LIYANAGE

v.

MUNICIPAL COUNCIL, GALLE

SUPREME COURT.
M. D. H. FERNANDO, J.
AMERASINGHE, J. AND
DHEERARATNE, J.
S.C. APPEAL NO. 9/92
CA APPLICATION NO. 1027/91
DC GALLE NO. 2621/SPL.
MAY 27, 1992.

Landlord and tenant – Tenancy agreement – Subletting – Notice of action under sections 307(1) and (2) of the Municipal Councils Ordinance – Sections 40(1) (f), 157 and 266(1) of the Municipal Councils Ordinance.

The Municipal Council, Galle, let a stall at the new market to one Wijeratne in 1962. On information received in the first part of 1990 that Wijeratne had, in

violation of the agreement, sublet the premises to the plaintiff-appellant, the Council cancelled the tenancy agreement by letter dated 6.6.90. By another letter of 6.6.90 the Council informed the appellant of the cancellation and that the tenancy would be granted to him provided he paid Rs. 25,000/- (in the nature of a premium) before 30.6.90. He paid this sum and also Rs. 332/16 as security. Later the Council decided to restore the tenancy to Wijeratne and returned Rs. 25,000/- and rejected the appellant's claim to the tenancy. The appellant then filed this suit for a declaration that he was the lawful tenant and that the respondent was not entitled to evict him without an order of court. An enjoining order was granted. The respondent council pleaded that no notice of the suit as required by s. 307(1) of the Municipal Councils Ordinance had been given. The enjoining order was set aside and the application for an interim injunction was refused by the District Court which held that notice under s. 307/(1) was imperative.

Held:

(1)(a) Section 307(1) of the Municipal Councils Ordinance requires notice of action in respect of "anything done or intended to be done under the provisions of (the) Ordinance". Clearly it is not in respect of **every** act or omission that notice is required.

(b) Section 307(1) does not apply to those acts which a Municipal Council has no power to do or which it has power to do (under statute, common law or contract) otherwise than under the Ordinance.

(c) Notice is also not required in respect of *mala fide* acts or those vitiated by some procedural or other defect.

(d) The fact that the relief sought included an injunction does not dispense with the need for notice in respect of the cause of action.

(2) Section 266(1) deals only with the case of a tenant in **arrears of rent** and has no application to termination for breach of other terms and conditions.

(3) Section 157 expressly confers the right to let premises in the market, and by necessary implication, the power to terminate any such tenancy – an implication which is confirmed by section 40(1) (w). The express conferment of the power to close a market or part thereof does not constitute a restriction of the Council's power but an extension. Section 40(1) (f) (ii) contains two restrictions on a Council's power to sell or lease its property. If the instrument by which it obtained title prohibits sale or lease the Council is bound; if there is no such prohibition, then such sale or lease must conform to the terms and conditions of that instrument; if the property was subject to a trust, then that trust will attach to the proceeds; or if was conveyed for recreational purposes, then the lease must be for those purposes.

It is sufficient that termination in general is an act within the express ambit of section 40(1) (f).

(4) While a court has power to reject a plaint where it appears *ex facie* barred by any positive rule of law, once it is accepted and summons served, it cannot be rejected or returned for amendment.

(5) Even where notice under section 307 is necessary, the fact of notice need not be averred. It is not possible for the judge to conclude that the plaint is *ex facie* defective and reject it.

(6) Section 307(2) requires that action be initiated within 3 months of the accrual of the cause of action. According to the plaint in the instant case it was on or about 11.7.1990. Thus by 9.11.90 the action was prescribed.

(7) Whether the plaint was rejected or the action was dismissed it was a final order and the appellant had a right of appeal.

Cases referred to:

1. *Chetty v. Municipal Council, Colombo* (1988) 8 SCC 133.
2. *Perera v. Municipal Council, Kandy* (1937) 17 CL Rec. 116.
3. *Jayasundera v. Municipal Council, Galle* (1883) 5 SCC 174.
4. *Jafferjee v. Colombo Municipality* (1905) 8 NLR 292.
5. *Ferdinandus v. Municipal Council, Colombo* (1948) 38 CLW 72, 73.
6. *Herath v. Panditha* (1966) 69 NLR 180.
7. *Negombo Municipal Council v. Fernando* (1961) 63 NLR 512, 520.
8. *Weerasooriya Arachchi v. Special Commissioner M.C. Galle* (1967) 69 NLR 437; 74 CLW 39.
9. *Municipal Council, Batticaloa v. Vijayalachchi* S.C. 20/74, S.C. Minutes of 19.3.76.
10. *Aleckman v. Kochchikade Town Council* (1982) 2 Sri LR 487.
11. *Perera v. Hansard* (1886) 8 S.C.C. 1.
12. *Van Haght v. Keegal* (1917) 4 C.W.R. 258.
13. *Ismalanne Lokka v. Harmanis* (1920) 23 NLR 192.
14. *Punchi Banda v. Ibrahim* (1927) 29 NLR 139.
15. *Appu Singho v. Don Aron* (1906) 9 NLR 138.
16. *Abaran Appu v. Banda* (1913) 16 NLR 49.
17. *De Silva v. Ilangakoon* (1956) 57 NLR 457, 459, 460.
18. *Ediriweera v. Wijesuriya* (1958) 59 NLR 446, 447.
19. *Ratnavira v. S.P., C.I.D.* (1949) 51 NLR 217, 222, 224.
20. *Attorney-General v. Arumugam* (1963) 66 NLR 403, 404.
21. *Walker v. Municipal Council, Kandy* (1881) 4 SCC.
22. *Buddhadasa v. Nadaraja* (1955) 56 NLR 537, 542.
23. *Jayawardena v. Urban Council, Ja-ela* (1976) 79(1) NLR 130, 132.

24. *Silva v. Jonklaas* (1913) 17 NLR 377.
25. *Pelis Singho v. A.G.* (1954) 57 NLR 143.
26. *Ratnam v. Dheen* (1969) 17 NLR 21.
27. *Soysa v. Soysa* (1918) 17 NLR 118.
28. *Mohideen v. Gnanaprakasam* (1910) 14 NLR 33.
29. *Fernando v. Soysa* (1896) 2 NLR 40.
30. *Vettavanam v. Retnam* (1958) 60 NLR 20.
31. *Read v. Samsudin* (1895) 1 NLR 292, 295.
32. *Avva Umma v. Casinader* (1922) 24 NLR 199.
33. *Tampoe v. Murukasu* (1909) 1 Curr. LR 107.
34. *Orr v. District Judge, Kalutara* (1948) 49 NLR 204.

APPEAL from order of the Court of Appeal

Manohara de Silva for the plaintiff-appellant.

Ananda Kasthuriarachchi with *D. A. Gunaratne* for the defendant-respondent.

Cur adv vult.

July 15, 1992.
M. D. H. FERNANDO, J.

The Respondent Municipal Council had let stall No. 10, at the New Market, Galle, to one Wijeratne, in or about 1962. During the first part of 1990 the Respondent received information that Wijeratne had sub-let the premises to the Plaintiff-Appellant ("the Appellant"). Sub-letting was in violation of the tenancy agreement, and by letter dated 6.6.90 to Wijeratne the Respondent cancelled the tenancy on that ground. By another letter dated 6.6.90 the Respondent informed the Appellant of such cancellation, and of its decision to grant the tenancy to the Appellant, provided he made a payment (in the nature of a premium) of Rs. 25,000/- on or before 30.6.90. The Appellant paid that sum on 13.6.90, as well as Rs. 332/16 as security. According to the plaint filed by the Appellant in the District Court, the Respondent entered into a tenancy agreement with him; no date was specified; that document was not produced, and no explanation was given for the failure to do so; it was averred that he learnt on 11.7.90 that steps were being taken to grant the tenancy to another person; on inquiring from the Respondent, he learnt that such action was

being taken, and also to evict him from the premises. According to the Respondent, the Appellant had falsely represented that he was the sub-tenant in order to obtain the tenancy; after due inquiry, the Respondent decided that Wijeratne's tenancy be restored and the Appellant's claim to the tenancy rejected.

The Appellant instituted this action on 9.11.90 pleading that a cause of action had accrued to sue the Respondent (a) for declarations that he was the lawful tenant of the premises and entitled to continue to carry on business therein, and that the Respondent was not entitled to evict him without the order of a competent court, (b) for an order prohibiting the Respondent from letting the premises to any other person, and (c) for permanent and interim injunctions to protect his occupation of the premises. An enjoining order was granted, *ex parte,* on 12.11.90. The Respondent filed objections, in particular that notice of action had not been given in terms of section 307(1) of the Municipal Councils Ordinance ("the Ordinance"), and that action had not been filed within three months of the date of accrual of the alleged cause of action (i.e. 11.7.90) as required by section 307(2). After inquiry into the Appellant's application for an interim injunction, the learned District Judge set aside the enjoining order, refused to grant an interim injunction, and dismissed the Appellant's action, holding that the tenancy agreement between the parties was entered into under the provisions of sections 40(1) (f) and 157 of the Ordinance, which alone gave power to a Municipal Council to let property vested in it; accordingly one month's notice of action was required under and in terms of section 307(1).

The Appellant applied in revision to the Court of Appeal, urging in particular that the trial Judge had erred in dismissing the action after the injunction inquiry, without proceeding to hear and determine the case on the merits. The Court of Appeal refused notice, and the Appellant appealed to this Court with special leave. The pleading in the Court of Appeal and in this Court give quite a different picture of the factual position. The Appellant averred that on 11.7.90, in response to a message conveyed by an official of the Respondent, he met the Municipal Commissioner:

> "... and was told that he is going to hold an inquiry in respect of this premises. Thereafter an inquiry was held by the Commissioner and at the inquiry the Petitioner was told that the Respondent intended to cancel the Petitioner's tenancy. No reason was given to him but was told that he would be informed in writing. The Petitioner did not receive any decision from the Respondent Council. But thereafter a Police Officer had come to the Petitioner's premises in early November and had requested him to come to the Police Station. At the Police Station Sub-Inspector Peiris of the Galle Police had informed him that the Police would eject him from the premises on the Respondent's direction as he was in unlawful occupation."

According to the Respondent, the Appellant had received letter dated 6.6.90 addressed to Wijeratne, but had delayed to hand it over to Wijeratne until after the Appellant had paid the sum of Rs. 25,000; Wijeratne had complained to the Respondent by letter dated 16.6.90 that the Appellant had made false representations in regard to sub-tenancy; the Respondent then decided to hold an inquiry; by letter dated 3.7.90 the Appellant requested permission to be represented by an Attorney-at-Law, and this was granted; an inquiry was held on 11.7.90 at which the Appellant was legally represented; thereafter a report was submitted to the Mayor; the Finance Committee of the Respondent Council then decided to grant the tenancy to Wijeratne and to refund the sum of Rs. 25,000 paid by the Appellant; by letter dated 8.11.90 a cheque for the Rs. 25,000 was sent to the Appellant; and by letter dated 9.11.90 the Appellant returned the cheque stating that he was not aware of the result of the inquiry.

As against the original averment that the Appellant knew on 11.7.90 that action was being taken to evict him and grant the tenancy to another, the Appellant alleged in the Court of Appeal that there had been an inquiry on 11.7.90 and that he had been led to believe that a written decision would be communicated to him. For the first time reference was made in the Court of Appeal to a Police threat of eviction made in early November. While the plaint suggested that there had only been an informal, almost casual, inquiry by the Appellant from the Respondent, it now appeared that a formal inquiry had been held, with prior notice and legal representation. In this

Court these matters were not denied, in particular that a cheque for Rs. 25,000/- was sent, and returned on 9.11.90 – facts which were known, but not disclosed to the trial Court by the Appellant, when the *ex parte* enjoining order was obtained on 12.11.90. Quite apart from the legal issues involved, these circumstances militate against any interference, in revision, with the refusal of interim relief by the trial Judge.

Learned Counsel for the Appellant made several legal submissions:

1. Section 307 had no application to the cancellation of the Appellant's tenancy and his threatened eviction. That provision did not apply to actions *ex delicto* – *Chetty v. Municipal Council, Colombo* [1], such as forcible dispossession of land – *Perera v. Municipal Council, Kandy* [2], or to actions for injunctions – *Jayasundera v. Municipal Council, Galle* [3], *Jafferjee v. Colombo Municipality* [4], or in respect of *mala fide* acts.

2. Although it was within the power of the Respondent, under the Ordinance, to let premises in the market, it could not cancel a tenancy of such premises by virtue of sections 40(1) (f), 157 and 266(1) of the Ordinance.

