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

Piliyandala Tharuna Bauddha Samithiya
(Young Buddhist Association),
No. 11, Maharagama Road,
Piliyandala.
Plaintiff-Appellant-Appellant

SC/APPEAL/96/2025
WP/HCCA/HO/137/2020 (LA)
DC KESBEWA RE/75

Vs.

Satharasinghe Achcige Don Chaminda,
No. 272/B, U.D.T. Wimal Perera Mawatha,
Kesbewa.
Defendant-Respondent-Respondent

Before: Hon. Justice Janak de Silva
Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna

Counsel: J.P. Gamage with Melisha Perera and Theekshana Ranaweera for the Plaintiff-Appellant-Appellant.
Vidura Gunarathna for the Defendant-Respondent-Respondent.

Argued on: 14.07.2025

Written submissions:
By the Plaintiff-Appellant-Appellant 25.08.2025.
By the Defendant-Respondent-Respondent 26.08.2025.

Decided on: 10.02.2026

Samayawardhena, J.

The plaintiff instituted this action against the defendant in the District Court of Kesbewa seeking the ejectment of the defendant from the premises described in the schedule to the plaint and damages, on the ground that the defendant is an overholding lessee who has remained in unlawful occupation of the premises after 31.12.2018. In the plaint itself, the plaintiff sought an enjoining order followed by an interim injunction, not to eject the defendant from the premises pending the determination of the action, but to restrain the defendant from continuing the business in the premises and from earning profits until the final determination of the action.

The learned District Judge, in the first instance, issued the enjoining order *ex parte*, but thereafter refused to issue the interim injunction by order dated 31.01.2020. On appeal, the High Court of Civil Appeal of Homagama, by judgment dated 21.06.2022, affirmed the order of the District Court. This Court granted leave to appeal to the plaintiff on the following question of law:

> *Did the High Court and the District Court err in law in not considering that the defendant is not entitled to take any benefit from the premises and such interim injunction prayed for by the plaintiff could be granted?*

The plaintiff, a body corporate, the Piliyandala Young Buddhist Association, is the owner of the premises. The plaintiff leased the premises to the defendant for a period of five years from 01.07.2012 to 30.06.2017, subject to the terms and conditions set out in the lease agreement. As is evident from the documents tendered with the plaint, when the said lease was about to expire, the defendant wrote several letters to the plaintiff earnestly requesting an extension of the lease period, citing various reasons, including the indigent circumstances of his ailing parents, who had previously been lessees under the plaintiff.

The plaintiff consistently refused to extend the lease on the basis that the premises were required for the establishment of a public library for the greater benefit of society. Notwithstanding this, the defendant persisted in making fervent requests, and the plaintiff eventually agreed to grant a further extension of 18 months, from 01.07.2017 to 31.12.2018, subject to revised terms and conditions. One such condition was that the defendant expressly agree in writing that he would not, under any circumstances, seek a further extension of the lease beyond 31.12.2018. These conditions were communicated to the defendant by letter marked C6.

<u>අංක 5 කඩ කාමරය බදු ගිවිසුමට සම්බන්ධව කරුණු ඉදිරිපත් කිරීම</u>

උක්ත කරුණ කෙරෙහි පිළියන්දල තරුණ බෞද්ධ සමිතියේ ගරු සභාපති අමතමින් 2017.06.06 දිනැතිව එවන ලද ලිපිය හා බාහිර වෙනත් ඉල්ලීම් ද සැලකිල්ලට ගනිමින් තරුණ බෞද්ධ සමිති කාර්යාලයේදී අප නිලධාරීන් හා ඔබ අතර සාකච්ඡාවකට අවස්ථාව ලබා දුනි.

එම සාකච්ඡාවේදී ඔබ විසින් ඉදිරිපත් කරන ලද කරුණු අතර ඔබගේ මව් පිය දෙපල මේ වන විට පත්ව ඇති මානසික තත්වය හා බැඳුණු සානුකම්පිත ඉල්ලීම බෞද්ධ සමිතියක් වශයෙන් සැලකිල්ලට ගනිමින් 2017.07.23 දින මේ පිළිබඳව සාකච්ඡා කිරීමට විශේෂ පාලක කාරක සභා රැස්වීමක් පැවැත්වීමට යෙදුනි.

