

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

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

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

PETITIONER

Case No. 1661/2003

Vs.

1. Kandiah Susilar
Commissioner General of Inland Revenue
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.
2. S.A.C.S.W. Jayatilleke
Director General of Customs
Customs House, Bristol Street,
Colombo 1.
3. Parakrama Ekanayake Bandara
Director General of Excise
28, Staples Street,
Colombo 2.
4. Ranjan Samaraweera
Controller of Imports & Exports
75 1/3, 1st Floor, Hemas Building
York Street,
Colombo 1.
5. H.A.G. Hettiarachchi
Controller of Exchange,
Central Bank of Sri Lanka
5th Tower, Level 7, Janadhipathi Mawatha,
Colombo 1.
6. A.S. Jayawardena
Governor, Central Bank of Sri Lanka
Chairman, Monetary Board of Sri Lanka
1st Tower, Level 15,
30, Janadhipathi Mawatha,
Colombo 1.
7. Ananda Coomaraswamy
Chairman, Commission to Investigate Allegations
of Bribery or Corruption
36, Malalasekera Mawatha,
Colombo 7.

8. Charitha Ratwatte
Secretary, Ministry of Finance
& Secretary to the Treasury
Secretariat,
Colombo 1.
9. Kairshasp Nariman Choksy
Minister of Finance
Secretariat,
Colombo 1.
10. Hon. Joseph Michael Perera
Speaker of Parliament of Sri Lanka
Parliament of Sri Lanka
Sri Jayawardenepura
Kotte.
11. W.J.S. Karunaratne
Secretary to Her Excellency the President
Presidential Secretariat
Colombo 1.
12. K.C. Kamalabayson, P.C.
Hon. Attorney General
Attorneys General's Department,
Colombo 12.

RESPONDENTS

TO: HER LADYSHIP THE HONOURABLE PRESIDENT AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 29th day of September 2003

The Petition of the Petitioner above-named appearing by Razmara Abdeen practising under the name, style and firm of **ABDEEN ASSOCIATES**, and his Assistants, Bushra Muheesa Hashim, Manjula Pasquel, Chamari Tharanga Athukorala and Horogoda Gamage Nadeeja Pragathi his Registered Attorneys-at-Law, states as follows:

1. The Petitioner is,
 - a) a citizen of the Democratic Socialist Republic of Sri Lanka;
 - b) a Fellow Member of the Institute Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of UK; and
 - c) practising as a Consultant, having functioned as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government of Sri Lanka, and as an Advisor to the Ministry of Finance.

2. The Petitioner is presenting this Petition on his behalf and for and on behalf of the general public, in the national and public interest, exercising constitutional rights, and performing his duties particularly under Article 28 of the Constitution;
 - a) to uphold and defend the Constitution and the law
 - b) to further the national interest
 - c) to preserve and protect public property
 - d) to combat misuse and waste of public property

3. a) The 1st Respondent is the Commissioner General of Inland Revenue to whom “declarations” were to be made, and who was to issue “acknowledgements in writing” to “declarants” under and in terms of Inland Revenue (Special Provisions) Act No. 10 of 2003 in respect of certain Statutes listed in the Schedule to the said Act No.10 of 2003, and to grant “amnesties” to “declarants”.
 - b) The 2nd, 3rd, 4th, 5th and 6th Respondents are public officers on whom powers of enforcement are vested by the said Statutes listed in the Schedule to the said Act No. 10 of 2003, and who are now required to grant “amnesties” to the aforesaid “declarants” in respect of violations of the provisions of the said Statutes.
 - c) The 7th Respondent is the Chairman of the Commission to Investigate Allegations of Bribery or Corruption, **which Commission is not precluded from ascertaining from the 1st Respondent the identity of the aforesaid “declarants” and any informations contained in their “declarations” made under Act No. 10 of 2003.**
 - d) The 8th Respondent is the Secretary, Ministry of Finance and Secretary to the Treasury and the 9th Respondent is the Minister of Finance. The 1st, 2nd, 3rd, 4th and 5th Respondents function under the purview, direction and control of the 8th and 9th Respondents, more particularly in relation to Act No. 10 of 2003. The 9th Respondent also has power to make Regulations under Section 8 of Act No. 10 of 2003.
 - e) The 10th Respondent is the Hon. Speaker of Parliament, who in terms of the Constitution, is bound to ensure that Bills presented to Parliament are in conformity with the constitutional mandates, procedures, limitations and prohibitions, and are within the scope of the “*limited legislative power*” conferred by the People on Parliament to be exercised in trust on their behalf, *without the alienation of their sovereignty, which is inalienable* (Article 3, read with Article 4 (a) of the Constitution), prior to Bills being placed on the Order Paper of Parliament and/or proceeded with and/or certified by him.
 - f) The 11th Respondent is the Secretary to Her Excellency the President, who, presenting a Note on Act No. 10 of 2003 to the Cabinet of Ministers, *inter-alia*, pointing out the **violation of Article 34** of the Constitution and the usurping and/or alienating the *sole and exclusive right* of **granting pardon**, vested in the President, and the violation of **international laws and treaties** in relation to *money laundering* and *financing of terrorists and terrorist activities*, **had required that Act No. 10 of 2003 be repealed.**
 - g) The 12th Respondent is the Hon. Attorney General.

