

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

N. K. Belin Nona of  
Moragalle, Beruwala.

**PLAINTIFF-APPELLANT**

C.A 123/1997  
D.C. Kalutara 6186/P

Vs.

K. P. Channa of  
Moragolla, Beruwala.

**DEFENDANT-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** R. Sahabandu for Plaintiff-Appellant  
G. Jayasinghe with C. Jayasekera and R. Hassan  
For the Defendant-Respondent

**ARGUED ON:** 14.03.2011

**DECIDED ON:** 31.03.2011

**GOONERATNE J.**

This was an action filed in the District Court of Kalutara in a partition suit, to partition a land called 'Dehigaha Owita' in extent of about 2 Roods (according to the schedule in the plaint). Judgment was delivered by the learned District Judge on 29.11.1996. An appeal was preferred to this court from the said judgment. At the hearing of this appeal, learned counsel for Defendant-Respondent Mr. Gamini Jayasinghe raised a preliminary objection, that this appeal has been lodged out of time and moved for rejection of this appeal.

The Notice of Appeal is dated 6.12.1996, and it is within time. There is no dispute with regard to the Notice. Petition of Appeal is dated 29.01.1997. The District Court seal with the date stamp appear on the Petition of Appeal. It was the contention of the learned counsel for Defendant-Respondent that the Petition of Appeal should have been filed on 28.01.1997. As such there is a delay of just one day. This fact was conceded by the learned Counsel for Appellant Mr. Rohan Sahabandu.

I had the benefit of perusing some of the decided cases cited by Counsel at the hearing. It is not possible to relax or enlarge the stipulated

time limit of 60 days to file the Petition of Appeal. This is mandatory. In *Perera Vs. Perera & Another. 1981 (2) SLR 41*

Held

(1) The provisions of sub-section 4 of section 754 and of sub-section 3 of section 755 of the Civil Procedure Code are mandatory and the petitioner had filed both his notice of appeal and petition of appeal out of time. Accordingly the learned District Judge has correctly rejected the petition of appeal.

At pg. 43....

In my judgment in the case under reference I referred to a number of authorities and held that the provisions of section 754(4) in regard to notice of appeal are imperative and mandatory. I came to a similar conclusion in regard to section 755 (3) and stated as follows:

“Subsection (3) of section 755 of the Civil Procedure Code which requires the appellant to present to the original Court a petition of appeal within sixty days is couched in imperative terms. This is a new provision and is clearly mandatory. The filing of the petition of appeal is an essential concomitant of the filing of the notice of appeal. Both steps are mandatory and imperative steps in lodging an appeal. Until these steps are taken as directed by the Civil Procedure Code the Judge cannot comply with subsection (4) of section 755. The learned District Judge was therefore right in rejecting the petition of appeal. The notice of appeal too lapses for want of compliance with the subsequent requirements and should now be rejected.

I see no reason to differ from or modify the views which I took in that case.

In *Jinadasa Vs. Hemamali 2006 B.L.R pg. 76* considers the question of time limit for filing Petition of Appeal

Held:

- (a) the date of pronouncing the judgment, from which the appeal is taken, should be excluded from the computation of time stipulated for filing of petition of appeal;

- (b) when the last day of the period prescribed for filing of petition of appeal is a non-working day for the Court, the petition can be filed on the next working day.
- (c) in interpreting a statute preference may be given to a reasonable meaning if the provision does not seem to be plain. However, it is not the function of the Judge to modify the language of a section of the Act in order to bring it in line with what is reasonable. However, it is not improper where two constructions are possible, for the more reasonable one to be chosen.

At pg. 77...

In the case of *Silva vs. Sankaram* (2002) 2 S.L.R 209 the Court of Appeal held that section 755(3) of the Civil Procedure Code does not permit the appellant to lodge the petition of appeal beyond the time frame of sixty days. In this case Dissanayake, J, with Somawansa, J agreeing held that the words “within sixty days” in section 755(3) restrict the right of the appellant to file the petition of appeal beyond the time frame of sixty days given, and also held that section 8(1) of the Interpretation Ordinance does not apply.....

At pgs. 77/78...

In explaining Section 8(1) of the Interpretation Ordinance, A. De Z. Gunawardana, J, in the case of *Chandrakumar Vs. Kirubakaran*(1989) 2 S.L.R 35 at page 39 made the following observation:

“It is seen that from the provisions in section 8(1) of the Interpretation Ordinance that where a person is allowed to do any act or take any proceedings in Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceedings can be done or taken on the next day such Court or office is open. The word ‘closed’ had been used in the said section as opposed to the word “open” because it is stated there an act or proceedings taken on the next date on which Court or office is open is considered to have been done or taken in due time.”

In the case of *Sivapadasundaram Vs. Pathmanadan and Others* (Supra) Balapatabendi, J, too expressed the view, that in terms of section 8(1) of the Interpretation Ordinance “the only conclusion that could be arrived at is if the 60<sup>th</sup> day for filing of the petition of appeal falls on a day on which the Court or office of the Court is closed, the filing of the petition of appeal on the next day thereafter on which the Court or office is opened, should be considered as it had been filed ‘within time’.

The case in hand does not suggest that the last date (60<sup>th</sup> day) for filing Petition of Appeal fell on a non-working day (Saturday or Sunday) As such strict compliance with the 60 day requirement need to be followed. Under no circumstances could this court extend the stipulated period in Section 755(3) of the Civil Procedure Code.

In another decided case, notice of appeal was given in time in terms of section 755(1) of the Civil Procedure Code. The Attorney-at-Law on record failed to file the petition of appeal as required by section 755(3) of the Civil Procedure Code. The excuse given was that the appellant was kept in detention and as a result his mental and physical condition deteriorated and after his release he and to obtain treatment for his condition and therefore could not give instructions.

The filing of a notice of appeal must be followed by presentation of the petition of appeal within 60 days. Both steps are imperative and mandatory. The responsibility is on the Attorney-at-Law on record and not on the petitioner.

Keethiratne Vs.Udena Jayasekara (1990 (2) S.L.R 346)

In view all the above circumstances there is no alternative for this court, but to reject this appeal. The stipulated statutory time limits

cannot be ignored, even if the delay was just one day Therefore I dismiss this appeal without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL