

## IN THE WAKFS BOARD OF SRI LANKA

In the matter of the administration and trustee selection of the Akkaraipattu Town Jummah Mosque under the Wakfs Act No. 51 of 1956.



WB/6005/2013

1. Moulavi S.D.M. Hancefa
2. S.M. Farook
3. M.I. Thaseem
4. A.L. Thavam
5. K.A. Saman
6. A.M.A. Ismail
7. Moulavi A.J.M. Sajath
8. M.P.M. Aliyar
9. M.M. Thahir
10. M.D. Noordeen
11. Moulavi M.K.A. Ziyath
12. M.I. Meera Mohideen

### Petitioners

-vs-

1. A.T. Farook
2. D.S. Athamlebbai
3. S.M. Abdul Hassan
4. M.A. Saleem
5. A.R. Bishrulhafee
6. M.I. Kiyafudeen
7. M.A. Athamlebbai
8. M.P.M. Hassim
9. M.A.M. Sulthan
10. A.K. Abdul Jabbar
11. I.L.M. Yahya
12. M.I. Yaseen Bawa
13. S.I. Ibrallebbai

### Respondents

**Before:**

M.L.M.H. Mohideen Hussain - Chairman  
M.A. Matheen Attorney-at-Law - Member  
Mufti M.Z.M. Mustafa Raza (LL.B.) - Member  
Mahil Dole - Member  
Moulavi M.I. Abdul Jabbar - Member

Hejaaz Hisbullah, Attorney-at-Law with Shifan Maharroof, Attorney-at-Law for the Petitioners.

M. Yoosuff Nasar, Attorney-at-Law for the Respondents.

**Decided on:** 28.01.2026

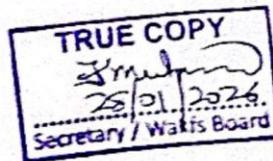
**ORDER**

This matter arises from a dispute relating to the appointment of Trustees of the Akkaraipattu Town Jummah Mosque, a registered Mosque governed by the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Law of Sri Lanka. This Mosque is an institution with a documented history exceeding one hundred and twenty-three (123) years and has historically been administered in accordance with the customary *Kudi* system prevailing in the Ampara District, under which specific administrative offices are held by members of designated *Katharais* (lineages).

The dispute primarily concerns the appointment of the President and the Treasurer of the Mosque, with reference to custom recognized under the *Kudi* system.

The initial complaint was filed before the Wakfs Board under Case No. WB/6005/2013, wherein allegations were raised regarding irregularities in the management of the Mosque, disputes concerning the composition and legitimacy of the Board of Trustees, and non-compliance with statutory and customary requirements governing the Mosque.

Upon consideration of the complaint, the Wakfs Board commenced an inquiry and called for observations, written objections, affidavits which were filed of record in English and Tamil as well, and relevant documentary material from all parties asserting authority over the administration of the Mosque. During the pendency of these proceedings, further representations and objections were received from multiple



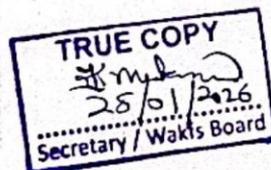
stakeholders, giving rise to interconnected issues of fact, custom, and law, particularly relating to customary entitlements to key administrative offices.

In view of the expanded scope of the dispute and the necessity for a comprehensive inquiry, the Wakfs Board registered a connected proceeding under Case No. WB/6005/2015. In the course of proceedings therein, the Petitioners filed detailed pleadings challenging the legitimacy of the existing trustees, alleging mismanagement, and asserting violations of long-established customary rights under the *Kudi* system. The Respondents filed objections denying the allegations and asserting their authority to administer the Mosque.

The Wakfs Board conducted several sittings over an extended period, during which both parties were afforded full and fair opportunities to be heard. Oral submissions were made, and documentary evidence was tendered in support of the respective positions of the parties. In order to arrive at a considered determination, the Board then examined the historical background of the Mosque based on the administrative files, previous determinations of the Wakfs Board, the statutory framework governing Mosques and the conduct of the parties in relation to the administration of this Mosque.

Thereafter, owing to the continued non-participation of the Respondents at the inquiry, the inquiry was formally concluded. Upon careful consideration of all pleadings, submissions, and materials placed before it, the Wakfs Board reserved the matter for determination. The present order is delivered upon a due evaluation of the entire record and evidence, with a view to resolving the disputes relating to administration, leadership, and trusteeship of the Akkaraipattu Town Jummah Mosque in accordance with law, equity, and the best interests of the Wakf and its beneficiaries.

