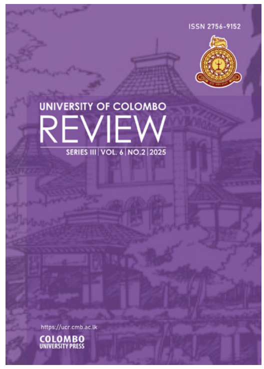

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Case Review: Kusum Priyadharshini Epa Weihana and 2 Others v Judge of the High Court and 7 Others (SC Writ 03-05 of 2025)

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The facts of *Kusum Priyadharshini Epa Weihana and 2 Others v Judge of the High Court and 7 Others* (2025) are central to understanding the law and procedure governing freezing orders in Sri Lanka under Section 53(1) of the Anti-Corruption Act, No. 9 of 2023 ('the Act').[1] The Petitioners are family members of former Minister of Health Keheliya Rambukwella, who is under investigation by the Commission to Investigate Allegations of Bribery and Corruption (CIABOC) under Section 42 of the Act (Daily FT, 2024). The Petitioners are his wife, Kusum Priyadharshini Epa Weihana; his son-in-law, Isuru Pulasthi Bandara Polgasdeniya; and his daughter, Chandula Ramali Rambukwella. The Petitioners filed three writ applications on 20th and 21st March 2025 before the Supreme Court of Sri Lanka, challenging a series of freezing orders issued against them. These freezing orders were issued by CIABOC, pursuant to a Suspicious Transaction Report (STR) received from the Financial Intelligence Unit of the Central Bank. These orders were subsequently confirmed and extended by the High Court under Section 53(3) of the Act. The first freezing order was issued on 27th June 2024, freezing a fixed deposit of Rs. 30 million belonging to the 1st Petitioner, a fixed deposit of Rs. 14.125 million belonging to the 2nd Petitioner, and a life-insurance policy valued at Rs. 8 million belonging to the 3rd Petitioner. The second and third freezing orders were issued on 11th November 2024 and applied to all three Petitioners, freezing additional assets, namely, two savings accounts and a fixed deposit of the 1st Petitioner, a motor vehicle and a savings account of the 2nd Petitioner, and two further savings accounts of the 3rd Petitioner.

Both the initial freezing orders and the subsequent confirmation and extension by the High Court were made *ex parte*, that is, without notice to the Petitioners, thereby depriving them of the opportunity to contest the orders. Contesting the *ex parte* procedures, the Petitioners sought writs of *certiorari* to quash the freezing

1 A freezing order prevents a person from transferring, transacting, or otherwise dealing with their assets for a specified period of time.

orders issued by CIABOC as well as their confirmation and extension, and writs of prohibition against CIABOC, seeking to prevent any further extension of the orders. The petitions contended that the *ex parte* procedures adopted by CIABOC and the High Court violated principles of natural justice and were therefore illegal and *ultra vires* (beyond the powers of the authority concerned, in this case, CIABOC and the High Court). They raised two contentions in this regard. First, that the Petitioners had a right to record a statement before CIABOC, before CIABOC issued the freezing order. Relying on this contention, they further argued that CIABOC could not issue *ex parte* freezing orders. The second contention raised by the Petitioners was that the High Court violated the principles of natural justice, namely the right to be heard, when it confirmed and extended the freezing orders *ex parte*. In dealing with these issues, the Supreme Court issued a consolidated judgment in respect of all three petitions and dealt with the legality of the *ex parte* procedures at two junctures. First, it analyzed whether CIABOC could issue freezing orders *ex parte* under Section 53(1) of the Anti-Corruption Act. Second, it examined the legality of the *ex parte* confirmation and extension of the orders by the High Court.

This case review undertakes a twofold analysis of the judgment. First, it analyzes the implications of the Court's decision to uphold the orders on the jurisprudence relating to the issuance of freezing orders in Sri Lanka. This analysis focuses on the Court's reasoning with regard to CIABOC's power to issue *ex parte* freezing orders and the High Court's confirmation and extension of the orders. Second, it reviews the broader implications of this case on anti-corruption efforts in Sri Lanka by analyzing the Court's affirmation that Sovereignty vested in the people under Article 3, includes the right to a government free from bribery or corruption.

