

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

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

**C.A. (WRIT) Application No.
CA/WRIT/0484/2022**

1. Prof. Mohamed Hussain Rezvi Sheriff,
No. 20/21, Fairfield Gardens,
Colombo 08.
2. Western Infirmary Hospital (Private)
Limited,
No.218, Cotta Road, Borella,
Colombo 08.

Petitioners

Vs.

1. Dr. G. Wijesuiya,
Deputy Director (Medical Services),
Ministry of Health, "Suwasiripaya",
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
2. Dr. Dhamminka Alahapperuma,
Director, Private Health Sector
Development Unit, Ministry of Health,
"Suwasiripaya",
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
3. Dr. Asela Gunawardena,
Director General of Health Services,
Ministry of Health, "Suwasiripaya",
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.

4. S. Janaka Sri Chandraguptha,
Secretary, Ministry of Health,
"Suwasiripaya",
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
5. Hon. (Dr.) Keheliya Rambukvella,
Ministry of Health, "Suwasiripaya",
No. 385, Rev. Baddegama Wimalawansa
Thero Mawatha, Colombo 10.
6. Private Health Services Regulatory Body,
No. 2A, CBM House, 4th Floor, Lake
House,
Colombo 08.

Respondents

Before: **N. Bandula Karunarathna J. (P/CA)**

&

M.C.B.S. Morais J.

Counsel: Faizer Musthapha, PC with Shaheeda Barrie, AAL, Hafeel Fariz, AAL and Ridmi Benaragama, AAL instructions of M/S Neelakandan Neelakandan, AAL for the Petitioners.

Shantha Jayawardhana, AAL for the Intervenient-Petitioner.

Vickum de Abrew, ASG with Navodi de Soysa, SC for the 1st – 5th Respondents.

Written Submissions: By the Petitioners – 04.09.2023

By the Respondents – 05.06.2023

Argued on : 14.07.2023 and 30.05.2023

Decided on : **24.11.2023.**

N. Bandula Karunarathna J. P/CA

The 1st Petitioner is a citizen of Sri Lanka, and the founder of the 2nd Petitioner Company. The Western Infirmary, established about 1985, is widely regarded to be the "Father of Nephrology" by the Medical Community in Sri Lanka.

The 1st Petitioner has contributed to the disciplines of medicine, health care, and academia in Sri Lanka in numerous ways, and is a pioneer in the field of Nephrology and transplantation in Sri Lanka, as well as being the chief proponent for the introduction of Renal Disease Diagnosis, Dialysis and Kidney Transplantation in the country. He was instrumental in performing the first ever kidney transplant in Sri Lanka in October 1985, and has performed over 1000 kidney transplants on patients.

The 1st Petitioner has additionally shared his vast knowledge in the field of Nephrology with several generations of Undergraduates and Postgraduates over a career that spanned over 5 decades, while conducting trail blazing medical research, and has had a hand in training most, if not all of the current Nephrologists in the country.

According to the Petition the 1st Petitioner was a Senior Professor of Medicine and the Head of the Department of Clinical Medicine at the Faculty of Medicine, University of Colombo, and had retired in September 2014, following more than 40 years of yeomen service to the University of Colombo, and is currently a Senior Professor of Medicine at the General Sir John Kotelawala Defence University (KDU).

According to the Petition, the 1st Petitioner, is amply qualified, having completed the following Academic, and Professional Qualifications:

(a) Academic

- i. E.C.F.M.G. Certification, USA, February 1970;
- ii. M.B.B.S. (Ceylon), August 1971;
- iii. M.D. (Ceylon), January 1974.

(b) Professional

- i. M.R.C.P. (UK), August 1975;
- ii. F.R.C.P. (London), April 1991;
- iii. F.C.C.P (Sri Lanka), September 1992;
- iv. F.R.A.C.P. (Hon), May 1994;
- v. F.R.C.P (Edin), July 1995;
- vi. F.N.A.S.S.L (Sri Lanka), 2006;
- vii. F.S.L.C.G.P (Sri Lanka), 2010;
- viii. F.I.M.A.C.G.P (India), 2011.

The 1st Petitioner has contributed to the following publications:

- (a) Chronic ill health in society, 2009, Sri Lankan Medical Association, Presidential Address 2009;
- (b) Chronic Kidney Disease of Uncertain Aetiology: Prevalence and Causative factors in a developing country, Nihal Jayathilake, Shanthi Mendis, Palitha Maheepala, Firdosi R Mehta, and on behalf of the CKDu National Research Project Team, BMC Nephrology 2013, 14:180;
- (c) Chief Editor of the CKDu Repository of the WHO — a collection of over 20 years of research in chronic kidney disease of unknown origin in the NCP & NWP in Sri Lanka;
- (d) Living related Donor kidney transplantation in Sri Lanka, Sheriff MHR, De Abrew K, Jayasekara G, Fernando R, Attygalla GM, Nanayakkara S, De Mel CP, Jayasinghe S, Ransi W, Peiris A, Mahamitha U, Anpalahan M, Rajapakse L, Sherifdeen All, (Transplantation Proceedings, October 1992);
- (e) National health policy, Sheriff M.H.R., CCPI, 1992, 25, p26-30;
- (f) A new monospecific ovine fab fragment anti-venom for treatment of envenoming by the Sri Lankan Russells Viper (Daboia-Russellii-Russellii) — A preliminary dose finding and pharmacokinetic study, Ariaratnam CA, Meyer WP, Perera G, Eddleston M, Kularatne SAM, Attapattu W, Sheriff MHR, Richards AM, Theakston RDG, Warrell DA, American Journal of Tropical Medicine and Hygiene 1999, Volume 61, Issue 2, 259-265;
- (g) Waist to height ratio: a better anthropometric marker of diabetes and cardio-metabolic risks in South Asian adults. Jayawardana R, Ranasinghe P, Sheriff MH, Matthews DR, Katulanda P. Waist to height ratio: a better anthropometric marker of diabetes and cardio-metabolic risks in South Asian population. Diabetes Res Clin Pract. 2013 Mar; 99(3):292-9;
- (h) Epidemic of self-poisoning with seeds of the yellow oleander tree (Thevetia Peruviana) in Northern Sri Lanka, Eddleston M, Ariaratnam CA, Meyer WP, Perera G, Kularatne AM, Attapattu S, Sheriff MHR, Warreell DA, Tropical Medicine & International Health 1999, Volume 4, Issue 4, 266-273.

The 1st Petitioner has been in receipt of the following Grant funding, in recognition of his contributions in his field:

- (a) CKDu Literature Repository - WHO Project, LKR Five Hundred Thousand (Rs.500,000/-);
- (b) The Public Health Initiative to Treat Chronic Kidney Disease - National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH) USA Project, USD 10,000/- (Part funding) for Research Assistant;
- (c) Low Fluoride in water Project - National Health Research Council Project in preparation, LKR Five million (Rs.5,000,000/-);

- (d) Echo Friendly farming practices to reduce CKDu - National Health Research Council grant LKR Five million (Rs.5,000,000/-);
- (e) National Renal Research Project - Part Funding from LKR 400 million from National Science Foundation.

In addition to the 1st Petitioner had also been named as one of the top 30 Scientists in Sri Lanka, following the science metric study on citation of research papers (15-year study) 2013.

In addition to the academic and professional qualifications, the 1st Petitioner has held the following posts:

- (a) Director, Institute of Biochemistry, Molecular Biology and Biotechnology, University of Colombo, January 2013 to date;
- (b) Chairman/Senior Professor Medicine, University of Colombo, Dec 1990 to date;
- (c) Chief Executive Officer/Director, Postgraduate Institute of Medicine, University of Colombo, Jan 2006 to 2011;
- (d) Clinical Head, Department of Clinical Medicine, University of Colombo, December 1990 to January 2006;
- (e) Acting Dean, Faculty of Medicine, for short periods of time, approx. 4 weeks since 1990;
- (f) Director, Postgraduate Institute of Medicine, Since 1998:
- (g) Associate Professor of Medicine/Honorary Consultant Physician, National Hospital of Sri Lanka, under the supervision of Prof. K. Dharmadasa, MD. FRCP, General Medicine and nephrology, General Hospital Colombo, Dec 1989 to February 1990;
- (h) Commonwealth Senior Research Fellow, General Medicine and Nephrology, University of Oxford, UK, 1 year;
- (i) Honorary Consultant Physician, under the supervision of Prof. J. Ledingham, John Radcliffe Hospital, 1 year;
- (j) Senior Lecturer in Medicine, under the supervision of Prof. K. Dharmadasa, MD. FRCP., General Medicine and Nephrology, General Hospital Colombo. 10 years;
- (k) General Practitioner, under the supervision of Dr. Roberts and Dr. Thomas Southsea, UK, 1 month;
- (l) Senior Registrar (Nephrology), and Lecturer in Renal Medicine, Dialysis Transplant and Renal Pathology, under the Under the Professor's Renal Unit, University of Southampton, 16 months;
- (m) Registrar (Renal Medicine), Renal Medicine Dialysis, Transplantation, under the supervision of Dr. A. MacDougall, MD. FRCP., Stobhil General Hospital, Glasgow, 5 months;
- (n) Senior Registrar (General Medicine), under the supervision of Dr. H.L. Matthew MD. FRCP., Derby Infirmary, UK, 4 months;

- (o) Senior House Officer, General Medicine, Diabetes and Rheumatology, under the supervision of Dr. K. Gurling MD FRCP, Dr. G. Cochrane MD FRCP., Derby Infirmary, UK, 12 months;
- (p) Senior House Officer, Clinical Attachment, chest Medicine, under the supervision of Dr. Biagi MD. FRCP., Langwyfan Hospital, Denbigh, U.K, 1 month;
- (q) Lecture in Medicine (Registrar/SR Grade), General Medicine and Nephrology, Professor K. Rajasuriya MD. FRCP. DCH. and Prof. K. Dharmadas MD. FRCP., General Hospital of Colombo, 06 years.

Having pursued, *inter alia*, Nephrology, and renal pathology, and having garnered an abundance of experience, both practical as well as academia, the Petitioner had, in 1985 established Lanka Medicare, as a Private-Public Partnership with the Faculty of Medicine, University of Colombo, following which, on 05/10/1985, the very 1st Kidney transplant in the Sri Lanka, was performed by a team of Surgeons from the University of Colombo. The learned counsel for the Petitioner says that Lanka Medicare, had subsequently become Western Infirmary, in 1995, and had thereafter, on 02/06/2009, been incorporated as the 2nd Petitioner company; Western Infirmary (Private) Limited, a private limited company, under and in terms of the Companies Act No. 07 of 2007, with it registered Office at No. 218, Cotta Road, Colombo 08.

According to the Petition, the 1st Petitioner had also undergone a kidney transplant at the 2nd Petitioner Hospital, on 21/08/2022, and is at present still recovering from the same, and the consequential events stemming therein, will more fully be adverted to hereinafter. The 1st Petitioner is a director of the 2nd Petitioner Company. Western Infirmary (Private) Limited, the 2nd Petitioner aforesaid, has been registered in terms of section 3 of the Private Medical Institutions (Registration) Act No. 21 of 2006, the Private Health Services Regulatory Council, and further that the Petitioners have been authorised to maintain and operate the aforesaid hospital, to provide health care services, under the category of private hospitals, nursing homes and maternity homes, from 01/01/2022 to 31/12/2022, subject to the conditions specified therein.

In addition, thereto, Western Infirmary had applied for and received the following licenses, *inter alia*:

- (a) Environment Protection License, issued in terms of section 23B of the National Environmental Act No. 47 of 1980, for the period between 25/10/2022 to 24/10/2023;
- (b) License No. C0/49/A/MR-01/L/01/2022, issued in terms of the Sri Lanka Atomic Energy Act No. 40 of 2014, by the Sri Lanka Atomic Energy Regulatory Council, authorizing the possession and use of a Dental X-ray machine for human diagnostic condition, as per the terms and conditions stipulated therein, till the 31/12/2023;
- (c) License No. C0/49/A/MR-02-A/L/01/2021, issued in terms of the Sri Lanka Atomic Energy Act No. 40 of 2014, by the Sri Lanka Atomic Energy Regulatory Council, authorizing the possession and use of a diagnostic X-ray machine for human diagnostic condition, as per the terms and conditions stipulated therein, till the 31/12/2023.