The Board must express its grave concern regarding the history of this litigation: Following the Wakf Tribunal's order to hold an inquiry and maintain the status quo, certain parties who were not traditionally entitled to hold office remained in their positions well beyond the ordinary three-year term. While external factors such as the COVID-19 pandemic played a role, the Board observes that the Respondents deliberately lacked interest in attending the inquiry, causing inordinate delays and changing their Counsels at the last moment to move for postponements. This Board finds itself in a difficult position where the upper forum directed an expeditious inquiry, yet practical circumstances beyond our control led to a prolonged period where the status quo allowed ineligible persons to continue managing the Mosque. Such a



situation is unhealthy, discourages the spirit of justice and ignores the will of the jamaath to appoint a Board of their choice. This could have been easily avoided through the appointment of an interim committee to maintain public confidence.

### **Background of the Dispute and Prior Determinations**

The records placed before this Board disclose a consistent and uninterrupted recognition of the relevant customary entitlements, as reflected in the following prior disputes and determinations:

**(a) 1993 Dispute (Case No. WB/1759/93)**

An attempt was made to create an unrecognized entity styled as the "*Arachchipodiyar Katharai*." The Wakfs Board rejected this claim and reaffirmed that the Presidency of the Mosque vested in the *Sinna Polisanai Katharai*.

**(b) 1995 Dispute (Case No. WB/2407/95)**

Pursuant to the directions of this Board, a fresh election was conducted under the supervision of the Divisional Secretary, Akkaraipattu. Mr. Abdul Azeez of the *Lebbai Kudi - Sinna Polisanai Katharai* was unanimously elected President, thereby reaffirming and reinforcing the long-established customary practice.

**(c) 2013 Conflict:**

Upon the expiry of the term of the Board of Trustees, attempts were made to appoint a President not belonging to the *Sinna Polisanai Katharai*, in clear derogation of established custom. This precipitated the institution of Case No. WB/6005/2013, seeking remedial intervention by this Board.

**(d) 2016 Trustee Selection:**

While Case No. WB/6005/2013 remained pending, this Board directed a fresh selection of trustees under the supervision of the Director of Muslim Religious and Cultural Affairs (MRCA). Disputes arose concerning the Presidency between Mr. M.K.A. Ziyath and Mr. Jameel. However, the customary entitlement to the office of Treasurer was acknowledged by both parties, resulting in the selection of Mr. A.L. Thavam to that post.

**(e) Wakfs Tribunal Order (Case No. WT/244/2017):**

The Wakfs Tribunal affirmed the statutory authority of this Board and directed that a comprehensive inquiry be conducted to determine the proper *Katharai* entitled to the



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offices of President and Treasurer, thereby remitting the matter to this Board for determination on the basis of evidence.

### **Findings on the Existence of *Sinna Polisanai Katharai***

Throughout these proceedings, the Respondents attempted to argue that the "*Sinna Polisanai Katharai*" does not exist as a distinct entity. However, this Board finds such a denial to be entirely without merit. The Petitioners have placed abundant and overwhelming evidence before this Board, including oral testimonies and historical records, establishing that the *Sinna Polisanai Katharai* has existed for over a century. The Respondents provided no evidence to support their denial. It is settled principle of law that a mere denial in pleadings cannot outweigh positive, documented proof of a long-standing tradition.

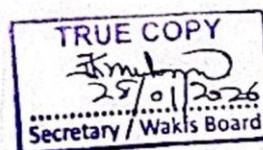
The Respondents' claims are founded upon a group described as the "*Arachchi Podiyar Katharai*." Upon careful examination of the evidence, the Board finds that the said "*Arachchi Podiyar Katharai*" is a relatively recent construct, having emerged only between 1990 and 1993. It has no historical recognition or standing within the 123-year history of the Mosque. Although the members of this group belong to the broader *Lebbai Kudi*, they constitute a faction that has branched off from the *Sinna Polisanai Katharai*, to which the presidency of the Mosque has traditionally been reserved.

### **2. The Petitioners' Case**

The Petitioners adduced evidence in support of their case through affidavits and oral testimony tendered by the 11<sup>th</sup> Petitioner, Mr. M.K.A. Ziyath, and the 4<sup>th</sup> Petitioner, Mr. A.L. Thavam (for the avoidance of doubt with the affidavit filed in Tamil, an affidavit in English was also filed of record), together with the evidence of two additional witnesses, namely Mr. Rahumathullah and Mr. Ahamed Lebbe Iqbal. The Petitioners also produced and marked documentary evidence during the course of the inquiry.