3. The Appellant's action could not have been dismissed, without a trial upon the merits.

It is convenient to reproduce the relevant provisions of the Ordinance:

"40(1) For the purpose of the discharge of its duties under this Ordinance, a Municipal Council (without prejudice to any other powers specially conferred upon it) shall have the following powers:–

(f) to sell by public auction or, with the prior approval in writing of the Minister, to sell otherwise than by public auction, or to lease, either in block or in parcels –

(i) any land or building vested in the Council by virtue of section 35 or section 37 if the prior sanction of the President has been obtained by the Council, and

(ii) any other land or building of the Council, subject to the terms and conditions of the instrument by which the land or building was vested in or transferred to the Council, unless the sale or lease is prohibited by such instrument;

(w) generally to do all things necessary for the effective exercise and performance of the powers and duties of the Council."

"157 A Municipal Council may, subject to the provisions of paragraph (f) of subsection (1) of section 40, sell, or let to tenants on lease or otherwise, on such terms as it may think fit, any public market or any part thereof, and may close any such market or part thereof."

"266 (1) The Council may cause a tenant of the Council who has failed to pay rent within fourteen days after the same has become due to be served with a notice determining the tenancy and requiring the tenant to quit on or before the expiration of one month from the date of service."

"307 (1) No action shall be instituted against any Municipal Council, or the Mayor or any Council or any officer of the Council or any person acting under the direction of the Council or Mayor for anything done or intended to be done under the provisions of this Ordinance or of any by-law, regulation or rule made thereunder until the expiration of one month next after notice in writing shall have been given to the Council or to the defendant, stating with reasonable certainty the cause of such action, and the name and the place of abode of the intended plaintiff and of his proctor or agent, if any, in the action.

(2) Every action referred to in subsection (1) shall be commenced within three months next after the accrual of the cause of action and not afterwards.

(3) If any person to whom notice of action is given under subsection (1) shall, before action is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover in any such action when brought, and the defendant shall be entitled to be paid his costs by the plaintiff.

(4) If no tender of amends is made under subsection (3) it shall be lawful for the defendant in such action, by leave of the court before which such action is pending, at any time before issued is joined, to pay into court such sum of money as he may think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court."

1. Section 307(1) requires notice of action in respect of "anything done or intended to be done under the provisions of [the] Ordinance". Clearly, it is not in respect of **every** act or omission that notice is required, for if that was the legislative intention section 307(1) could have simply provided that "no action shall be instituted against any Municipal Council [etc] ... until the expiration of one month....It has been held in *Perera v. Municipal Council, Kandy* [2], that the corresponding section of the old Ordinance –

"... applies to causes of action accruing from 'something done or intended to be done under the provisions of the Ordinance'. The entering into forcible possession of another's land cannot be done or intended to be done with any propriety under the Ordinance; at least I hope so."

This was followed in *Ferdinandus v. Municipal Council, Colombo* [5] – the plaintiff (ratepayer) sent a blank cheque to the Council, with instructions to fill it for the amount due as rates; the Council inserted an amount which also included warrant costs. This was held not to be an act done or purported to be done in pursuance of the provisions of the Ordinance, but only under the authority of the ratepayer;

"If the act does not fall within the express ambit of the section ... it can neither be regarded as having been performed under the provisions of the Ordinance nor as an act intended to be performed under any such provision."

In *Herath v. Panditha* [6], a public officer, acting not in his official capacity, but as an officer of a body receiving Government funds and implementing Government policy was held not entitled to notice of action. In *Negombo Municipal Council v. Fernando* [7], it was held that the Council had the right to supply electricity only by virtue of the licence granted to it under the Electricity Act; the fact that it was empowered by the (1947) Ordinance to supply electricity did not mean that supplying electricity was something done **under the Ordinance,** since that power could not be exercised save in conformity with the Electricity Act, which was a later special enactment governing the supply of electricity. *Weerasooriya Arachchi v. Special Commissioner, M.C. Galle* [8], was an action for damages in respect of the negligent act of the Council's servant; it was done under the Electricity Act, and was one which a Municipal Council had no power to perform under any of the provisions of the Ordinance; and the action was therefore not for anything done under the Ordinance. See also *Municipal Council, Batticaloa v. Vijayalachchi* [9], and *Aleckman v. Kochchikade Town Council* [10]. In the latter three cases section 307 (and the corresponding section of the Town Councils Ordinance) was held to be inapplicable.