එහිදී ඔබ විසින් තරුණ බෞද්ධ සමිතිය වෙත යොමු කරන ලද සියළුම ලිපි ඉතා ගැඹුරින් සලකා බලා ඔබගේ බැගෑපත් සානුකම්පිත ඉල්ලීම් කෙරෙහි වඩාත් සැලකිල්ලට ගනිමින් මෙහි පහත සඳහන් කොන්දේසි මත බදු ගිවිසුම නැවත දීර්ඝ කිරීමට පාලක කාරක සභාව තීරණය කරන ලදි.

1. බදු ගිවිසුම 2017 ජූලි මස 01 සිට 2018 දෙසැම්බර් 31 දක්වා වසර එකහමාරක (මාස 18) කාලයක් සඳහා පමණක් දීර්ඝ කිරීම.
2. 2017.07.01 සිට 2018.12.31 දක්වා අදාළ කාලයට බදු ගිවිසුම් කොන්දේසි අලුත් කිරීම.
3. බදු ගිවිසුම් කාලය අවසන් වූ පසු කුමන හේතුවක් මතවත් බදු ගිවිසුම් කාලය නැවත දීර්ඝ කරන ලෙස ඉල්ලා නොසිටීමට වගබලා ගත යුතුය.

4. මාසික බදු වාරික මුදල අනෙකුත් බදු දී ඇති කඩ කාමර වල නව බදු ගිවිසුම් යටතේ අය කරන බදු මුදලට සමවන සේ රුපියල් පහළොස් දහසක් (15,000/=) ලෙස සංශෝධනය කිරීම.

ඉහත කොන්දේසි වලට ඔබ එකඟතාවය පලකරන්නේ නම් මෙම ලිපිය ලැබී දින 14 ක් ඇතුලත පිළියන්දල තරුණ බෞද්ධ සමිතිය වෙත පිළිතුරු ලිපියක් ලැබෙන්නට සලස්වන්න. ඔබගේ එකඟතාවය දැන්වීමෙන් අනතුරුව බදු ගිවිසුම් කාලය දීර්ඝ කිරීමේ නව කොන්දේසි ඇතුලත් ගිවිසුම් ඔප්පුව අත්සන් කිරීමට අදාළ කටයුතු සිදු කරනු ඇත.

The defendant replied to this by letter marked D1, stating that he was agreeable to all the new conditions.

<u>අංක 05 තාවකාලික බදු ගිවිසුම දීර්ඝ කිරීම</u>

ගරු සභාපති තුමනි!
පළමුකොටම මාගේ ඉල්ලීම සැලකිල්ලට ගනිමින් බදු ගිවිසුම දීර්ඝ කිරීමට තීරණය කිරීම පිළිබඳව සභාපතිතුමා ඇතුළු කාරක සභාවට ස්තූතිවන්ත වන අතර ඔබ දක්වා ඇති කරුණු වලට එකඟව බදු ගිවිසුම දීර්ඝ කිරීමට කටයුතු කර දෙන මෙන් කාරුණිකව ඉල්ලා සිටිමි.

All the new conditions were incorporated into the new lease agreement, in addition to the terms and conditions contained in the previous lease agreement. The new lease agreement was notarially executed between the plaintiff and the defendant on 19.08.2017. Clause 19 of the said lease agreement reads as follows:

බදු ගැනුම්කාර පාර්ශවය 2018-12-31 දිනට මෙම බදු ගිවිසුම අවසන් කර ඉහත කී දේපලට කිසි අලාභ හානියක් නොකර දේපලේ හිස් සාමකාමී භුක්තිය බදු දීමනාකාර පාර්ශව සමිතිය වෙත භාරදී සමාදානයෙන් මෙම දේපලෙන් ඉවත්විය යුතු අතර එසේ භාර නොදී නීති විරෝධී ලෙස මෙම දේපලේ රැඳී සිටින්නේ නම් එසේ රැඳි සිටින සැම අතිරේක දිනයක් සඳහාම ගිවිසුම කඩ කිරීමේ අලාභයක් වශයෙන් දිනකට රුපියල් දහසක් (රු:1000.00) බදු දීමනාකාර පාර්ශව සමිතිය වෙත ගෙවීමට බදු ගැනුම්කාර පාර්ශවය එකඟ වේ.

