

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

In the matter of an application made under
and in terms of Section 9E(1) of the Muslim
Mosques and Charitable Trusts or Wakfs Act
No. 51 of 1956 as amended.

CA/LTA/06/2022

Wakfs Tribunal Case No:

WT/268/2019

1. Mohamed Ibrahim Mohammed Mafaz

No 40/10, King Lane, Pannawa, Kobeigane.

2. Mohammed Jabir Mohammed Maznavi

No 51/1, Beira Road, Colombo 12

3. Pakeerdeen Sahib

No 427 / D, Kanamoolai, Madurankuliya

4. Abdul Raseedu Muhammadu Manas

No 22, Western Solder Road, Puttalam.

5. Mohamed Mohamed Ashraf

No 32, Temple Avenue, Maradana, Colombo

10.

Plaintiffs

Vs

1. Mohamed Alavi Nawaz Gafoor,

No.57, Green Path, Colombo 07.

2. Majid Abdul Carder,
No.85, Barnes Place, Colombo 07.

3. Mohamed Riyaz Mohamed Hamza,
No.11, Ruhunukala Mawatha, Colombo 08.

And presently

Puisne Judge - High Court of Fiji.
Registrar of the High Court of Fiji,
Fiji.

4. Ahmed Jazeem Mohamed Arif,
No.171/7A, Baudhaloka Mawatha,
Colombo 04.

5. Mohamed Zubair Nehru Caffoor,
No.10/16A, Lake Drive, Lake Drive Enclave,
Colombo 08.

6. Mohamed Iqbal Faiz Abdul Caffoor,
No.31, W.A.D. Ramanayake Mawatha,
Colombo 02.

7. Farzard Hussain Caffoor,
No.5, Flower Road,
Colombo 07.

8. Azmeth Hussain Caffoor,
No.114B, Horton Place,
Colombo 07.

9. Mohamed Thalib Hussain Caffoor,

No.81, Hortan Place,
Colombo 07.

10. Mohamed Uvais Mohamed Hamza,
No.26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

Trustees of the Trust established by the
Deed/indenture of Trust bearing No. 2125
dated 1935.11.21 attested by John Wilson of
Colombo Notary Public

Defendants

AND NOW BETWEEN

In the matter of an application for Leave to
Appeal under and in terms of section 754(2)
read with section 757 of the Civil Procedure
Code and section 55A of the Muslim Mosques
and Charitable Trusts or Wakfs Act, No.51 of
1956 as amended against the Order of the
Wakfs Tribunal dated 03.09.2022

1. Majid Abdul Cader,
No.85, Barnes Place,
Colombo 07.
2. Mohamed Riyaz Mohamed Hamza,
No.11, Ruhunukala Mawatha,
Colombo 08.
And presently
Puisne Judge - High Court of Fiji.

Registrar of the High Court of Fiji,
Fiji.

By his Attorney -

Mohamed Uvais Mohamed Hamza,
No.26/9, Sir Marcus Fernando Mawatha,
Colombo 07.

3. Mohamed Iqbal Faiz Abdul Caffoor,
No.31, W.A.D. Ramanayake Mawatha,
Colombo 02.

4. Farzard Hussain Caffoor,
No.5, Flower Road, Colombo 07.

5. Azmeth Hussain Caffoor,
No.114B, Horton Place, Colombo 07.

6. Mohamed Thalib Hassan Caffoor,
No.81, Horton Place, Colombo 07.

By his Attorney –

Fathima Inneth Sherin Caffoor
No.10/16A, Lake Drive, Lake Drive Enclave,
Colombo 08.

7. Mohamed Uvais Mohamed Hamza,
No.26/9, Sir Marcus Fernando
Mawatha, Colombo 07.

Trustees of the Trust established by the
Deed/indenture of Trust bearing No. 2125
dated 1935.11.21 attested by John Wilson of
Colombo, Notary Public.

Defendant-Petitioners

1. Sithy Shihara Caffoor
No.114B, Horton Place, Colombo 07.
2. Mohamed Hejazi Thahir
No. 117, Hampden Lane
Wellawatte, Colombo 06
3. Mohammed Hussain Sulaiman
61 Ananda Coomeraswamy Mawatha,
Colombo 03
4. Mohamed Abdul Nasser Hammad
No. 5 Flower Road, Colombo 07
5. Jamila Hanim Abdul Cader
No. 85 Barnes Place, Colombo 07

Added Petitioners

Vs

1. Mohamed Ibrahim Mohammed Mafaz
No 40/10, King Lane, Pannawa, Kobeigane.
2. Mohammed Jabir Mohammed Maznavi
No 51/1, Beira Road, Colombo 12
3. Pakeerdeen Sahib
No 427 / D, Kanamoolai, Madurankuliya
4. Abdul Raseedu Muhammadu Manas
No 22, Western Solden Road, Puttalam.

5. Mohamed Mohamed Ashraf
No 32, Temple Avenue, Maradana, Colombo
10.

Plaintiff-Respondents

6. Mohamed Alavi Nawaz Gafoor, No.57, Green
Path, Colombo 07.

7. Mohamed Zubair Nehru Caffoor,
No.10/16A, Lake Drive, Lake Drive Enclave,
Colombo 08.

8. Ahmed Jazeem Mohamed Arif,
No.171/7A, Baudhaloka Mawatha,
Colombo 04.

Defendant- Respondents

Before : R. Gurusinghe, J
B. Sasi Mahendran, J.
R.P. Hettiarachchi J.

Counsel: Suren Gnanaraj with Shamalie De Silva and Sandun Batagoda for the
Petitioners
P. Jayasekara, SC for the 1st Respondent
Hejaaz Hizbullah for the 5th to 15th Respondents

Written

Submissions 16.05.2025 (by the Defendant-Petitioner)

On: 23.06.2025 .(by the 1st to 5th Plaintiff Respondents))

Argued On : 18.03.2025 and 01.04.2025

Judgment On: 28.08.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Petitioners, who are the Defendants in the Wakfs Tribunal case No. WT 268/2019, being the Trustees of the N.D.H. Abdul Gaffoor Trust (hereinafter referred to as 'the Trust'), have filed this leave to appeal application seeking permission to set aside the order of the Wakf Tribunal dated 03.09.2022.

The Plaintiff-Respondents (hereinafter referred to as 'the Respondents') in terms of the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 as amended (hereinafter referred to as 'the Act') instituted action before the tribunal against the Defendant Petitioners (hereinafter referred to as 'the Petitioners') *inter alia*:

- i. Issue notices and/ or summons of this action to the Defendants;
- ii. Remove the Defendants from their position as trustees of the Muslim charitable trust established by deed/indenture of trust bearing no: 2125 dated 1935.11.21 attested by John Wilson of Colombo, Notary Public;
- iii. Appoint fit and proper persons to the position of trustees of the Muslim charitable trust established by the deed/indenture of trust bearing no: 2125 dated 1935.11.21 attested by John Wilson of Colombo, Notary Public;
- iv. Direct the Defendants to submit a statement of accounts to the Tribunal or the Wakf Board for the years 2015/2016, 2016/2017, 2017/2018.
- v. Grant and Issue an interim order appointing special trustees for the Muslim charitable trust established by the deed/indenture of trust bearing no: 2125 dated November 21st, 1935 attested by John Wilson of Colombo, Notary Public;
- vi. Grant and Issue an interim order and/or stay order preventing the Defendants from dealing with and/or disposing of and/or transferring and/or granting any lease in respect of the land and premises described in the first and second schedule hereto until the final determination of this action, or

- vii. Grant and Issue an enjoining order preventing the Defendants from dealing with and/or disposing of and/ or transferring and/or granting any lease in respect of the land and premises described in the first and schedule hereto, pending the final determination of the application for interim injunction;
- viii. pending the final determination of this action grant and issue an interim injunction preventing the Defendants from dealing with and/or disposing of and/or transferring and/ or granting any lease in respect of the land and premises described in the first and schedule hereto;
- ix. grant and issue a permanent injunction preventing the Defendants from dealing with and or disposing of and/or transferring and/or granting any lease in respect of the land and premises in the first and schedule hereto;
- x. Grant and Issue an order appointing a receiver for the better custody and management of the premises described in the first and second schedule hereto pending the final determination of this application.
- xi. Grant Costs;
- xii. Grant such and other further relief as shall seem meet to Your Honours' Tribunal.