4. In terms of Articles 53 and/or 61 and/or 165, the 1st to 12th Respondents being holders of public office are bound to faithfully perform and discharge the functions of such public office in accordance with the Constitution and the law, and are bound to be faithful to the Republic of Sri Lanka and uphold and defend the Constitution, under and in terms of the solemn official oath / affirmation taken in terms of the Fourth Schedule to the Constitution; and in addition, the 9th and 10th Respondents as Members of Parliament are further bound to uphold and defend the Constitution in terms of Article 63 of the Constitution.

5. a) Act No. 10 of 2003 specifically provided, for “declarations” to made by “declarents” under Section 2 thereof to the 1st Respondent **on or before 30.6.2003** for such “declarents” to be entitled to claim amnesty / indemnity / immunity / pardon, etc., as provided for in Act No. 10 of 2003.
- b) The main empowering provisions for making “declarations” to the 1st Respondent and the 1st Respondent issuing “acknowledgements in writing” therefor and the consequential affording of such amnesty / indemnity / immunity / pardon, etc., **lapsed on 30.6.2003.**
6. The 8th Respondent, acting at the instance of the 9th Respondent, published Newspaper Notices on or about 30.6.2003 notifying the public that the Cabinet of Ministers had decided to introduce in Parliament necessary amending legislation to extend the **final date** for the making of such “declarations” under Act No. 10 of 2003 from **30.6.2003** to **15.8.2003.**

True copies of English and Sinhala Notices so published in the Newspapers are annexed hereto marked “X1(a)” and “X1(b)”, respectively, and pleaded as part and parcel hereof

7. a) A Bill titled - “Inland Revenue (Special Provisions) (Amendment) - a BILL to Amend the Inland Revenue (Special Provisions) Act No. 10 of 2003” (hereinafter referred to as the “**Amending Bill**”) was placed on the Order Paper of Parliament on **25.7.2003** and passed by Parliament by a *simple majority* on **21.8.2003**, with 98 votes in favour and 67 votes against.
- b) The Amending Bill sought to amend Act No. 10 of 2003 specifying the **final date** for the making of such “declarations” by “declarents” to the 1st Respondent from **30.6.2003** to **15.8.2003.**
- c) At the Committee Stage of Parliament on **21.8.2003**, the said final date of **15.8.2003** in the Amending Bill was replaced to read **31.8.2003.**
- d) The 9th Respondent in moving the 2nd reading of the Amending Bill in Parliament on **21.8.2003** is reported to have, *inter-alia*, stated thus as per the Hansard;

“Now that the Law has been fully approved as being constitutionally valid by the Supreme Court an extended date is requested to enable them to submit the declarations” (*Emphasis added*) - *Hansard Column 2429 Highlighted*

“Nor is it correct to state that the law detracts from the President’s powers of granting pardons under the Constitution. The Constitution vests in the President the authority to grant a pardon or a remission of a penalty of an offender convicted for any offence by a Court. The present law permits only the withdrawal of pending cases, that is; cases, which have not proceeded to conviction by Court of the offender, there is therefore no conflict with the President’s powers.” (*Emphasis added*) - *Hansard Column 2430 Highlighted*

“As I mentioned, the advantage is, we will have at least, 45,000 more tax files” (*Emphasis added*) - *Hansard Column 2486 Highlighted*

True copies of the Amending Bill and the Hansard Columns 2429 to 2489 of 21.8.2003 are annexed hereto marked “X2(a)” and “X2(b)” respectively, and pleaded as part and parcel hereof

