

Affidavit

I, Nagananda Kodituwakku, Attorney-at-Law, of 99, Subadrarama Road, Nugegoda, being a Buddhist do hereby solemnly and truly declare and affirm and state as follows;

1. I am the affirmant above named and I affirm to the facts herein contained from my personal knowledge and by reference to records available to me and I do so on behalf of myself.
2. I state that on 09-09-2014, Addl Solicitor General, V K Malalgoda, was arbitrarily appointed as the President of the Court of Appeal by the former President Mahinda Rajapakse, and since then he has been presiding over the Writ Court of the Court of Appeal. I also state that the Hon' Office of the Chief Justice has been occupied by Mr Mohan Peiris PC, who was also arbitrarily appointed by the former President Mahinda Rajapakse.
3. I state that the experience I had in Writ Court, since then, is vividly explained in the Motion filed in the Court of Appeal on 02-01-2015 by me concerning the Writ Application (CA/Writ/434/2014), details of which are set out in the following paragraphs.

A true copy of the said motion dated 02-01-2015 marked X1 is attached hereto.

4. I state that the case No CA/Writ/434/2014 was filed by me on 15-12-2014 as the Petitioner, challenging former President Mahinda Rajapakse's eligibility to contest the Presidential Election, scheduled for 08-01-2015, two years before the end of the term in office. In this application an interim relief was also sought to suspend the election, pending final determination of the case.
5. I state that before the matter was fixed for support, the Petition filed in Court went missing from the Registry of the Court of Appeal, whereas the records at the Registry, had confirmed the receipt of the Petition. I state that this case was however, later fixed for support in the Vacation Court on 02-

01-2015 before the Hon' Justices V K Malalgoda and Hon' Justice A H M D Nawaz.

6. I state that by then the Opposition Election campaign had been gathering mass support and President Mahinda Rajapakse's camp was sensing a possible defeat at the Presidential Election. Meanwhile the Opposition Camp, realising the danger in the event of an interim relief (postponing the election), being granted in the case (CA/Writ/434/2014), urged me to withdraw the case.
7. I state that the disappearance of the Petition (CA/Writ/434/2014) filed in Court denied the supporting of it before the commencement of the court vacation, and events taken place thereafter compelled me to withdraw the case with the Motion Marked X1) dated 02-01-2015 filed in Court, (without appearing Court) on the day the matter was fixed for support. Accordingly, the withdrawal of the said Writ Application was allowed and the Application was dismissed.

A copy of the Order made by the Court dated 02-01-2015 marked X2 is attached hereto

8. I state that since then I have lost trust and confidence in Hon' Justice Malalgoda and decided not to support any matter before the Writ Court presided over by him.
9. I state that on 09-02-2015, I filed another Writ Application (CA/Writ/65/2015) before the Writ Court challenging the abuse of office of the Attorney General for improper purposes by Mr Mohan Peiris (the former AG and the *de facto* Chief Justice) causing a heavy monetary loss of revenue to the government. And in the Motion dated 09-02-2015 filed in Court, specifically setting out the reasons, a request was made to the President of the Court of Appeal that the said matter be not listed for support before a Bench Comprising of Hon' Justice V K Malalgoda and Hon' Justice A H M D Nawaz and this request was granted by Hon' Justice V K Malalgoda.

A true copy of the said Motion dated 09-02-2015 marked X3, together with the documents attached thereto are attached hereto.

10. I state further that I am the Counsel appearing for the Petitioners in another Court of Appeal Writ Case (CA/Writ/83/2014) in a matter of which Notice was issued on the Respondents on 03-04-2014.
11. I state that when this matter came up for Arguments, on 20-05-2015 a Motion was filed by me, requesting to change of the Bench, that included Justice V K Malalgoda.
12. I state however, the said Motion was not considered and instead the matter was called up on 21st May 2015, before Justice V K Malalgoda, who informed me in the open court that he had the right to hear the case. Then I had no other option but with due respect inform Justice V K Malalgoda, that 'I had lost my trust and confidence in him', and therefore, the matter be transferred to another Bench.
13. I respectfully state that for the reasons set out above I am entitled to make request for the transfer of this matter (CA/Writ/83/2014) before a Bench that will ensure a fair hearing.

Read over, explained, affirmed to
and signed at Colombo on this 25th
day of May 2015.



Before me

Commissioner for oaths/ Justice of
the Peace

DESHA KIRTHI SRI LANKA PUTHRA
JAGATH ABEYSINGHE
Justice of the Peace
2000/08/WP/MTL/B/651
No. 49, Jambugasmulla Road,
Nugegoda.