At the hearing before the tribunal, Learned Counsel for the Petitioners raised preliminary objections regarding the maintainability of the action. It was contended that the trust in question does not qualify as a Charitable Muslim Trust within the meaning of the relevant statute. Consequently, Counsel argued that the tribunal lacked jurisdiction to hear and determine the dispute brought forward by the Respondent, as the said Trust does not fall within the scope of the provisions of the governing Act.

By its order dated 03.09.2022, the Learned Tribunal overruled the preliminary objections raised by Counsel for the Petitioner, who had challenged the maintainability of the action on jurisdictional grounds. The Tribunal held that it possessed the requisite jurisdiction to hear and determine the dispute and accordingly fixed the matter for further hearing. This

application for leave to appeal is filed against the said order, seeking appellate review of the Tribunal's determination on jurisdiction.

Leave to appeal was granted by this Court on the basis, inter alia, of several substantial questions of law arising from the impugned order of the Wakfs Tribunal. The Petitioner contends that: (a) the Tribunal erred in failing to appreciate that the N.D.H. Abdul Gaffoor Trust does not qualify as a Muslim Charitable Trust within the meaning of the relevant statute; (b) the Tribunal failed to recognize that the Trust is not, in fact, a charitable trust at all; (c) the proceedings before the Tribunal were tainted by bias, rendering its order illegal; (d) the Tribunal improperly engaged in a speculative inquiry, amounting to a voyage of discovery beyond the scope of its mandate; (e) the Tribunal erroneously applied the doctrine of estoppel in circumstances where it was inapplicable; (f) the Tribunal incorrectly held that its jurisdiction over the matter was a settled issue; and (g) the Tribunal misrepresented material facts in its order, thereby undermining the integrity of its findings.

Before delving into the legal submissions advanced by the parties about the foregoing, I consider it appropriate to first outline, in summary, the factual matrix underpinning the present application.

Factual Matrix

The Ghaffooriya Arabic College was established in 1931 by Abdul Ghaffoor, the Settlor, predating the formation of the N.D.H. Abdul Ghaffoor Trust. Initially, the College was managed by the Settlor, for several years, and subsequently by the Trustees of the N.D.H. Abdul Ghaffoor Trust including the settlor (vide Admission No. 9 at page 75 of the Brief). The Trust Deed marked "P1" (hereinafter referred to as "the Deed") outlines two parcels of land conveyed by the Settlor to the Trustees, namely:

- (a) A plantation property comprising approximately 17 acres situated in Maharagama, which includes buildings on about 2 acres and the remaining 15 acres designated exclusively for plantation use, as described in the First Schedule to the Deed (hereinafter referred to as "the Maharagama Land"); and
- (b) A property measuring approximately 386 perches located in Grandpass, Colombo 14, as described in the Second Schedule to the Deed (hereinafter referred to as "the Grandpass Property").

According to the objectives of the aforesaid Deed No.2125, the Trustees shall,

- a. Employ the rents from the said premises in the Second Schedule (i.e. Grandpass Land) particularly described (vide Clause 2 of the Trust Deed P1), a) for the purpose of paying and discharging the rates and taxes imposed on the said premises in the second schedule and for keeping and maintaining the plantations on the premises in the first schedule hereto (i.e. Maharagama Land) particularly described in a fit and proper state of management and cultivation.
- b. for keeping in good and substantial repair the buildings standing on the said premises in the first and second schedules (i.e. buildings of both Grandpass Land and Maharagama Land),
- c. for paying and discharging all costs, charges and expenses of the trustees of or incidental to the administration of the trust,
- d. the balance remaining after payment of the above expenses for the education in Arabic and maintenance of Muslim boys at the Arabic Language School founded by the settlor in the buildings standing on the premises in the first schedule .

The Maharagama Land comprises a large plantation of approximately 15 Acres, and at the Northwestern end of the land, buildings stand on an extent of about 2 further acres.

About the selection of the students the Settlor has stated that; subject to the stipulation that 25% of the Muslim youths educated and maintained at the Arabic Language School shall be Ceylon Moors, descended from parents with long-standing residence in Colombo, the Trustees shall have the sole and unfettered discretion to select the Muslim youths to be educated and maintained, and to determine the duration and manner of such education and maintenance as they deem appropriate. (Vide Clause 3 of the Trust Deed marked "P1").