Turning to the first limb of the twofold analysis, this review examines the Court's reasoning for upholding the *ex parte* orders issued by CIABOC. It is noteworthy that the Court relied on principles of English law and the United Nations Convention Against Corruption (UNCAC) which Sri Lanka has ratified. In interpreting the scope of Section 53(1), the Court held that freezing orders were analogous to Mareva injunctions and Anton Piller orders in English law, noting that these remedies operate *ex parte* to 'maintain the element of surprise, speed and secrecy' to prevent asset dissipation (pp. 15-16).[2] The Court also relied on Article 31 of UNCAC to interpret Section 53(1), particularly the purpose and scope of freezing orders. Article 31(2) requires States Parties to adopt measures to identify, trace, restrain, seize, or freeze property that might be subject to eventual confiscation (UNODC, 2009, p. 96; UNODC, 2012, p. 115 -116). Although not mentioned in the judgment, Recommendation 4 of the Financial Action Task Force (FATF) adopts a similar standard. It mandates that countries establish measures to expeditiously carry

2 Asset dissipation refers to the intentional depletion, squandering, transfer, or hiding of assets to avoid detection or investigations.

out provisional measures on asset recovery, including *ex parte* freezing orders (FATF, 2012, p. 40). Adopting a similar rationale to both UNCAC and FATF, in *Weihana and Others* the Court characterized freezing orders as important investigative tools that are temporary and used to secure property for eventual forfeiture (pp. 14-15). Based on the foregoing analysis, the Court concluded that prior notice, including the recording of a statement, would undermine the statutory purpose of Section 53(1), as advance notice would enable suspects to dispose of or conceal the property, thereby frustrating potential forfeiture (p. 16).

The Court's reasoning in addressing the question of CIABOC's authority is significant because it acknowledges the relevance of UNCAC as an interpretive aid for the Anti-Corruption Act. The Act's preamble stipulates that it is an Act *"to give effect to certain provisions of the United Nations Convention Against Corruption and other internationally recognized norms, standards, and best practices".* By interpreting Section 53(1) in light of Article 31 of UNCAC, the judgment gives substantive effect to the preamble. This is doctrinally significant because by relying on Article 31 to clarify the scope and purpose of Section 53(1), the Court affirms the enabling character of the Anti-Corruption Act and establishes UNCAC as an interpretive aid that can inform future judicial deliberations.

This review now turns to the Court's reasoning in upholding the High Court's decisions confirming and extending the freezing orders. The Supreme Court was called to examine whether the High Court's orders violated the principles of natural justice and were therefore illegal and *ultra vires.* The Court invoked the principle of legality, which posits that fundamental rights cannot be overridden by general or ambiguous statutory language (p. 18). Despite invoking the principle of legality, the Court grounded its decision on the statutory text of the Anti-Corruption Act and the Prevention of Money Laundering Act, No. 05 of 2006. Section 112(2) of the Anti-Corruption Act incorporates the provisions of the Prevention of Money Laundering Act, *mutatis mutandis* (all necessary changes having been made). Relying on Section 112(2), the Court referred to Section 8(1) of the Prevention of Money Laundering Act, which expressly provides for *ex parte* applications to the High Court to confirm freezing orders (pp. 19, 20). On this basis, the Court held that the *ex parte* confirmation and extension of the freezing orders were neither illegal nor *ultra vires*.

It may be argued that the Court's decision on the *ex parte* confirmation and extension of freezing orders leaves two critical questions of law unresolved. First, the Court does not adequately assess whether such *ex parte* orders violate principles of natural justice. Second, it could be reasoned that the Court missed the opportunity to specify whether the Anti-Corruption Act, on its own terms and in instances that do not involve a money laundering offence, authorizes *ex parte* confirmation and extension proceedings before the High Court. It must, however, be noted that the observations made in this regard, are made against the backdrop of the Court holding that it lacked jurisdiction to issue writs against High Court orders. The following discussion and the Court's decision on the legality of the *ex parte* confirmation are, therefore, *obiter*,[3] and not binding. It may, however, still shape future jurisprudence.

