

IN THE DISTRICT COURT OF COLOMBO

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

**PLAINTIFF**

Case No : 19849/MR  
Nature : Money Recovery  
Value : Rs.300,000,000.00  
Procedure : Regular

Vs

Gamini Lakshman Peiris  
of "Visumpaya", Staples Street  
Colombo 2 and also of  
37 Kirula Place,  
Colombo 5.

**DEFENDANT**

On this 31<sup>st</sup> day of October 1997

The **Answer** of the Defendant abovenamed appearing by James Henry Paul Ratnayake, Uswattaliyanage Sudath Nilupul Prasansa Perera, Attorneys-at-Law of the Honourable Supreme Court of the Democratic Socialist Republic of Sri Lanka, carrying on business in Partnership under the name, style and firm of **Pual Ratnayake Associates** and their assistants Ms. Punyakanthi Navaratne, Ms. Shalindri Jayasinghe, Ms. Indralogini Rajagopalan, Ms. Chandrani Suriyaarachchi, Mr. Kolitha Susantha Bandara Wijeratne and Ms Kshenuke Dushani Wickremasinghe its Attorneys-at-Law state as follows:

1. The Defendant denies all and singular the averments contained in the Complaint save and except those of which are expressly admitted to hereinafter.
2. The Defendant specifically pleads that the Complaint does not disclose a cause of action against this Defendant.
3. The Defendant states that the Complaint has been accepted **per incuriam** in that on the face of the Complaint, the Complaint does not disclose a cause of action against this Defendant and thus the Complaint must be rejected and/or action **dismissed in limine**.
4. The Defendant states that the Complaint has been abuse of the process of Court in that it has been instituted for extraneous purposes which is further evidenced by the wide publicity given in several newspapers to the averments in the Complaint which are not relevant nor necessary for the purpose of this action.
5. The Defendant expressly pleads that the institution of this action is mala fide and is an abuse of the process of Court. The Defendant reserves his right to file action for malicious institution of civil proceedings and to claim damages from the Plaintiff.
6. In any event the Defendant pleads that damages claimed in this action are for alleged acts done in his official capacity and thus the Plaintiff cannot have and maintain this action against the Defendant in his personal capacity, thus the Plaintiff's action must be dismissed in limine.

7. The Defendant states that the Plaintiff is prolix and thus the Court should have **refused to entertain the Plaintiff in terms of Section 462(a) of the Civil Procedure Code** which expressly states that the Court would refuse to entertain a Plaintiff if it does not state correctly and without prolixity the several particulars required to be specified; thus the Court would at present refuse to accept the Plaintiff and/or dismiss the action.
8. This Defendant pleads that the Plaintiff does not conform to the imperative provisions of the Civil Procedure Code in that inter alia:
  - i. it is prolix
  - ii. it does not conform to Section 40(d) of the Civil Procedure Code.
9. Answering paragraph 1 of the Plaintiff the Defendant admits his residence within the local limits of the jurisdiction of this Court but specifically denies that a cause of action has arisen for the Plaintiff to sue the Defendant.
10. The Defendant is unaware of the averments contained in paragraphs 2(a) and 2(b) of the Plaintiff save and except that the Defendant had, at one stage, been the Advisor to the Ministry of Finance. In the circumstances, subject to the aforesaid the Defendant denies the averments contained in paragraphs 2(a) and 2(b) of the Plaintiff.
11. Answering paragraph 3 of the Plaintiff the Defendant states that the said averments are irrelevant for the purpose of this case but admits same save and except that the Defendant was very closely associated with the former Government.
12. The Defendant admits paragraph 4(a) of the Plaintiff.
13. Answering paragraph 4(b) of the Plaintiff, the Defendant is aware that the Plaintiff instituted action No. 3155/Spl in the District Court of Colombo but denies the other averments contained therein subject to the fact that District Court Case No. 3155/Spl was instituted as a derivative action.
14. Answering paragraph 4(c) of the Plaintiff the Defendant admits that restraining orders were issued but denies the other averments therein contained subject to the terms of the enjoining order and the contents of the said case.
15. Subject to what is contained in the District Court of Colombo Case No. 3155/Spl the Defendant is unaware of the averments contained in paragraphs 5, 6 and 7 of the Plaintiff and thus denies the same.
16. Answering paragraph 8 of the Plaintiff the Defendant admits only that the HDL is a listed public company and is therefore governed by the rules of the Colombo Stock Exchange and the Securities and Exchange Commission. The Defendant denies the other averments contained in paragraphs 8(a), (b), (c) and (d) of the Plaintiff save and except that the Defendant was a member of the Securities Exchange Commission from 23.10.1987 up to 31.03.1994.
17. The Defendant is unaware of the averments contained in paragraphs 9, 10 and 11 of the Plaintiff and thus denies the same.