Further, in terms of the Trust, the trustees are *inter alia* entitled and empowered to,

- a. use their "uncontrolled discretion (to) educate and maintain such youths for such period and in such manner to them shall seem meet"
- b. the Trustees shall and may at all times hereinafter peaceably and quietly possess and enjoy allotment of land and receive the rents income and profits

thereof without any interruption or disturbance whatsoever by the settlor or other person, and

c. to claim all costs charges and expenses incurred in the administration of the trust.

d. appoint new Trustees to fill any vacancy upon death, being unwilling to act or being incapacitated. Only the remaining Trustees can fill any further vacancy.
(Vide clause 2(c), 3, 4 and 6 of the Trust Deed "P1" marked to the Petition)

Moreover, the Settlor has expressly stipulated that the English law of trusts shall govern the subject Trust (vide Clause 6 of the Trust Deed marked "P1").

Having set out the factual background surrounding the N.D.H. Abdul Ghaffoor Trust, I now proceed to examine the grounds of argument advanced by the Petitioners. Central to their case is the preliminary and jurisdictional question of whether the Trust qualifies as a Muslim Charitable Trust within the meaning of the relevant statutory framework. The Petitioners contend that, in the absence of such classification, the Wakfs Tribunal lacks the legal authority to entertain and adjudicate the dispute brought before it. This threshold issue forms the foundation upon which the Petitioners challenge the Tribunal's assumption of jurisdiction and the validity of its subsequent proceedings.

The Petitioners' principal objection is that the Trust does not fall within the ambit of a Muslim Charitable Trust. Accordingly, they contend that the Wakf Tribunal lacks the requisite jurisdiction to entertain and adjudicate upon the present dispute.

According to section 9E (1) of the Act, which states thus,

"General power of the Tribunal.

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

In their written submissions, the Petitioners have advanced, inter alia, four principal arguments in support of their contention that the subject Trust does not constitute a Wakf. These arguments may now be examined.

We are mindful that Section 55 of the said Act expressly excludes only Sections 100 to 109 of the Trusts Ordinance from its application, thereby indicating the legislative intent for the remaining provisions of the Trusts Ordinance to continue to apply.

Upon perusal of the said Deed, it is evident that the Settlor has directed that the balance remaining, after payment of the specified expenses, be allocated towards the education in Arabic and the maintenance of Muslim boys attending the Arabic language school.

According to the Respondents, the Trust in question was established to benefit Muslim youths by facilitating their education in the Arabic language. The Tribunal, upon consideration, formed the view that the Settlor intended to create an Arabic school specifically for Muslim youths through the establishment of the Trust. It is noted, however, that the said school had already been founded prior to the execution of the Trust Deed. Nonetheless, the Tribunal concluded that the primary objective of the Deed was to support Arabic language education for Muslim youths. In reaching this conclusion, the Tribunal relied on Section 32(1) of the Wakfs Act to determine that the Trust qualifies as a Charitable Trust within the meaning of the Act.

While it is true that the Settlor intended to provide Arabic language education for Muslim youths, the Trust Deed clearly states that such support is to be funded only from the remaining balance after covering the specified expenses.

In order to ascertain whether the instrument in question qualifies as a trust within the meaning of the law, it is necessary to refer to Section 6 of the Trusts Ordinance, which sets out the essential elements required for the creation of a valid trust.

“ 6. Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with **reasonable certainty** by any words or acts -

- (a) an intention on his part to create thereby a trust,
- (b) the purpose of the trust,
- (c) the beneficiary,

(d) **the trust property, and**

(unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

Illustrations

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and

(b) A bequeaths certain property to B, "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock in trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust, for A's creditors and C. " [Emphasis is mine]

In the Trust Deed bearing No. 2125, the Settlor has indicated that the income allocated for educational purposes specifically for the Arabic Language School is to be drawn from the residual funds remaining after the discharge of expenses enumerated under Clause 2(a), (b), and (c) of the said Deed. Accordingly, it becomes pertinent to examine Clause 2 in detail, as it governs the financial priorities and operational framework of the Trust.

