

IN THE MAGISTRATE'S COURT OF COLOMBO

**In the matter of application in
terms of section 136(1) and 139 (1)
of the Criminal Procedure Code**

M.C. Case No.: Kelum
Kumarasinghe
No.38,
Bodhirukkarama Road,
Galborella,
Kelaniya

Complainant

-Vs-

1. Ajith
Nivard
Cabraal
6/31
School Lane,
Nawala,
Rajagiriya.

2. Mahinda
Rajapakse
Carlton
House,
Tangalle

Accused

I Kelum Darshana Kumarasinghe of No.38, Bodhirukkarama Road, Galborella, Kelaniya, being a Buddhist do hereby solemnly, sincerely, truly, declare and affirm as follows :

1. I am the affirmant and I above named and I affirm to the following facts from the information that is publicly available.
2. (a) I state that the 1st Accused is the former Governor of the Central Bank and has caused a loss of Rs.12 Billion to the EPF Fund by intentionally investing in low shares in the stock market, and by being party to a process referred to as pumping and dumping with full knowledge of the fact and has thereby committed the offence of criminal breach of trust.

(b) I state that the 2nd accused is the former President of the Democratic Socialist Republic and the former Minister of Finance under whose purview the Central Bank

fell within, and the offence committed by the 1st Accused was during the tenure of the 2nd accused as the Minister of Finance.

(c) I further state that the 2nd accused has publicly admitted that he has prevented any action being taken against persons who committed offences under the tenure of the 2nd accused and has thereby committed the offence of aiding and abetting.

(d) The said video clipping of the said 2nd accused who made such an admission in three different occasions is marked as 'X' and pleaded herewith as part and parcel of the plaint.

3. I state the Employees Provident Fund (EPF) monies that have been invested in the stock market of Sri Lanka with intent to boost up the values of certain shares irrationally and arbitrarily at the expense of the Employees Provident Fund resulting in a total loss of approximately 12 Billion SLR.

4. I state that:

a) As per Section 5(e) of the EPF Act, "The Monetary Board may invest such of the moneys of the Fund as are not immediately required for the purposes of this Act in such **Securities** as the Board may consider fit and may sell such Securities."

b) As per Section 7(d) of the ETF Act, "The Board may invest such of the moneys of the Fund that are not immediately required for the purposes of this Act in such shares or Securities as the Board may consider fit and may sell such shares and securities.

5. Therefore it is abundantly clear that the Parliament has drawn a clear distinction with regard to the two acts and taken away the power from the Employees Provident Fund in making any investments in shares that may be purchased from the stock market.

6. I state that there is a clear distinction in the definitions of 'shares' and 'securities' and thus in the powers of the Monetary Board as per Section 5(e) of

the EPF Act and the powers afforded to the ETF Board as per Section 7(d) of the ETF Act and accordingly, whilst the Board of the ETF is eligible to invest in shares the Monetary Board has no such power of investing EPF funds in shares.

7. I state that the opinion of former Attorney General Mr. Shibly Aziz, when the Attorney General's Department was consulted in 1995 was that investment in shares was against the EPF Act, and only investments permitted as prescribed by the EPF Act were investments in Government Securities and that volatile or risky investments was against the EPF Act. The said opinion was in line with a previous opinion that had been given previously by one of the previous Attorney General's, Mr. Shiva Pasupathy in the late 1970's.
8. However consequently, when the Department was consulted in 2002 during the tenure of Attorney General Kamalasabeyson in 2002, his opinion was that EPF could invest in shares, although only in listed blue chip companies and not in smaller shares.
9. I state that whilst the EPF has 13 million contributing and non-contributing members, the ETF has 2.3 Million members and the monies of the EPF and ETF belong to its members. The Government agencies managing these funds act as trustees to the funds and play only a fiduciary role and thus are bound to act in the best interest of its beneficiaries.
10. I state that the 1st accused, being a member of the Monetary Board at the time which is the governing Council of the EPF fund, has breached all fiduciary duties as a member of the Monetary Board and has acted in a dishonest and corrupt manner causing loss in excess of 12,000 Million Rupees to the Fund and its beneficiaries.
11. I state that as per figures tabled by Hon. Sarath Amunugama, in response to a question raised by the Leader of the Opposition, the loss to the EPF as a result of investments made in the Stock Exchange is a sum of Rs. 11.04 Billion as at 20th June 2012. It is further stated by the Hon. Minister that out of 65 companies in which investments were made only 17 of those investments have recorded profits.