18. Answering paragraph 12(a) of the Plaintiff the Defendant admits that the Peoples Alliance has made the "Hilton Matter" an issue among other matters of fraud and corruption that needs investigations as part of its election platform. Answering the other averments in paragraph 12 of the Plaintiff the Defendant admits that the Special Presidential Commission Inquiry was established to investigate the affairs of public bodies listed in the schedule to the warrant, and that show cause notices were in fact issued on some directors of HDL. Subject to the aforesaid the Defendant denies the averments contained in paragraph 12 of the Plaintiff.
19. The Defendant is unaware of the averments contained in paragraph 13(a) of the Plaintiff.
20. Answering paragraph 13(b) to 13(e) of the Plaintiff the Defendant admits the contents of the settlement and reiterates that the settlement has to be read in toto. The Defendant denies that the settlement was achieved by the sole and sustained efforts of the Plaintiff.
21. The Defendant is unaware of the averments contained in paragraph 14(a), (b) and (d) of the Plaintiff and thus denies the same. The Defendant specifically denies the averments contained in paragraph 14(c) of the Plaintiff.
22. Answering paragraph 15 of the Plaintiff the Defendant admits that a news conference was convened and that the Minister of Foreign Affairs, Minister of Tourism, the Japanese Ambassador and the Secretary, Ministry of Finance were present at the conference and that the Defendant chaired the conference.
23. The Defendant specifically states that the Defendant made a statement at the said conference on the basis of information disclosed to him by the Plaintiff. Subject to the aforesaid and subject to what was said at the said conference the Defendant denies the averments contained in paragraph 15 of the Plaintiff.
24. Answering paragraph 16 of the Plaintiff the Defendant admits the publication in "The Island" Newspaper marked "A1a". Subject to the aforesaid the Defendant denies the other averments contained in the said paragraph.
25. Answering paragraph 17(a) and 17(b) of the Plaintiff the Defendant admits that Letters "A2a" and "A2b" were communicated to the persons named therein.
26. Answering paragraph 17(c) the Defendant admits that the "Daily News" of 25<sup>th</sup> July 1995 carried the statement referred to therein. Subject to the aforesaid the Defendant denies the other averments contained in paragraph 17 in the Plaintiff.
27. The Defendant denies the averments contained in paragraphs 18 and 19 of the Plaintiff.
28. Subject to what is contained in the Hansard of those dates the Defendant denies the averments contained in paragraph 20, 21 and 22 of the Plaintiff and pleads that in any event statements made in Parliament are absolutely privileged.
29. Answering paragraph 23 of the Plaintiff subject to what is contained in the Hansard the Defendant denies the other averments contained in the said paragraph and in any event pleads that said statement made in Parliament are absolutely privileged.

30. The Defendant is unaware of the averments contained in paragraph 23(b) of the Plaintiff save and except that action No. 3231/Spl was instituted. The Defendant denies the averments contained in paragraph 23(c) of the Plaintiff.

The Defendant is unaware of the averments contained in paragraphs 23(d) and 23(e) of the Plaintiff and thus denies the same.

31. Answering paragraphs 24(a) and (b) of the Plaintiff the Defendant states that the Cabinet of Ministers in the larger national interest decided to implement the said agreements 1 and 2 which relates *inter alia* to payments to Architects and Contractors.

Further answering paragraph 24 the Defendant states that payments were made consequent to the said settlement.

32. Subject to the aforesaid and subject to the settlement that was agreed upon by the Cabinet of Ministers, Defendant denies the other averments contained in paragraph 24 of the Plaintiff.

33. Answering paragraph 25 of the Plaintiff the Defendant admits receipt of a letter of demand from the Plaintiff's Attorney-at-Law. The Defendant does not accept as factually correct the contents of the said Letter of demand and thus denies the averments contained in paragraph 25 of the Plaintiff.

34. Answering paragraph 26 of the Plaintiff, the Defendant admits receiving from the Plaintiff a purported notice under and in terms of Section 461 of the Civil Procedure Code.

The Defendant denies the other averments contained in paragraph 26 of the Plaintiff.

35. The Defendant denies the other averments contained in paragraph 27 of the Plaintiff.

36. Subject to the aforesaid, the Defendant denies the averments contained in paragraph 1 to 27 of the Plaintiff.

37. In any event and without prejudice to the aforesaid the Defendant states that the alleged publication referred to was justified in that it was true and made in the public interest.

38. In any event and without prejudice to the aforesaid the Defendant states that the alleged publications was privileged.

39. In any event and without prejudice to the aforesaid the Defendant pleads that at all times material be acted in his capacity as the Deputy Minister of Finance.

40. In any event and without prejudice to the aforesaid the Defendant states that the publication in the "Daily News" referred to in the Plaintiff was consequent to a directive made by Her Excellency the President and thus in any event the Plaintiff cannot have and maintain this action against this Defendant.

WHEREFORE the Defendant prays:

- a) That the Plaintiff's action be dismissed
- b) For costs

c) For such other and further relief as to this Court shall seem meet.

*Paul Raymond Brown*

REGISTERED ATTORNEYS-AT-LAW

FOR THE DEFENDANT