Over the last 35 years, the aforementioned Lanka Medicare Company, and now Western Hospital, had conducted over 1000 kidney transplants, and maintains over 100,000 dialysis cases, thus maintaining its position as a leading force in Kidney Transplantation and Haemodialysis in Sri Lanka, and provide a wide array of services, including *inter alia*, the following:

(a) Renal Services;

- i. Dialysis & Kidney Transplant Service;
- ii. Western Fresenius Dialysis Unit;
- iii. Holiday Dialysis.

(b) Diagnostics;

- i. Ultrasound Scan;
- ii. Doppler scanning;
- iii. Echo-Cardiography;
- iv. X-Ray imaging;
- v. ECG;
- vi. Laboratory Services;
- vii. Health Packages;
- viii. Bio Impedance;
- ix. Spirometry;
- x. Uroflowmetry.

(c) Surgical Service;

- i. Surgical Service;
- ii. Laparoscopic Surgery.

(d) Medical Services;

- i. Channel Consultations;
- ii. Dental Clinic;
- iii. Out-patient department;
- iv. Mobile Services;
- v. Emergency Services;
- vi. Vaccination and Immunisation;
- vii. Wound care;
- viii. Pharmacy (open till midnight);

- ix. Western Loyalty cards;
- x. Geriatric care;
- xi. Inward and Critical Care;
- xii. Medical Intensive Care Unit;
- xiii. Blood Pressure checks;
- xiv. Physiotherapy;
- xv. Western Institute for Professional Development;
- xvi. Western Family Clinic.

(e) Maternity Services;

- i. Senehasa Maternity Unit.

In addition to providing the aforementioned services, Western Hospital, is the foremost specialist in kidney transplant and dialysis, and include *inter alia*:

- (a) A comprehensive, structured and cohesive process from registration, consultation and counselling, right up to the operating table;
- (b) An efficient system to do a thorough examination of patient and Donor before transplantation;
- (c) Streamlined legal processes;
- (d) An expert post-transplant care team made up of specialists, nurses and support staff;
- (e) A specialized Renal Intensive Care Unit for only post-transplant patients, ensuring the best care possible for recovery and a successful outcome;
- (f) Post-transplant clinics for follow ups;
- (g) Offer Plasmapheresis services;
- (h) Assistance with obtaining aid from the President's Fund;
- (i) Prompt procedure, where a kidney transplant can be arranged within three weeks.

All Kidney transplants undertaken by the Western Hospital, are undertaken following the clear, transparent and established legal procedures, following an ethical screening process first, which is conducted with the Hospital's own independent Donor authorization screening committee, which is chaired by a Senior Judicial Medical Professor, before final authorization being provided by the Director General of Health Services, Ministry of Health, Sri Lanka, including *inter alia*, the following:

- (a) Recipient and Donor registration with WIKTP. The Recipient and Donor should be from the same country, and nationality;
- (b) Recipient and Donor work up, Stage I, II and III;
- (c) Opinion from Nephrologists, for further management;

- (d) Comprehensive education, and awareness on the transplantation process, to both the Donor and the Recipient;
- (e) Transparent legal process, including verification by in house Authorisation Committee;
- (f) Ministry approval;
- (g) Patient management over the long-run.

The 1st Respondent is the Deputy Director (Medical Services), who had issued the very first media statement regarding the impugned temporary suspension issued against the Respondent Hospital. The 02nd Respondent is the Director, Private Health Sector Development Unit, who had issued letter bearing reference No. PHSD/B/KT/INVES/2022, dated 08/12/2022. The 3rd Respondent is the Director General of Health Services, Ministry of Health. The 4th Respondent is the Secretary, Ministry of Health, under whose purview the subject matter pertinent to this Application falls. The 5th Respondent is the Hon. Minister of Health, under whose purview the subject matter pertinent to this Application falls.

The 6th Respondent is the Private Health Services Regulatory Council, incorporated under in and terms of the Private Medical Institutions (Registration) Act No. 21 of 2006, which is a body corporate, having perpetual succession and a common seal, and the capacity to sue and be sued in its own name, who has issued the Registration No. PHSRC/PH/10.

The learned Additional Solicitor General submits that the 1st Petitioner in this Writ Application is the Western Infirmary Hospital and the 2nd Petitioner is the Managing Director of the Hospital who is named as Prof. Rizvi Sheriff. Primary grievance of the Petitioner is that the license of the Petitioner hospital to perform Kidney transplant surgeries were suspended by the document marked P19 and the Petitioners state that such suspension is *ultra vires* and sought to quash the same by way of a Writ of Certiorari.

Petitioners have prayed *inter alia* for the following reliefs in their Petition;

- a. Issue notice on the Respondents;
- b. Grant and issue a mandate in the nature of a Writ of Certiorari, quashing letter bearing reference No. PHSD/B/KT/INVES/2022, dated 12.12.2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, produced marked "P-19" temporarily suspending kidney transplant surgeries, at the Western Hospital operated by the 2nd Petitioner Company;
- c. Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision to temporarily suspend kidney transplantation surgery at the Western Hospital operated by the Petitioner Company;
- d. Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision to disallow kidney transplantation surgery already approved by the Ministry of Health;

- e. Without prejudice to the aforementioned, grant and issue a mandate in the nature of a Writ of Prohibition, preventing the any one/or more of the 1st to 5th Respondents, and/or their servants, and/or their agents, and/or their successors in office, from taking any consequential action, pursuant to the issuance of letter bearing reference No. PHSD/B/KT/INVES/2022, dated 12.12.2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, produced marked "P-19", temporarily suspending organ transplantation surgeries, at the Western Hospital, operated by the 2nd Petitioner Company;
- f. Grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents to withdraw the temporary suspension, dated 12.12.2022, marked P-19;
- g. Grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents to permit the performance of the surgeries already approved;
- h. Grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents to permit the performance of the surgeries at the 2nd Respondent Hospital, unless the Petitioners are held guilty of wrong doing by a court of law;
- i. Grant and issue a mandate in the nature of a Writ of Mandamus, directing anyone or more of the Respondents, and their servants, and their agents, to issue the relevant registration under and in terms of Private Medical Institutions (Registration) Act No. 21 of 2006 for the year 2023, upon meeting the necessary requirements;
- j. Grant and issue a mandate in the nature of a Writ of Prohibition, preventing the 6th Respondents from refusing to grant a Certificate of Registration in terms of section 03, Private Medical Institutions (Registration) Act No. 21 of 2006 Act, merely on the basis of the impugned letter of suspension and the media expose;
- k. Issue an interim order, suspending the decision, to temporarily suspend kidney surgeries, at Western Hospital, until the final hearing and determination of this Application;
- l. issue an interim order, suspending letter bearing reference No. PHSD/B/KT/INVES/2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, produced marked "P-19" temporarily suspending organ transplantation surgeries, at Western Hospital, operated by the 2nd Petitioner Company;
- m. In the alternative, and without prejudice whatsoever, issue an interim order, preventing the implementation of the decision of temporarily suspend kidney transplant surgeries at the 2nd Petitioner Hospital, until the final hearing and determination of this Application unless and until a complete, and transparent investigation, and inquiry has been carried out until the alleged transgressions by the 2nd Petitioner Company;
- n. Award Costs to the Petitioner,

- o. Grant the Petitioner such other and further reliefs as Your Lordships' Court shall seem meet.

This matter was taken up for Support for Notices and Interim Relief in Court No. 303. On 10th January 2023, both the Petitioners and 1st to the 5th Respondents (hereinafter referred to as the Respondents) were heard. Petitioners supported for Notices and Interim Relief and the Respondents resisted both Notices and Interim relief.

Having heard both the Petitioner and the Respondents at the stage of Support, Court issued only Notices. Interim Relief was not granted by Court although vehemently supported for interim relief. Perusal of the proceedings dated 10th January 2023 makes it evident that interim relief was not granted. The Petitioners did not take steps to challenge the said Order in the Supreme Court. Thereafter, this matter was fixed for Notice Returnable on 27th January 2023. On such date due to the urgency that was claimed by the Petitioners, the Court directed that the Statement of Objections of the Respondents be filed on or before 15th March 2023 and the matter was fixed for Argument on 03rd April 2023.

On 29th March 2023, a motion was filed on behalf of the Respondents informing court that the respective inquiry (as stated in the proceedings dated 10th January 2023) has not been concluded yet and that, since the findings of the said Report is imperative to file the Statement of Objections, the Respondents will be unable to file the Statement of Objections prior to the date of Argument. On the said grounds the Respondents pleaded to take this matter be taken out of the Argument list on 3rd April 2023 and to mention this matter to be re-fixed for Argument.

When this matter was taken up for Argument on 3rd April 2023, the Court directed that the Statement of Objections of the Respondents be filed on or before 18th April 2023 and the Counter Affidavits if any to be filed on or before 28th April 2023 and the matter was fixed for Argument on 4th May 2023. The respondents state that they were unable to file the Statement of Objections on the 18th April 2023 due to internal discussions held in this regard. The Statement of Objections were filed with Notice to the Petitioners on 28th April 2023.

When the matter was taken up for Argument on 4th May 2023, the learned President's Counsel for the Petitioner objected for the acceptance of the Statement of Objections and requested an Order by Court with regard to the acceptance of the Statement of Objections. The matter was re-fixed for Argument on 11th May 2023 once again. This matter could not be reached on 11th May 2023 and therefore was re-fixed for Argument on the 16th May 2023. The learned ASG appearing for the Respondents had a difficulty on 16th May 2023 and therefore this matter was re-fixed for Argument on 17th May 2023. This matter could not be reached on 17th May 2023 and therefore was re-fixed for Argument on 22nd May 2023 for the submissions of the Petitioner and on 24th May 2023 for the submissions of the Respondents.

The case could not be reached once again on the 22nd May 2023 and was re-fixed for the submissions of the Petitioner on 23rd May 2023. The learned President's Counsel for the Petitioner concluded his submissions on 23rd May 2023. Whilst making his submissions, learned President's Counsel made reference to the Statement of Objections filed by the Respondents. He further contended that although this is for Argument, he is supporting for interim relief. For the first time in the Application, the Petitioners moved to support for interim relief again on the same material placed before the Court.

Although the matter was for fixed for Argument on 24th May 2023, the case could not be reached as there was another matter specially fixed at 1.30 p.m. Therefore, the Argument was re-fixed for 30th May 2023. In the interim, the Petitioners filed their Counter Affidavit on 29th May 2023. The matter was taken up for Argument on 30th May 2023 and the submissions on behalf of the Respondents were concluded. It was recorded by the learned President's Counsel for the Petitioners that the Objection he had raised with regard to the Statement of Objection in their Counter Affidavit would not be maintained.

However, the application for the interim relief was agitated again by the learned President's Counsel for the Petitioner, after the conclusion of the submissions of the Respondents. It was the submission of the Petitioners that, he has made submissions only in respect of the interim relief and therefore an Order may be made in respect for interim relief. It is the position of the Respondents that re-agitating the interim relief at the stage of arguments is unfair and leads to inordinate delay in disposing the matter, especially when the Respondents cooperated with the applications of the Petitioners to conclude the matter expeditiously.

However, the learned ASG for the Respondents made it clear to Court that the matter was throughout fixed for Argument and that he had concluded his submissions and therefore this matter could be fixed for judgment. This matter was heard and supported *inter parte* for Notices and interim relief on 10th January 2023. It was only Notices that was issued. Interim relief was not granted by Court. Thereafter, the matter was throughout fixed for Arguments. Parties have filed their Statement of Objections and the Counter Affidavits.

The Petitioners have never filed a motion indicating to Court that there is new material for them to re-agitate for interim relief for the second time. In any event, the Respondents state that such practice of supporting for interim relief for the second time, when the matter is in fact fixed for Argument, is highly unprecedented when the pleadings are complete.

As highlighted above, the learned Counsel for the Respondents further state that the Petitioner have failed to impress upon this Court any new circumstances which warrants considering interim relief for the second time before the judgement is delivered. Assuming, but not conceding, that the petitioners do have placed any new material before this Court, yet, the Respondents state that since the pleadings are complete and comprehensive submissions were made by the parties, a necessity of considering for the interim relief does not arise because, the final relief prayed for by the Petitioner could be considered in the judgement. When the final relief is considered in the judgement, interim relief need not be looked into.

In such circumstances, and especially when;

- a. the parties have been heard *inter parte* for interim relief;
- b. when the matter had been throughout fixed for Argument; and
- c. when the pleadings are concluded;

The Respondents move that the Order delivered by this Court should be considered as the judgment for all intents and purposes. The 1st Petitioner is a private hospital registered under the Private Health Services Regulatory Council of the Ministry of Health.