Particular attention may be drawn to Clause 2(a) of the governing provisions of the Trust Deed, wherein the Settlor has directed the Trustees to maintain the plantation situated on the property described in the First Schedule in a fit and proper state of management and cultivation. However, in issuing this directive, the Settlor has not expressly clarified whether the profits derived from the said plantation are to be applied toward the specific charitable object namely, the provision of education in Arabic and the maintenance of Muslim boys at the Arabic Language School established by the Settlor within the buildings located on the said premises (Hereinafter called and referred to as ‘the Charitable Purpose’).

On the other hand, the Deed includes a provision indicating the Settlor’s intention regarding how the profits from the cultivation are to be applied.”

That provision reads as follows:

“....settlor doth hereby covenant with the trustees that the trustees shall and may at all times hereinafter peaceably and quietly possesses and enjoy the said allotment of land and receive the rents income and **profits** thereof without any interruption or disturbance...” [Emphasis added]

A joint reading of the relevant provisions reveals that the Settlor placed significant emphasis on the plantation property, which encompasses approximately 15 acres. It is particularly noteworthy that, at the time of executing the Trust Deed, rubber cultivation was a prominent contributor to the national economy. Supporting documentation indicates that the estate described in the First Schedule comprised rubber plantations, underscoring the Settlor’s intention to generate sustainable income through agricultural means for the benefit of the Trust’s objectives.

Nonetheless, within this context, the Settlor has not expressly indicated whether the income generated from the plantation is to be applied toward the charitable objectives of the Trust—specifically, the promotion of Arabic education and the maintenance of Muslim boys at the Arabic Language School situated on the premises. This omission gives rise to a material ambiguity regarding the intended allocation of the estate’s income, thereby warranting a careful and purposive interpretation of the Settlor’s overarching intent as reflected in the Trust Deed.

Conversely, Clause 6 of the Trust Deed authorizes the Trustees to enjoy the profits. However, there is no explicit indication that the term “balance remaining” is intended to include profits generated from the estate itself. The Settlor has specifically stated that the “balance remaining after payment of the above expenses” is to be drawn from the rents of the premises mentioned, without providing any clarification as to whether this encompasses income derived from the plantation or other portions of the estate. This ambiguity raises questions regarding the scope of the Trust’s income sources and the Settlor’s precise intention in allocating funds for charitable purposes.

This ambiguity gives rise to a pivotal legal question: What is the legal effect of the phrase “balance remaining”? More precisely, does this phrase carry sufficient clarity and certainty in its meaning and scope to support the administration of the Trust? If it does not, then it becomes necessary to examine whether the Trust Deed satisfies the essential requirements for the creation of a valid trust as set out under Section 6 of the Trusts Ordinance. The resolution of this issue is fundamental to determining the legal character of the instrument and the enforceability of its provisions.

The principle of **certainty of subject matter** in trust law is foundational and has been elaborated upon in various legal texts. The following authorities discuss this concept in detail and may be cited accordingly:

In **Trust by L.J.M. Cooray, page 78**, wherein it states;

“The following elements must concur for the creation of a trust under chapter II: (i) the three persons concerned in a trust (settlor, trustee, beneficiary,) must have the capacity to enter into the transaction; **(ii) there must be certainty as to the intention to create a trust, the beneficiary of the trust and the property affected by the trust**; (iii) the trust must not offend the rule against perpetuities; (iv) it must be for a lawful purpose; (v) the formalities prescribed by law for the creation of

such an interest must be observed and the trust property must be transferred to the trustee.”[Emphasis is mine]

Further, it is elaborated on **Page 86** that,

“There must be certainty both of the property intended to be affected by the trust, and as to the beneficial interest to be taken by each of several beneficiaries. The latter has been considered in relation to the requirement of certainty of beneficiary in article 24.c. Illustration (d) to section 6 which seems to be based on *Palmer v. Simmonds*, gives an example of uncertainty of trust property—“A bequeaths certain property to B, desiring him to divide the bulk of it among C's children.” Before 1918, a direction to hold the bulk of certain property in trust was surprisingly upheld.⁵³ But a trust of surplus income was held to be void.”..” [Emphasis is mine]

Equity and the law of trusts, by Dr. U.L. Abdul Majeed at page 81

“ In order to have a valid trust, the three certainties must be present, namely, (a) certainty of words or intention, (b) certainty of the subject and (c) certainty of the object. Lord Eldon said: "in order for a trust to be valid, first that the words must be imperative..., secondly, that the subject must be certain.... and thirdly, that the object must be as certain as the subject." See *Wright vs. Aykyns*,