- e) The Petitioner respectfully states that the aforesaid Statements made by the 9th Respondent are incorrect, false and misleading.
8. a) The Petitioner reliably understands that in terms of Article 79 of the Constitution, **the Hon. Speaker has not yet endorsed his Certificate on the said Amending Bill**, certifying that it had been “*duly passed by Parliament*” and therefore the Petitioner is advised that the said Amending Bill **has not yet become law**.
- b) In the given circumstances,
- h) the 1st Respondent was not statutorily authorized / empowered to have received “declarations” from “declarants”, and issued “acknowledgements in writing” therefor to “declarants” between the dates **1.7.2003** and **31.8.2003**, and
- ii) the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents were not statutorily authorized / empowered to grant any amnesty / indemnity/ immunity / pardon, etc., in respect of “declarants”, who had made “declarations” to the 1st Respondent between the dates **1.7.2003** and **31.8.2003**.
- c) The Amending Bill becomes law only on the date of the said Certification by the Speaker ***and its applicability as law is prospective***, thereby rendering ***ab-initio null and void and of no force or avail in law*** all acts, deeds, matters and things, whatsoever, done and performed by the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents in respect of “declarations” that had been made by “declarants” to the 1st Respondent between **1.7.2003** and **31.8.2003**.
9. a) A retrospective enactment for an Act to be deemed to have **come into force on a prior date has to be expressly so stated**, as in the 2nd Amendment to the Constitution – vide Article 3 thereof – “*The provisions of Section 2 of this Act shall be deemed for all purposes, to have come into force upon the commencement of the Constitution, and accordingly, ...*”.
- b) Section 11 of Act No. 10 of 2003, itself, has a “deeming clause” where “declarations” made under the previous Inland Revenue (Special Provisions) Act No. 7 of 2002, which was repealed by Act No. 10 of 2003, **were to be considered** as if such “declarations” were made under Section 2 of Act No. 10 of 2003.
- c) Section 2 of the Urban Development Authority (Special Provisions) Act No.44 of 1984 is another example of specific provision in an enacted law *for validation of acts previously done*.
10. a) The 12th Respondent in his Written Submissions, at paragraph 17 thereof, tendered to the Supreme Court on **12.8.2003** in Petitioner’s S.C. (SD) Application No. 20/2003, *inter-alia*, stated thus –
- “Although the time period for making the declaration under Section 2 expired on 30.6.2003, the declarations made in terms of Section 2 were continuously processed and are still being processed, beyond 30.6.2003”.**
(Reference being to Section 2 of Act No. 10 of 2003).(Emphasis added)
- b) In the aforesaid Written Submissions dated 12.8.2003 at paragraph 30 and 31 thereof , *inter-alia*, the 12th Respondent contended, that a “**fine is not a conviction**”, and that granting pardon under Article 34 of the Constitution is only in respect of “**convictions**”, and that the power conferred on the President to grant pardon in terms of the Article 34 of Constitution ***is not exclusive***, and **that the power to grant pardon is an “executive function”, which could also be granted by “relevant authorities” referred to in the principal enactment.** [Emphasis added]

A certified copy of the said Written Submissions of the 12th Respondent dated 12.8.2003 is annexed hereto marked “X3” and pleaded as part and parcel hereof.

- c) Regulations (one undated and the other dated 15.7.2003, both unsigned, not yet Gazetted) stated to have been made by the 9th Respondent under Act No. 10 of 2003 have been circulated to the Officers of the Department of Inland Revenue. These Regulations specifically include immunities to be granted **even after convictions** in courts, where appeals have been made to superior courts, including **sentences of imprisonment**.
- d) One of the so called “Regulations” stipulates that –

“Where it would appear to any Authority that a declarant has committed a serious violation of the relevant law and the immunity or the privileges under this Act may not be granted to such declarant he may refer such cases to the Minister of Finance for a ruling” [*Emphasis added*]

The 9th Respondent had thereby *circumvented* the 12th Respondent and has empowered himself to give a ruling in cases of **“serious violation”**, some of which cases could be those of the 9th Respondent’s former Clients and matters that he, himself, had dealt with as a Lawyer, prior to assuming office as Minister.

- e) The “Authorities” referred to in the above Regulations are the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents, one or more of whom, the Petitioner verily believes, had been instructed by the 8th Respondent / or a person holding under him, to consult the Ministry of Finance, and not the 12th Respondent, on any matter pertaining to or arising from the application of the provisions of Act No. 10 of 2003.