In assessing whether *ex parte* orders violate principles of natural justice, the Court could have drawn guidance from the UNCAC and FATF Recommendations. Both the UNCAC and FATF Recommendations require that freezing orders be issued in accordance with the domestic legal system, with the FATF specifically recommending that judges should ensure that the measure is warranted and that the rights of the affected persons are protected in accordance with relevant law and procedures (UNODC, 2012, pp. 13, 105; FATF, 2025, p. 170). Sri Lanka's domestic legal system has long recognized the natural justice principle of *audi alteram partem* (listen to the other side). This principle of natural justice requires that individuals be afforded the right to be heard and the opportunity to respond to allegations affecting their rights (*Gunadasa v Attorney General and Others,* 1989*; Nanayakkara v University of Peradeniya and others,* 1985). The Court in *Weihana and Others* does not adequately consider whether the confirmation or extension of a freezing order constitutes a sufficient infringement of fair hearing rights or any other rights, such as due process or property rights, which would give rise to the right to be heard. This may be contrary to what is expected of the Court under both UNCAC and FATF. In such manner, the judgment leaves unresolved the broader normative question of whether a freezing order contravenes the principles of natural justice.

In examining whether the Court missed an opportunity to clarify the scope of Section 53(2) of the Anti-Corruption Act, it may be argued that the Court could have drawn on the UNCAC and FATF to interpret the scope of Section 53(2), as it did in interpreting Section 53(1). The Court correctly relied on the Prevention of Money Laundering Act to justify the *ex parte* confirmation and extension orders, as the freezing orders specifically referred to the offence of money laundering (p. 20). However, it is contended that the Court could have also taken this opportunity to confirm whether *ex parte* orders are independently permissible under the Anti-Corruption Act. Having already invoked UNCAC Article 31 to interpret the purpose of Section 53(1), the Court could have adopted the same interpretive approach for Section 53(2). UNCAC Article 31 recognizes that restraint, seizure, or freezing measures should be taken *ex parte* and without prior notice for them to be effective (UNODC, 2009, p. 97). It also stipulates that where judicial authorization is required, the procedure should be structured so as not to frustrate the process (UNODC, 2009, p. 97). The Court could have also drawn on FATF Recommendation 4 in interpreting Section 53(2). Recommendation 4 requires States to ensure freezing orders do not have unreasonable or unduly restrictive conditions for effective action (FATF, 2012-

3 This refers to comments, observations, or opinions by the Court which are made by the way and are therefore not essential to the final decision.

2025, p.4). It also recognizes that for freezing orders to be effective, the element of surprise is essential. For this reason, freezing orders should be obtainable *ex parte* to prevent suspects from moving assets beyond the reach of courts and law enforcement authorities (FATF, 2025, p. 170). As freezing orders under Section 53 remain in force for only seven days, requiring notice to be provided prior to their confirmation by the High Court creates a risk of asset dissipation. The Court could therefore have relied on the UNCAC and FATF Recommendations to extend the reasoning it used for Section 53(1)—that notice would defeat the purpose of the freezing order—to support the permissibility of *ex parte* confirmation or extension orders by the High Court under the Anti-Corruption Act itself. It is argued that by failing to apply its mind to this question, the Court missed an opportunity to clarify whether proceedings under Section 53(2) of the Anti-Corruption Act may proceed *ex parte* if filed independently of the Prevention of Money Laundering Act.

The second approach of this case review examines how this judgment impacts the broader anti-corruption jurisprudence in Sri Lanka. It is important to note that the Court drew on Article 3 of the Constitution to recognize a right to a government free from bribery or corruption. This is significant because it affirms the right to a government free from bribery or corruption recognized in special determination S.C.S.D. 16-21/2023. The special determination held that Sovereignty, as vested in Article 3 of the Constitution, includes rights beyond fundamental rights and franchise. In so interpreting Article 3, the Court, for the first time in Sri Lanka, recognized the right to a government free from bribery or corruption (p. 21). However, as the determination arose from a pre-enactment review of legislation under Articles 120 and 121 of the Constitution, its precedential value is limited.[4] By explicitly affirming the right in the course of adjudicating a substantive dispute, *Weihana and Others* potentially gives the right precedential force.