It performs the facilities as stated in 1R1, application for registration for Private hospitals, Nursing Homes and Maternity Homes filed by the Statement of Objections of the Respondents. The impugned document in this Writ Application is the document marked P19. Petitioners pray for a Writ of Certiorari to quash P19.

P19 is a letter dated 12th December 2019, issued by the Director General of Health Services suspending the Petitioner hospital from performing kidney transplant surgeries. P19 states as follows;

"Organ Trafficking Incident at Western Infirmary Hospital, Colombo"

"This has reference to the recent media disclosure regarding the organ trafficking incident at your hospital. Please note that the Ministry of Health decided to temporary suspension of kidney transplant surgeries in your hospital until further notice. "

The legal issue that has to be determined by this Court is whether this decision to suspend the Petitioner hospital from performing kidney transplant surgeries, warrants to be quashed by way of a writ of Certiorari or not.

The Respondents state that a Writ of Certiorari or any interim relief to suspend P19 ought to be refused for the following reasons;

- a. There were adequate reasons to have formulated an opinion to issue P19.
- b. P19 is *intra vires*.
- c. A suspension pending an inquiry is permitted in law.
- d. The decision which subsequently confirm P19 is not challenged by the Petitioners.
- e. Petitioners lacks *uberimae fides*.

As per the Petition of the Petitioners, on or about 21st November 2022 there was a particular incident pertaining to organ trafficking which was said to be done with the involvement of the Petitioner Hospital, which aired on Derana in a programme called "Ukussa". Subsequently, there were several other media clips pertaining to the same issue of organ trafficking published in News in the same channel as well as published in the official YouTube channel of the said media institution, which broadcasted that a private hospital in Borella has been engaged in organ trafficking.

In terms of Section 17 of the Transplantation of Human Tissues Act, No. 48 of 1987 selling or disposing any human body part for valuable consideration is prohibited. In other words, if an organ transplant surgery is to be performed, it has to be ensured that the Donor had willingly donated the respective organ to the Donee. However, the allegation levelled against the Petitioner hospital through this media outrage was that the hospital is directly involved in organ trafficking.

There had been several other occasions prior to this date as well, where there had been certain concerns with regard to the manner in how the Petitioner hospital conducts this whole process of kidney transplant surgeries. The Additional Secretary (Medical Services) by its letter dated 14th June 2021 had written to the District Secretary requesting to verify the accuracy of 5 Grama Niladhari certificates that has been produced by the Donors for kidney transplant surgeries. This letter is marked as 1R3 along with the Statement of Objections.

The District Secretary by the letter dated 19th July 2021 had replied to the aforementioned letter of the Additional Secretary (Medical Services) stating that it is confirmed by the Divisional Secretary that the Grama Niladhari certificates are forged documents marked as 1R4 along with the Statement of Objections. Accordingly, the Additional Secretary (Medical Services) by the letter dated 3rd August 2021 had written to the Inspector General of Police requesting to the investigate into the forged Grama Niladhari Certificates marked as 1R5 along with the Statement of Objections.

The recent media outrage corroborated and further strengthened a *prima facie* case against the Petitioner hospital into the allegations of organ trafficking. What is most alarming is the fact that the own admission by the Petitioners that they have made an ex-gratia payment to certain attackers who they say had stormed the Petitioner hospital. This ex-gratia payment had been made at the Campbell Park to certain Donors. The simple and the most logical question that would pop into any reasonably prudent person according to the Petitioner's version would then be is, why would the hospital get involved in making an ex-gratia payment to some random people who had stormed into the hospital asking for money?

If at all, assuming that there had been a private agreement between the Donor and the Donee for the donation of a kidney, still the most obvious question is, what then is the involvement of the hospital? Why would the brokers attack the hospital?

The most logical understanding for this is, any person would be aggrieved with the person/entity who had promised them to pay the money. In this case, the brokers attacked the Petitioner hospital because there was an involvement of the Petitioner hospital. If there was no involvement of the Petitioner hospital, there is no reason for the brokers to attack the hospital and for the Petitioner hospital to make an ex-gratia payment. It should also be noted that CA(Writ) 103/22 had been filed by certain members of the hospital staff to prevent them being arrested.

The mere fact that the brokers attacking the hospital which gives a reasonable inference that the Hospital had breached some promise made towards the brokers and the fact that the Petitioner hospital made an ex-gratia payment to the brokers alone are sufficient grounds for any reasonably prudent person to have formulated a reasonable inference that the organ trafficking had been done with the involvement of the Petitioner hospital. In a like situation, the very first step the regulating authority should take is to immediately halt the illegal activity until the same is looked into in detail as such operations affect the lives of the Donors as highlighted in the Report marked 1R6.

Since this was a serious matter that has to be investigated into and also to prevent the imminent danger that would continue to happen to the general public if further kidney transplant surgeries are permitted to be performed by the Petitioner Hospital it was decided to temporary suspend the kidney transplant surgeries until further notice, as has been informed by the letter dated 12th December 2019 marked as P19. A Committee to investigate in to the same was appointed by the Director of the Private Health Service Sector (Ministry of Health) by the letter dated 8th December 2022. The decision to appoint a committee is not challenged by the Petitioners. In fact, the Petitioners have participated in such inquiry.

In Nagalinzam v Layman de Mel 78 NLR 231 it was held that;

"the Petitioner having participated in the prolonged proceedings without any objections and having taken the chance of the final outcome of the proceedings, is precluded from raising any objection to the jurisdiction of the Commissioner of Labour", "the Petitioner's right, if any, to Certiorari has in the circumstances, been lost by his acquiescence or implied waiver.'

Therefore, the quashing of P19 is futile as there is a subsequent Report marked 1 R6 wherein eminent doctors and other professionals having considered the evidence, decided to suspend only transplant operations until the investigations are over. P19 is the letter sent by the DG of Health Services in his capacity of the Chairman of the Private Health Services Regulatory Council ("the Council"), suspending a part of the registration (authority) granted to the Private Hospital to carry out transplantation operations.

The registration granted to the Western Hospital is in terms of Private Medical Institutions (Registration) Act, No. 21 of 2006. The purpose of the said Act as set out in the Preamble is in the interest of providing a safe and efficient medical service to the public, through private medical institutions and to identify the manner in which such services are to be so provided in order to achieve its objectives [emphasis added].

The objectives are set out in sec. 9 of the Act and of them, two are significant to this matter. They are;

- (a) ...monitoring of standards to be maintained by the registered Private Medical Institutions;
- (b)
- (c)
- (d) to ensure the quality of patient care services rendered or provided by such Private Medical Institutions.

To achieve the said objectives, the Council is empowered by section 10 of the Act to exercise, perform and discharge the powers, duties and functions as may be necessary to achieve the objects as referred to in section 9. The Council is empowered to grant a Registration upon Application by a Private Medical Institution under section 3. It should be understood that amending, varying, rescinding such registration is provided for in the aforesaid legislations.

In order to achieve the objectives, set out in the Act, the Council headed by the DG of Health Services as the Chairman, has the duty and function to discharge powers as may be necessary to ensure the quality of patient care services and standards maintained by such a registered Private Medical Institution. The Council is empowered to do so when the Act is silent vis-a-vis section 18 of the Interpretation Ordinance.

Section 18 of the Interpretation Ordinance reads as follows;

"Where any enactment, whether passed before or after the commencement of this Ordinance, confers power on any authority to issue any proclamation, or make any order or notification, any proclamation, order, or notification so issued or made may be at any time amended, varied, rescinded, or revoked by the same authority and in the same manner, and subject to the like consent and conditions, if any, by or in which or subject to which such proclamation, order, or notification may be issued or made. "

In the case of James Perera V. Government Agent of Kandy 46 NLR 287 Jayathilake J observed that,

"The Petitioners contend that the Respondent had no power under the Village Communities Ordinance (chap.198) to cancel the notice issued by him on November 7, 1944. I think a very short and simple answer to that contention is to be found in section 15 of the Interpretation Ordinance" (present section 18).

Basnayake CJ in the case of Silva V. Attorney General 60 NLR 145 had observed that,

"In the instant case, as stated above the Public Service Commission was free to revoke its delegation by order published in the Government Gazette by virtue of section 15 of the Interpretation Ordinance (present section 18) although the empowering section itself, as in the case of the English Statute referred to in the case of Huth V Clark (supra), does not confer a power to revoke a delegation once made"

His Lordship Justice Malalgoda in the case of Archbishop of Colombo v. Minister of Education and others SC/Appeal/54/2017 decided on 22.05.2018 held that,

"When going through the provisions of the above section it appears to me that the provisions of section 18 apply when the enabling statute contains the power to issue a proclamation or to make any order or notification without a corresponding power to amend, vary, rescind or revoke them. In the said circumstances it is understood that, in the statute, the power to revoke or amend is expressly provided, thus section 18 of the Interpretation Ordinance has no application."

Furthermore, Samayawardhena J in the case of A.M.M.K. Moragalla and others V. The Land Reform Omission and others CA/76/2016/WRIT decided on 06.09.2018, referring to sec. 18 and an argument against it stated as follows,

"Notwithstanding there is some force in that argument, as the petitioners got the opportunity to express their grievances through these proceedings and as this Court is satisfied that the Land Reform Commission had a valid legal basis to cancel the earlier Determination made upon misapprehension of the law, I am not inclined to hold with the petitioners to quash the later Gazette 1R3 allowing to perpetuate the illegality with the blessings of Court until the Land Reform Commission comes to the same conclusion for the second time upon a formal inquiry. Court need not in my view make orders for the sake of making orders."

In Green Up International (private) Limited v. Director General of Customs, Writ 335/2014 decided on 29.06.2020, Arjuna Obeysekera J held that,

"Although the Act provides for the amendment of an Order made under Section 2(1), the Act does not provide for the cancellation of an Order. The power to cancel an order is clearly provided for in Section 18 of the Interpretation Ordinance..."

Thus, when the Act is not specific with regard to any suspension or revocation it is prudent to examine the Preamble of the Act as held in the case of Aldin V. Sannasgala 48 NLR 236, where Dias J observed that,

"the preamble of an Ordinance is a good means to find out its meaning, and may legitimately be consulted for the purpose for solving any ambiguity".

Therefore, the power exercised by the DG of Health Services as the Chairman of the Council, to maintain the objectives of the Act and to ensure the quality of patient care services and standards maintained by Western Hospital, and suspend the registration of Western Hospital, conditionally is valid and proper in law, especially when there is a *prima facie* case of illegality, offences and misconduct on part of the said hospital. Thus, the Respondents submit that P19 is *intra vires* and therefore, a necessity to quash such decision embodied in P19 via a Writ of Certiorari should not arise at any stage.

It has to be noted that this suspension has been done subject to an inquiry being conducted. It is vital at this juncture to consider as to how the Court had viewed at a suspension pending an inquiry. It is more specifically recognized that, suspension pending inquiry is part of the Sri Lankan law.

In De Saram v. Panditharatne (1984) 2 SLR 106 the Court had considered the effect of a suspension pending an inquiry. In this matter, the petitioner was a final year student of the Engineering Faculty of the University of Peradeniya. He was suspended from the University by the Vice Chancellor (1st Respondent) pending inquiry into allegations of indiscipline and misconduct during the period 11th to 17th July. 1983. The 1st Respondent thereafter appointed 3rd Respondent to inquire into the allegations levelled against the Petitioner. The petitioner had made an application for the issuance of a Writ of Certiorari to quash the order of suspension and for a writ of prohibition prohibiting the 3rd Respondent from holding the investigation and inquiry.

It was held that;

"Where a person is responsible for the maintenance of discipline in a particular institution, suspension pending inquiry would be an inherent or implied right flowing from such responsibility. The question whether the suspension pending inquiry is tainted with malice or unfairness is a different matter. However, taking all the circumstances into consideration in the instant case, it cannot be said that the 1st respondent has acted unfairly or maliciously"

Hence, in the present case in hand, it is apparent that the regulatory authority (the Director General of Health Services) was responsible in preventing the imminent danger to the society that would have continued to prevail if the kidney transplant surgeries were continued in the Petitioner hospital.

In Nanayakkara V. University Of Peradeniya And Others (1985) 1 SLR 174 it was held that;

"The Vice-Chancellor as the Chief Executive Officer of the University and the University Council are clothed with sufficient power to deal with breaches of discipline even where they were not covered by the Compendium. They can exercise this power in a fair manner as regards determining what acts would constitute breaches of discipline and what punishments such breaches should attract."