<u>තව ද පාලක කාරක සභාව ඒකමතිකව සම්මත කරන ලද යෝජනාව පරිදි ශ්‍රීමත් බාරොන් ජයතිලක පුස්තකාලය 2019 ජනවාරි සිට ආරම්භ කිරීම සඳහා මෙම කඩ කාමරය අවශ්‍ය බැවින් බදු දීමනාකාර සමිතිය බදු ගිවිසුම නැවත දීර්ඝ නොකරන බවටත්, බදු ගැණුම්කාර</u>

පාර්ශ්වය බදු ගිවිසුම නැවත දීර්ඝ කිරීම සඳහා කිසිදු ඉල්ලීමක් ඉදිරිපත් නොකරන බවටත් මෙයින් වැඩිදුරටත් පොරොන්දුව බැඳී සිටියි.

Several letters were sent to the defendant prior to the expiry of the extended lease period, reminding him of his obligation to vacate the premises by 31.12.2018. However, the defendant regrettably failed and refused to vacate the premises.

The plaintiff thereafter waited for a further period of one year in the expectation that the defendant would hand over vacant possession. Upon his continued failure to do so, the plaintiff instituted this action on 13.11.2019 and sought the aforesaid interim injunction pending the determination of the action.

In the objections filed against the application for interim injunction, the defendant, for the first time, took up a high-handed position by contending that the premises are governed by the Rent Act and that, upon the expiry of the lease, he became a statutory tenant and was therefore not obliged to vacate the premises merely because the lease agreement had expired.

Both the District Court and the High Court correctly refrained from adjudicating upon the validity of this defence at that stage and left it to be determined at the conclusion of the trial.

In considering an application for interim injunction, the Court is not required to finally determine the rights of the parties in the manner expected at the end of the trial. What is expressed by a Court in an order granting or refusing an interim injunction represents only its provisional views, formed on the basis of the material then available, solely for the purpose of determining the interlocutory application, and not its concluded views on the merits of the case.

The law relating to interim injunctions in Sri Lanka is governed by statutory provisions. The substantive law is found in section 54 of the Judicature Act, while the procedural law is contained in sections 662 to 667 of Chapter XLVIII of the Civil Procedure Code. Although an interim injunction is a statutory remedy, the exercise of it by Courts is governed by well-established equitable principles.

As was authoritatively laid down by Justice Soza in the celebrated decision of *Felix Dias Bandaranaike v. The State Film Corporation* [1981] 2 Sri LR 287, the sequential tests to be applied in deciding whether or not an interim injunction should be granted are as follows:

(a) Does the plaintiff have a strong *prima facie* case?
(b) Where does the balance of convenience lie?
(c) Do equitable considerations favour the plaintiff?

However, in *Amarasekere v. Mitsui and Co. Ltd.* [1993] 1 Sri LR 22 at 34, Justice Amarasinghe quoted with approval the following observations of Lord Denning M.R. in *Hubbard v. Vosper* [1972] 2 QB 84 at 96, which were also quoted with approval by Sachs L.J. in *Evans Marshall & Co. v. Bertola S.A.* [1973] 1 WLR 349 at 378:

> *In considering whether to grant an interlocutory injunction, the right course for the judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but to leave him free to go ahead. ... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.*

I am in respectful agreement with the above view.

In the instant application, the learned District Judge did not consider whether the plaintiff had established a *prima facie* winnable case and whether equitable considerations favoured the plaintiff. I must state that, *prima facie*, the plaintiff would succeed on both. However, the learned District Judge proceeded directly to consider the balance of convenience and concluded that it favoured the defendant.

The balance of convenience is assessed by considering whether the harm likely to be suffered by the defendant if the injunction is granted would outweigh the harm likely to be suffered by the plaintiff if it is refused. In essence, which party would suffer greater harm?

In refusing to grant the interim injunction, the learned District Judge took the view that no tangible benefit would accrue to the plaintiff by restraining the defendant from carrying on the business in the premises, whereas the grant of such an injunction would cause grave prejudice to the defendant by depriving him of his livelihood. On that basis, the Judge declined to apply the wrongdoer principle, which I shall address shortly, and refused to grant the interim injunction.

The learned District Judge further stated that the plaintiff had not produced evidence of practical steps taken to establish a public library in the premises.

