

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

In the matter of an
application for leave to
appeal

Court of Appeal No: CALA 39/2007

District Court of Homagama No: 4587/T

R.A. Irangani Perera

2nd Respondent-Respondent-
Petitioner

Vs.

The Public Trustee

Petitioner-Respondent-
Respondent & 1st and 3rd to
14th Respondent-Respondent-
Respondents

K. Nandani Perera
Nanayakkara

Petitioner-Respondent

Before: Eric Basnayake J

**Counsel: Romesh De Silva P.C. with Sugath Caldera for the 2nd Respondent-Respondent-
Petitioner**

Ranjan Suwandarathne with Ranjith Perera for the Petitioner-Respondent

Argued On: 7.3.2011

Written Submissions Tendered On: For the 2nd Respondent-Respondent-Petitioner:

10.1.2011

For the petitioner-Respondent: 17.10.2007 &

21.3.2011

Decided On: 13.7.2011

Eric Basnayake J

The 2nd respondent-respondent-petitioner (2nd respondent) filed this leave to appeal application *inter alia* to have the order dated 30.1.2007 of the learned District Judge of Homagama set aside.

This is a testamentary action filed by the Public Trustee on 10.3.1999 in respect of the estate of six persons of the same family, murdered at Hokandara on 10.2.1999. To this application, the Public Trustee did not name any respondents. An order was made for the publication of order nisi for 19.2.2003 and 19.3.2003. There is no dispute with regard to the publications. On 21.4.2003 the 1st to 12th respondents (including the 2nd respondent) filed objections and prayed for letters of administration to be issued to the 1st respondent. On 14.10.2003 the 13th and 14th respondents too intervened and sought letters.

On 8.6.2005 the petitioner, the 1st and 3rd to 14th respondents consented to the issuing of letters to the 2nd respondent and the same was issued by court on 8.9.2005. The 2nd respondent has since then filed an inventory, final accounts and a scheme of distribution. In the mean time on 1.11.2006 (petition is dated 16.10.2006) the petitioner respondent, namely, K. Nandani Perera Nanayakkara (petitioner-respondent) filed papers seeking to recall letters issued to the 2nd respondent and to have the letters issued to her. The petitioner respondent also sought an interim injunction restraining the 2nd respondent from alienating property and constructing buildings. The petitioner respondent stated in her petition that the 2nd respondent is not suitable to be issued with letters. All the other respondents objected to this application. The court after inquiry made order to recall the letters of administration issued to the 2nd respondent. The court also issued an interim injunction as prayed for by the petitioner respondent. It is this order that the 2nd respondent is seeking to have set aside.

The learned District Judge held in his order that although an order was made by the court to publish the order nisi in the newspapers on 19.2.2003 and 19.3.2003, proof of such

publication was produced only for the publication of 19.2.2003. No such proof was produced for 19.3.2003. The learned Judge held that the letters were issued to the 2nd respondent without such proof of publication. The learned Judge declared it to be a lapse on the part of court. Hence the court made order under section 537 of the Civil Procedure Code to recall the letters issued to the 2nd respondent.

Under section 537 the letters once issued may be recalled in two situations namely:-

1. Where the court is satisfied that the grant of letters ought not to have been made.
2. The administration has become useless.

Section 537 is as follows:-

In any case whereadministration of a deceased person's property has been granted it shall be competent to the District Court to recall the said grant of administration, and to revoke the grant thereof, upon being satisfied that....the grant of administration ought not to have been made; and it shall also be competent to the District Court to recall the grant of administration, at any time upon being satisfied that events have occurred which render the administration hereunder impractical or useless

The petitioner respondent states that the 2nd respondent will not be entitled to any rights from the intestate. The six deceased persons are Leelananda, his wife Siriyawathie and four children. The 2nd respondent made a claim to the inheritance through her husband Ariyadasa. Ariyadasa was a brother of Siriyawathie. Ariyadasa had predeceased Siriyawathie. Therefore the 2nd respondent will not be able to get a share through Ariyadasa. However it is not disputed that the children of Ariyadasa will be entitled to a share. In that case the 2nd respondent will have an interest over the administration.

The learned Judge thought that the letters were issued when proof of advertisement was not filed. Therefore the learned Judge thought that this appointment should not have been made. However the advertisements were duly published on 19.2.2003 and 19.3.2003 as

ordered by court. There is no dispute as regards this. The publication is done under section 529 of the CPC calling for any objections to the grant of letters of administration. If no objections are received the court shall make an order for the grant of letters of administration (s. 531 (1) (b) (i)). This testamentary case was filed by the Public Trustee. It is the Public Trustee who got the advertisements published. The 2nd respondent together with the 1st and 3rd to 12th respondents filed objections on 21.4.2003 in response to the paper advertisement. The 13th and 14th respondents filed objections on 14.10.2003. It is the consent of all parties present that gave authority to court to grant letters of administration to the 2nd respondent. Therefore the learned Judge's order is based on an incorrect finding.

The 2nd respondent did not make a claim for letters. The 2nd respondent was issued with letters as she was the unanimous choice of the petitioner, the 1st and 3rd to 14th respondents. The petitioner respondent does not make any other complaint against the 2nd respondent. There is no complaint of mismanagement or any abuse. No complaint with regard to her administration. The 2nd respondent had filed inventory, final account and a scheme of distribution. The administration had almost come to an end. It is at this stage on 16.10.2006 that the petitioner respondent made this application to recall letters.

In terms of section 526 of the CPC any interested party is entitled to seek letters. The section is as follows:-

When any person shall die without leaving a will...and such person shall have left property in Sri Lanka (a) any person interested in having the estate of the deceased administered may apply for the grant to himself of letters of administration; (b) not reproduced.

Admittedly the 3rd, 4th and 5th respondents are entitled to shares through Ariyadasa. They are the children of Ariyadasa and the 2nd respondent. To that extent the 2nd respondent can be considered as a person who is entitled to the administration of this property.

Even if there are no persons to apply for letters, section 527 empowers court to issue letters to any suitable person. The said section is as follows:-

In case no person shall apply for the grant of letters of administration....and **it appears to the court necessary or convenient to appoint some person to administer the estate** or any part thereof, it shall be lawful for the court in its discretion,....appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate (emphasis added)....

The 2nd respondent was issued with letters as she was the choice of all the other parties who were present in court. I am of the view that the learned Judge has failed to consider any of the relevant provisions before making his order and thus has erred in law. Therefore I set aside the order dated 30.1.2007.

Learned counsel invited court to consider leave and if leave is granted to have the appeal also decided on the same submissions. Having considered the submissions of counsel, I grant leave and allow this appeal with costs payable by the petitioner respondent.

Judge of the Court of appeal