This Court also has to be mindful that the regulatory authority is always vested with the power to give force to the legislative intent. Hence, when there are allegations levelled against the Petitioner hospital for acting in violation of Section 17 of the Transplantation of Human Tissues Act, the most appropriate remedy is to immediately suspend such action, pending an inquiry.

In Jaipur Mineral Development vs The Commissioner Of Income Tax, AIR 1977 SC 1348 it was held that;

"the courts had power under Section 151, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court".

As stated in the previous paragraphs, soon after P19 was issued, a committee comprising of 9 members were appointed by the Director General of Health Services to look into the allegations made against the Petitioner hospital. The final Report of the said Committee along with its annexures has been marked as 1R6 with the Statement of Objections. As stated above, challenging P 19 without challenging 1R6 is futile.

Accordingly, the said Committee when arriving at the conclusions, had considered *inter alia* the following documents/Circulars/Laws;

- a. Transplantation of Human Tissues; Act, No. 48 of 1987. (Annexure 3 of the Report)
- b. The letter dated 10th August 2010 issued by the Director General of Health Services on Implementation of the National Organ Donor Programme including Transplantation of Kidneys to CDK patients from live non related and cadaveric Donors (Annexure 4 of the Report)
- c. Circular No. 01-27/2010 issued by the Secretary to the Ministry of Health on Implementation of the National Organ Donor Programme for Deceased Donor Organ Transplantation. (Annexure 5 of the Report)
- d. The Circular dated 9th March 2015 issued by the Director General of Health Services on National Transplant Programme: Streamlining deceased Donor organ transplantations. (Annexure 6 of the Report)
- e. Letter dated 8th December 2015 issued Director (Private Health Services) on Human Tissue Transplant done at Private Hospitals in Sri Lanka. (Annexure 7 of the Report)
- f. The letter dated 19th June 2019 issued by the Director General of Health Services on Resuming Organ Transplantation on Foreign Individuals in the Private Health Sector.
- g. The Circular dated 28th October 2021 issued by the Director General of Health Services on Confirmation of Brain Death and Promote National Deceased Donor Organ Transplantation Programme. (Annexure 9 of the Report)
- h. Private Medical Institutions (Registrations) Act, No. 21 of 2006. (Annexure 10 of the Report)

After the conclusion of the inquiry, the inquiring committee had made several recommendations. Out of the said recommendations the recommendation 9 is vital because it states that all kidney transplant surgeries should be suspended until the conclusion of all investigations. It is pertinent to note that, the Colombo Crimes Division had already filed a B Report bearing No. 81217 /2/2022 in the Magistrate's Court Colombo, against the 2nd Petitioner and certain other employees and the said investigations are underway. It is in this backdrop the committee had recommended that suspension should continue until the conclusion of the investigations. Although the said

investigation Report marked as 1R6 was filed along with the Statement of Objections, the Petitioners have never moved to quash the findings of the said Inquiry Report.

It is apparent that even if P19 is quashed, still the recommendations made by the inquiring committee is still in force. Based on the recommendations of the said Inquiry Report the Director General should issue a letter suspending the kidney transplant surgeries of the Petitioner hospital if P19 is quashed. Therefore, the Respondents state that this application of the Petitioners has now become futile as there is a subsequent decision which overrides and confirms the impugned decision which remains unchallenged!!

It is important to note that Petitioners lacks *uberimae fides* -unmeritorious conduct of the Petitioner. It is trite law that a person who seeks for relief by way of a writ which is a discretionary remedy should come to courts with clean hands. In the present case;

- a. There had been allegations against the Petitioner hospital with regard to organ trafficking;
- b. Criminal action is ongoing with regard to the alleged incidents of organ trafficking against the 2nd Petitioner and some other staff members of the Petitioner hospital;
- c. There are police complaints from the Donees who underwent surgery in the Petitioner hospital to say that they have sold kidneys due to their financial difficulties.

In the given circumstances, the Respondents state that the mere *prima facie* consideration of the above facts alone makes it clear that the Petitioners lack *uberrimae fidei* and that the conduct of the Petitioners is unmeritorious.

In Wickramasinghe v. Ceylon Electricity Board (1982)2 SLR 607 it has been held that;

"It must be noted that certiorari is a discretionary remedy and this Court has the power to withhold it if it thinks fit. This Court will do so in the case of an unmeritorious petitioner, even though there has been a clear violation of natural justice."

The same position had been reiterated in His Lordship Marsoof J. in University of Peradeniya v. Justice Jayalath /etc.,/ (2005) 3 SLR 337 at pg. 360.

Similarly, in Perera v. National Housing Development Authority (2001) 3 SLR 50 at pg. 55 it was held as follows;

"It is also relevant to note that the petitioner has submitted to this Court a privilege document which he is not entitled to have in his possession. He has not explained the circumstances under which he came to possess this document. Writ being a discretionary remedy the conduct of the applicant is also very relevant. The conduct of the applicant may disentitle him to the remedy. (R v. Garland] 51)"

It is important to focus to the test applicable for granting an Interim Relief.

Applicable test for granting interim relief in Writ Applications is laid down in Duwearchchi v Vincent Perera 1984 2SLR 94. It has been held that;

"An interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court. The Court should be guided by the following principles:

- i. Will the final order be rendered nugatory if the petitioner is successful?
- ii. Where does the balance of convenience lie?
- iii. Will irreparable and irremediable mischief or injury be caused to either party?"

This test laid down for granting of interim relief had been followed in;

- a. CA (Writ) Application 314/2016 C.A. Minutes dated 31.03.2017
- b. Ceylon tobacco Company PLC vs Maithripala Sirisena and others (CA Writ Application No. 336/2012-CA Minutes 22.02.2013)
- c. Natwealtha Securities Limited vs the Monetary Board of Sri Lanka and others. (CA Writ Application No. 335/2015 - CA Minutes of 29.03.2016).

The Respondents state that the balance of convenience clearly lies with the Respondents, as the two competing interests that has to be balanced is whether it is necessary to permit the Petitioner hospital to perform kidney transplant surgeries as opposed to saving lives of people who would be victims of organ trafficking.

If it was permitted to continue the Petitioner hospital performing kidney transplant surgeries, many innocent people who are suffering with financial difficulties, upon falsified promises of financial gains, would sell their kidneys. They are not being properly educated with regard to the adverse medical conditions post-surgery. In such circumstances, the Respondents state that balance of convenience does not lie with the Petitioner to seek an interim relief from this Court. Intervention permitted in a Writ Application is important as an intervention application dated 28th March 2023 have been filed by certain parties to intervene in this Writ Application. There is no formal order by Court permitting such intervention. Hence, such intervenient parties have not been added as Respondents to this application.

The Respondents whilst making submissions at the Argument stage on 30th May 2023, also made submissions as to why intervention should not be permitted in writ applications. The legal question as to whether intervention is permitted in Writ Applications were comprehensively dealt in the recent judgment CA (Writ) Application 152/20 C.A. Minutes 17.05.2023. In the said judgment His Lordship Laffar j. concluding that intervention is not permitted in Writ Application held as follows;

"it is the view of this Court that generally speaking, the intervention cannot be allowed in Writ Applications in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in Writ Applications"

"In the instant Application the intervenient Petitioner is seeking the same reliefs that are prayed for in the Petition. It appears to this Court that the intervenient Petitioner is in support of the Petitioner. There is no impediment for the intervenient Petitioner to challenge the impugned liquor license issued to the 7th Respondent in a fresh Application. Having considered the facts and circumstances of these Applications, it is the view of this Court that the intervenient Petitioner is not a necessary party for the final determination

of the instant Application. Moreover, the Application filed by the Petitioner will not affect the rights of the intervenient Petitioner"

In arriving at this decision, the court have considered the following judgments which had similarly held that intervention in Writ Applications should not be permitted.

- a. Tyre House (Pvt) Ltd. Vs. Director General Customs - CA- Application No. 730/95. CA-Minute dated 05-06-199
- b. Weerakoon and another V. Bandaragama Pradeshiya Saba (CA Writ 580/2007) 2012 BEI? 310
- c. Harold Peter Fernando V. The Divisional Secretary Hanguranketha and two others 2005 BL1? 120
- d. Dilmi Kasundara Malshani Suriyarachchi V. Sri Lanka Medical Council and Others CA- Application No.187/ 2016, minute dated 05.10.2016

Therefore, the learned Counsel for the Petitioner indicates that in the light of the judicial precedents, it is apparent that the application for intervention should be refused by this Court. The learned Counsel for the Respondent submits that as per the facts and law stated above the Interim relief ought to be refused by this Court. Furthermore, the Respondents state that the all-substantive reliefs prayed for by the Petitioners should be refused subject to costs.

The Petitioners are presently before this Court, seeking a Writ of Certiorari, to squash the impugned letter, bearing reference, No. PHSD/B/KT/INVES/2022, dated 12/12/2022, produced marked as P19, to the Petition, issued under the hand of the Director General of Health Services, Ministry of Health, temporarily suspending kidney transplantation surgeries at the 2nd Petitioner Hospital.

For the ease of this Court, the submissions have been divided into three parts:

- a) Part 1 - An enumeration of the numerous, fatal errors in the impugned order P19.
- b) Part 2 - the vires of the arbitrary decision on the part of the Respondents, acting merely on the basis of purported media expose, to temporarily suspend kidney transplant surgeries at the 2nd Petitioner Hospital.
- c) Part 3 - Statement of Objections file on behalf of the 1st to 5th Respondents, and the Report, produced marked as 1R6.

The attention of this Court is invited to the submissions, which clearly render the impugned order P19 beyond any form of resuscitation in law and to the multitude of irregularities, contained prima facie on the face of the impugned document, produced marked as P19.

At the very outset, it is very clearly indicated, that the impugned letter temporarily suspending kidney transplantation surgeries, produced marked as P19, has been issued with reference "to the recent media disclosure regarding the organ trafficking incident at your hospital", and not on the basis of any legal provision.

The transplantation of all human tissues is governed by the Transplantation of Human Tissues Act No. 48 of 1987. As per section 7 of the aforementioned statutory enactment, all transplantation

of human tissues, including kidney transplantation surgeries have to be performed only if the DGHS provides his consent, in writing. To any person above the age of 21 years, for the removal, during his lifetime, from his body of non-regenerative tissue. All such transplantation of kidneys, carried out at the 2nd Petitioner hospital, have been undertaken pursuant to the relevant consent being approved from the DGHS, prior to such surgeries being undertaken. In fact, the files pertinent to the Complainant Donors, and their relevant consent forms, issued under the hand of the DGHS, has been annexed to Prof. Ravindra Fernando, Chairman of the Ethical Review Committee, produced marked as X-11, dated 08/01/2023.

As such, it is blatantly obvious that the 2nd Petitioner Hospital, had acted well within the scope and ambit of section 7 of the Transplantation of Human Tissues Act, by submitting all relevant documentation to the DGHS, for his due consent, and approval prior to the surgeries being carried out at the Hospital.

The only penal provision contained in the Transplantation of Human Tissues Act, is contained in section 17, which stipulates that anyone buying, selling disposing of, or otherwise dealing in, either directly or indirectly, for valuable consideration, without the prior written approval of the Ministry of Health, shall be guilty of an offence, and on conviction after a summary trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding two years or to a fine not exceeding one thousand five hundred rupees or to both such imprisonment and fine.

As such, even if at all, if one were to merely allege, that the 2nd Petitioner Hospital has engaged in an alleged kidney scam, then the proper course of action, would be to seek a conviction before the Magistrate's Court, in term of section 17 of the Transplantation of Human Tissues Act, and not to recklessly, and callously issue a temporarily suspension, suspending all kidney transplantation surgeries at the 2nd Petitioner Hospital, merely on a purported media exposé. In fact, further fuelling fire to the situation, are the multiple of media statements that have been made by the officials of the Ministry of Health, on 24/11/2022 and 05/12/2022, had made statements that a decision had been made to suspend kidney transplantation surgeries at the 2nd Petitioner Hospital, when in fact no such notice of such allegations, or purported suspension had even remotely been communicated to the 2nd Petitioner Hospital, although the Hospital, had on its own volition, written to the DGHS, seeking clarifications on the issue, produced marked as P12.

The first notice that the Ministry of Health, was entertaining the purported allegation, was by letter, bearing reference No. PHSD/B/KT/INVES/2022, dated 08/12/2022, produced marked as P17, whereby the Hospital was merely asked the details of the Directors of the Hospital, the Ethical Review Committee, and kidney transplantation surgeons at the hospital, and a mere 4 days, later, i.e. on 12/12/2022, without having carried out any form of investigation, and thus in blatant disregard to the trite principles of natural justice, issued the temporary letter of suspension, produced marked as P19.