Under cross-examination, the testimony of both witnesses remained materially reliable, consistent, and unimpeached. In particular, Mr. A.L. Thavam provided a clear and cogent explanation as to the circumstances, timing, and manner in which a new *Katharai* was created.

According to the evidence, prior to 1990, the *Lebbai Kudi* consisted of five distinct *Katharais*, namely:



1. *Simna Polisanai Katharai*;
2. *Omar Kathab Koidiyar Katharai*;
3. *Kadikadi Katharai*;
4. *Omar Lebbai Kudi Katharai*; and
5. *Kanadi Paribara Katharai*.

The witness explained the subsequent transition from five to six branches and stated that the sixth branch, known as the *Arachchi Katharai (Lebbai Kudi Arachchi Katharai)*, was established only after 1990. He maintained that there are presently six *Katharais* in total within the *Lebbai Kudi*.

Counsel for the Respondents sought to discredit the witness by challenging the timeline and naming conventions and suggested that the "*Arachchi Podiyar Katharai*" had existed since 1900, thereby contradicting the witness's assertion of a post-1990 origin. This suggestion was categorically denied by the witness. It was further put to the witness that the sixth branch was in fact the *Mapulla Marikar Katharai*. The witness rejected this proposition and reiterated that the *Arachchi Podiyar Katharai*, while now accepted as a branch within the *Lebbai Kudi*, is a modern creation that emerged only between 1990 and 1993.

The evidence further established that, notwithstanding its present recognition as a branch, the *Arachchi Podiyar Katharai* lacks any historical or customary entitlement to the Presidency of the Mosque, whereas the *Simna Polisanai Katharai* has consistently exercised leadership in accordance with long-recognized custom.

In addition to the evidence of Mr. Ziyath and Mr. Thavam, two other independent witnesses testified before this Board. Their evidence materially corroborated the testimony of the Petitioners' witnesses on all salient issues, particularly with regard to the historical composition of the *Lebbai Kudi*, the emergence of the sixth *Katharai*, and the customary entitlement to the offices of President and Treasurer.

In contrast, the conduct of the Respondents was marked by procedural neglect. Although counter-affidavits were filed in 2019, the Respondents failed to proceed with the evidentiary phase, repeatedly changed legal representation to obtain postponements, and ultimately defaulted despite being afforded a final opportunity on 03.09.2025.

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The Petitioners have placed abundant and compelling evidence before this Board, including oral testimony and historical records, conclusively establishing that the *Sinna Polisanai Katharai* has existed for over a century. The Petitioners contend, and the evidence amply supports, that by immemorial and consistently recognized custom:

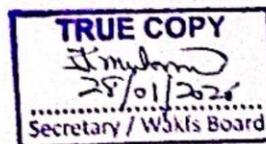
- the office of President of the Akkaraipattu Town Jummah Mosque is to be filled exclusively from among members of the *Lebbai Kudi – Sinna Polisanai Katharai*; and
- the office of Treasurer is to be filled exclusively from among members of the *Irasampillai Katharai*.

Pursuant to the directions of this Board and the Wakfs Tribunal, the Petitioners diligently prosecuted the inquiry from 2018 to 2024 by filing affidavits, producing documentary evidence, and leading oral testimony to establish the existence, continuity, and recognition of the relevant customs.

In contrast, the record reveals a consistent pattern of non-compliance, negligence, and delay on the part of the Respondents. Despite being afforded repeated opportunities and adjournments, and notwithstanding final directions issued by this Board on 05.02.2025 and 03.09.2025, the Respondents failed to file affidavits of examination-in-chief, lead oral evidence, or produce any documentary material in support of their claims.

On 15.05.2025, learned Attorneys-at-Law appearing for both parties tendered a settlement document titled "*Marabu Vaghi Awanam*." Thereafter, the 4<sup>th</sup> Respondent, Mr. M.A. Saleem, raised a unilateral objection, alleging that his counsel lacked authority and questioned the validity of signatures, and sought to belatedly reopen the inquiry on the premise that only a judgment could provide a permanent resolution. The Counsel for the Respondent, Mr. Yousuf Nasar, informed this Board that he was not representing the 4<sup>th</sup> Respondent.

At that stage and pursuant to the settlement, in relation to the appointment of the President, the Board queried in open court whether the current selected President agreed or disagreed with the objections raised by the 4<sup>th</sup> Respondent. In response, the current selected President stated that he concurs with the 4<sup>th</sup> Respondent's objections and intends to '*sail with*' that position.



