

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

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

Madduma Waththage Oshan Weerasinghe,
No. 253/5, Shanthi Mawatha,
Makola.

CA (Writ) App. No. 0775/2023

PETITIONER

Vs.

1. P.B.S.C. Nonis,
Director General of Customs,
Sri Lanka Customs Department,
No. 40, Main Street,
Colombo 11.

2. Y.I.M. Silva,
Director of Customs,
Sri Lanka Customs Department,
Bandaranayake International Airport,
Katunayaka.

3. J.A.K.K. Pradeep,
Senior Deputy Director of Customs,

Sri Lanka Customs Department,
Bandaranayake International Airport,
Katumayaka.

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

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

A.A.M. Illiyas, P.C. with Tharindu Rathnayake and S.M.M. Thanseem instructed by Nithi Murugesu and Associates for the Petitioner.

Nayomi Kahawita, S.S.C. for the Respondents.

Argued on: 10.09.2025

Delivered on: 20.11.2025

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is an individual who is engaged in a business of importing and distributing apparel items and footwear. The Petitioner and his wife having gone to Bangkok, Thailand, has purchased fourteen gold biscuits, and on his return on 26.08.2023, he has gone through the ‘Red channel’ (counter at Customs) of the Sri Lanka Customs, then he filled the declaration marked as P1 and declared that he had imported fourteen gold biscuits that he had in his possession; consequently, the officers of the Customs Department have arrested him and kept him under detention.

Thereafter, in the early hours of the next day morning, he was directed to face an inquiry, which is borne out by document marked as P2 annexed to the Petition. The inquiry that the Petitioner had to face was based on mainly two charges, and at the end of the inquiry, the Petitioner was convicted by the order of the 3rd Respondent, and the said order is marked as P6 annexed to the Petition.

According to the said order, the Petitioner was convicted on two counts based on Sections 12 and 43, read with Section 129 of the Customs Ordinance, the Import and Export Control Act No. 01 of 1969, and a gazette issued thereunder; and consequently, ordered to pay a penalty of Rs. 83,274,750/- (Eighty-Three Million Two Hundred and Seventy-Four Thousand Seven Hundred and Fifty Rupees), which is triple the value of the items that he has imported to Sri Lanka without a license, in addition to the forfeiture of the gold items.

Thereafter, he exercised his right to appeal by making an appeal to the 1st Respondent, who then decided to mitigate the penalty imposed under Section 129 of the Customs Ordinance to a sum of Rs. 27,758,250/- (Twenty-Seven Million Seven Hundred and Fifty-Eight Thousand Two Hundred

and Fifty Rupees) which is equivalent to the value of the said gold; from which Rs. 20,000,000/- (Twenty Million Rupees) was paid while the remaining sum was promised to be paid within two weeks.

Thereafter, he has exercised his right to appeal to the Minister-in-charge of the subject, and based on that, the amount of penalty he had to pay was reduced to Rupees 20,000,000/- (Twenty Million Rupees), which he had already paid. Nevertheless, the forfeiture of the gold biscuits remains intact. Thereafter, the Petitioner has instituted the above styled application in this Court, challenging the order marked as **P6** and sought *inter alia* the following relief;

- “(b) Call for and issue a mandate in the nature of a Writ of Certiorari, quashing the impugned decision/order dated 08.09.2023 of the 3rd Respondent produced and marked ‘P6’;*
- “(c) Call for and issue a mandate in the nature of a Writ of Certiorari, quashing the impugned decision dated 19.09.2023 of the 1st Respondents imposing a penalty in a sum of Rs. 27,758,250/-;*
- “(d) Issue a mandate in the nature of a Writ of Prohibition, restraining the 1st, 2nd and 3rd Respondents and their servants and agents, from demanding payment of a sum of Rs. 7,758,250/- from the Petitioner on or before 13th December 2023;*
- “(e) Issue a mandate in the nature of a Writ of Prohibition, restraining the 1st, 2nd and 3rd Respondents and their servants and agents, from auctioning the 14 Glod Slabs forfeited from the Petitioner;*
- “(f) Issue a mandate in the nature of a Writ of Prohibition, restraining any and all the monies thereon, from being distributed as rewards to any officers of the Sri Lanka Customs or as contributions to any officers’ fund or in the manner set out in the Customs Ordinance or from being credited to the Consolidated Fund;*

- (g) Issue a mandate in the nature of a Writ of Mandamus, directing the Respondents, upon the Petitioner obtaining an Import Control License (ICL) for the importation of the said 14 Gold Bars, to return the same to the Petitioner;
- (h) Issue a mandate in the nature of a Writ of Mandamus, directing the Respondents, upon the Petitioner obtaining an Import Control License (ICL) for the said 14 Gold Bars, to return to the Petitioner the sum of Rupees Twenty Million (Rs. 20,000,000/-) already paid by the Petitioner to the Sri Lanka Customs;
- (i) Issue an Interim Order, staying and suspending the operation of the impugned decisions/orders dated 08.09.2023 of 3rd Respondent, produced and marked 'P6', until the final determination of this application;
- (j) Issue an Interim Order, restraining the 1st and 2nd and 3rd Respondents and their servants and agents, from demanding any payment of the sum of Rs. 7,758,250/- from the Petitioner on or before 13th December 2023 and/or thereafter, pending the final determination of this Application;
- (k) Issue an Interim Order, restraining the 1st and 2nd and 3rd Respondents and their servants and agents, from distributing the sum of Rupees Twenty Million (Rs. 20,000,000/-) already paid by the Petitioner to the Sri Lanka Customs, pending the final determination of this Application;
- (l) Issue an Interim Order, restraining the 1st and 2nd and 3rd Respondents and their servants and agents, from selling and/or auctioning the forfeited 14 Gold Bars, pending the final determination of this Application;
- (o) Grant such further and other reliefs, as to your Lordship's Court, shall seem meet."

The Respondents have filed their respective objections, and according to the objections the Petitioner has imported the gold biscuits without the valid license from the relevant authorities. Hence, the Petitioner is guilty of the charges as enunciated in the charge sheet; further, he has paid the reduced penalty ordered by the Minister-in-charge of the subject. Therefore, this application instituted in this Court cannot be maintained, and as such, moved for a dismissal. This was argued

before us on 10th September 2025, and the following arguments were advanced; hence this judgement.

Arguments in brief

The first argument advanced by Mr. Illias, P.C., is that the Petitioner has not purchased any illegal item, either in Sri Lankan law or Thai law. As the biscuits were available, he had purchased 14 gold biscuits in Thailand and, on his way back, he had not come through the Green Channel or the Middle Channel, but through the Red Channel directly, knowing very well that he did not have the necessary license issued to import gold biscuits to Sri Lanka under the relevant authority; and it is his stand that he had never previously brought gold items to Sri Lanka with or without a license, and therefore, he had no prior knowledge thereof, except in engaging merely in the footwear and apparel industry; having come through the Red Channel, he had declared that he had 14 biscuits in his possession.

According to Mr. Illias, the Petitioner had declared so in good faith to pay the relevant import duty imposed by the Customs and thereafter, release the relevant goods by the Customs. However, the Customs arrested him and kept him in custody, and thereafter, the following morning, he had been subjected to an inquiry. The said inquiry had supposedly been conducted under Section 12 of the Customs Ordinance, read with Section 43 of the Customs Ordinance.

Mr. Illias's second argument is that since he has not brought any illegal item or contraband and had only brought a restricted item to the Island, the so-called offence cannot fall into the category of Section 12 or Section 43 of the Customs Ordinance. Therefore, Mr. Illias argued that the very inquiry and the finding of guilty on the charges based on Sections 12 and 43 of the Customs

Ordinance, read with the offences that fall within Schedule B of the Gazette bearing No. 1953/28 marked as P14, are untenable and illegal; as such, a *Writ of Certiorari* lies.

However, on the other hand, Mrs. Kahawita contended that importing gold without the license itself is an offence committed by the Petitioner in terms of Section 12 of the Customs Ordinance, read with Section 43 of the Customs Ordinance, which falls into the category of offences within Schedule B.

She further contended, therefore, that importing restricted items without a license falls into the category of offences provided for in Sections 12 and 43, read with the list of items enumerated in Schedule B of the Gazette bearing No. 1953/28 marked as P14. Hence, the inquiry held by the Customs is justified, and since it is justified, the Petitioner, without coming to this Court, had already exercised alternative remedies in appealing to the Director General and thereafter, to the Minister, where the Petitioner had received a reduction in the fine, which had been imposed by the Inquiring Officer. Now, he has already paid the mitigated fine of Rs. 20,000,000/- (Twenty Million Rupees). Therefore, if a *Writ of Certiorari* is issued, then the gold items that he had imported into Sri Lanka should also be released without even the Government Revenue. As no prejudice is caused to the Petitioner, this Application should be dismissed.

Now I wish to mention the following factual matrix to avoid repetition since they are undisputed facts as transpired in evidence, and also the steps taken in the proceedings conducted by the Respondents.

Factual matrix

It is common ground that the Petitioner had gone to Bangkok, Thailand, and returned on 26.08.2023. On his return, he has brought fourteen gold biscuits of 24 carats, which he has declared

at the Red Channel of Customs at the Bandaranayake International Airport by filling the document marked as P1. It is also an undisputed fact that except for the gold biscuits he has not brought anything else, although he claims to have gone on a business trip. Additionally, it is an undisputed fact that the Petitioner had borrowed a large amount of money from a friend in Thailand to purchase the said biscuits, in addition to the money he already had in his possession. It is also undisputed that he did not have any license issued relating to the importation of the said gold biscuits in terms of the Gazette marked as P14. After having been found guilty through an inquiry, he was imposed with a fine three times equivalent to the value of the said gold in Sri Lankan currency as a penalty in addition to the forfeiture of the said gold biscuits. It is also undisputed the Petitioner has no previous convictions of similar offence.

It is also an undisputed fact that, subsequently on the Petitioner's Appeal to the 1st Respondent, the fine was reduced to Rs. 27,758,250/- (Twenty-Seven Million Seven Hundred and Fifty-Eight Thousand Two Hundred and Fifty Rupees) which is equivalent to the value of the said gold biscuits. He further made an appeal to the Minister; thereby, the Minister had reduced the imposed penalty to a sum of Rs. 20,000,000/- (Twenty Million Rupees). However, the forfeiture of the gold was not removed by the Minister; thus, it remains intact.

In this case, the Petitioner challenges the entire proceedings on the basis that the proceedings from his arrest, is illegal as he genuinely had declared the 14 gold biscuits after coming through the Red Channel. Therefore, I will consider that aspect first.

On the arrest, detention and denial of natural justice

One of the contentions advanced by Mr. Illias for and on behalf of the Petitioner is that, the Petitioner should have been given the opportunity to obtain the license even after the importation

in terms of **P14**, the Gazette bearing No. 1953/28 issued dated 11.02.2016 under the Imports and Exports (Control) Act, No. 01 of 1969 (as amended), which was applicable at the time of the importation of the 14 gold biscuits, though the Petitioner did not have a license to import the said gold biscuits under the said Gazette, as it is provided for as Item No. 2 of the Schedule III.

He further argued that if the license was obtained after the importation, he would not have been liable to pay a levy of 4% of the value of the imports. Accordingly, it is his contention that the Petitioner is entitled to obtain a license even after the importation has taken place. Since he was not given the opportunity to obtain an import license, he was unable to produce such; therefore, the Respondents were able to charge him for smuggling gold, convict him, and impose a penalty. Therefore, the order is capricious and illegal.

Further, it is argued that the Respondents did not allow the Petitioner an opportunity to obtain an import license even after importation since he was arrested just after the declaration. In addition to that, the Petitioner alleges that, upon his arrest, the inquiry under the Customs Ordinance commenced, and in the course, he was produced before the Magistrate's Court straight away while the inquiry was proceeding, securing his incarceration without even providing the opportunity to obtain legal assistance, which amounts to a denial of natural justice. As such, it is contended that the whole exercise on the part of the Respondents, put together, amounts to a complete denial of justice. Therefore, the inquiry and also the penalties imposed, as contained in **P6**, are illegal and capricious. Now I will consider them in detail.

The Petitioner's entitlement to obtain import license after importation

Although the Petitioner asserts, and an argument is advanced, that he is entitled to obtain an import license even after the importation took place, as per Schedule III of the Gazette marked as **P14**,

the Respondents denied this, as there is no express mention as to whether an import license can be obtained after importation. Accordingly, the 2nd and 3rd Items tabulated in Schedule III of the Gazette¹ reads thus;

S: L No.	Item	Additional Fee (Rs. Of CIF)
2	Import prior to obtain ICL	4%
3	Import after expiring ICL	3%

On perusal of **P14**, I further observed that the way the Gazette is worded, even after the importation of certain items, an import license can be obtained under the said Gazette. Therefore, it is my view that, had he been given an opportunity to obtain the license, if the facilities were available for a limited time, he could have easily obtained the said license and paid a penalty limited to only 4%, which is one percent higher than the tax levied if he had imported the same items with a license but expired. Therefore, although it is not expressly mentioned in the Gazette that he can obtain a license after importation, it is implied that he is able to obtain such a license. However, an opportunity has not been accorded to him.

Denial of an opportunity to obtain the license

If the Petitioner was given an opportunity to obtain an import license in terms of **P14**, he could have taken steps to obtain the said license; however, the Petitioner was also deprived of such an opportunity by incarceration for more than 2 months. The reasons have not been properly explained in the Statement of Objections, except for the mere denial of the averments contained in paragraph 34 of the Petition and by paragraph 24 of the Statement of Objections. Therefore, it is

¹ Page 6A of the Gazette Extraodrinary Bearing No. 1953/28, dated 11.02.2016

my view that if an opportunity had been accorded, the Petitioner could have obtained the import license.

Irrational conduct of the Respondents

Be that as it may, I will now come to the next argument. In fact, according to the Inquiring Officer, the Petitioner has committed this offence for the first time, and also he was not aware that he needed to obtain a license to import the items he had already imported and which were found in his possession, namely, the 14 biscuits of gold. However, in the course of the inquiry, it transpired (from his own evidence) that he had prior knowledge that somebody had been found guilty when he imported gold into Sri Lanka and thereafter was imposed a penalty and was able to go away with the gold biscuits upon paying it. Probably, the Petitioner may have imported the said gold biscuits with the intention of paying the penalty and then taking them into the country without any problem. That may have been the reason why he declared the said gold biscuits, having straightaway come into the Red Channel without going through the Green Channel. Therefore, his genuineness is very clear. In addition to that, he has no previous convictions as well, which also has not been considered.

Nevertheless, since he was not given the opportunity at least to obtain a license, which he had apparently come to know of on advice later, he was unable to obtain a license even after importation. Therefore, the entire proceedings seem to be irrational and also appear to be capricious.

In addition to that, I wish to say that when the Customs Officers find certain items in the possession of a passenger who tries to smuggle or import without a license some restricted item into the country, part of the penalties imposed for such an act goes as a reward to be paid to the Customs

Officers. Therefore, they tend to indulge in this type of irrational, capricious, and unwarranted exercise, particularly following unwarranted procedures without even observing natural justice, as transpired in this case.

Violation of natural justice

On a perusal of the document marked as **P2**, the inquiry has been conducted by the 3rd Respondent, the Senior Deputy Director of Customs. In addition to that, he was assisted at the inquiry by T.D. Wijerathne, Assistant Customs Officer. During the inquiry, the person who testified was P.S. Karunakalage, who was also the Investigating Officer. All three have participated in the investigations, and therefore, the investigators have conducted the inquiry; one has given evidence against the Petitioner, another was the prosecutor, while the 3rd Respondent was the judge. They have tried their own case, violating *nemo judex in causa sua*, thus violating the rules of natural justice.

The 1st Respondent has acted judiciously

Nevertheless, on exercising his power (jurisdiction) of appeal, as a very responsible officer, the 1st Respondent has reduced the penalty, which had been three times equivalent to the value of the gold that was imported by the Petitioner, to a mere Rs. 27,758,250/- (Twenty-Seven Million Seven Hundred and Fifty-Eight Thousand Two Hundred and Fifty Rupees), which is equivalent to the property imported. As such, it is my view that the 1st Respondent, who is the officer in-charge of Customs, has rationally decided to reduce the penalty already imposed by the 3rd Respondent.

In this case, the Petitioner has sought a *Writ of Certiorari* from the act of his arrest to quash the entire proceedings of the inquiry conducted by the 3rd Respondent in terms of Sections 12 and 43

of the Ordinance. Now I will consider the conduct on the part of the Petitioner on whether it warrants an issuance of writ.

Conduct on the part of the Petitioner

The Petitioner has exercised his first right of appeal, which was available to him, by appealing to the 1st Respondent regarding the penalty without directly challenging, in this Court, the procedure or the inquiry and also the manner in which it was conducted, without even awarding an opportunity to obtain an import license. This has not been challenged initially by way of a *Writ of Certiorari* before exercising his right of appeal.

In fact, the Petitioner, having paid Rs. 20,000,000/- (twenty million rupees), agreed to pay the balance Rs. 7,758,250/- (Seven Million Seven Hundred and Fifty-Eight Thousand Two Hundred and Fifty Rupees) within two weeks. In the meantime, he has further made an appeal to the Finance Minister, and consequently, the Finance Minister has accepted the amount he has already paid and released him from paying the remaining balance of the penalty. Therefore, he has twice exercised his rights before directly coming to this Court alleging the capricious manner in which the Customs Officers conducted their inquiry and the order contained in P6. Had he come before this Court by way of an application for a *Writ of Certiorari*, he could have obtained relief as a right. However, he has opted to appeal to the 1st Respondent and the Minister, without coming to this Court. Thus, I will consider the consequences of him appealing twice now.

The two appeals by the Petitioner

The two appeals made by the Petitioner to the 1st Respondent and to the Minister-in-charge to the portfolio of finance under which the subject of Customs also comes, are marked as P7 and P12 respectively. By the time the Petitioner made those appeals, he had the opportunity of obtaining

legal assistance, which he had done; nevertheless, in none of those appeals he had raised the point raised in this appeal for the first time by the President's Counsel Mr. Illias.

Therefore, it is my view that, had the Petitioner been properly advised at the time of making those appeals, he could have canvassed the legality of his illegal arrest, which was followed by the inquiry, and not according any opportunity to obtain an import license in terms of the Gazette marked as **P14**; however, the 1st Respondent himself as a very responsible and honourable officer, who has already taken a decision to reduce the imposed fine that was triple the actual value of the items imported, and also the Finance Minister, who at the time was a lawyer of 50 years in the bar would have considered all that and given further relief sought by the Petitioner.

Therefore, in this Application, we are only concerned about the legality and illegality of this application, and not its merits and demerits. Therefore, on the merits, the Petitioner could have been successful in those appeals, had he raised those issues, or instead invoked the jurisdiction of this Court in this very application under Article 140 to question the illegal arrest and the proceedings that ensued thereafter, because the arrest was illegal, and what follows from that is also illegal.²

The Petitioner is dillydallying despite his innocence

As transpired in evidence, although he was engaged in the apparel industry and the importation of footwear, on the fateful day of 26th August 2023, he had not purchased or imported items of such nature. He had only purchased gold biscuits in Thailand, and in addition to the money he had in his possession, he had also borrowed a substantial amount of money, not a similar or small amount, but an enormous sum, to purchase the gold biscuits without knowing the consequences, as it

² *Benjamin Leonard Macfoy v. United Africa Company Ltd (West Africa)* [1961] 3 ALL ER 1169

appears on record, of the offence he was going to commit, namely the smuggling of gold items into the country without first securing a license for importation.

It appears that he had been instigated by somebody to import these items with the intention of making a profit, taking advantage of his innocence as a novice, to earn quick money to spend on the education of his stepson. Therefore, he appears to have fallen into a trap designed by some other invisible hand. Nevertheless, it also transpired in evidence that he was already aware of a politician who had smuggled gold items and, having paid the customs duty, has gone away scot free. He may have intended to do the same thing. Nevertheless, he has been arrested after the declaration, therefore, his innocence also seems to be quite clear. However, he has committed the offence knowing the consequences. Therefore, it is my view that the punishment imposed upon him is commensurate and not harsh.

As such, it is my view that the said items have been imported or smuggled into Sri Lanka, and although they were declared in the Red Channel, he has done so knowing very well that they are items smuggled into Sri Lanka without any license or permission. Therefore, though he had not been awarded an opportunity, the conviction under Sections 12 and 43 is technically not incorrect despite the error in the procedure and error on the face of the record mentioned above.

To buttress my view above, I rely on the following passage in the authoritative textbook, “Administrative Law” by H. W. R. Wade and C.F. Forsyth (12th Edition);

“The system of judicial review is radically different from the system of appeals.’ When hearing an appeal, the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is right or wrong?’ On review the question is ‘lawful or unlawful?’

Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary: the court is simply performing its ordinary functions in order to enforce the law. The basis of judicial review, therefore, is common law. This remains true even though nearly all cases in administrative law arise under some Act of Parliament. Instead of substituting its own decision for that of some other body, as happens when on appeal, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the court may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default.

*Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the court requiring the issue of the licence. If administrative action is in excess of power (*ultra vires*), the court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one needs to pay any attention to it. The minister or tribunal or other authority has in law done nothing, and must make a fresh decision.*

Judicial control, therefore, primarily means review, and is based on a fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within their true limits. The doctrines by which those limits are ascertained and enforced form the very marrow of administrative law. But there are many situations in which the courts interpret Acts of Parliament as authorising only action, which is reasonable or which has some particular purpose, so that its merits determine its legality. ”³

³ H. W. R. Wade and C. F. Forsyth, *Administrative Law* (12th Edition, Oxford University Press 2023) Chapter 2 “Constitutional foundations of the powers of the Courts”, Page 15-16.

In addition to that, I rely on the case of *Somasunderam v. Forbes*⁴ by Justice Bandaranayake.

Furthermore, the Petitioner has another chance to assert his rights in a competent forum, namely the District Court, to obtain this relief, since he admittedly has a title to the forfeited the goods in terms of Section 154 of the Customs Ordinance as enunciated in the judgements of *Fernando v. Dharmasiri*⁵, *Gunasekera v. Weerakoon*⁶, and *Samarakoon v. Tikiri Banda*⁷.

Suggestion for action

The Petitioner was arrested only after the declaration, not in the course of committing an illegal activity. Therefore, I make bold to say that some officers are part of a malpractice. They abused the legal process in the guise of using the legal process to gain something mean (below the law), which they cannot do in an ordinary course of business. Once the Petitioner, while being at the Red Channel, declared that he had imported 14 biscuits of gold by the document marked as **P1**, then they should have allowed him to obtain the import license under the Gazette **P14**. Without doing so, they have done some *mala fide* act to obtain the part of the reward that they are supposed to be entitled to.

In the circumstance, before I part with this judgement, I would like to mention that I condemn their conduct, and strongly suggest that the Honourable Attorney General, who is learned in law and the chief law officer, responsible for the good governance of this country, take cognizance of their conduct and advise the 1st Respondent to take necessary action to further investigate. While

⁴ *Somasunderam Vanniasingham v. Forbes and Another* [1993] 2 Sri LR 362

⁵ 72 NLR 320

⁶ 73 NLR 262

⁷ 51 NLR 259

commending his conduct in this case, I also strongly suggest that the 1st Respondent, who is an honourable officer, to take strict actions.

Conclusion

Accordingly, it is my view that no writ lies in this instance for the reasons I have adumbrated above, particularly for exercising two appeals. The Application is dismissed; no cost is awarded, since the Petitioner has already incurred sufficient and substantive cost, including the cost of litigation.

JUDGE OF THE COURT OF APPEAL