> මෙහිදී මෙම නඩුව අවසානාත්මක වශයෙන් ලැබිය යුතු සහනය වන විත්තිකරුවන් අදාළ දේපලෙන් නෙරපා හැරීම සහ පැමිණිලිකරුවන්ට හිස් නිරවුල් භුක්තිය ලබා ගැනීම වන අතර අදාළ ස්ථානයෙන් විත්තිකරුවන් ඉවත් කිරීම තුල පැමිණිලිකරුවන්ට එකී වාරණයෙන් විශේෂ සහනයක් හිමිවන බවක් අධිකරණයට ඒත්තු නොගැන්වේ. එහිදී විත්තිකරුවන්ට සිය ජීවිකාව අහිමි වීම තුල බලවත් අගතියක් වන බවට බැලු බැල්මට පෙනී යයි. එවැනි තත්ත්වයක් තුලදී යම් ස්ථානයක නීත්‍යානුකූලව නිතිවිරෝධී ආකාරයෙන් රැදී සිට ආදායම් ඉපයීම වැළැක්වීම සිදු විය යුතු බවට පිළිගත් නඩු තීන්දුවලදී තීරණය වී ඇති නමුත් එනයින් සමථයක් වශයෙන් පැමිණිල්ලට වන අගතියක් නැති බව අධිකරණයට මෙම අවස්ථාවේ ඉදිරිපත් වී ඇති කරුණු අනුව පෙනී යයි. එසේ වුවද විත්තිකරු මෙකී බදු ගිවිසුමට

ඇතුළත් වීමේදීම අදාළ බදු කාල සීමාව ඉවත්වීමේදී මෙම ස්ථානයෙන් බැහැර වී ඇති බවට පූර්ව දැනුවත් භාවයක් තිබී ඇති බව ද නිරීක්ෂණය වන අතර ඒ සම්බන්ධයෙන් විත්තිකරු විසින් පියවර ගත යුතුව ඇති බවට ද අධිකරණයට ඒත්තු ගැන්වේ. එවැනි තත්ත්වයක් තුලදී අතුරු තහනම් නියෝගයක් නඩුවේ පාර්ශවයකට ඕනෑම අවස්ථාවකදි ලබාගත හැකිව ඇති බැවින් පැමිණිලි පාර්ශවය විසින් අදාළ පුස්තකාලය මෙම ස්ථානයේ ස්ථාපිත කිරීම සම්බන්ධයෙන් ප්‍රායෝගිකව ගෙන ඇති කිසිදු ක්‍රියාමාර්ගයක් සම්බන්ධයෙන් අධිකරණයේ කරුණු ඉදිරිපත් කර නොමැති බැවින් ද දෙපාර්ශවයට මෙම අතුරු ආඥාව නිකුත් කිරීමෙන් සහ නොකිරීමෙන් සිදු වන්නා වූ අගතින් සම්බන්ධයෙන් සළකා බලා මෙම අවස්ථාවේදී අතුරු නියෝග නිකුත් කිරීමට කරන ලද ඉල්ලීම අවස්ථානුගත කරුණු මත ප්‍රතික්ෂේප කිරීමට තීරණය කරමි.

This approach is erroneous, particularly when viewed in light of the nature of the interim injunction sought by the plaintiff. The learned District Judge's conclusion that no benefit would accrue to the plaintiff by restraining the defendant from continuing the business is fundamentally inconsistent with the rationale underlying the wrongdoer principle and also overlooks the practical realities of litigation.

The plaintiff instituted this action in 2019, seeking the ejectment of the defendant more than one year after the expiry of the lease. Yet, the defendant continues to carry on his business and earn profits from the premises as usual. It is a matter of common experience that such litigation may continue for a considerable period of time, during which a defendant in unlawful occupation has every incentive to prolong the proceedings so long as he is permitted to continue the commercial use of the premises. This is a practical reality that the Court cannot ignore.

The learned District Judge also faulted the plaintiff for not producing evidence of practical steps taken to establish the proposed public library. However, where the plaintiff is the owner of the property, it is not required to justify the ejectment of a trespasser by demonstrating the purpose for which he intends to use his own property. Possession is an essential

incident of ownership, and an owner is entitled to recover possession from a person in unlawful occupation without being called upon to explain the future use of the property.

The High Court endorsed the approach adopted by the District Court and affirmed its conclusion. The High Court further held that no irreparable damage would be caused to the plaintiff by the refusal of the interim injunction sought.