There is no provision in law to issue such a suspension of surgeries. This court had most pertinently questioned the Respondents, as to the particular provisions, upon which the impugned suspension letter had been issued. However, whilst the Respondents had made several submissions, as will more fully be alluded to hereinafter, the Respondents, had failed to provide, with clarity, and/or certainty, the precise provisions upon which such action had been taken.

Attention of this court is drawn to the conflicting arguments put forward by the Learned Counsel appearing on behalf of the Respondents. Initially, the Learned Counsel, had attempted to validate the issuance of the suspension letter, (P19), by extension of the general powers of holding the office of DGHS. However, the Learned Counsel says that the DGHS, is in fact a Statutory creature, and is thus governed by the provisions of the Health Services Act, and other related laws and regulations, none of which, in any manner and/or form, grant such powers to suspend, even temporarily the undertaking of a particular type of surgery, within a hospital.

Thereafter, the learned President's Counsel, appearing for the Respondents, submitted, that firstly, the authority and power, to suspend kidney transplantation surgeries is implicit in reading together both the Private Medical Institutions (Registrations) Act No 21 of 2006, and the Transplantation of Human Tissues Act No. 48 of 1987, and secondly sought to rely on the Doctrine of Necessity. The power to issue the impugned suspension was based implicitly on the joint reading of both the aforementioned Acts.

The Transplantation of Human Tissues Act No. 48 of 1987, as has been more fully dealt with hereinabove, lays down procedure to be adopted, in the event of a transplantation scam being carried out. As per section 17, a conviction, ought to be obtained from the Magistrate's Court, punishable by a fine and a prison sentence, or both.

However, nowhere does it provide for the suspension of a particular type of surgeries, in as the said Act, prescribes that no such transplantation surgeries may be carried out without the consent of the DGHS, under and in terms of section 7 of the said Act. A procedure, which as at all instances have been adopted and followed by the Hospital. If at all, the Petitioners are convicted upon summary trial before a Learned Magistrate, then the Petitioners would be subject to the penal sanctions contained therein, and not to some adhoc suspension, which very clearly lacks any validity, and whilst a B Report has been lodged, and is presently pending before the Learned Magistrate of Colombo, i.e. No. B 81217/02/22, no conviction of any sorts have been obtained as yet, nor have the Petitioners, nor the Directors of the 2nd Petitioner Hospital, been named suspects thereto.

The Private Medical Institutions (Registrations) Act No. 21 of 2006, as its preamble suggests, an act to provide for the registration, regulation, monitoring and inspection of private medical institutions, and to foster the development of, private medical institutions, and to provide for matters connected therewith or incidental thereto. As such it provides the necessary conditions, and/or elements, which are pre-requisite to carrying out a private medical institution, and/or hospital. If at all, the failure to meet the provisions contained therein, may trigger the suspension of the registration as a Private medical institution, but may not in any event be extended to the suspension of a particular type of surgery being carried out by the Hospital.

Whilst it is conceded that the DGHS, also bears the mantle of Chairman of the Private Medical Institutions Regulatory Council, even if the DGHS, is seeking to validate the impugned suspend kidney surgeries, although the Private Medical Institutions (Registration) Act, does not provide for the same, it must be done, in the capacity of and under the hand of the Chairman, Private Medical Institutions Regulatory Council, and not in the capacity and under the hand of the DGHS, as per suspension letter, dated 12/12/2022, P19. Moreover, a specific decision has to be made in that regard by the said Council, and not by the Chairman alone.

The Private Medical Institutions Regulatory Council, being the Authority, tasked with ensuring the provisions of the Private Medical Institutions (Registration) Act is bided by, had in fact taken a decision to suspend kidney transplantation surgeries at the Western Infirmary, in terms of the said Act, the same would have been submitted before this Court, without simply asserting the same from the bar table, although no Counsel appeared for and on behalf of the Regulatory Council, the 6th Respondent.

It has been submitted, by the Learned President's Counsel appearing for the 1st to 5th Respondents, that both the aforementioned Acts ought to be read in conjunction, and that the issuance of the aforementioned suspension letter, has been done implicitly through both such acts. However, we wish to draw this courts attention to the vastly separate and distinct purposes for which both Acts have been enacted. The Private Medical Institutions (Registrations) Act provides, as has more fully been alluded in its preamble, detailed above, provides specifically for the registration, regulation, monitoring and inspection of the institution, and its facilities, and does not extend to the regulation of a particular type of surgery.

Whereas the Transplantation of Human Tissues Act, being a very specific act provides, as the name suggest, the transplantation of non-regenerative human tissues, and as has been more fully adverted to hereinabove, provides specific penal sanctions, upon conviction. To read such distinct acts, enacted at such different times, and by such different Legislatures, the Transplantation of Human Tissues Act was enacted in 1987, whereas the Private Medical Institutions (Registration) Act was enacted in 2006, is to give a different meaning that what was intended to by the Legislature at the time of enactment, and would be an attempt to now stray into realm of constructively and implicit legislating.

I shall now turn to the Doctrine of Necessity. It was submitted on behalf of the Respondents, that doctrine of necessity, citing De Saram v. Panditharatne and Others ([1984] 2 Sri L.R. 106) and the Indian judgment in Lalit Kumar Modhi v. Board of Control for Cricket in India, that where the law does not provide for a relief, the Administration may use their discretion. However, in the present instance, the Legislature in all their wisdom, has sought fit to include a penal sanction within the Transplantation of Human Tissues Act, which as has more fully be adverted to hereinabove, and as such is not applicable in the least to the present circumstance.

However, it was held in De Saram v. Panditharathne and Others (19841 2 Sri L.R. 106), that where a person is responsible for the maintenance of discipline in a particular institution, suspension pending inquiry would be an inherent or implied right flowing from such responsibility. The question whether the suspension pending inquiry is tainted with malice or unfairness is a different matter.

In the present instance, whilst the DGHS, is the authority vested with the power to provide his consent in terms of section 7 of the Transplantation of Human Tissues Act, that section by its very nature provides the DGHS a safeguard, to prevent any irregular transplantations from taking place, and is thus materially separate and distinct from the authority vested on the Vice Chancellor, by the Universities Act.

In fact, as per Priyantha Jayawardena, J. in Ranjith Flavian Wijeratne v. Asoka Sarath Amarasinghe and 8 others, SC Appeal No. 40/2013, S.C.M. 12/11/2015, provides as follows:

"A tribunal exercising quasi-judicial functions is not bound to adopt a particular procedure in the absence of statutory provision. In some situations, the tribunals have to act within certain limits. However, it needs to observe certain minimum standards of natural justice and fairness when discharging its functions.

The need to follow the principles of natural justice is an accepted norm in Sri Lankan courts and tribunals as well as in the world over for several decades. I am of the opinion that the need to follow principles of natural justice has now become part of the Sri Lankan law. Hence, in the absence of special provisions as to how the court or tribunal is to proceed, the law requires that the principles of natural justice to be followed."

Justice Jayawardena, further cites Lord Diplock in the case of O'Reilly v. Mackman (1983) 2 AC 237 at 276, where it was "held that the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement."

The suspension, issued by the DGHS, dated 12/12/2022, produced marked as P19, without ever having afforded the 2nd Petitioner Hospital an opportunity of being heard prior to the suspension being issued, is a clear violation of the principles of *audi altera partem*, and in gross violation of the principles of Natural Justice, which renders such decision voidable.

This position is further supported by Wade & Forsyth, "Administrative Law", 11th Edition, page 374, as follows:

"Violation of natural justice is then to be classified as one of the varieties of wrong procedure, or abuse of power, which transgress the implied conditions which Parliament is presumed to have intended. Just as a power to act "as he thinks fit" does not allow a public authority to act unreasonably or in bad faith, so it does not allow disregard of the elementary doctrines of fair procedure. Thus, violation of natural justice makes the decision void, as in any other case of ultra vires."

A similar position is further taken in M P Jain & S N Jain, "Principles of Administrative Law", 9th Edition, at page 772, as follows on *audi alteram partem*:

"The basic requirement of this maxim is that each party must have a reasonable notice of the case he has to meet; and he must be given an opportunity of stating his case and answering (if he can) any arguments put forward against it. This requirement of natural justice applies to all statutory functions i.e. administrative judicial or quasi-judicial, because where holders of power have been assigned duty to decide the rights of individuals, those likely to be affected must be given the opportunity of having their say. This is a procedural propriety"

In addition, it is my view that suspending the 2nd Petitioner Hospital, as a knee jerk reaction, to a purported media exposé, the suspension issued by the DGHS, is categorically tainted with malice, and is in blatant disregard of the trite principles of natural justice.

The impugned suspension has been issued, having taken cognizance of the purported public safety. However, it is more fully reiterated, that all kidney transplantation surgeries carried out at the 2nd

Petitioner Hospital was carried out only after having due consent being obtained by the DGHS, in terms of section 7 of the Transplantation of Human Tissues Act. Upon the Hospital getting wind of a purported suspension via the media Statements in November 2022, and although the Hospital had not in any manner or form been even remotely informed of the same, the Hospital had on its own volition, written to the DGHS, by letter dated 01/12/2022, inquiring into the alleged suspension, P12, even though the hospital already had scheduled 2 transplantation surgeries upon having obtained consent from the DGHS, and refrained from carrying out the surgeries, as will be more fully elucidated hereinafter.

In fact, the Hospital, was more than agreeable to allowing a Ministry Official sit in the Ethical Review Committee, and overlook the screening process, as a sign of good faith, and in discharge of its due diligence, and more fully as an assurance to the Ministry as to its dedication to the field of transplantation. Upon a plain reading of the suspension letter P19, that prima facie the suspension has been issued in "Reference to the recent media disclosure regarding the organ trafficking incident at your hospital". As such the suspension letter does not refer, in any way to any inquiry of sorts, or investigation, which had led to the suspension, and it is only by their subsequent report, produced marked as 1R6 in the Statement of Objections, and affidavit date 27/04/2023, which then *ex post facto* attempts to validate and rationalize a decision taken more than 5 months before the Report was finalized.

Following the Media expose, 5 Donors have lodged police complainants, that they were promised a certain sum of money, but were not paid the same promised sum in full. As such, it is a blatant admission by the very individuals that the so-called Complainants, had in fact engaged in buying, selling, disposing of or otherwise dealing with, either directly or indirectly for valuable consideration, their kidneys, in blatant violation of the section 17, being the penal provision of the Transplantation of Human Tissues Act, by their very own admission.

Upon such a categorical admission having being made to the Colombo Crimes Division, the most obvious response would have been to forthwith institute an investigation into such admissions. However, it is indicative of serious *mala fides*, surrounding the present application, that whilst travel bans have been issued against the Directors, from as far back as December 2022, without having been named as parties to the proceedings before the Colombo Magistrate's Court in case No. B 81217/02/22, no action, whatsoever has been taken in regards to those, who by their own admission has violated the section 17, the penal provision in the said act.

It has further been submitted on behalf of the Respondents, that the mere fact of the 2nd Petitioner Hospital, paying an ex-gratia payment, on 19/11/2022, is conclusive evidence that the Hospital has engaged in the purported kidney scam. This is a perverse position to take, as the Petitioners has clearly explained that such payment was made to safe guard the hospital and patients from an unruly mob. This act of desperation, done in public and in an open area, cannot in any way or manner be considered a 'scam'. In this context, it is reiterated, that the 2nd Petitioner Hospital, is a fully functioning hospital, providing a range of services to the Public. On 18/11/2022, a mob, had stormed the hospital, created a ruckus, and threatened not only to commit suicide, but also to set the entire hospital on fire.

This type of threats carried out in the middle of the day, and more so in a hospital looking after sick patients, would obviously cause panic and concern amongst not only the patients but the staff as well. As such the Petitioners took the only means available to them to forthwith de-escalate a

situation that may have gotten very much out of control, and caused unforeseeable trauma to those present, both patients, and staff, by undertaking to pay a nominal *ex gratia* payment to the mob, and it was in a bid to avoid a recurrence of a similar incident on the following day, that the mob was directed to a public neutral venue.

It is further submitted by the learned counsel for the Petitioner, that within the mob that had stormed the Hospital, was the person called "Sandun", who is not only the primary suspect in the case No. B 81217/02/22, presently pending before the Colombo Magistrate, and in fact is the same individual who had even, rather humorously alleged that he was offered a sum of money in exchange for his testicles. Learned Counsel further says that which is ludicrous to say the least, and is an indication of the absurd lengths taken to lay blame on an institution that is in no way culpable for the actions of third-party actions.