Thus section 301(1) does not apply to those acts which a Municipal Council has no power to do, or which it has power to do (under statute, common law, or contract) otherwise than under the Ordinance. The next question is whether even in regard to acts falling within the ambit of the Ordinance, there are any exceptions: whether notice is not required in respect of *mala fide* acts or those vitiated by some procedural or other defect. On the one hand, it can be contended that by "anything intended to be done" the legislature meant "*bona fide*" intended to be done". This view was taken in regard to section 79 (now 88) of the Police Ordinance ("anything done or intended to be done") in *Perera v. Hansard* [11], *Van Haght v. Keegal* [12], *Ismalanne Lokka v. Harmanis* [13], and *Punchi Banda v. Ibrahim* [14]; and section 461, C.P.C. ("an act purporting to be done in his official capacity") in *Appu Singho v. Don Aron* [15], and *Abaran Appu v. Banda* [16].

However, in *De Silva v. Ilangakoon* [17], Basnayake, C.J., observed that a public servant can only be said to act, or to purport to act, in

the discharge of his official duties if his act is such as would lie within the scope of his official duties. He added:

> "I am unable to find in the language of section 461 anything which requires a person bringing an action against a public officer to ascertain beforehand whether the act which he purported to do in his official capacity was *mala fide* or *bona fide*".

A similar view was expressed in *Ediriweera v. Wijesuriya* [18]. In *Ratnavira v. S.P., C.I.D.*[19], it was held that previous decisions had taken too restricted a view of section 461 in holding that it was not applicable to *mala fide* acts. That view seems to be confirmed when one considers the reason for the requirement of notice. Section 461 is not intended to give some special advantage to the defendant, but to enable him to consider or reconsider the grievance of the citizen, and to offer amends (see *Attorney General v. Arumugam* [20]). Such opportunity to make amends has been expressly referred to in section 307(3). In the case before us the act of the Respondent is not impugned as being *mala fide*.

I have now to consider the other limitations sought to be placed on this provision (and its legislative predecessors).

In *Walker v. Municipal Council, Kandy* [21], Clarence, J., held that notice is required only in "actions to recover damages for torts or to restrain the commission of torts". In *Jayasundera v. Municipal Council, Galle* [3] Clarence, J., (Dias, J., agreeing) observed that the phrase "done or, intended to be done" was "an obscure and unhappy expression":

> "... I cannot suppose that the legislature meant that no plaintiff should be able to sue for an injunction except on the terms of giving a month's notice of action. If such was the law, an injunction could rarely be obtained in time ... I do not think the legislature meant by [those] words ... to include a suit to restrain an intended or threatened act. More probably, the enactment may have been meant to refer to acts done by a

person who in doing them purported to act under the provisions of the Ordinance."

Soon thereafter section 20 (then 22) of the Courts Ordinance, No. 1 of 1989 made provision for the grant of injunction by the Supreme Court to prevent any irremediable mischief which might ensue before an applicant could prevent the same by bringing an action in a court of first instance, a jurisdiction now vested in the Court of Appeal under Article 143 of the Constitution. Although that decision was followed in *Jafferjee v. Colombo Municipality* [4], the inveterate practice has been to apply for interim injunctions to the Supreme Court, and since 1978 to the Court of Appeal, whenever an action could not be filed in an original court without giving notice of action (see for instance *Buddhadasa v. Nadaraja* [22].) The fact that the **relief** sought included an injunction does not dispense with the need for notice in respect of the **cause of action** (cf. *Jayawardena v. Urban Council, Ja-Ela* [23].)

In *Chetty v. Municipal Council, Colombo* [1] a third party assigned his rights under a contract with the Council, to the Plaintiff, who then sued the Council for the sum due under that contract. Dias, A.C.J., held that notice was required only in regard to obligations *ex delicto,* but gave no reasons for that conclusion. A different view was taken in *Silva v. Jonklass* [24], and *Pelis Singho v. A.G.* [25].