> *Accordingly, in the event the Defendant is refrained from carrying out business in the subject land by way of an interim injunction as claimed by the Plaintiff, without giving him an opportunity to establish that the subject premises is governed by the Rent Act, the damages caused to the Defendant, is much higher than the damages caused to the Plaintiff, by not granting interim injunction as prayed by the Plaintiff. Hence, the Learned District Judge rightly held that the balance of convenience lies in favour of the Defendant.*
>
> *The considered view of this Court is irreparable loss or damage would not be caused to the Plaintiff due to carrying out business by the defendant in the subject property since in the event, the Defendant would fail to establish his Defence, the Plaintiff is entitled to claim for damages from the Defendant. In view of the materials placed by the parties, it is observed that in the event, the Defendant is not refrained from doing any business in the subject property pending the action the Plaintiff would not cause irreparable or irremediable damages.*
>
> *Considering all the material placed by the parties, we are of the view that the learned District Judge has rightly refused to grant interim injunction as prayed for by the plaintiff, restraining the defendant from carrying on business in the subject matter of the action after the expiry of lease agreement.*

I am unable to accept this reasoning.

As the injunction is an equitable relief granted in the discretion of the Court, the conduct and dealings of the parties and the circumstances of the case are relevant.

It is in this backdrop that the wrongdoer principle has come to be applied in applications for interim injunctions. It is evident that both the District Court and the High Court failed to appreciate the distinctive nature of the interim injunction sought by the plaintiff, which was expressly founded on this principle. The plaintiff did not seek to eject the defendant pending the determination of the action, but to restrain the defendant from carrying on business and earning profits pending determination of the action. This species of interim injunction is primarily grounded in the Latin maxim *nullus commodum capere potest de injuria sua propria*, which means "*A wrongdoer should not be allowed to benefit from his own wrongdoing.*"

The law does not permit a party who has acted unlawfully, dishonestly, or in breach of duty to found a claim, defence, or advantage upon the fruits of his own wrongdoing. Accordingly, when considering an application for this category of interim injunction, the Court should not refuse relief by applying only the test of balance of convenience, for the injunction sought is founded on a different and distinct legal rationale.

This legal doctrine serves several core purposes, foremost among them being the preservation of the integrity of the judicial process. Courts must not be seen to endorse or reward unlawful conduct, for permitting a wrongdoer to benefit from his own wrongdoing would inevitably undermine public confidence in the administration of justice. The doctrine also has a deterrent purpose, as permitting legal advantage to flow from wrongdoing would encourage non-compliance with the law. Finally, it promotes fairness between parties, ensuring that a person is not placed in a better position by

reason of improper or unlawful conduct than he would have occupied had he acted lawfully.

In *Seelawathie Mallawa v. Millie Keerthiratne* [1982] 1 Sri LR 384, the facts of which bear a close resemblance to those of the present case, the lessee refused to vacate the premises upon the effluxion of the lease and continued to carry on his business therein, earning profits while remaining in unlawful possession. Justice Victor Perera, speaking for the Supreme Court, characterised such an overholding lessee as a *trespasser* and held that the payment of damages for wrongful occupation, in the event the plaintiff ultimately succeeds, would be an inadequate remedy. At page 389, His Lordship expressly applied the wrongdoer principle to justify the grant of an interim injunction restraining the defendant from deriving benefit from his wrongful possession.

> *Much of the argument before us was based on the plea that the plaintiff-respondent could be compensated by damages for the wrongful possession of the land and buildings by the defendant-appellant even though the plaintiff-respondent had made out a strong prima facie case in regard to her claim. It was therefore contended that the order issuing an interim injunction was not justified.*
>
> *In the present case, the defendant-appellant being an over-holding lessee is a trespasser in regard to the land and buildings leased to her and will be liable to pay damages for wrongful possession thereof, but there is the further fact that she was trying thereby to keep alive a licence to run a business which licence had ceased to exist and to derive for herself the sole benefit therefrom as long as the litigation lasted.*
>
> *An injunction is the normal way of stopping a wrongdoer from obtaining the benefit of such wrong doing to the detriment of the aggrieved party.*

It was further stated at pages 390–391 as follows:

> *On the authority of the case of Pounds v. Ganegama (40 NLR 73) the District Judge could not possibly have placed the plaintiff-respondent in possession of the leased premises pending the trial. The Supreme Court in that case clearly held, that a Court by an interim injunction had no power to remove a defendant in possession pending the result of an action. The District Judge quite correctly refused to grant such an injunction. However, the District Judge had addressed his mind to the underlying principle that if a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such wrongful possession, otherwise the Court would be a party to the preserving for the defendant-appellant a position of advantage brought about by her own unlawful or wrongful conduct.*

A similar view was taken by Justice Tambiah in *Subramanium v. Shabdeen* [1984] 1 Sri LR 48 at 56:

> *Prima facie, therefore, after the Agreement X2 expired on 4.6.82, the defendant is in wrongful and unlawful possession of the business. It will take a long time for the case to be finally disposed of. Is it just that the plaintiff should be confined to his remedy in damages? I do not think so. Until the case is finally disposed of, the defendant will be wrongfully earning a large income from the business, while the plaintiff, who has established prima facie his right to carry on the said business, will be deprived of his right to earn the same income during the same period. The learned Judge himself took the same view. There is this further principle that an injunction would issue to stop a wrong doer from obtaining benefits arising out of his wrongful conduct. If a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such*

> *wrongful possession, otherwise the Court would be a party to the preserving for such person a position of advantage brought about by his own unlawful or wrongful conduct (Victor Perera, J. Seelawathie Mallawa v. Millie Keerthiratne).*

In *Kariyawasam v. Sujatha Janaki* [2013] 1 Sri LR 176, Justice Ekanayake, speaking for the Supreme Court, quoted with approval the wrongdoer principle enunciated in *Seelawathie Mallawa* and followed in *Subramanium*, and concluded at page 191 as follows:

> *In the case at hand too when the defendants appear to be in wrongful possession of the subject matter, they cannot be allowed to obtain the benefits of their wrongdoings. The nature of the interim injunction sought … is to restrain the defendants from obtaining any benefits from their wrongdoings. Therefore the District Judge was correct in granting the said injunction.*

In all those cases, the Court granted interim injunctions by applying the wrongdoer principle, thereby preventing the defendants from carrying on business and earning profits pending the determination of the action.

The principle that the law will not permit a party to take advantage of his own wrongdoing is well entrenched. Maxwell on *The Interpretation of Statutes*, 12th Edition 1969, at page 212, states:

> *On the general principle of avoiding injustice and absurdity, any construction will, if possible, be rejected (unless the policy of the Act requires it) if it would enable a person by his own act to impair an obligation which he has undertaken, or otherwise to profit by his own wrong. "A man may not take advantage of his own wrong. He may not plead in his own interest a self-created necessity." (Kish v. Taylor [1911] 1 KB 625, per Fletcher Moulton L.J. at page 634)*

The principle that a wrongdoer should not be permitted to profit from his own wrongdoing is deeply entrenched across common law jurisdictions.

In *Attorney General v. Blake* [2000] UKHL 45, [2001] 1 AC 268, the House of Lords observed that "*The broad proposition that a wrongdoer should not be allowed to profit from his wrong has an obvious attraction. The corollary is that the person wronged may recover the amount of this profit when he has suffered no financially measurable loss.*" The same principle was reaffirmed by the House of Lords in *Moore Stephens (a firm) (Respondents) v. Stone Rolls Limited (in liquidation) (Appellants)* [2009] UKHL 39.

South African courts have consistently applied the same principle. In *MEC for the Department of Health, KwaZulu-Natal v. Shaw and Others* [2009] ZAKZPHC 77, Madondo J. stated that "*the wrongdoers cannot be allowed to benefit out of their own wrongdoing or mistake.*" Similarly, in *L'Oreal South Africa (Pty) Ltd v. Kilpatrick and Another* [2014] ZALCJHB 353, Snyman A.J. affirmed that "*As a matter of principle, no man can be allowed to profit from his own wrongdoing, especially in a situation of an agreement that has material reciprocal obligations.*" In *Air Innovations (Pty) Ltd v. Pillay* [2017] ZAGPJHC 444, the High Court of South Africa reiterated that the law does not permit a person to make money from conduct that is unlawful.