True copies of the said Regulations are annexed hereto marked “X4(a)” and “X4(b)”, respectively and pleaded as part and parcel hereof

11. The Petitioner is advised that,

- a) some of the Offences under the Statutes [Customs Ordinance, Exchange Control Act, Import & Export Control Act, Excise Ordinance and Excise (Special Provisions) Act] scheduled to Act No. 10 of 2003, **include scheduled non-bailable Offences under the Criminal Procedure Code**, punishable under the Penal Code, for which amnesty/ indemnity /immunity/pardon from investigations/prosecutions/convictions cannot be granted under the guise, ruse and “smoke screen” of an “Inland Revenue Bill”.
- b) “declarants” under Act No. 10 of 2003 cannot be granted “immunity” in respect of any **criminal act** connected with any “declaration” made by such “declarants” to the 1st Respondent under Act No. 10 of 2003, *thereby frustrating the Rule of Law*, and ***alienating the judicial power of the People.***

12. a) The Petitioner on 25.6.2003 addressed a Letter to the Hon. Prime Minister pointing out, *inter-alia*, the obnoxious and *unconscionable* features and the unconstitutionality, including the incongruities in the provisions of the Act No. 10 of 2003, forwarding copies thereof to Her Excellency the President, the 12th Respondent and certain others.

- b) Among those certain others to whom the Petitioner forwarded copies of aforesaid Letter dated 25.6.2003 were the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents.

- c) The Petitioner in the public interest urged the aforesaid Respondents **to concur with / refute / controvert any of the facts** set out in the Petitioner's aforesaid Letter dated 25.6.2003, **but none of the Respondents have responded to date.**
- d) The Petitioner only received on or about 25.7.2003, a copy of a Letter dated 30.6.2003 from the Asst. Secretary (for the Secretary) to the Hon. Prime Minister addressed to the 8th Respondent requesting him to take necessary action regarding the matters referred to in the Petitioner's aforesaid Letter and to send a reply to the Petitioner, with a copy to the Hon. Prime Minister, in order that it may apprise the Hon. Prime Minister accordingly.
- e) However, no reply as aforesaid has been received to date by the Petitioner from the 8th Respondent; nor is the Petitioner aware, as to what actions had been taken by the 8th Respondent.

True copies of the Petitioner's Letter dated 25.6.2003 addressed to the Hon Prime Minister and Letter dated 30.6.2003 of the Asst. Secretary (for the Secretary) to the Prime Minister addressed to the 8th Respondent are annexed hereto marked "X5(a)" and "X5(b)" respectively, and pleaded as part and parcel hereof.

- 13. a) Her Excellency the President consequently in or about July 2003 presenting a Note on Act No. 10 of 2003 to the Cabinet of Ministers, *inter-alia*, pointing out the violation of Article 34 of the Constitution and the usurping and/or alienating of the *sole and exclusive right* of **"granting pardon"** vested in the President, and the violation of **international laws and treaties** in relation to ***money laundering*** and ***financing of terrorists and terrorist activities*** **had required that Act No. 10 of 2003 be repealed.**
- b) The Governors of provinces were vested with power to **"grant pardon"** for Offences under the Statutes of a Provincial Council, without prejudice to the powers of the President, by Article 4 of the **13th Amendment to the Constitution**, incorporating Chapter XVII A, specifically Article 154 B (9).
- c) The 6th Amendment to the Constitution, by Article 3 thereof, incorporating Article 157 A (1) stipulates that no person shall **directly or indirectly** in or outside Sri Lanka, support, espouse, promote, **finance**, encourage or advocate the establishment of a separate State within the territory of Sri Lanka. (*Emphasis added*).
- d) Consequent to the United Nations Security Council Resolution No. 1373 of 28.9.2001, Regulations Gazetted by the Government on 16.10.2001 under the United Nations Act No. 45 of 1968, **mandated that funds related to terrorism and terrorist activities be frozen and seized by the Government.**
- e) Article 27 (15) of the Constitution stipulates that the State shall endeavour to foster respect for international law and treaty obligations in dealings among nations.
- 14. a) Article 82 (1) of the Constitution stipulates that –