It is reiterated, that whilst Sandun, being the primary suspect in B Report No. 81217/02/22, he was merely arrested after several media statements were made by Donors alleging that it was in fact, he, who had promised a certain sum to them, the Directors of the 2nd Petitioner Hospital, had travel bans issued against them from December 2022, without having being named as parties thereto. As has more fully been disclosed in the Petition, Prof. Rezvi Sheriff too undergone a kidney transplantation surgery in August 2022. Prior to the surgery taking place, the relevant documentation was forwarded to the DGHS, Ministry of Health, for proper consent, and upon such consent being obtained in terms of section 7 of the Transplantation of Human Tissues Act that the surgery was performed.

Following the surgery, and as a sign of gratitude for the love and affection towards the 1st Petitioner, which led Mariyadasa Gnanadasan, to donate his kidney to Prof. Sheriff, his wife and daughter had visited Mariyadasa Gnanadasan, and in appreciation for the sacrifice he had undertaken on behalf of their husband, and father, showered him with gifts, to ensure that he is cared for during the recovery, until the resumption of normalcy. What transpires thereafter, between Mariyadasa Gnanadasan and "Sandun", was not privy to the Prof. Sherriff's family, and a separate transaction between those two individuals.

In addition to the aforementioned, the several acts of *mala fides* by persons acting on behalf of the Ministry of Health. In as much as from about 24/11/2022, and culminating on 05/12/2022, the 1st Respondent, and the 3rd Respondent, had made several contradicting statements in regards to the 2nd Petitioner Hospital.

Attention of this court is drawn to the following examples:

a) the statements made on/about the 24/11/2022, (P11(a)) and on 05/12/2022 (P15): On 24/11/2022, it was initially stated that a temporary suspension had been issued preventing, temporarily any organ transplantations being carried out by the Western Infirmary, whereas as per the 05/12/2022, media statement, given by the 1st Respondent, the decision to temporarily suspend organ transplantations had been taken only on 05/12/2022.

b) statements made on 24/11/2022, (P11(a)) and aired on 02/12/2022, (P 13) and 05/12/2022, (P15): A committee was said to have been constituted as per the Media statement, aired on 24/11/2022, (P 11(a)), but as per the media statement, aired 02/12/2022, (P13), the Western Province Director General of Health Services was said to

have been appointed to carry out an investigation into the hospital. Thereafter, as per the statement on 05/12/2022, (P15), the media Statement by the 1st Respondent, with the concurrence of the Secretary, and Hon Minister of Health, he had appointed a seven-person committee to inquire into the allegations being broadcast on social media and television.

It is blatantly obvious that the Ministry of Health had acted wilfully, and negligently by issuing the aforementioned statement on 24/11/2022, announcing an enforced suspension of transplants at the 2nd Petitioner Hospital totally neglecting the fundamental legal requirement to call for an explanation from the Petitioners and without any form of preliminary investigation. It is reiterated that the Ministry of Health had not at any point in time prior to the media statement called any one of more of the Petitioners and their servants, and their agents, and their nominees to provide an explanation to these allegations.

As per the Statement of objections, filed on behalf of the 1st to 5th Respondents, reference had been made to fraudulent Grama Sevaka certificates, and an inquiry into the same on or about 2019 to 2021. The issuance of the fraudulent certificates by a third party Grama Sevaka, who is no way connected to the 2nd Petitioner Hospital, is not in any manner or form attributable to the hospital. In fact, it is the Donors and Recipients who obtain the necessary documentation, and submit to the hospital. The relevant persons at the Hospital do not have the necessary technical competence to evaluate the validity and veracity of a document issued by a public servant. These very documents have been submitted to the Health Ministry for approval prior to the surgeries. If the Respondent's argument is to be adopted, should not the officials at the Health Ministry, who approved the surgeries also be faulted and dealt with? Singling out the 2nd Petitioner Hospital, is exercise in blaming the scape goat, and cannot be a basis for a court of law like this Court to act upon.

In this context it was argued that whilst the Hospital submits such documents to its in-house Ethical Review Committee, as a sort of administrative assistance to the DGHS, the actual authority to verify consent is statutorily placed on the DGHS, in terms of section 7 of the Transplantation of Human Tissues Act. As such, the learned counsel for the Petitioner argued that if the Hospital was even remotely culpable to the actions of the Grama Sevaka, the DGHS ought to have not granted their consent to any transplantation surgery at the hospital, from 2021, at the latest.

However, 18 months hence, to now contrive to state that such past conduct was part of the consideration, which lead to the issuance of the suspension in December 2022, is irrational, capricious, and arbitrary, and speaks of the severe vires against the Petitioners and is once again a blatantly obvious tactic to rationalize and vindicate *ex post facto* the perverse decision to suspend the transplantation surgeries. On behalf of the Petitioner learned Counsel submits that the Report, issued by 9 Doctors, is a malicious and spiteful attempt and rationalizing and validation *ex post facto*, the rash, ad hoc, unlawful, illegal, capricious, arbitrary and vexatious decision to suspending kidney transplantation surgeries on a purported media expose. As at the time of suspension, aside from merely requesting a list of the Directors, Ethical Review Committee Members, and surgeon, a mere 4 days prior, to the issuance, no inquiry had been undertaken.

I will now turn into the contents of the Report, dated 26/04/2023, produced marked as 1R6. As per the recommendations, contained in page 10 of 12 of the said Report, the very 1st recommendation is reproduced below;

"වෙස්ටර්න් ඉන්ෆර්මර් රෝහල තුළ අවයව ජාවාරමක් සිදු වූවේ දැයි නිශ්චිත නිගමනයකට එළඹීමට අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව මගින් අපරාධමය පරීක්ෂණයක් සිදු කළ යුතුය."

The very 1st recommendation itself, called for a proper criminal investigation be carried out to come to a final conclusion on whether an 'organ racket' had taken place in the hospital. Thus, it is evident that the committee has not arrived at any conclusive factual findings against the Hospital. To continue with this suspension, pending the conclusion of an open-ended criminal investigation, with no time frame or end in sight, would be tantamount to a permanent suspension, and is therefore perverse and cannot be upheld by this Court.

The recommendation in the Report, made 6 months following issuance of the impugned letter of suspension (P19), is effectively to continue with the suspension until such time as the conclusion of all relevant investigation, inquiries, as well as the conclusion of any legal proceedings that may, or may not be instituted. Clearly then, even at this stage there is insufficient material to conclude that the Hospital had committed wrongful acts. Therefore, it is evident at the time the impugned suspension was issued, there was no material whatsoever for Ministry of Health to arrive at a *prima facie* conclusion that a wrong had been perpetrated. So far, the Respondents have failed to demonstrate the matters relied on to issue the suspension made on 12/12/2022.

Thus, the learned counsel for the Petitioner argued that the Statement of Objections filed on behalf of the 1st to 5th Respondents, and more particularly the Report, produced marked as 1R6 thereto is blatantly a self-serving document, seeking to rationalize and validate *ex post facto*, the impugned decision, retrospectively, and invalid, illegal, has no basis in Law.

It is evident from the foregoing the impugned suspension P19 has been issued:

- a) without any legal provision to suspend surgeries at a hospital;
- b) without having verified by way of evidence, that any illegal act had been committed by the Hospital; and
- c) as a knee jerk reaction to a media blitz deliberately designed to discredit the Hospital, and in connivance with persons behind such a vilification campaign.

It is also evident from the objections filed that:

- a) the committee appointed to justify P19 has only given the report marked 1R6 which is inconclusive to say the least;
- b) it does not validate the suspension effected by P19;
- c) there is no legal basis to continue with the suspension in P19 any further; and
- d) continuing with the suspension is contrary to principles of proportionality.

Therefore, it is evident that the Petitioner is entitled to the interim relief prayed for and that the suspension marked P19, should be held in abeyance and not given effect to until the final hearing and determination of this application. In this regard, it is reiterated that no prejudice can be caused to any patient or Respondents, for as explained above the Transplantation of Human Tissues Act sets out the strict regulatory framework for the approval of a transplant. Suspending the Petitioners, in view of these checks and balances that exist cannot be justified. It is merely a punitive act, which the Respondents have no power to effect.

The Hospital's primary expertise lies in the treatment of kidney disease which would at time culminate in the performance of Kidney Transplants. Continued suspension, would compromise the comprehensive treatment that can be afforded to patients, with the more serious cases requiring surgery, having to be sent from pillar to post, to secure a place for a surgery. Further, the suspension will virtually kill the core service offered by the Hospital jeopardizing the livelihood of its entire staff. The termination of their services would be inevitable, if this suspension is continued. Therefore, effects of the serious loss and damage caused by this continued illegal suspension are felt far and beyond the Petitioner.

Therefore, this court would grant the Petitioners the interim and other reliefs prayed for in their Petition, and grant a mandate in the nature of a Writ of Certiorari, quashing the suspension of kidney transplant surgeries, dated 12/12/2022, produced marked as P19.

The Petitioner invokes the Writ jurisdiction of this Court challenging *inter alia*, The decision of anyone, and more of the 1st to 4th Respondents, and their servants, and their agents, to impose a 'temporary suspension of kidney transplant surgeries' carried out at the 2nd Petitioner Hospital until further notice' based on media reports, on the premise that the said decision is *ultra vires*, arbitrary, unreasonable and implemented as a knee jerk reaction to incendiary media reports, without any justifiable reason.

The Petitioners at the very outset state that all Kidney transplants are carried out under and in terms of the Transplantation of Human Tissues Act No. 48 of 1987, and in terms of the circulars which lays down the procedures for the removal and donation of human bodies, organs and tissues for therapeutic, scientific, educational and research purposes in Sri Lanka.

The Petitioners State that every Donor is assessed on the following grounds:

- (a) Type of Donor;
- (b) Counselling;
- (c) Consent for organ removal;
- (d) Risks involved;
- (e) Legal Procedures, including *inter alia* Donor authorization and ethical review;
- (f) Age eligibility for donations;
- (g) ABO Blood grouping and cross match testing;
- (h) Medical evaluation of the Donor and Donor suitability;
- (i) Renal function evaluation;
- (j) Follow-up Donor evaluation.

An essential aspect of living Donor kidney transplantation, is that it has to be established that the Donor is in fact willing, and donates the kidney willingly, and of his own free will, and not under duress, nor being coerced into doing so. The treating technician is required to explain all aspects of the donation to the Donor, including *inter alia*, the consequences of living post donation, and on reverting back to normal state of life. A pre-donation psychological evaluation is crucial to

assess, and make sure that the Donor is of sound mind, and is fully aware of the gravity of undertaking such a task.

In terms of the prevalent law, Donors must be over the age of 25 years if male, and over the age of 30 years if female, in comparison to the UK guidelines, which allows for the Donors to be merely over 18 years. The seeking of consent for the removal of organs from living Donors, for the purposes of transplantation is the responsibility of the treating physician, and the Donor should give valid informed consent without any influence, and duress of any sort. However, the Donor is free at any time, up to the very date of transplantation, to refuse to proceed with the procedure.

The Petitioners State that the Western Hospital provides three stages of counselling, and consent from each Donor, including *inter alia*:

- (a) Counselling at the investigation stage, providing explanations on all aspects of the Donation, following which the first round of written consent is obtained;
- (b) Thereafter, Donor is counselled by the Donor Authorization Committee, and written consent is once again obtained in the Donor's vernacular;
- (c) The third and final round of Counselling is offered immediately before the surgery, wherein all aspects of the surgery are explained, and surgical consent is obtained.

In addition to the aforementioned the Petitioners state that all Donors and Recipients are required to follow the established legal procedures, including *inter alia*, affidavit's to the effect that the relevant donation is to being undertaken purely out of the love and affection, and on humanitarian grounds, to the exclusion of all monetary gains, in line with the aforementioned the Transplantation of Human Tissues Act, and include the submission of relevant documentation to the Ministry of Health, for prior approval.

The Petitioners state that the proceedings for a kidney Transplant may be instituted in 2 ways. A patient may approach the hospital, having found a willing Donor, or the patient may already be receiving dialysis, and in the search of a willing Donor.