2. Learned Counsel for the Appellant submitted that while a Council had power, under sections 40(1) (f) and 157 of the Ordinance, to let premises, its power to terminate such tenancies was subject to three limitations. Section 266(1) precluded termination without one month's notice to quit; in the case of premises forming part of a public market, section 157 did not confer a right of termination unless the Council decided to close the entire market; in any event, there was a burden on the Council to establish that "the terms and condition of the instrument by which the land or building was vested in or transferred to the Council", (cf. section 40(1) (f) (ii)) permitted such termination. These contentions are entirely without merit. If any one or more of these submissions is correct, the termination of Wijeratne's tenancy was invalid for the very same reasons, and the Appellant himself

could not have been granted a tenancy, and the foundation of his action would disappear.

Section 266(1) deals only with the case of a tenant **in arrears of rent,** and has no application to termination, for breach of other terms and conditions. Section 157 expressly confers the right to let premises in the market, and, by necessary implication, the power to terminate any such tenancy – an implication which is confirmed by section 40(1) (w). The express conferment of the power to close a market or part thereof does not constitute a restriction of the Council's powers, but an extension. Section 40(1) (f) (ii) contains two restrictions on a Council's power to sell or lease its property. If the instrument by which it obtained title prohibits sale or lease, the Council is bound. If there is no such prohibition, then such sale or lease must conform to the terms and conditions of that instrument: if the property was subject to a trust, then that trust will attach to the proceeds; or if it was conveyed for recreational purposes, then the lease must be for those purposes. It is far-fetched to imagine that any such instrument might have authorised a tenancy only on the terms that the tenancy could be terminated in a particular way, or not at all. There is no burden on the Respondent to negative any such position, and in any event it is sufficient for present purposes that termination in general is an act within the express ambit of section 40(1) (f), even if the particular termination might have been irregular or in excess of the power conferred thereby.

3. While a court has power to reject a plaint where it appears *ex facie* barred by any positive rule of law (*Ratnam v. Dheen* [26], *Soysa v. Soysa* [27],) once it is accepted and summons served it cannot be rejected or returned for amendment (*Mohideen v. Gnanaprakasam*[28], *Fernando v. Soysa* [29]; *Vettavanam v. Retnam*)[30]. Grenier, J., in *Mohideen's case* recognised that this principle applies to a plaint which is not defective *ex facie*, and this was the view expressed by Bonser, C.J., in *Read v. Samsudin* [31]:

> "If the plaint is defective in some material points, and that appears on the face of the plaint, but by some oversight the Court has omitted to notice the defect, then the defendant, on discovering the defect, may properly call the attention of the

> Court to the point, and then it will be the duty of the Court to act as it ought to have done in the first instance, either to reject the plaint or to return it to the plaintiff for amendment. If the plaint is a good one on the face of it, but the defendant has reason to urge why the plaintiff is not entitled to sue him, that objection must be taken by the answer".

This has been followed in *Soysa v. Soysa* [27] and *Avva Umma v. Casinader* [32].

Where notice in terms of section 461, C.P.C., is necessary, that section provides that the plaint "must contain a statement that such notice has been delivered or left", and before the enactment of section 461A, an action could have been dismissed for non-compliance: *Tampoe v. Murukasu* [33]. There is no such provision in section 307. Hence if the trial Judge, after examining the averments in the plaint, had taken the view that notice under section 307 was necessary, yet, since the fact of notice need not have been averred, it was not possible for him to have concluded that the plaint was *ex facie* defective in some material respect, and to have rejected it on that ground, either initially or at a later stage. However, section 307(2) required that action be initiated within three months of the accrual of the cause of action, which according to the plaint was on or about 11.7.90; thus by 9.11.90, the action was prescribed.

It is true that in the Court of Appeal the Appellant changed his position, so as to suggest that the cause of action accrued only in November 1990, when the Police threatened forcible dispossession on the Respondent's directions, but that was not the position taken up in the District Court. The trial Judge however, did not merely reject the plaint but dismissed the action. Whether the plaint was rejected or the action was dismissed, it was a final order, and the Appellant had a right of appeal *Orr. v. District Judge, Kalutara* [34]. The Appellant gave no reason why he made an application in revision, instead of appealing and having regard to the non-disclosure of material facts even in the Court of Appeal, this was not an appropriate case in which that Court should have acted in revision.

It was for these reasons that at the conclusion of the argument we dismissed the appeal without costs.

AMERASINGHE, J. – I agree.

DHEERARATNE, J. – I agree.

Appeal dismissed.