampattiya, Kaduruwela.

2. Isma Lebbe Kamaldeen (Deceased)  
No. 81, Paranagama,  
Manikkampattiya, Kaduruwela.

**Petitioners**

Adam Bawa Assia Umma  
No. 81, Paranagama,  
Manikkampattiya, Kaduruwela.

**Substituted 2<sup>nd</sup> Petitioner**

**Case No. CA (Writ) 224/2012**

**Vs.**

1. Divisional Secretary  
Divisional Secretariat, Thamankaduwa.

2. R. P. R. Rajapakshe  
Commissioner General of Lands,  
Land Commissioner General's Department,  
No. 7, Gregory's Avenue, Colombo 7.

2A. R. M. C. M. Herath  
Commissioner General of Lands,  
Land Commissioner General's Department,  
No. 7, Gregory's Avenue, Colombo 7.

3. Mohmadu Lebbe Assia Umma  
No. 61, Manikkampattiya, Kaduruwela.

4. Hon. Attorney General  
Attorney General's Department, Colombo 12.  
**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

Razik Zarook P.C. with Rohana Deshapriya and Chanakya Liyanage for the Petitioner

Chaya Sri Nammuni SSC for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents

**Argued On:** 26.09.2019

**Written Submissions Filed On:**

Petitioner on 26.09.2018 and 14.11.2019

1st, 2nd and 4th Respondents on 26.11.2019

**Decided On:** 26.05.2020

**Janak De Silva J.**

The land forming the subject matter of this application is Lot 81 in plan no. F.V.P.C. 140 containing A.6 R.0 P. 17 in extent. It was given to one Ibrahim Lebbe Mohamadu Lebbe by grant (P1) issued in terms of section 19(4) read with 19(6) of the Land Development Ordinance.

According to the Petitioners the said Ibrahim Lebbe Mohamadu Lebbe had contracted two marriages during his life time. Firstly he married one Navur Umma who is deceased and they had one son namely Mohamadu Lebbe Isma Lebbe.

Secondly, the said Ibrahim Lebbe Mohamadu Lebbe married one Thangamooththu and they had a daughter named Mohamadu Lebbe Assis Umma, the 3<sup>rd</sup> Respondent.

Mohamadu Lebbe Isma Lebbe married the 2<sup>nd</sup> Petitioners mother, namely the 1<sup>st</sup> Petitioner Adam Bawa Assis Umma. The 2<sup>nd</sup> Petitioner is the only son of that marriage.

There is no dispute that Ibrahim Lebbe Mohamadu Lebbe the grantee did not name a successor. The Petitioners are seeking a writ of mandamus against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to take necessary steps to nominate the succession under the 3<sup>rd</sup> Schedule to the Land Development Ordinance for the land depicted in the grant marked P1.

At the conclusion of the argument, Court invited parties to tender further written submissions on whether a writ of mandamus can be issued against the 1<sup>st</sup> Respondent since he has been made a Respondent nominee officii. The Court wishes to place on record its appreciation to the learned Presidents Counsel for the Petitioner who has accordingly filed further written submissions which are quite helpful in addressing this issue.

However, given the long history of litigation between the Petitioners and the 3<sup>rd</sup> Respondent, I am desirous of addressing the substantive issues so as to provide the parties with finality on the disputed issue.

It is observed that the grant P1 was issued to Ibrahim Lebbe Mohamadu Lebbe on 25.02.1983. There was prior litigation between the 1<sup>st</sup> Petitioner Adam Bawa Assia Umma and Mohamadu Lebbe Assia Umma the 3<sup>rd</sup> Respondent in the District Court Polonnaruwa Case No. 6722/L/96. The 1<sup>st</sup> Petitioner giving evidence in that case testified on 13.08.2002 (page 21 of the proceedings) that her husband Mohamadu Lebbe Isma Lebbe died 24 years ago which means that he was dead by 1978. Therefore, legally it is not possible for the said Mohamadu Lebbe Isma Lebbe to succeed in terms of the 3<sup>rd</sup> Schedule to the Land Development Ordinance to the land forming the subject matter of this application.

It is further observed that this material fact was not disclosed by the Petitioners. Even though a reference to the proceedings in the District Court Polonnaruwa Case No. 6722/L/96 was made in the petition, the pleadings and proceedings therein was filed by the Petitioners only consequent to an order made by Court on 27.09.2018.

Hence in my view the Petitioners are guilty of suppression and/or misrepresentation of material facts.

It is trite law that a writ application can be dismissed in limine without going into the merits if there has been a suppression and/or misrepresentation of material facts. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R.275], *Collettes Ltd. v. Commissioner of Labour* (1989) 2 Sri.L.R. 6, *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88, *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360, *Jaysinghe v. The National Institute of Fisheries* (2002) 1 Sri.L.R. 277 and *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* (2007) 1 Sri.L.R. 24].

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

“(1)A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.

(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make that fullest possible disclosure of all material facts within his knowledge.

(3) If there is anything like deception the Court ought not to go in to the merits, but simply say" we will not listen to your application because of what you have done.”

For all the foregoing reasons, the application is dismissed in limine without costs since the 3<sup>rd</sup> Respondent was absent and unrepresented.

Judge of the Court of Appeal

**N. Bandula Karunarathna J.**

I agree.

Judge of the Court of Appeal