The Court's affirmation of the right has the potential to create new grounds for litigation that extend beyond the public trust doctrine. Corruption cases have historically relied on the public trust doctrine and the guarantee of equality before the law under Article 12 (Roht-Arriaza, 2025; *Samarakoon v Wickremesinghe, and Jayaratne v The Attorney General, 2023; Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters Edge Case),* 2008). The Court holding that the Anti-Corruption Act must be interpreted in a manner that makes the right

4 Under the doctrine of *stare decisis et non quieta movere*, courts are bound by the decisions of their superior courts on like cases (Cross, 1977; *Walker Sons and Co v Gunathilake,* 1978). In S.C.S.D. 16-21/2023 the Court was acting under its constitutional jurisdiction as opposed to its general jurisdiction under Article 118 when issuing the determination. Therefore, the Court's jurisdiction in this case was confined to assessing the constitutionality of a Bill. As such, it is unlikely to generate "like" cases in the future or in lower courts.

"attainable and not merely illusory" (p. 21), suggests that the Court views the right as substantive rather than a mere principle of constitutional interpretation. Read in this light, the affirmation of the right may have significant implications for future litigation, wherein petitioners may not only rely on Article 12 and the public trust doctrine to challenge instances of bribery or corruption, but also on the enunciated right. Conversely, however, it must also be noted that the recognized right flows from Article 3 instead of Chapter III on fundamental rights. As such, the right is unlikely to carry the same degree of justiciability and enforceability as a fundamental right. Although *Weihana and Others* recognizes the right, it will fall upon future benches to determine whether it establishes a freestanding enforceable right.

In conclusion, the determination in *Weihana and Others* is jurisprudentially significant for several reasons—first, because it defines the scope and purpose of Section 53 of the Anti-Corruption Act and expressly allows for the issuance, confirmation, and extension of freezing orders *ex parte* by CIABOC. As one of the first cases on the Anti-Corruption Act, *Weihana and Others* interprets this Section to achieve the objects of the Act, appearing to set a positive judicial trend of interpreting the Act so as to achieve its purpose. Second, the judgment is significant because it affirms a right to a government free from bribery or corruption, thereby giving the right precedential force. The judgment, however, leaves open two key questions of law, as it fails to adequately deliberate on whether *ex parte* freezing orders violate principles of natural justice or whether such orders may be made independently under the Anti-Corruption Act itself. The task of resolving these issues will fall to future courts.

Conflict of Interest

The author has no conflict of interest to declare.

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References

Anti-Corruption Act, No. 9 of 2023.

Anti-Corruption Bill, S.C.S.D. 16-21/2023.

Cross, R. (1977). *Precedent in English law* (3rd ed.). Clarendon Press.

Daily FT. (2024, July 5). Court orders freezing of Keheliya Rambukwella's family assets. https://www.ft.lk/news/Court-orders-freezing-of-Keheliya-Rambukwella-s-family-assets/56-763885

Financial Action Task Force (2012). *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (last updated in 2025).* https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf?nocache=true

Financial Action Task Force. (2025). *Asset Recovery Guidance and Best Practices*. https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Asset-Recovery-Guidance-Best-Practices.pdf.coredownload.pdf

Gunadasa v Attorney General and Others, 1989 2 Sri L. R. 130.

Kusum Priyadharshini Epa Weihana and 2 Others v Judge of the High Court and 7 Others, S.C. (Writ) Application Nos. 03/2025, 04/2025 & 05/2025. https://supremecourt.lk/wp-content/uploads/judgements/sc_writ_3_2025.pdf

Nanayakkara v University of Peradeniya and Others, 1985 1 Sri L. R. 174.

Prevention of Money Laundering Act, No. 5 of 2006.

Roht-Arriaza, N. (2025). *The right to be free of corruption: A new frontier in anti-corruption approaches through national courts* (U4 Issue 2025:8). U4 Anti-Corruption Resource Centre. https://www.u4.no/api/publications/the-right-to-be-free-of-corruption-a-new-frontier-in-anti-corruption-approaches-through-national-Courts/pdf

Samarakoon v Wickremesinghe, and Jayaratne v The Attorney General, SCFR 195/2022 & 212/2022.

Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters Edge Case), 2008 2 Sri L. R. 339.

United Nations Office on Drugs and Crime. (2009). *Technical Guide to the United Nations Convention against Corruption*. https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf

United Nations Office on Drugs and Crime. (2012). *Legislative guide for the implementation of the United Nations Convention against Corruption* (2nd revised ed.). https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf

Walker Sons and Co v Gunathilake, 1978-79-80 1 Sri L. R. 231.