In the case of *Knight vs. Knight* (supra), Lord Longdale declared that, for a trust to be validly created, three things are necessary. They are: (1) the first concerns the question whether what the putative settlor did or said amounts to a declaration of a trust over his property. (2) the second requires that the subject matter of the trust that is to form the trust corpus is identifiable, and must be certain, and (3) the objects or the persons intended to be benefited, i.e., the beneficiaries, must be certain. These three requirements have often been termed the "three certainties" of a valid trust.

The certainty of intention should be distinguished from the other two, as certainty of intention is like the 'intention to create legal relations' in contract law; it concerns the question whether the putative settlor really meant to create a trust

at all or a power of appointment or an outright gift. The second and third certainties will be easily workable if the intention of the settlor is very clear.

Section 6 of the Trusts Ordinance states: Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with reasonable certainty by any words or act-

- a) An intention on his part to create thereby a trust,
- b) The purpose of the trust,
- c) The beneficiary,
- d) The trust property, and

(unless the trust is declared by will or the author of the trust himself to be the trustee) transfers the trust property to the trustee.

As found in section 6(a) of the Trusts Ordinance, the intention of the author or settlor of the trust is paramount for the creation of the trust

Under this section, a trust can be created even orally if the words are reasonably certain of the creation of the trust.

(1) Certainty of Words/Intention

The maxim 'Equity looks to the intent rather than the form' fully applies to the declaration of trust.

There is no need for any technical expression or particular formula to be used to constitute a trust. It is a question in every case of construction of the words used to ascertain whether they, together with any admissible extrinsic evidence, establish an intention to set up a trust. The certainty of intention requirement looks only to the intention of the settlor.

Though for the sake of brevity we refer to the intention of the settlor, it is more correct to speak of the settlor's 'manifestation of intention' to create a trust.

In the Indian case of *Maharajah Manindra Chandra Nandi vs. Raja Durga Prashad Singh*, the Privy Council held that that, In construing the terms of a deed,

the question is not what the parties may have intended, but what is the meaning of the words which they used. This decision was followed by L.W. De Silva J. in the local case of *Fernando vs. Jossie*.

It is a generally accepted principle that the intention as gathered from the whole document is paramount as against specific words. In the case of a last will, the intention of the Testator is paramount. In the case of *Fan Fyre vs. The Public Trustee*, de Kretser J. held that "In the interpretation of a will the paramount rule is to look for the intention of the testator as it is expressed and clearly implied in the general terms of the will. When the intention is found on satisfactory evidence, to that must be sacrificed inconsistent clauses and words.

A provision for the education and maintenance of children without any definite sum being mentioned with respect to each does not amount to a legacy. The dicta of Coleridge J. in *Morrall vs. Sutton*, is relevant to mention here.

"The paramount rule is that before all things we must look for the intention of the testator as we find it expressed and clearly implied in the general terms of the will, and when we have found that on evidence satisfactory in kind and degree, to that we must sacrifice the inconsistent clause or words, whether standing first or last, indifferently."

In light of the aforementioned authorities, the key issue that emerges is whether the Settlor intended, through the Trust Deed, to establish a trust specifically aimed at promoting Arabic education and supporting the upkeep of Muslim boys at the Arabic Language School—an objective that is ostensibly charitable. However, it must be noted that there is a degree of uncertainty surrounding the availability of funds to sustain this charitable purpose once the designated expenses have been met. For example, should the Trustees fail to collect rent, or if the costs of maintaining the plantation surpass the rental income, the Trust may be rendered incapable of fulfilling its intended charitable functions.

The Settlor has focused exclusively on the income generated from the building, without making any reference to revenue derived from the broader estate. Although the Deed stipulates that rental income is to be utilized for the maintenance of the estate, it does not expressly provide that profits arising from the estate itself—such as those from

plantation activities—are to be directed toward any charitable objective. This omission introduces a degree of uncertainty regarding the scope of the Trust’s charitable application and raises questions about the Settlor’s true intention in relation to the use of estate-generated income.

Therefore, the Trust Deed does not clearly demonstrate that the Settlor intended to dedicate both parcels of land exclusively for charitable purposes. In the absence of such express intention, and given the uncertainty surrounding the use of income derived from the estate, it must be concluded that the Deed does not meet the requirements of a valid trust as set out in Section 6 of the Trusts Ordinance.

It is pertinent to refer to illustration (d) of the said Section 6 of the Trusts Ordinance, which reads thus;

“(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C’s children. This does not create a trust, for the trust property is not indicated with sufficient certainty.”

Accordingly, we are of the considered view that the Settlor did not intend to create a trust for charitable purposes, and that the Trust Deed fails to satisfy the requirements of a valid trust owing to the absence of sufficient certainty in its terms.

Be that as it may, the question remains whether the said Deed satisfies the prerequisite criteria for a valid Muslim Charitable Trust under, and in terms of, the Muslim Mosques and Charitable Trusts Ordinance No. 51 of 1956 (as amended).

It is pertinent to observe that the Settlor has appointed himself as one of the Trustees of the purported Trust, and has named, in the Trust Deed, several other individuals as co-Trustees—all of whom are members of his immediate family.

Noor Deen Hadjiar Abdul Carrem- Brother

Abdul Hamid Mohomed Ismail-Nephew

Mohamed Falil Abdul Caffoor- Eldest Son

Tuan Brhanudeen Jayah- Well-known friend of the Settlor

Mohamed Sulaiman Marikkar Bawa- Well Known friend of the Settlor

Noordeen Hadjar Mohamed Abdul Cader- Brother

Abdul Rahiman Mohamed Ghouse- Daughter's Father-in-law

Arisi Marikak Hadjar Mohamed Shariff- Daughter-in-law's father

Assena Marika Hadjar Hamid- Daughter-in-law's father's cousin.

It should be noted that presently, the settlors' own family, in fact, are the present trustees in the said purported trust,

Trustee (Petitioner in this case)	Relationship to the Grantor
1. M.A.N. Caffoor (1 st Petitioner)	Grand Son
2. M.A. Cader (2 nd Petitioner)	Second Cousin
3. M.R.M. Hamza (3 rd Petitioner)	Great Grand Nephew
4. A.J.M. Ariff (4 th Petitioner)	Relative
5. M.H. Thahir (5 th Petitioner)	Relative
6. M.I.F.A. Caffoor (6 th Petitioner)	Grandson
7. F.H. Caffoor (7 th Petitioner)	Grandson
8. M.A.H. Caffoor (8 th Petitioner)	Great Grandson
9. M.T.H. Caffoor (9 th Petitioner)	Great Grandson
10. M.U.M. Hamza (10 th Petitioner)	Great Grand Nephew
11. S.S.Caffoor (11 th Petitioner)	Great Grand Niece

According to clause 4 of the deed, which may be reproduced *verbatim*, the same as follows,

“4. The trustees shall not be less than ten in number and in the event of any of the said Trustees dying or being unwilling to act or incapacitated from acting the vacancy shall be filled by the appointment of a new Trustee by the remaining Trustee and in the event of a difference of opinion among them by the majority of them.”

A close examination of the above clause reveals that the Settlor's intention was to retain the administration of the purported trust within the family. Moreover, he has expressly stated that—

“....the settlor doth hereby covenant with the trustees that the trustees shall and may at all times hereinafter peaceably and quietly possesses and enjoy the said allotment of land and receive the rents income and profits thereof without any interruption or disturbance whatsoever by the settlor or other person or persons whomever lawfully claiming any right or title thereto...” [Emphasis is mine]

Furthermore, the Settlor has conferred upon the Trustees the discretion to select the Muslim youths to be educated under the Trust. This provision indicates that the Settlor has retained a measure of control over the administration of the property, which is purported to be the subject of a wakf. Such retained discretion is inconsistent with the irrevocable and absolute dedication typically required for the creation of a valid wakf.

Mahommedain Law , volume I, by Sybd Ameer Ali, at page 381:

“When once a property has been dedicated or declared to be wakf, the right of the person dedicating "drops" absolutely. Thenceforth the property is 'tied-up" in the ownership of the Almighty, and nobody has a right to deal with it in any shape- neither the wakf, nor his heirs, nor the beneficiaries under the wakf.”

According to **The Muslim Law of Succession, Inheritance and waqf in Sri Lanka by M. S. Jalden, at page 275,**

“The Waqif should immediately divest himself from the property waqfed.

The waqif has no right to interfere or intermeddle with the property which is the subject-matter of the waqf. The ownership of the property vests in God.”

The legal issue referred to above was neither duly nor adequately addressed by the Wakfs Tribunal, thereby resulting in an error of law on its part.

The next question is why the settlor has indicated that the said so-called trust deed is governed by English Law?

One of the principal objections raised by the Petitioner is that the trust in question constitutes a private trust rather than a charitable one. Upon examining the Trust Deed, the Court is of the view that the Settlor’s intention was to retain the land

within the family. This inference is clearly supported by the contents of the Deed itself.

“The English Law of Trusts shall apply to the Trust herein created, and Grantor doth hereby covenant with the Trustee that the Trustees shall and may at all times hereafter peaceably and quietly possess and enjoy the said allotments of land and receive the rents, income and profits thereof without any interruption or disturbance whatsoever by the grantor or other person or persons whomever lawfully claiming any right or title thereto that the Grantor has good right to convey and assign in manner aforesaid the said allotments of land and that the same are free from encumbrance and that the Grantor shall and will at all times hereafter warrant and defend the title to the said allotments of land and premises and every part or portion unto the Trustees against any and every person or persons whomever and shall and will at all time hereafter at the request cost and expense of the.....”

While the Settlor did indicate that any remaining funds could be used to support Muslim youth in learning the Arabic language, it is important to note that the term used “profit” does not encompass the residual balance. The trustee is entitled to enjoy the profits from the estate, and this distinction suggests that the Settlor expressly intended for the Trust to be governed by English law.

Furthermore, it is noteworthy that the ownership of the subject property has consistently remained with the trustees, who are relatives of the settlor. It is also important to consider the settlor’s intention, as reflected in the trust deed, which explicitly stipulates that the trust is governed by English law. This indicates a deliberate choice to exclude the application of Muslim Law under the relevant Act. Consequently, this raises the question of whether private wakfs are recognized under Muslim law.

The Muslim Law of Succession, Inheritance and Waqf in Sri Lanka, M.S. Jaldeen, at page 272

“Ameer Ali Classifies waqfs under three heads:_

1. Public waqfs- designated *masalih-al-‘aamma* for example, the building of a mosque or school;
2. Quasi public waqfs- a trust created primarily for a pious purpose and partly for the benefit of a particular persons or embers of the family of the settlor,
3. Private waqfs- primary object of which is to benefit individuals, including members of the settlor’s family.”

Although the Muslim Law provides for family trust according to **Muslim Law in Sri Lanka by Dr. H.W. Tambiah Q.C. Ph.D. and Mohammado Markhani AAL** at page 76 it states thus,

“The Muslim Law governing private trusts is no part of our law. Muslim law provides for family trusts by a written instrument creating a trust, in the English sense, in which event the Trusts Ordinance (Cap. 87) will apply, and if this Ordinance is silent, then resort is had to English law.”

In my respectful view, the Settlor’s principal objective in executing the Deed appears to have been the preservation of the estate within the family, ensuring that its benefits remained under familial control. The reference to Arabic education and the support of Muslim boys at the Arabic Language School—an institution that existed prior to the Deed—seems to have been a secondary consideration. Moreover, the Settlor’s decision to apply English law appears to have been driven by this underlying intent, rather than by any genuine aim to create a charitable trust in the strict legal sense.

The Settlor clearly stipulated that the Deed would be governed by English law, thereby intentionally refraining from invoking Muslim law. This deliberate choice reflects his intention to establish an express private trust—an arrangement that is not recognized under traditional Muslim legal principles.

Accordingly, Case No. WT 268/2019, presently pending before the Wakfs Tribunal, is hereby dismissed on the ground that the Trust Deed in question is governed by English

law and does not fall within the purview of Muslim law. As such, the matter lies outside the jurisdiction of the Tribunal.

Accordingly, the application is allowed.

JUDGE OF THE COURT OF APPEAL

R. Gurusinghe, J

JUDGE OF THE COURT OF APPEAL

I Agree,

R.P. Hettiarachchi J.

JUDGE OF THE COURT OF APPEAL

I Agree,