"No Bill for the amendment of any provision of the Constitution shall be placed on the Order Paper of Parliament, unless the provisions to be repealed, altered or added, and consequential amendments, if any, are expressly specified in the Bill and is described in the long title thereof as being an Act for the amendment of the Constitution".
(*Emphasis added*)

b) Article 82 (3) of the Constitution stipulates that –

“If in the opinion of the Speaker, a Bill does not comply with the requirements of the paragraph (1) or paragraph (2) of this Article, he shall direct that such Bill be not proceeded with unless it is amended so as to comply with those requirements” (*Emphasis added*).

c) Article 82 (6) of the Constitution stipulates that –

“No provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provisions thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article.”

d) Article 84 (3) of the Constitution stipulates that –

“Such a Bill when enacted into law, shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting” (*Emphasis added*)

15. a) In terms of the Constitution, more particularly Articles 79 and 82 (3), it is the onus of the 10th Respondent to ensure that Bills presented to Parliament are in conformity with the constitutional mandates, procedures, limitations and prohibitions, and are within the scope of the **“limited legislative power”** conferred by the People on Parliament **to be exercised in trust on their behalf, without the alienation of their sovereignty, which is inalienable** (Article 3, read with Article 4 (a) of the Constitution), **prior to Bills being placed on the Order Paper of Parliament and/or proceeded with and/or certified.**

b) Article 77 (1) of the Constitution stipulates that –

“It is the duty of the Attorney-General to examine every Bill for any contravention of the requirements of paragraphs (1) and (2) of Article 82 and for any provision which cannot be validly passed except by the special majority prescribed by the Constitution; ...”

16. The Petitioner further states that;

a) Act No. 10 of 2003 does not grant amnesty / indemnity / immunity / pardon from investigation and prosecution for Bribery & Corruption by the Commission to Investigate Allegations of Bribery or Corruption, established under Act No. 19 of 1994, of which Commission the 7th Respondent is the Chairman.

b) Nor does Act No. 10 of 2003 grant amnesty / indemnity / immunity / pardon for those persons, who come under purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 74 of 1988, which is to be enforced, among others, by the 1st, 5th, 7th and the 12th Respondents.

c) **The Declaration of Assets and Liabilities Law No. 1 of 1975, as amended by Act No. 74 of 1988, is not a scheduled Statute to Act No. 10 of 2003.**

d) Hence public servants coming under the purview of the Bribery Act, amended by Act No. 20 of 1994, and those persons coming under the purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988 **cannot seek refuge of amnesty / indemnity/ immunity / pardon under the provisions of Act No. 10 of 2003.**

17. a) Act No. 19 of 1994 to establish the Commission to Investigate Allegations of Bribery or Corruptions, of which the 7th Respondent is the present Chairman, was passed **unanimously** in Parliament in October 1994.

b) On that occasion the then Minister of Justice & Constitutional Affairs in presenting the relevant Bill to Parliament, *inter-alia*, stated:

"Hon. Deputy Speaker, you are aware that there is a great resentment and hatred in our country concerning bribery and corruption. Therefore, it is the duty of the government to formulate laws in conformity with public opinion."

"Apart from the financial implications, there is also the question of an overweening sense of cynicism. Discerning, discriminating, thinking people in our country have expressed profound dissatisfaction with the extent to which corruption and bribery have taken root in our country. If this spirit of cynicism is not addressed there is a definite danger to the stability and tranquility of political and social institution in our country. That is why the government was convinced that there should be a vigorous response to the issues of bribery and corruption".

c) Endorsing the above Bill in Parliament, the Prime Minister, as the then Leader of the Opposition, *inter-alia*, stated :

"In fact, the whole question of bribery and corruption raises many fundamental questions in a democratic society. We have all got to recognise that corruption is a cancer of democracy, as one of the biggest problems that we faced, when elected representatives and officials of the Government who are also public servants - when their decisions are effected not by matters of political consideration but by pecuniary gains and financial gain".

d) **The above clearly demonstrated the intention of the legislature in unanimously passing the enactment of the aforesaid law to deal with Bribery & Corruption.**

True copies of the Hansard Columns 280 to 288 of 4.10.1994 and Hansard Columns 401 to 412 of 5.10.1994 are annexed hereto marked "X6(a)" and "X6(b)" respectively, and pleaded as part and parcel hereof

18. The Petitioner states that upon representations he had made to the President of the World Bank, the Petitioner received Letter dated 25.9.2002 from the World Bank, Country Program Co-ordinator for Sri Lanka, who had written on the instructions of the World Bank President, stating:

"As noted in your letter, the senior management of the World Bank, as well as the entire staff of the institution, take the issues of fraud and corruption very seriously. Furthermore, the community of developing countries acknowledged this issue at the meeting held in Monterrey earlier this year. Specifically, developing countries in Monterrey said "We understand that if there is to be development assistance, then we have to put our house in order. We have to deal with building our human capacity, we have to deal with legal systems that protect rights, we have to have financial systems that are transparent, and we must fight corruption." (Emphasis added)

A true copy of the said Letter dated 25.9.2002 addressed to the Petitioner from the World Bank is annexed hereto marked "X7" and pleaded as part and parcel hereof

19. The foregoing circumstances warrant the due performance by the Petitioner of his duties and obligations in terms of Article 28 of the Constitution and to invoke the jurisdiction vested in Your Ladyship's Court in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka and seek from Your Ladyship's Court the following Writs of Certiorari, Prohibition and Mandamus and Interim Orders:
- a) a Writ of Certiorari quashing all acts, deeds matters and things, whatsoever, done and performed by the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, under Act No. 10 of 2003, on "declarations" made by "declarants" to the 1st Respondent between 1.7.2003 and 31.8.2003,
 - b) a Writ of Certiorari quashing any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions granted by the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, to "declarants", who have made "declarations" to the 1st Respondent under Act No. 10 of 2003,
 - i. which could only have been granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,
 - iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences, as may be determined by the 12th Respondent,
 - c) a Writ of Prohibition restraining the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting amnesty / indemnity / immunity / pardon under Act No. 10 of 2003 to "declarants", who have made "declarations" to the 1st Respondent between 1.7.2003 and 31.8.2003
 - d) a Writ of Prohibition restraining the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions to "declarants", who have made "declarations" to the 1st Respondent under Act No. 10 of 2003,
 - i. which could only be granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,
 - iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences as may be determined by the 12th Respondent,

- e) a Writ of Mandamus compelling the 1st Respondent to forward to the 5th and/or 7th and/or 12th Respondents “declarations” made to the 1st Respondent under Act No. 10 of 2003, by public servants, who have held such office within the last 10-years prior to the date of coming into effect of Act No. 10 of 2003, coming under the purview of the Bribery Act, amended by Act No. 20 of 1994, and those persons who have held such office within the last 10-years prior to the date of coming into effect of Act No. 10 of 2003 coming under the purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988, and compelling the 7th Respondent to take any warranted action in terms of the law in respect of the said “declarants”.
- f) an interim order restraining the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting amnesty / indemnity / immunity / pardon under Act No. 10 of 2003 to “declarants”, who have made “declarations” to the 1st Respondent between **1.7.2003** and **31.8.2003**
- g) an interim order restraining the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions to “declarants”, who have made “declarations” to the 1st Respondent under Act No. 10 of 2003,
- i. which could only have been granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,
 - iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences, as may be determined by the 12th Respondent,
20. The Petitioner has not invoked the jurisdiction of Your Ladyship’s Court previously in respect of this matter.
21. By way of disclosure the Petitioner states that;
- a) the Petitioner has filed in the Supreme Court S.C./FR Application No. 194/2003 against several Respondents, including the above Respondents, in connection with the enactment of Act No. 10 of 2003, *which Application is pending.*
 - b) the Petitioner has filed in the Supreme Court S.C. (SD) Application No. 11/2003 and the Supreme Court upholding the preliminary objections raised by the 12th Respondent, held that the Supreme Court has to necessarily uphold the preliminary objections raised by the 12th Respondent and **declined to exercise jurisdiction to determine upon the constitutionality of the provisions of Act No. 10 of 2003.**
 - c) the Petitioner has also filed in the Supreme Court S.C. (SD) Application No. 20/2003 and the 12th Respondent once again raising preliminary objections, a 3-Member Bench of the Supreme Court determined that the amending of the date by the Amending Bill is consistent with the Constitution, **without having examined the constitutionality of the provisions of Act No. 10 of 2003** (some of which had lapsed on 30.6.2003), and which were being enacted into law to be applicable after 1.7.2003 to be extended to a new group of persons, *distinct and different from the first group of persons.*

in the foregoing circumstances, Petitioner has filed in the Supreme Court on 12.9.2003 an Application for the aforesaid matter to be re-examined by a fuller Bench of the Supreme Court for the reasons set out in the Petition.