According to the Petitioner, if the Patient approaches the hospital with a willing Donor, the hospital follows the following procedure:

- (a) Patient will meet with a Nephrologist, who will assess whether the patient requires a kidney transplant, and would register with the Kidney Transplant Coordinating Centre (KTCC);
- (b) The Patient would then bring the Donor for evaluation. The entire transplantation process would therein be explained to the Donor;
- (c) Blood type testing, and Diabetes and Hypertension evaluations done on the Donor;
- (d) Both Donor and Patient admitted to the Hospital for a full evaluation on their suitability to undergo the proceedings;
- (e) Concurrently check list of documents required by the Ministry of Health is provided to both the Patient and the Donor;
- (f) 3 Stages of testing for Donor evaluation and registration;

- (g) The Patient and Donor both receive the 1st round of counselling;
- (h) Clinical evaluation, followed by Donor consent;
- (i) The Patient will be evaluated by a Nephrologist, Surgeon, Cardiologist and Anaesthesiologist, to assess whether the Patient is fit to receive the Donation;
- (j) The Donor will be evaluated by a Nephrologist, Surgeon, Cardiologist and Anaesthesiologist, to assess whether the Donor is fit to donate his organ;
- (k) Once the clinical evaluations are complete, the relevant documents required by the Ministry of Health, are forwarded to the Donor Authorisation Committee or Ethical Review Committee, consisting of Prof. Ravindra Fernando (MBBS, MD, FCCP, FCGP, FRCP (London)), Professor of Forensic Medicine and Toxicology, sitting as the Chairman, Dr. Ariyarani Gnanathan, Professor at the Faculty of Medicine, University of Colombo, Mrs. Champika Monarawila (LLB), Attorney-at-Law, Mr. K.A.S. Dharmasiri, Postgraduate Institute of Medicine and Justice of the Peace, and Prof. Rezvi Sheriff;
- (l) However, Prof. Sheriff, does not participate in any discussions, approval pertaining to his institute, and merely functions in *ex officio* capacity, due to regulatory requirements;
- (m) Donor Authorisation Committee or Ethical Review Committee, will evaluate both the Patient and the Donor, on the strength of the documentation provided by them, as to the veracity of their claims;
- (n) Donor Authorisation Committee or Ethical Review Committee, will further provide a second round of counselling to both the Patient and the Donor, to assess their fitness to undergo such a perilous surgery;
- (o) Once the Donor Authorisation Committee or Ethical Review Committee approval is obtained the documents are then forwarded to the Ministry of Health for their approvals;
- (p) The first round of approvals is granted by the Director -MS 1, Ministry of Health, who will check all documentation submitted pertaining to the relevant application. Following which the application/documentation will be forwarded to the Director - MS
- (q) The second round of approval will be obtained from the Director - MS 2, following which the application/documentation will be forwarded to the DGHS, for the final round of approvals;
- (r) The third and final round of approval will be thereafter being granted by the DGHS, Ministry of Health, who will thereafter communicate their decision to the Hospital;
- (s) Upon the hospital receiving the aforementioned approval, the kidney transplant surgery will be fixed, with the concurrence of the Kidney Transplant team;
- (t) Both the Patient and the Donor will be admitted a day prior to the scheduled surgery;

- (u) Final and third round of counselling offered by the Hospital to the Patient and Donor, regarding the surgery;
- (v) Consent to perform the surgery obtained from the both the Patient and Donor;
- (w) Day of kidney transplant surgery;
- (x) Following the surgery, the Donor will remain in the Intensive Care Unit for 1 day, following which the Donor is transferred to a ward for a further 4 days;
- (y) The Patient/Recipient will remain in the Intensive Care Unit for 4 days, following which the Patient/Recipient will be transferred to a ward for a further 4 days;
- (z) Both Patient/Recipient and Donor, will thereafter be give a post-surgery round of counselling on certain pre-cautions to be undertaken for the next 6 months, and will be clinically evaluated to assess whether both parties are physically fit for discharge;
- (aa) If fit for discharge, then discharged from Hospital.

The Petitioner further states that if the Patient is already receiving Dialysis treatment from the hospital, prior to finding a Donor, the aforementioned procedure would have already commenced prior to Donor being found, in as much of the same testing carried out on the Patient, would have been undertaken over the course of Dialysis. The Petitioner further states that upon the Patient and Donor being identified, the Hospital maintains comprehensive records of the same. Upon the documents being forwarded to the Ministry of Health, and being subjected to the three rounds of approvals, and final authorization being granted by the DGHS, Ministry of Health, the Donor and Recipient is warded a day prior to their scheduled surgery.

The Petitioner states that, diseases of the urinary system, under which chronic kidney disease is classified, have been the fourth leading cause of hospitalization (1,830 per 100,000 population) and the eighth leading cause of hospital deaths (14.4 per 100,000 population) in Sri Lanka in 2019 according to the Annual Health Statistics Report. As per the 2019 Annual Health Statistics Report, and according to a recent cross-sectional epidemiological study conducted in the Western province revealed a CKD prevalence of 14.8% among adults.

The CKD burden of the country has risen further during the last two decades with the detection of an increasing number of individuals with CKD from the north-central region of Sri Lanka, who do not have the traditional risk factors such as diabetes or hypertension or any other known causes of kidney disease. This disease, now termed CKD of unknown aetiology (CKDu), was first reported in the districts of Anuradhapura and Polonnaruwa in the Northcentral province but was subsequently identified from certain other hot spots in adjacent Kurunegala, Matale and Badulla districts. The prevalence of CKD in these endemic areas ranges from 5 to 15% with more than 75% of them not having traditional risk factors for CKD.

The Petitioner states that many steps have been taken by the Sri Lankan government to mitigate the disease including *inter alia*, the provision of demineralized water, banning the importation of certain agrochemicals, and provision of health advice on food and food preparation. Sri Lanka has a universal healthcare system that extends free healthcare to all citizens. The Ministry of Health provides government-funded free healthcare services via a tiered network of urban tertiary care

hospitals coupled with smaller provincial and district hospitals and peripheral clinics. Haemodialysis is the main modality of renal replacement therapy (RRT) for patients with end-stage renal disease (ESRD) and is available mainly in tertiary care hospitals based in larger cities, and that almost all the state-funded dialysis units are hospital-based with very few stand-alone dialysis units. Most of these units are overwhelmed by the excessive number of patients requiring chronic RRT resulting in many prioritizing dialysis to individuals with kidney transplant plans, and younger patients with fewer comorbidities. Most patients are dialyzed only two times per week with a considerable number getting only once per week or even lesser frequency of dialysis.

The Petitioner states that only a few hospitals in the private sector provide dialysis services. Most of them are based in the Western province, and access is limited to patients who can afford the out-of-pocket expenditure. Initiation of dialysis for most is via temporary vascular catheters with only a minority having mature arteriovenous fistulae (AVF) at the start of maintenance dialysis. Many factors including delayed referral to nephrology services, poor patient uptake, and delays in creating AVF due to lack of trained staff and non-availability of surgical theatre facilities contribute to this. Both haemodialysis and CAPD are provided free of charge in public hospitals. A haemodialysis session in the state sector approximately costs USD 38, while it costs between USD 39-43 in the private sector. Considering that most patients undergo twice-weekly dialysis the approximate cost per month for a patient on haemodialysis is USD 300 - 350. Despite the haemodialysis and the medications provided free of charge in the state sector, indirect expenses including transport and loss of work due to treatment have resulted in many patients not attending dialysis sessions regularly.

Patients have to bear the cost of dialysis out-of-pocket in the private sector, and those in low-income groups are supported by the government through the President's Fund, where Rs.400,000/- (USD 1000) per patient is paid directly to the private dialysis unit. Thereby reducing the burden placed on the GOSL.

The Petitioner states that whilst CKD patients may be treated with Dialysis, and some patients do indeed choose to stay on dialysis through-out, it is a painful process and may be accompanied by a multitude of side effects that have a direct impact on their mental and physical health. Some patients would seek to undergo a Kidney transplant surgery, which in itself is not without its risks. As per the 132nd International Medical Congress of Sri Lankan Medical Association, 2019 SLMA, the number of Kidney transplants carried out in Sri Lanka, as at 2018, are as follows:

LDKT — Living Donor Kidney Transplant

DDKT — Dead Donor Kidney Transplant

The Petitioner states that as per the aforementioned table, of the total number of living Donor kidney transplants undertaken over the year, the burden providing a majority of such services falls onto the private sector. Private sector hospitals are not authorised to carry out any Dead Donor Kidney transplants. As one of the foremost practitioners in Nephrology, and who no less was involved in the very first Kidney transplant surgery in the country, as well as being one of the leading authorities in the area, was most severely aggrieved and shocked upon this contrived and malicious expose about Western Infirmary, which he had developed over the last 3 decades.

In any event, the proper course of action would be to forthwith notify the hospital, and its Board of Directors, as to the allegations being levelled against it, so as to ensure that the Hospital would

then be given an opportunity to respond to such allegations and aspersions being cast against it. This gross failure on the part of anyone or more of the 1st, and/or 2nd, and/or 3rd Respondents, and/or their servants, and/or their agents, to even communicate the aforementioned allegations to the Petitioners, and/or Western Infirmary, and further to provide an opportunity to be heard, is *prima facie* illegal, unlawful, ultra vires, vexatious, arbitrary, and capricious, and is furthermore offends the principles of legitimate expectation, natural justice, reasonableness, fairness, and rationality, exceeding jurisdictional boundaries, illegality, and violative of the trite principles of natural justice and proportionality.

The Petitioner states that consequent to the aforementioned exposé the Colombo Crimes Division of the Police Department had filed B-Report No B 81217/02/22, at the Magistrates Court of Colombo. Even though the Petitioners or the Directors of the 2nd Petitioner was not named as suspects, travel bans have been imposed against the 6 Directors of the 2nd Petitioner Hospitals. Having not received any form of communication from the Ministry of Health, and in light of the multiple transplants scheduled to happen at the Western Infirmary, the Petitioners had written to the 3rd Respondent, i.e. Dr. Asela Gunawardena, Director General Health Services, Ministry of Health, by letter dated 01/12/2022, in reference to approval that has been sought, and/ on behalf of 2 other patients, whose documents had already been approved of by the Ministry on 14/11/2022.

As per the aforementioned letter dated 01/12/2022, the Petitioners had stated that the surgeons are unsure of whether to proceed with any scheduled surgeries, in as much as the Media statement, more fully referred to herein above had indicated that all kidney transplants performed by Western Infirmary had been temporarily suspended, however the Petitioners had gone onto state that neither one of the Petitioner's had received any form of communication in regards to the purported temporary suspension. Once again, the Petitioners had not received any response to the aforementioned letter. It is blatantly obvious that the Ministry of Health had acted wilfully, and/or negligently by issuing the aforementioned statement on 24/11/2022, announcing an enforced suspension of transplants at the 2nd Petitioner Hospital in the absence of even an explanation being called from the Petitioners, without any form of preliminary investigation. It is reiterated that the Ministry of Health had not at any point in time prior to the media statement called any one of more of the Petitioners and/or their servants, and/or their agents, and/or their nominees to provide an explanation to these allegations.

The Petitioners thus state that, the failure, and/or omission of the 1st to 3rd Respondents, and/or their servants, and/or their agents, to call for an explanation from the any one of more of the Petitioners' and/or their servants, and/or their agents is *prima facie* illegal, unlawful, ultra vires, vexatious, arbitrary, and capricious, and is furthermore offends the principles of legitimate expectation, natural justice, reasonableness, fairness, and rationality, exceeding jurisdictional boundaries, illegality, and violative of the trite principles of natural justice and proportionality.

Thereafter the 2nd Respondent, i.e. Dr. Dhamminka Alahapperuma, had arrived unannounced at the Western Infirmary, on/about 05/12/2022, and acted in a very hostile, and/or aggressive manner, and had yelled at staff members, and/or nurses at the Dialysis Unit, and had further gone up to the Intensive Care Unit, and insisted that it be opened, so that he can inspect whether any kidney transplant had been carried out, which had not been the case. The Petitioners state that in

the meanwhile Prof. Sheriff, i.e. the 1st Petitioner has arrived at Western Infirmary, and queried as to the purpose of the aforementioned visit by the 01st Respondent above named.

The 3rd Respondent had further stated, that on/about 05/12/2022 that a decision has been reached, to temporarily suspend the organ transplants being carried out at Western Infirmary, until the conclusion of the investigation. It has been borne out in the aforementioned letter dated 01/12/2022, Prof. Sheriff, i.e. the 1st Petitioner has requested permission to carry out surgeries, which had already been approved by the 2nd Respondent, and/or the 3rd Respondent, and/or any one or more of their servants, and/or agents, and clearly stated that at no point in time had the Petitioners undertaken any transplant out-side of the approvals granted by the Ministry.