In light of this alignment, the Board is now compelled to formally adjudicate the status of the President and the validity of the 4<sup>th</sup> Respondent's objections.

In the totality of circumstances, and having regard to the Respondents' persistent failure to prosecute their case despite clear and final procedural directions, this Board finds no basis to reopen the Inquiry and decided to fix the matter on evidence led so far.

In *Abrew v Housing Development and Finance Corporation* 2006 2SLR 365 the Court held that:

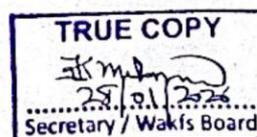
*"... if a party to whom time has been granted fails to produce his evidence or to bring his witnesses or to do any other act necessary for the further progress of the case, for which time has been allowed, the Court has the power notwithstanding such default, to decide the action forthwith.*

*When the defendant repeatedly seeks adjournments on one ground or the other and fails to bring evidence, the Court should proceed to decide the suit by rejecting the adjournment application. It is appropriate for the Court to dispose of the suit on merits on the available evidence."*

#### **Legal Analysis and Findings**

This Board is unable to accept the objections raised by the 4<sup>th</sup> Respondent. The said objections were raised after a prolonged period of inaction and at a stage when the inquiry had, for all practical purposes, been concluded. Throughout these proceedings, the Respondents were afforded every reasonable and adequate opportunity to participate meaningfully. Their failure to avail themselves of such opportunities amounts to procedural abandonment. Justice delayed in this matter has become justice denied. The excessive duration of this litigation – spanning more than a decade and several Boards – has imposed a significant toll on the parties and the Mosque. The logistical and financial strain of travelling from Akkaraipattu to Colombo for frequent hearings has rendered the pursuit of justice prohibitively expensive. The systemic delays undermine the spirit of the Wakfs Act which requires an expedited conclusion to restore the parties' faith in the administrative process.

The well-established legal maxim *vigilantibus non dormientibus jura subveniunt* – the law aids the vigilant and not those who sleep over their rights – squarely applies to the circumstances of this case. The concept of laches has been judicially recognised as negligence or undue delay disentitling a party to relief (Chambers 20th Century Dictionary, 1983, p. 704). K.J. Aiyar's *Judicial Dictionary* (11th Ed., 1992, p. 673), relying on Wharton's *Law Lexicon* (1976 Reprint Ed., p. 562), defines laches as slackness or



negligence in pursuing a legal remedy whereby a party forfeits the benefit of such remedy upon the aforesaid principle. These definitions were cited in the recent judgment of the Supreme Court in Case No. SC/APPEAL/100/2020, decided on 14.05.2025 by his Lordship Mahinda Samayawardhena, J.

Further, the principles enunciated in *Attorney General v. Herath* (2003 2SLR 162) establishes that a party who fails to act with diligence and disregards procedural directions is not entitled to indefinite indulgence. The 4<sup>th</sup> Respondent's silence during the evidentiary phase, coupled with his failure to raise any contemporaneous objection to the settlement process, clearly constitutes acquiescence and indifference, which this Board is neither obliged nor inclined to condone.

On the merits, the evidence led by the Petitioners stands uncontroverted and overwhelmingly establishes the customary entitlements claimed. The historical decisions of this Board, uninterrupted practice, and the manner of selection of trustees in the past conclusively affirm the customary Kudi system governing the Mosque.

Applying the legal maxim *vigilantibus non dormientibus jura subveniunt* (the law aids the vigilant and not those who sleep over their rights), this Board concludes that the Respondents' inaction amounts to a total abandonment of their defense. Furthermore, the unilateral objection by the 4<sup>th</sup> Respondent to a previously tendered settlement document (*Marabu Vazhi Ananam*) is rejected as a dilatory tactic attempting to wrongfully postpone the finality of these proceedings and further the person who was selected as President based on the said settlement also hereby set side based on his own admission before the board.

I have also considered the decision in *Gunasekera v Abdul Latiff* 1995 1SLR 225 where it was held:

*"Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt. The neglect to assert ones rights or the acquiescence in the assertion of adverse rights will have the effect of barring a person from the assertion of adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a*

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*situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material. What is reasonable time and what will constitute delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay."*

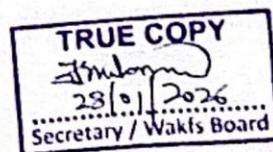
Accordingly, this Board finds that:

1. The Akkaraipattu Town Jumma Mosque is governed by a valid and established customary Kudi system.
2. The *Lebbai Kudi – Sinna Polisanai Katharai* is exclusively entitled to the post of President.
3. The *Irampillai Kudi – Nachiyar Katharai* is exclusively entitled to the post of Treasurer.
4. The Respondents have failed to rebut the Petitioners' case or establish any lawful deviation from such custom.