12. I state that the loss is principally caused as a result of stock market manipulation caused through a mechanism referred to as 'pumping and dumping' whereby a low value 'junk stocks' are purchased by a select few widely referred to in the media as the 'stock market mafia', with full blessings of 1st accused and other members of the Monetary Board and there after 'pumped up' to enormous values, sometimes in the range of thousands of percent higher than the price originally purchased at by the persons belonging to the said 'stock-market mafia' and thereafter dumped upon the unsuspecting traders in the stock exchange and principally the Employers Provident Fund consequent to which the particular share in question falls back to its original and actual values.
13. I state that as a result of the loss caused to the Employees Provident Fund the rate of return from investments made by the EPF has fallen to 12% in 2011 from 15% in the previous year and the interest paid to members' balances has declined to 11.5% in 2011 from 12.5% in 2010.
14. I state that a select few instances of such market manipulations are listed below:
- The EPF incurred a **loss of Rs. 700 Million** on an investment of Rs. 3000 Million in **Ceylon Grain Elevators PLC**. At the time of investment the value of the share was Rs.250, and bought a further number of shares in its downward trend at a cost of Rs.185/share as a mitigatory measure. However the value of the share had fallen to Rs. 55/share. However the total loss incurred as a result of investment in the said share exceeds a sum of Rs.1.02 Billion as stated by Dr.Harsha De Silva.
 - In April 2012 the EPF invested Rs.280.5 Million in **Piramal Glass (Ceylon) Ltd.** at Rs.6.20 per share increasing total shareholding of the company to 10%. However the price of the share fell to Rs.5.20 per share **within a week of making the investment** causing a **loss of Rs. 50 Million** to the EPF.

- Despite a debt of Rs.6.2 billion the EPF purchased 23.7 Million shares of Galadari Hotels (Lanka) PLC., at a cost of Rs.32.50 per share from Nawaloka Hospitals and related parties increasing its stake by 13 percent. According to Nawaloka Hospitals Deputy Chairman and Chief Executive Officer Jayantha Dharmadasa it has been “a great relief” for them to get rid of the “burden” – Galadari Hotels (Lanka) PLC. The current trading price of Galadari Hotels (Lanka) PLC is approximately Rs.13/share causing a **loss in excess of Rs.500 Million.**

- Shares of Laugh Gas PLC was trading at approximately Rs.38 per share over a period of 2 months prior to the purchase of Rs.1.8 Billion worth of shares by the EPF, on 10th October 2012 at approximately 11.00 am at a price ranging between Rs.48-51/share. On the **same day at 2.30 pm the market price of the share fell back nearing original levels to Rs.40/share causing a loss of Rs.300 Million within hours of purchase.** It is ironical that Laugh Gas share is not even on the main Board where as it was on the second board namely the Dirisaviya Board and has no apparent asset base for such an inflated value of the share.

- The EPF thereafter increased its shareholding in Laugh Gas PLC to 57.89 Million ordinary shares holding a stake of 17.28% of the company followed by 18 Million or 35% non-voting shares. The current trading prices of Laugh Gas PLC Voting is Rs.22-23/share whilst the Non-Voting price is Rs.14-15/share causing a **loss of a sum in excess of Rs.1300 Million.**

- **A loss of Rs.1000 Million** as a result of an investment made in Lanka Orix and Leasing Company.

- Other major losses incurred include Browns (Rs 934 million), Central Finance (Rs 933 million), Vallibel One (Rs 740 million) and DFCC (Rs 655 million).

- The EPF recorded a loss in value of shares held in Dialog (Rs 572 million), Richard Peiris (123 million shares) (Rs 455 million), HNB (Rs 420 million).

15. I hereby state that the shares that have been purchased from Companies were spear headed by political cronies who are near and dear to the governor and the other members of the Monetary Board such as Wegapitiya of Laugh Gas; Valibal – Dhammika Perera; Orix Lanka Ltd- Ajith Devasurendra; Nawaloka Hospitals – Jayantha Dharmadasa & Upali Dharmadasa (already charged in court for insider dealer transactions).

16. **I further state that Ajith Nivard Cabral – Govenor Central Bank, has acted in a corrupt manner with intent knowingly that such monies invested in shares of which values were drastically crashing and thereafter did nothing when it was very well known and seen that such share values were plummeting, causing colossal losses to the Government and has thereby committed the offence of criminal breach of trust, by breaching the trust placed in the 1st accused as the holder of the office of Governor Central Bank.**

17. **I state that the loss caused by these suspects to the tune of approximately Rs. 11.5 Billion (Rs.11,500 Million) Causing a loss to the wage earning employees of Sri Lanka is a heinous offence.**

18. I further state that the 2nd accused being the Minister in charge of the subject of Finance and the 1st accused was directly reporting to the 2nd accused. This incident causing loss to the EPF was very much publicized and was reported in the public domain. How ever the 2nd accused aided and abetted the 1st accused by knowingly ignoring his illegal conduct and encouraged the 1st accused to commit the offence of Criminal Breach of Trust of the funds of the EPF that was entrusted with the 1st accused as the head of the Monetary Board.

19. I urge that a Sinhala translation of this plaint will be filed in your honour's court in due course.

20. I state that the 2nd Accused was also holding the office of the President of the Republic of Sri Lanka. He has relinquished office on the 8th January 2015. The

2nd Accused Mahinda Rajapaksha does not enjoy any immunity. He can be sued in any court of Law.

21. I wherefore seeks summons/notices to be issued in the first instance on the 1st and 2nd for the offence committed under and in terms of section 388 of the penal code accused and to take steps to punish them under section 389 of the penal code.

Read over and explained and)

Having understood the)

contents therein signed)

and affirmed to at Colombo)

on this 12th day of August 2015)

BEFORE ME

JUSTICE OF PEACE