The Supreme Court of Appeal of South Africa, in *Food & Allied Workers Union v. Ngcobo NO and Another* [2013] ZASCA 45, quoted with approval the view expressed by P.M. Nienaber, a distinguished South African jurist and former Judge of that Court, in *The Effect of Anticipatory Repudiation: Principle and Policy*, (1962) Cambridge Law Journal 213 at 225, where he stated:

> *It is a fundamental principle of our law that no man can take advantage of his own wrong. Nullus commodum capere potest de injuria sua propria. From this broad proposition it follows that a contracting party*

> *cannot liberate himself from a contract by reason of his own breach. A contract mutually made cannot be terminated unilaterally, unless the law authorises the one to do so by reason of the other's misconduct. Rescission cannot be effected at the instance of the guilty party. Hence the innocent party to a breach of contract, entitled to rescind, is not obliged to do so.*

In *Higgins v. Orion Insurance Co. Ltd. et al.*, 1985 CanLII 2011 (ON CA), Robins J.A. of the Ontario Court of Appeal, after surveying a number of authorities, observed that "*underlying these cases is the age-old tenet that a wrongdoer must not be allowed to take advantage, directly or indirectly, of his or her own wrong.*"

In *Richard Shorten & Anor v. David Hurst Constructions Pty Limited & Anor; David Hurst Constructions v. Richard William Shorten & Anor* [2008] NSWSC 546, Einstein J., sitting in the Supreme Court of New South Wales, stated:

> *66. In considering the type and weight of evidence required to satisfy the Court on this issue, the court is entitled to further rely upon the maxim 'nullus commodum capere potest de injuria sua propria': "No man can take advantage of his own wrong": cf ADC v White (1999) NSWSC 43 at 89 et seq. This principle is supported by a long line of authority [cf Broome's Legal Maxims, 10th edition, Pakistan Law House, 1989 at 191 et seq, noting that this maxim, being 'based on elementary principles', is fully recognised in Courts of law and equity and, indeed, admits of illustration from every branch of legal procedure].*
>
> *67. The principle and its application to several areas of law has relatively recently been discussed in the House of Lords by Lord Jauncey in Alghussein Establishment v. Eton College [1988] 1 WLR 587, with whose reasons Lord Bridge, Lord Elwin Jones, Lord Ackner and Lord Goff agreed.*

> *68. The principle is applicable to "various and dissimilar circumstances" [per Broome at page 195].*

Indian jurisprudence is equally settled. In *Ashok Kapil v. Sana Ullah and Others* [1996] 6 SCC 342, the Supreme Court of India held:

> *If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "Nullus commodum copere potest de injuria sua propria" (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.*

In *Eureka Forbes Ltd v. Allahabad Bank* (2010) 6 SCC 193, the Indian Supreme Court emphasised that "*The maxim nullus commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations.*"

Taken together, these authorities demonstrate a consistent and unwavering judicial response across jurisdictions: courts will not countenance attempts by a party to secure a benefit flowing from his own wrongful acts. This principle should apply with greater force where interim injunctions, which are essentially moulded by equitable principles are sought, for equity will not assist a wrongdoer to perpetuate or profit from wrongful conduct pending adjudication of the main action on the merits.

In the instant case, the defendant is, *prima facie*, in wrongful possession of the leased premises and has continued to carry on business therein and earn profits for more than seven years after the expiry of the lease agreement. In paragraph 15 of the statement of objections filed before the District Court, the defendant has stated that they earn a net profit of Rs.

4,000 per day. Applying the wrongdoer principle, the defendant cannot be permitted to benefit from his own wrongdoing pending the determination of the action.

The District Court acknowledged the wrongdoer principle as enunciated by the superior courts of this country, but declined to apply it on the basis that no prejudice would be caused to the plaintiff by the refusal of the interim injunction. The High Court did not consider the application of the wrongdoer principle at all.

The finding of the High Court that no irreparable damage would be caused to the plaintiff, on the footing that the plaintiff could recover damages in the event of ultimate success, cannot be accepted as good law. I acknowledge that the traditional view has been that where damages are quantifiable, an injunction will not ordinarily lie. However, this proposition was specifically examined and qualified in *Seelawathie Mallawa*, in the context of the application of the wrongdoer principle, and a contrary conclusion was reached.