In fact, the Petitioners had submitted all the necessary documentation, vetted by the Ethical Review Committee of Western Infirmary, to the Ministry of Health, for three rounds of approvals, culminating in approval being granted by the 3rd Respondent, which thereafter leads to the surgery even being scheduled. A further statement by Dr. Dhamminka Alahapperuma, Secretary, Private Health Services Regulatory Council, in which he state that an investigation had been carried out on the information published on print, and video broadcasts, and had looked into the irregularities that had taken place in the kidney transplants undertaken at Western Infirmary, and an investigation carried out, and further that the reports issued based on such investigations had been rejected by the Directors of Western Infirmary.

The Petitioners draw the attention of this court to the severe discrepancies between the 2 statements given by the Dr. Dhamminka Alaheppuruma, and the Dr. Asela Gunawardena, DGHS, in as much as the former in his statement indicates that an investigation has been carried out by the Private Health Serviced Regulatory Council, were as the DGHS, indicates the appointment of a 7-person committee taken on the 05/12/2022.

In as much as the Ministry of Health has *prima facie* appointed multiple committees, the Petitioners state that at no point in time had any one of more of the Petitioners and/or their servants, and/or their agents, been as at the 05/12/2022;

- a) even remotely been notified of any form of committee being appointed, and/or
- b) been called for an explanation in regards to the aforementioned allegations.

As such the Petitioners state that the failure and/or omission, as at 05/12/2022:

- (a) to be notified of any form of committee being appointed; and/or
- (b) call for an explanation in regards to the aforementioned allegations; and/or is *prima facie* illegal, unlawful, ultra vires, vexatious, arbitrary, and capricious, and is furthermore offends the principles of legitimate expectation, natural justice, reasonableness, fairness, and rationality, exceeding jurisdictional boundaries, illegality, and violative of the trite principles of natural justice and proportionality.

The Petitioners further state that the only formal communication that has been received in regards to the aforementioned investigations, and/or inquiry, is by letter bearing reference No. PHSD/B/KT/INVES/2022, dated 08/12/2022, titled "Appointment of Committee to Investigate the Organ Trafficking Incident at Western Infirmary Hospital, Colombo", in terms of which, the Hospital has been notified of the investigation being commenced, and requesting a list of names of the

Board of Directors, Ethical Committee, and specialist surgeons, who had participated at kidney transplants.

Aside from the aforementioned letter dated 08/12/2022, no formal communication regarding any of the purported ongoing investigations, and/or inquiries, and/or committees, aside from the 7-person committee appointed on the 05/12/2022 had been communicated to the Petitioners. Thus the Petitioners state that failure, and/or omission of the 1st to 5th Respondents, and/or their servants, and/or their agents to notify the Petitioners, in relation to the aforementioned is prima facie illegal, unlawful, ultra vires, vexatious, arbitrary, and capricious; and is furthermore offends the principles of legitimate expectation, natural justice, reasonableness, fairness, and rationality, exceeding jurisdictional boundaries, illegality, and violative of the trite principles of natural justice and proportionality.

The Petitioners further states, in a rather shocking turn of events, the Petitioners have become aware of a most ludicrous and absurd aspersion being levelled at the Western Hospital, alleging that the Petitioners are also engaging in "testicle transplantation". Such sort of ridiculous aspersions demonstrates the palpable mala fides against the Petitioners. It was strange to see the person, identified as "Sandun", making allegations to the media, for the said Sandun was the very same individual accused of fraud by the mob, who had stormed the 2nd Petitioner Hospital.

The Petitioners state that whilst the situation remained such the Ministry of Health contacted Western Hospital on/about 02:48 pm on the 12/12/2022, and requested that an office assistant be sent to the Ministry to collect a letter issued to the 2nd Petitioner Hospital.

Upon sending an officer to the Ministry of Health, the Petitioners states that that Ministry had then handed over letter bearing reference No. PHSD/B/KT/INVES/2022, dated 12/12/2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, which had been minuted as received at 04:00 pm of even date.

The Petitioner states that purported letter of temporary suspension, provides as follows:

"Organ Trafficking Incident at Western Infirmary Hospital, Colombo"

"This has reference to the recent media disclosure regarding the organ trafficking incident at your hospital. Please note that, the Ministry of Health has decided to temporary suspend the kidney transplant surgeries in your hospital until further notice."

The aforementioned letter of temporary suspension and the decision to so suspend is bad in law, *inter alia* for the reasons that:

- (a) The suspension has been effected based on media hyperbole and hysteria motivated by malice and extraneous considerations;
- (b) The letter has in no way and/or manner indicated a reference to a file, and or inquiry, and/or investigation, and/or preliminary inquiry which had led to the decision to temporarily suspend kidney transplant surgeries;
- (c) No justifiable reasons have been given for temporarily suspending kidney transplant surgeries;

- (d) The only explanation offered, i.e. the "recent media disclosures regarding the organ trafficking incident", is perverse and unreasonable;
- (e) No reference has been made to the provisions, and/or circulars, and/or by-laws, in terms of which the letter temporarily suspending kidney surgeries, had been issued;
- (f) The said temporary suspension is illegal, ultra vires, and unlawful, and not based on ascertainable law;

It is the considered view of this court that, by the very reference to the phrase "organ trafficking incident at your hospital", it is blatantly obvious that the Ministry of Health had pre-judged the manner, in direct violation of the principle of Natural justice, and Audi Alterum Partem. The Petitioners state, as has more fully been adverted to above, that the Ministry of Health has on multiple occasions referred to the temporary suspension of kidney surgeries from as far back as 24/11/2022, and as has been more fully set out above appointed multiple committees to investigate, and/or inquire into the so-called scam. However, a cursory reading of the letter temporarily suspending surgeries, does not in any manner and or form indicate any of the references to identifying the particular decision taken in relation to the same.

In light of such serious omissions, and/or infirmities, present on the face of the aforementioned letter temporarily suspending kidney transplant surgeries, the aforementioned temporary suspension letter, bearing reference No. PHSD/B/KT/INVES/2022, dated 12/12/2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, is prima facie illegal, unlawful, ultra vires, vexatious, arbitrary, and capricious, and is furthermore offends the principles of legitimate expectation, natural justice, reasonableness, fairness, and rationality, exceeding jurisdictional boundaries, illegality, and violative of the trite principles of natural justice and proportionality.

The Petitioners state that, they could not have engaged in any kidney transplant surgeries, without such transplantation being sanctioned by the Director General of Health Services. Thus, it is reiterated that all necessary approvals for each and every transplant surgery carried out at the 2nd Petitioner Hospital has been approved by the Ministry of Health, following a rigorous process of scrutiny, described above. Therefore, it is grossly unreasonable and capricious for the very same official who had issued the final approval with regard to the transplantation of kidneys to issue the impugned directive without calling for an explanation from the Petitioner and/or according them a hearing.

The Petitioners reiterate that the Petitioners have at all times followed all guidelines, and procedures laid down by the Ministry of Health, and have only ever undertaken kidney transplants upon approval being granted by the Ministry and have further out of an abundance of caution, and being cognizant of the media statements aired by the Ministry of Health, the 2nd Petitioner had held back from carrying out previously approved of kidney transplants, despite the detriment to their patients, who are suffering from this chronic life-threatening ailment. As it has been more fully adverted above, that as at 01/12/2022, addressed to the DGHS, Ministry of Health, 2 patients whose transplants had already been approved, following the three rounds of approvals, culminating with the approval of the DGHS, were awaiting their scheduled kidney transplant surgeries.

It is the patients, who are most severely and grievously affected by the impugned temporary suspension, in as much as the patients suffering *inter alia* from CKD, are now once again dependent on the multiple painful rounds of dialysis, to sustain their lives. In fact, the Ministry taking such ad hoc, arbitrary, and capricious decisions, more so in regards to kidney transplant surgeries that have already been pre-approved by the Ministry following three rounds of inspection, and/or inquiry, would deter the efficient operation of private hospital undertaking kidney transplant surgeries, which could result in the entire burden and cost of patient care shifting onto the Government sector. The 2nd Petitioner is a registered Private medical institution, under and in terms of the Private Medical Institutions (Registration) Act No. 21 of 2006, for the period 01/01/2022 to 31/12/2022. The Petitioners further states that the 2nd Petitioner has already applied to renew the aforementioned registration.

The Petitioners state, that in light of the aforementioned smear campaign, and/or media hyperbole, and/or the illegal, and/or unlawful letter, dated 12/12/2022, issued by the DGHS, Ministry of Health, temporarily suspending the kidney surgeries, the Petitioners are now fearful of whether the aforementioned renewal will be granted. In all of the circumstances set out above, the Petitioners state that the actions and/or inaction of the Respondents are:

- (a) Ultra Vires, and illegal;
- (b) Arbitrary, capricious and unreasonable;
- (c) Is in violation of the rules of natural justice;
- (d) Is in violation of the principles of due process;
- (e) Is in violation of the principles of *audi alteram partem*;
- (f) The impugned decisions and/or directives have been made without just, and/or reasonable cause;
- (g) Is contrary to the legitimate expectations of the Petitioners; and
- (h) Does not conform to the principle of proportionality and reasonableness.

This court is of the view that grave and irreparable loss, damage, harm, and severe prejudice, will be caused to the Petitioners, and continue to be caused to them, and their interests, and the reliefs claimed herein will be rendered nugatory, unless this Court is pleased to grant the interim orders prayed for. The Petitioners state that grave and irreparable loss, damage, harm, and severe prejudice, will be caused to the several patients, awaiting kidney transplant surgery at the 2nd Petitioner Hospital, unless this Court is pleased to grant the interim orders prayed for herein below.

Considering the above-mentioned legal arguments and the documents tendered by both parties I am of the view that the Petitioner has proved his case and therefore, the reliefs prayed by the Petitioner should be granted.

In the above circumstances, the Petitioner has established by sufficient means, that the decisions as contains in P 19 was wrong in law, illegal, ultra vires, arbitrary, Capricious, vexatious and amounts to a complete abuse of law and principles of natural justice, fairness, proportionality, reasonableness, rule of law and of due process, and therefore, considering all the submissions and

documents filed by all parties this Court decides that the Petitioner is entitled to the following reliefs as prayed for in the Petition dated 15.12.2022.

- i) This Court grant and issue a mandate in the nature of a Writ of Certiorari, quashing letter bearing reference No. PHSD/B/KT/INVES/2022, dated 12/12/2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, produced marked "P-19" temporarily suspending kidney transplant surgeries, at the Western Hospital operated by the 2nd Petitioner Company;
- ii) This Court grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision to temporarily suspend kidney transplantation surgery at the Western Hospital operated by the 2nd Petitioner Company;
- iii) This Court grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision to disallow kidney transplantation surgery already approved by the Ministry of Health;
- iv) This Court grant and issue a mandate in the nature of a Writ of Prohibition, preventing the any one/or more of the 1st to 5th Respondents, and/or their servants, and/or their agents, and/or their successors in office, from taking any consequential action, pursuant to the issuance of letter bearing reference No. PHSD/B/KT/INVES/2022, dated 12/12/2022, signed by the Acting Director General of Health Services, for and on behalf of the Director General of Health Service, produced marked "P-19", temporarily suspending organ transplantation surgeries, at the Western Hospital, operated by the 2nd Petitioner Company;
- v) This Court grant and issue a mandate in the nature of a writ of Mandamus compelling the Respondents to withdraw the temporary suspension, dated 12/12/2022, marked P-19;
- vi) This Court grant and issue a mandate in the nature of a writ of Mandamus compelling the Respondents to permit the performance of the surgeries already approved;
- vi) This Court grant and issue a mandate in the nature of a writ of Mandamus compelling the Respondents to permit the performance of the surgeries at the 2nd Respondent Hospital, unless the Petitioners are held guilty of wrong doing by a court of law;
- viii) This Court grant and issue a mandate in the nature of a writ of Mandamus, directing anyone or more of the Respondents, and/or their servants, and/or their agents, to issue the relevant registration under and in terms of Private Medical Institutions (Registration) Act No. 21 of 2006 for the year 2023, upon meeting the necessary requirements;

- ix) This Court grant and issue a mandate in the nature of a writ of Prohibition, preventing the 6th Respondent from refusing to grant a Certificate of Registration in terms of section 03 Private Medical Institutions (Registration) Act No. 21 of 2006 Act, merely on the basis of the impugned letter of suspension and/or the media expose;

Petition allowed. No order for cost.

President of the Court of Appeal

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal