

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

*In the matter of an application for  
Leave to Appeal in terms of Section 5C  
of the High Court of Provinces  
(Special Provisions) Act No. 54 of 2006.*

The Land Reform Commission,  
475, Kaduwela Road,  
Battaramulla.

**PLAINTIFF-PETITIONER-**  
**RESPONDENT-PETITIONER**

-VS-

**Case No. SC/HCCA/LA/35/2020**  
(WP/HCCA/Gam/06/2019/LA)  
(WP/HCCA/Gam/07/2019/LA)  
(DC Attanagalla Case No.538/L)

Kandy Plantations Limited,  
69, Sri Jinarathana Road,  
Colombo 02.

**4<sup>th</sup> DEFENDANT- RESPONDENT-**  
**PETITIONER- RESPONDENT**

1. Gnanapoo De Croos  
2. Vijyanti Johnpillai  
3. Devayani De Croos,  
All at,  
No. 47,  
Wijeyapala Mendis Mawatha,  
Negombo.

**1<sup>st</sup> to 3<sup>rd</sup> DEFENDANT-**  
**RESPONDENT-RESPONDENT-**  
**RESPONDENTS**

Before: Murdu N. B. Fernando, PC, J.  
E. A. G. R. Amarasekara, J.  
Yasantha Kodagoda, PC, J.

Counsels: Shiraz Hassan for the Plaintiff- Petitioner- Respondent- Petitioner.

Ikram Mohamed with Charitha Jayawickrema & Rasika Dissanayake & Anuradhi Abeysekera instructed by Sanath Wijewardena for the 1<sup>st</sup> - 3<sup>rd</sup> Defendant- Respondent- Petitioner- Respondents.

Kapila Liyanagamage instructed by Hashan Gunaratne for the 4<sup>th</sup> Defendant- Respondent- Petitioner- Respondent.

Argued on : 10.05.2023

Decided on : 06.06.2024

**E. A. G. R Amarasekara, J.**

This Leave to Appeal Application was made against the Order dated 09<sup>th</sup> December 2019 of High Court of Civil Appeal of Gampaha by which the Learned High Court Judge allowed the appeal in both matters and set aside the order of the Learned Additional District Judge dated 17<sup>th</sup> January 2019 which granted an interim injunction prayed for by the Land Reform Commission, the Plaintiff- Petitioner-Respondent-Petitioner (hereinafter the Petitioner).

When this matter was taken up for support on 10<sup>th</sup> May 2023, the learned President's Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Defendant-Respondent-Respondent- Respondents (hereinafter the 1<sup>st</sup> to 3<sup>rd</sup> Respondents) raised a preliminary objection that the Affidavit of Wijesinghe Mudiyanselage Nilantha Wijesinghe, the Chairman of the Land Reform Commission that has been filed in support of the averments in the Petition is bad in law for the reason that the said Affidavit had been affirmed to before Jeevanie Jayasundara, Attorney-at-Law and Commissioner for Oaths who was holding office as the Assistant Director, Legal of the Land Reform Commission. The Counsel for the 4<sup>th</sup> Defendant- Respondent- Petitioner- Respondent too associated with the said preliminary objection raised by the learned President's Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. It is observed that even a motion dated 28.01.2022 along with an affidavit of the 2<sup>nd</sup> Defendant- Respondent- Respondent-Respondent has been filed in this regard.

In their written submissions tendered on 31.05.2023, the Respondents have placed certain factual and legal positions in support of the preliminary objection raised, and the Respondents have brought the Court's attention to the Section 12(2) of the Oaths and Affirmations Ordinance, No. 9 of 1895 as amended (hereinafter sometimes referred to as the Ordinance) which reads as follows;

*"A Commissioner for Oaths appointed under this Ordinance may administer any oath or affirmation or take any affidavit for the purpose of any legal proceedings or otherwise in all cases in which a Justice of the Peace is authorized by law so to do, and in all cases in which an oath, affirmation, or affidavit is commonly administered or taken before a Justice of the Peace; and any oath or affirmation or affidavit administered or taken by a Commissioner for Oaths shall in all legal proceedings and for all other purposes have the same effect as an oath, affirmation, or affidavit administered or taken before a Justice of the Peace; and all enactments relating to oaths, affirmations, and affidavits administered or taken before a Justice of the Peace shall, with the necessary modifications, apply thereto:*

***Provided that a Commissioner for Oaths shall not exercise the powers given by this section in any proceeding or matter in which he is attorney-at-law to any of the parties, or in which he is otherwise interested.*** (Highlighted by me)

It is not in dispute that the Commissioner for Oaths, Jeewani Jayasundara who attested the said affidavit accompanying the Petition in this leave to appeal application is an employee of the Petitioner. In fact, the Counsel for the Petitioner conceded the said fact- vide paragraph 15(1) of the written submissions of the Petitioner tendered on 31.05.2023.

In the written submissions, the Respondents have referred to certain decisions made by our Courts with appellate powers.

In **Pakir Mohidin v. Mohamadu Casim 4 NLR 299**, it was held that "*an affidavit sworn by the defendant before his own proctor is not, according to the practice of English Courts, admissible in evidence, and such practice should be followed here*".

In **Cadar Saibu v. Sayadu Beebi 4 NLR 130**, it has been held that "*affidavits sworn before a Justice of the Peace, who is also a proctor in the case, are not admissible for the purpose of that case*".

In **Airport and Aviation Services (Sri Lanka) Limited v. Buildmart Lanka (Pvt) Limited (2010) 1 Sri L.R. 292**, where facts are similar to the facts of the present matter, Her Ladyship Dr. Shirani Banadaranayake, J. (as she then was) has held that an Assistant Legal Officer of an organization has an interest in a leave to appeal application filed before the Supreme Court by such an organization.

**Seylan Bank PLC V Christobel Daniels CA PHC APN 58/2014**, is a decision of the Court of appeal where the supporting affidavit had been attested by the Legal Officer-Human Resources of the bank who also acted as its lawyer in applying certified copies for the bank. The Court found the said legal officer fell within the prohibited categories.

**Environmental Foundation (Guarantee) Ltd. V Director General of Wildlife Conservation and Others CA Writ 51/2018 reported in (2020) 1 Sri L R 366**, was a matter where the Commissioner for Oaths who attested the affidavit had been an employee of the Petitioner. The Court cited the Judgment in **Airport and Aviation Services (Sri Lanka) Limited** mentioned above with approval where the Commissioner for Oaths who attested the affidavit was the Attorney-at- Law for the petitioner at the related arbitration proceedings and the instructing attorney in the High

Court case, and also an employee of the Petitioner in the capacity of Assistant Legal Officer.

In **Jayatillake and Another V Kaleel and Others (1994) 1 Sri L R 319**, it was indicated that an affidavit sworn before the deponent's own junior counsel ought not be received in evidence and **Samantha Kumara V T. A. C. N. Thalangama & Others SC/SPL/LA/99/2021 SC Minutes dated 08.06.2021** is another example where the preliminary objection raised in terms of the proviso to section 12(2) of the Oaths and Affirmation Ordinance was upheld as the Commissioner for Oaths who attested the affidavit has written certain communications on behalf of the deponent and appeared for the deponent in the Court of Appeal and marked his appearance in this Court as well.

In one of the recent cases, namely **Faith Pharmaceuticals (Pvt) Ltd. and another V Matrix Life Care (Pvt) Ltd and Others SC/HC/LA/45/2021**, decided on 01.12.2022 this Court held that an Affidavit affirmed before an Attorney-at-Law and Commissioner for Oaths who was working at the same Law Office in which the Registered Attorney for the affiant was working is bad in law. In the said case, this Court observed that our Courts, even at the beginning of the 19<sup>th</sup> Century had followed the English Principle which did not accept the affidavits sworn before one's own Lawyer.

Thus, it is clear that our Courts for a long period of time continuously has followed the principle now contained in the proviso to Section 12(2) of the Oaths and Affirmations Ordinance. The Counsel for the Petitioner attempts to indicate that this is a mere technicality and the error must be allowed to be rectified. Though he referred to many decisions where our Courts considered certain errors contained in affidavits as insignificant and not fatal, those decisions were not made in relation to the proviso to section 12(2) of the Oaths and Affirmations Ordinance or its effect. However, the cases cited above directly relates to the matter in issue. The Petitioner has not cited a single case where the proviso to said section 12(2) has been given a different interpretation. Furthermore, it must be noted that the proviso to aforesaid section 12(2) contains an express prohibition. As observed in **Environmental Foundation (Guarantee) Ltd V Director General of Wildlife and Others CA Writ 51/2018**, a Court cannot override such prohibition using a general provision such as section 9 of the said Ordinance. On the other hand, as observed in **Faith Pharmaceuticals (Pvt) Ltd and another v Matrix Life Care (Pvt) Ltd and Others SC/HC/LA/45/2021** said prohibition contained in the said proviso is more concerned with the credibility of the affidavit to be tendered in the judicial proceedings. If the affidavit is attested by a commissioner for oaths who has an interest in the matter involved, such attestation may be tainted with bias and partiality, the affidavit will lose its evidential value.

For the reasons given above, I hold that the Affidavit accompanying the Petition is bad in law. The Petitioner has not shown that on the face of the Order of the Learned High Court Judges, there are illegalities which need no affidavit to support the factual matrix related to the impugned order. Thus, the application for leave to appeal is bad in law.

There is a time limit to file a leave to appeal application. If the affidavit filed along with the Petition is not valid, there is no valid leave to appeal application- vide **Foreign Employment Bureau Vs Suraj Dandeniya C A L A 324/2004, C A minute dated 12.01.2004**, and **Yogaratnam V Naheem and Others [2004] 3 Sri L R 212**. After

the lapse of time allowed by law to file a leave to appeal application, now this Court cannot consider to give permission to tender a new affidavit to rectify the error.

Hence, the preliminary objection is upheld and I dismiss this leave to appeal application with costs.

Application dismissed with costs.

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Judge of the Supreme Court.

Murdu N. B. Fernando, PC, J.

I agree.

.....  
Judge of the Supreme Court.

Yasantha Kodagoda, PC, J.

I agree.

.....  
Judge of the Supreme Court.