Further, Justice Amerasinghe, in *Amarasekere v. Mitsui and Company Ltd.* [1993] 1 Sri LR 22 at 37, questioned the continuing validity of this traditional approach in the contemporary legal context, observing as follows:

> *I should like to refer to the following observations of Sachs, LJ. in Evans Marshall & Co. v. Bertola SA (supra) at p. 379 para. H-p. 380 para. H:*
>
> *The standard question in relation to the grant of an injunction, "Are damages an adequate remedy?", might perhaps, in the light of the authorities of recent years, be rewritten: "Is it just, in all the circumstances, that a plaintiff should be confined to his remedy in damages? …. The courts have repeatedly recognized that there can be claims under contracts in which, as here, it is unjust to confine a*

> *plaintiff to his damages for their breach .... So far the question of adequacy of damages has been discussed on the footing that if judgment was recovered (sic) the sum awarded would be paid. But whenever the adequacy of damages falls to be considered in this class of case, there arises the further question are the defendants good for the money? Also (if they are abroad), will their government's exchange control permit the payment? In other words, will the judgment be satisfied?*

In *Sumeet Research and Holdings Ltd. v. Elite Radio & Engineering Co. Ltd.* [1997] 2 Sri LR 393 at 408, the Court of Appeal held that "*once loss is quantified, the need for an enjoining order restraining the defendant does not arise*." However, Justice Mark Fernando, in the Supreme Court, declined to accept that proposition and observed as follows:

> *But the plaintiff did not attempt to quantify its future loss (as in the precedents cited on behalf of the defendant). In any event, a claim for damages is not an inflexible bar to the grant of injunctive relief, and I would respectfully adopt the observations of Amerasinghe, J. in Amerasekera v. Mitsui & Co. Ltd., the question is whether it is unjust, in all the circumstances, to confine a plaintiff to damages for the breach of contract.*

It would be unjust to confine a plaintiff to damages and refuse injunction on the ground that damages are quantifiable. Even after a protracted litigation, a plaintiff who ultimately succeeds may be left with no more than a paper decree if the defendant lacks assets. Even where assets exist, there is a material distinction between entering a decree and its effective enforcement. Moreover, there may be cases in which an award of damages, however substantial, does not adequately compensate the injured party. By way of illustration, the injury suffered by a plaintiff may have wider ramifications, including adverse effects on business goodwill, reputation,

and future commercial opportunities. In a case such as the present, the injury lies not merely in the loss of rent or use, but in being compelled to tolerate the continued profit-making activities of a party who has no entitlement to remain in occupation. The law cannot require an owner to stand by while a wrongdoer continues to derive benefit, especially financial benefit, from unlawful possession. For these reasons, an interim injunction should not be refused solely on the basis that damages are quantifiable.

The question whether final relief may, in appropriate circumstances, be granted by way of an interim injunction has been addressed in the orders of both the District Court and the High Court. This is also a recurring issue. The widely held view that final relief can never be granted by way of interim relief is unsustainable in law. Where a plaintiff establishes a strong *prima facie* case, and the balance of convenience and equitable considerations favour him, it would be unjust to refuse interim injunction merely on the ground that such relief may substantially coincide with the final relief sought. In *Shell Gas Lanka Ltd. v. Samyang Lanka (Pvt.) Ltd.* [2005] 3 Sri LR 14, Justice Wimalachandra held that where there is a strong *prima facie* case in favour of the plaintiff, the balance of convenience also favours him, and no plausible defence is available to the defendant, it is not contrary to law to grant an interim injunction even if such injunction affords the plaintiff the substantial relief claimed by him. This principle was subsequently cited with approval by the Supreme Court in *People's Bank v. Yasasiri Kasthuriarachchi* [2010] 1 Sri LR 227. I am in respectful agreement with that view.

For the aforesaid reasons, I answer the question of law on which leave to appeal was granted in the affirmative. I direct the learned District Judge to issue forthwith the interim injunction as prayed for in paragraph (b) of the prayer to the plaint dated 13.11.2019, restraining the defendant and all

persons holding under him from carrying on business in the premises or deriving any benefit therefrom until the final determination of the action.

The learned District Judge is further directed to conclude the trial within a period of six months from the date of receipt of this judgment.

In the unique facts and circumstances of this case, the defendant's conduct is reprehensible. The defendant shall pay a sum of Rupees One Million as costs of all three Courts in relation to the proceedings concerning the interim injunction, which have remained pending more than six years, within one month from today.

Judge of the Supreme Court

Janak de Silva, J.
I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.
I agree.

Judge of the Supreme Court