

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

In the matter of an application under  
and in terms of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka and in particular under and in  
terms of Article 105(3) of the  
Constitution.

1. Geoffrey Alagaratnam

President's Counsel

No.7 Daisy Villa Avenue,

Colombo 4.

And Six (06) others

**Petitioners**

CA Application No.205/2012

Rishard Bathiudeen MP

No. C37 Stanmore Crescent

Colombo 7.

Before: **S.Sriskandarajah, J (P.C/A)**

**Deepali Wijesundera, J**

Order On: **13.02.2013**

**Applications to intervene in  
CA Application No.205 of 2012.**

**Intervention Application**

1) M.A.M. Rakeeb  
President,  
Kalmunai Lawyers Association.

2) M.I.R. Hathi  
S.M. Road, Maradamunai

**Intervenient Petitioners**

The above Intervenient Petitioners are seeking to intervene in this Application where 7 Petitioners have filed an action for contempt under and in terms of Article 105(3) of the constitution against the Respondents. The Intervenient Petitioners, in their Application claim, that they are the incumbent President and the Secretary of the Kalmunai Lawyers Association, which is a Branch Association recognized by the Bar Association of Sri Lanka in terms of Article 4 of the Constitution of the Bar Association of Sri Lanka. The Intervenient Petitioners are seeking to intervene in these proceedings on the basis that they are interested in upholding the rule of law and safeguard the independence of the judiciary, and they also have sought in their petition, that if the Management Committee of the Bar Association of Sri Lanka, which has sought intervention in this Application, it would cause prejudice to the entire proceedings.

The main purpose of these Petitioners to intervene in this Application is to nullify the effect of any possible permission granted by this Court for the Management Committee of the Bar Association to intervene in this Application and to make submissions and, they have submitted that they should assist the Court to make a more considered decision as compared to the so called Management Committee of the Bar

Association, and they have made a request that this Court should reject the Application made by the Management Committee of the Bar Association of Sri Lanka.

The above Application is made on the basis that this Court should not allow the intervention of the Bar Association of Sri Lanka and also that their concern is on the rule of law and the independence of the judiciary.

Intervention in an Application for contempt proceedings are not permitted as the contempt proceedings are between the Court and the person who has committed contempt and, as these proceedings are of a criminal nature, and the proof of allegations are beyond reasonable doubt, the intervention of a 3<sup>rd</sup> party is not permitted and it is not warranted and, for these reasons this Court refuses the intervention of the Petitioner.

### **Interventient Application**

The Bar Association of Sri Lanka  
**Interventient Petitioners**

In the said Application, the Interventient Petitioner, the President of the Bar Association, the Deputy President and the office bearers of the Bar Association have made an application to intervene in this contempt proceedings. The said application was on the basis that they are entitled to intervene in these proceedings to ensure the independence, honour and the dignity of the judiciary and to maintain the rule of law. They submit, that the Bar Association of Sri Lanka is the only professional association of all the Attorneys at Law of this country, and the objects of the Bar Association is to maintain the honour and independence of the judiciary of Sri Lanka, and also, for the consideration of matters of importance relating to the rule of law and administration of justice. As the Bar Association is the largest body of Attorneys-at-Law, it is obliged and,

in fact, is entitled to protect the dignity of judges and the independence of judiciary and, therefore, the Bar Association claims that it is entitled to intervene in this Application and their Application be permitted.

As I have observed in the above Application, that these proceedings are between the Court and the Respondent, and the proceedings are of a criminal nature, and the intervention of 3<sup>rd</sup> parties might cause prejudice to the right of a fair trial, and also will prolong the trial, the Intervention Application filed by the Bar Association has the same objective of the Petitioners who have initiated these proceedings and, therefore, permitting the Bar Association to intervene in this Application will not have any benefit in arriving at a fair decision in this case and, therefore, this Court rejects the Application for intervention, the application filed by the Executive Members of the Bar Association of Sri Lanka to intervene in this case is rejected.

### **Intervention Application**

Munasinghe Arachchige Sangadasa Perera

Premachandra Siriwardena

### **Intervient Petitioners**

The Petitioners are retired public servants, and they claim to be Members of (Sri Helaya Sanvidanaya) and they submit that they are deeply concerned of the independence of the judiciary and the rule of law in this country, and they also claim that the judges and lawyers who observe and respect professional ethics and good conduct in keeping with the principles that justice should not only be done, but also seem to be done, and the Petitioners claim that their Application for intervention is to maintain the above said principles, and as this contempt matter has received wide publicity, and the public are greatly concerned about the matter, in these circumstances the Petitioners in their capacity as citizens are greatly interested in the matter as of

public interest and, as such, they are making this application for intervention in the interests of the public.

As I have observed in the above Application for intervention that is to permit 3<sup>rd</sup> parties to intervene in these proceedings which are of a criminal nature, will cause prejudice to the Respondent, and to a fair trial, and for the reasons stated in the above applications, I refuse the Intervenient Application of these Intervenient Petitioners.

### **Intervention Application**

Haniffa Nalees  
Mohamed Thawlathulla,  
the President and  
The General Manager  
of Al Azar Fisheries Co-operative  
Society, Mannar.

### **Intervenient Petitioners**

These Intervenient Petitioners, in their petition stated that they form an important group of the general public of Mannar. The interest of the intervenient - Petitioners is to ensure the proper administration of justice and the Rule of Law. It is the position of the intervenient - Petitioners that the matters concerned affects the public at large and is of grave public importance. It was held in *Abayadeera and 162 others v Dr. Stanley Wijesundera, vice Chancellor University of Colombo and Another* [1983] 2 Sri L R 267: when considering an intervention application in a writ application the Court held: The addition of the 45 students of the University of Colombo who have not joined the petitioner as parties to the application was not necessary as the relief sought for will not affect them adversely. In a contempt proceedings the 3<sup>rd</sup> Parties are not affected and

there assistance is not necessary as the function of the Court is to see whether the Respondent has committed any act that would constitute a contempt of court.

For the reasons stated above, I refuse the intervenient Application of these Petitioners as well.

President of the Court of Appeal

**Deepali Wijesundera, J**

I agree,

Judge of the Court of Appeal