The Board acknowledges the diligence exercised by the Petitioners in the prosecution of this matter, and contrasts it with the belated objections raised by the 4<sup>th</sup> Respondent. Although the Respondents failed to adduce formal evidence to disprove the *Sinna Polisanai* tradition, the Board recognizes the familial linkage of the *Arachchi Podiyar* – a divided faction of the *Sinna Polisanai Katharai* – to the *Lebbai Kudi*, with a view to fostering harmony and preserving communal peace.

The Wakfs Board, as a statutory body vested with general supervision, control, and adjudicatory authority over Wakfs institutions under the Wakfs Act, No. 51 of 1956, including its powers relating to the proper administration and regulation of Wakfs, is not confined to the grant of mere declaratory relief but is empowered to issue such consequential and remedial directions as may be necessary to secure orderly administration, prevent mischief, and safeguard the best interests of the Wakf and its beneficiaries.

This Board is fortified in its approach by settled Sri Lankan jurisprudence recognizing that adjudicatory bodies exercising statutory authority may invoke equitable principles to mould relief in the interests of justice. In *Paramalingam v. Sirisena* (2001) 2 Sri L.R. 239, the Court of Appeal affirmed that equity aids the vigilant and not the indolent.



In *Attorney-General v. Herath* (2003) 2 Sri L.R. 11, the Supreme Court held that equitable relief may be shaped having regard to conduct, delay, and the overall interests of justice.

In *Wickremabandu v. Herath* (1990) 2 Sri L.R. 348, the Supreme Court recognized that equity exists to prevent rigid application of legal rights from resulting in injustice.

The Board has further emphasized that the administration of a mosque must be conducted in a spirit of communal harmony, peaceful coexistence, and inclusivity. As a mosque is primarily a place of worship, administrative or leadership disputes shall not give rise to discrimination, marginalization, or the exclusion of any member of the Muslim community from participation in its affairs.

The Board directs the current persons-in-charge to submit the name of the duly selected member proposed for appointment to the office of President for the approval of the Board, within a period of one (01) week from the date of this Order.

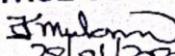
The Secretary of the Wakfs Board is further directed to hand over all correspondence, records, and documents relating to the mosque, together with the issuance of this Order, to the persons duly authorized in this regard.

Further, the current persons-in-charge are directed to submit a constitution within four (04) week from the date of this Order for the Approval of the Board according to Law and past practice in order to avoid future conflicts.

The Board has taken serious cognizance of the deteriorated condition of the Akkaraipattu Mosque, which has been attributed to prolonged litigation. It has been brought to the attention of the Board by members of the Jamaath, supported by documentary material including photographs and video recordings, that the mosque premises are subject to flooding even during minor rainfall.

The Board observes with concern that, notwithstanding the pendency of litigation, the current Persons-in-Charge were under an obligation to take timely and reasonable measures to safeguard and maintain the mosque premises.

It has further been made known to the Board that a Building Committee has come forward with a proposal to undertake renovation works of the mosque. In this regard, the current Persons-in-Charge are hereby directed to submit all relevant documents

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pertaining to the proposed renovation, including committee details and plans, to the Board for approval within one (01) week from the date hereof.

The Board will be compelled to take prompt action if there is a failure to comply with the aforesaid directions as this Mosque is in a neglected state.

Accordingly proceedings are terminated.

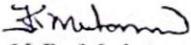
On this 28<sup>th</sup> day of January 2026.

**Sgd. M.L.M.H. Mohideen Hussain**  
**CHAIRMAN**  
**WAKFS BOARD OF SRI LANKA**

We agree:

Sgd. M.A. Matheen Attorney-at-Law - Member  
Sgd. Mufty M.Z.M. Mustafa Raza (I.L.B.) - Member  
Sgd. Mahil Dole - Member  
Sgd. Moulavi M.I. Abdul Jabbar - Member

*I do hereby certify that the foregoing is a true copy of the Order dated 28<sup>th</sup> of January 2026, filed of record in the Wakfs Board Case No. WB/6005/2013*

  
K.R. Mohamed,  
Secretary (Acting),  
Wakfs Board of Sri Lanka,  
No.180 T.B. Jayah Mawatha, Colombo – 10.