A true copy of the Petition in the above Application, without the Documents marked thereto is annexed hereto marked "X8" and pleaded as part and parcel hereof

- d) In support of the averments contained and the stance taken by the Petitioner in his said Application ("X8"), the Petitioner tendered by his Motion dated 25.9.2003 to the Supreme Court, the Determinations made by a 5-Member Bench of the Supreme Court (*announced by the Hon. Speaker of Parliament on 23.9.2003*) in Applications SC (SD) Nos. 22/2003 and 23/2003, wherein the Petitioner appeared in person as an Intervent-Petitioner.

The 5-Member Bench of the Supreme Court in the said Determinations have examined and determined upon the inconsistency of the provisions of a principal enactment in circumstances of they being extended to a "new group of persons" / "new transactions" and has further, *inter-alia*, determined that an Amendment cannot be viewed in isolation, and that **an Amendment certainly cannot derive a stamp of constitutionality from an Act that is in force**, and that the Court will, *inter-alia*, strike down **unconscionable law**, and that the law certainly cannot strengthen the strong and weaken, the weak.

True copies of the Motion dated 25.9.2003 and the said 2 Determinations are annexed hereto marked "X9", "X10(a)" and "X10(b)", respectively and pleaded as part and parcel hereof.

- e) **Accordingly, the Petitioner states that the constitutionality of the provisions of Act No. 10 of 2003 has not been examined and determined upon by the Supreme Court.**

22. An Affidavit of the Petitioner in support of the averments herein contained is appended hereto.

WHEREFORE the Petitioner respectfully prays that Your Ladyships' Court be pleased to:

- a) issue Notices on the Respondents,
- b) issue a Writ of Certiorari quashing all acts, deeds matters and things, whatsoever, done and performed by the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, under Act No. 10 of 2003, on "declarations" made by "declarants" to the 1st Respondent between 1.7.2003 and 31.8.2003,
- c) issue a Writ of Certiorari quashing any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions granted by the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, to "declarants", who have made "declarations" to the 1st Respondent under Act No. 10 of 2003,
 - i. which could only have been granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,

- iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences, as may be determined by the 12th Respondent,
- d) issue a Writ of Prohibition restraining the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting amnesty / indemnity / immunity / pardon under Act No. 10 of 2003 to “declarants”, who have made “declarations” to the 1st Respondent between **1.7.2003** and **31.8.2003**
- e) issue a Writ of Prohibition restraining the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions to “declarants”, who have made “declarations” to the 1st Respondent under Act No. 10 of 2003,
 - i. which could only have been granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,
 - iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences, as may be determined by the 12th Respondent,
- f) issue a Writ of Mandamus compelling the 1st Respondent to forward to the 5th and/or 7th and/or 12th Respondents “declarations” made to the 1st Respondent under Act No. 10 of 2003, by public servants, who have held such office within the last 10-years prior to the date of coming into effect of Act No. 10 of 2003, coming under the purview of the Bribery Act, amended by Act No. 20 of 1994, and those persons who have held such office within the last 10-years prior to the date of coming into effect of Act No. 10 of 2003 coming under the purview of the Declaration of Assets and Liabilities Law No. 1 of 1975, amended by Act No. 74 of 1988, and compelling the 7th Respondent to take any warranted action in terms of the law in respect of the said “declarants”.
- g) issue an interim order restraining the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting amnesty / indemnity / immunity / pardon under Act No. 10 of 2003 to “declarants”, who have made “declarations” to the 1st Respondent between **1.7.2003** and **31.8.2003**
- h) issue an interim order restraining the 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 8th and/or 9th and/or 12th Respondents and/or their authorized officers, agents, servants and all those holding under them, from granting any amnesty / indemnity / immunity / pardon from investigations / prosecutions / convictions to “declarants”, who have made “declarations” to the 1st Respondent under Act No. 10 of 2003,
 - i. which could only have been granted by Her Excellency the President in terms of Article 34 of the Constitution,
 - ii. in respect of any offences punishable under the Penal Code,

- iii. in respect of any offences of money laundering, pirating, narcotics and drug peddling, illicit brewing, bootlegging, human trafficking and financing of terrorists and terrorists activities, and such other and further offences, as may be determined by the 12th Respondent,
- i) grant costs; and
- j) such other and further reliefs as to Your Ladyship's Court shall seem meet

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Settled by:

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