

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

In the matter of an Appeal in terms of  
the provisions in the Constitution read  
together with the provisions of the  
High Court of the Provinces (Special  
Provisions) Act No. 19 of 1990.

Officer in Charge,  
Police Station,  
Nuwara Eliya.

**Complainant**

**VS.**

**CA (PHC) 23/2005**

**Badulla High Court Case No. 99/02 Revision**

**MC Nuwara Eliya Case No.36964**

1. Henry Persy Bonipus,
2. Carrol Mercule Bonipus,  
both of  
No. 24, Lady Macklum Drive,  
Nuwara Eliya.

**1<sup>st</sup> Party**

1. Rathnayake Mudiyansele  
Mahinda Rathnayake,  
No 15, Dipowa Made Para,  
Nuwara Eliya.

2. Sudath Priyantha Karunaratna,  
No. 7/23,  
Craiton Village,  
Nuwara Eliya.
3. Weerawarna Kulasooriya  
Busabaduge Hosman Tyron  
Neranjana Fernando,  
School Lane,  
Seetha Eliya,  
Nuwara Eliya.
4. Manthilaka Rathnayake  
Mudiyanselage Wimaladasa,  
No. 31,  
Shanthipura,  
Nuwara Eliya.
5. Devapriya Mahinda Rupasinghe,  
No.39, Abhayapura,  
Kalegale,  
Nuwara Eliya.
6. Garumuni Archchilage Chandima  
Karunadasa,  
No.14/7, Baros Road,  
Hawa Eliya,  
Nuwara Eliya.

**2<sup>nd</sup> Party**

**AND BETWEEN**

1. Henry Persy Bonipus,
2. Carrol Mercule Bonipus,  
Both of  
No. 24, Lady Macklum Drive,  
Nuwara Eliya.

**1<sup>st</sup> and 2<sup>nd</sup> 1<sup>st</sup> Party Petitioners**

3. Sellaiyah Yuvaraj,  
No. 22, Hawa Eliya,  
Nuwara Eliya.

**3<sup>rd</sup> 1<sup>st</sup> Party Respondent**

**AND**

1. Rathnayake Mudiyanseelage  
Mahinda Rathnayake,  
No. 15, Dipowa Made Para,  
Nuwara Eliya.
2. Sudath Priyantha Karunarathna,  
No.7/23, Craiton Village,  
Nuwara Eliya.
3. Weerawarna Kulasooriya  
Busabaduge Hosman Tyron  
Neranzan Fernando,  
School Lane, Seetha Eliya,  
Nuwara Eliya.
4. Manthilaka Rathnayake  
Mudiyanseelage Wimaladasa,  
No. 31, Shanthipura,  
Nuwara Eliya.

5. Devapriya Mahinda Rupasinghe,  
No. 39, Abhayapura,  
Kalegale,  
Nuwara Eliya.
6. Garumuni Arachchilage Chandima  
Karunadasa,  
No. 14/7, Baros Road,  
Hawa Eliya,  
Nuwara Eliya.

### **2<sup>nd</sup> Party Respondents**

### **AND NOW BETWEEN**

1. Rathnayake Mudiyansele  
Mahinda Rathnayake,  
No.15, Dipowa Made Para,  
Nuwara Eliya.
2. Sudath Priyantha Karunarathna,  
No. 7/23, Craiton Village,  
Nuwara Eliya.
3. Weerawarna Kulasooriya  
Busabaduge Hosman Tyron  
Neranjana Fernando,  
School Lane, Seetha Eliya,  
Nuwara Eliya.
4. Manthilaka Rathnayake  
Mudiyansele Wimaladasa,  
No.31, Shanthipura,  
Nuwara Eliya.

5. Devapriya Mahinda Rupasinghe,  
No.39, Abhayapura,  
Kalegale,  
Nuwara Eliya.

6. Garumuni Arachchilage Chandima  
Karunadasa,  
No. 14/7, Baros Road,  
Hawa Eliya,  
Nuwara Eliya.

**2<sup>nd</sup> Party- Respondent –  
Appellants.**

**VS.**

1. Henry Persy Bonipus,  
2. Carrol Mercule Bonipus  
Both of  
No. 24, Lady Macklum Drive,  
Nuwara Eliya.

**1<sup>st</sup> and 2<sup>nd</sup> 1<sup>st</sup> Party Petitioner –  
Respondents.**

3. Sellaiah Yuvaraj,  
No.22, Hawa Eliya,  
Nuwara Eliya.

**3<sup>rd</sup> 1<sup>st</sup> Party Respondent -  
Respondent**

**BEFORE:** : **W.M.M. Malinie Gunaratne, J. and  
P.R. Walgama, J.**

**COUNSEL** : Dr. Sunil Cooray with B. Gamage  
for the Appellant.  
  
Vidura Ranawaka  
for the 1<sup>st</sup> Party Petitioner-Respondent.

Argued on : 11.12.2015

Written submissions  
filed by the 1<sup>st</sup> and 2<sup>nd</sup> party  
Petitioner –Respondent  
on : 29.01.2016

Written Submissions not  
filed by Appellant

Decided on : 28.04.2016

**Malinie Gunaratne, J.**

In this Appeal the 2<sup>nd</sup> Party Appellants (hereinafter referred to as the Appellants) challenge the Judgment of the learned High Court Judge of Badulla, dated 27.02.2004 allowing a Revision Application by setting aside the determination of the learned Primary Court Judge, under Chapter VII of the Primary Court Procedure Act.

When the Appeal was taken up for argument on 11.12.2015 the learned Counsel for the 1<sup>st</sup> Party – Petitioner – Respondents (hereinafter referred to as the Respondents ) raised the following preliminary objections as to the maintainability of this Appeal.

- (i) The Appellants have failed to comply with Rule 4 (2) of the Court of Appeal (Procedure for Appeals from High Court established by Article 154 P of the Constitution) Rules 1998.
- (ii) The prayer of the Petition of Appeal is defective as the Appellants have not prayed for a dismissal of the revision application filed before the Provincial High Court.

The Counsel for the Respondents submitted that, as required by Rule 4(2) of the Court of Appeal Rules, the purported Petition of Appeal has not been forwarded to this Court and therefore, the purported Petition of Appeal should be rejected *in limine*.

In view of the above objections the Court decided without going into the matters raised in the Petition, to inquire into the question in view of the said issue whether the Appellant can proceed or not with this Application.

It is relevant to note although it was agreed by both parties to file written submissions on the question of the preliminary objections that relates to the maintainability of this action, written submissions has been filed only on behalf of the Respondents.

I will now turn to consider the legal position of the preliminary objections which were raised by the Counsel for the Respondents.

The Court of Appeal Rule 4 (1) and 4 (2) reads as follows:-

4 (1) Every petition of appeal shall state shortly the grounds of appeal and shall be signed by the appellant or his Attorney-at-Law.

4 (2) Where the appeal is on a matter of law the petition shall contain a statement of the matter of law to be argued and shall bear a certificate by an Attorney-at-Law that such matter of law is a fit question for adjudication by the Court of Appeal.

It is relevant to note as per Rule 4 (1), every Petition of Appeal **shall** state shortly the grounds of appeal. Even though it is stated in paragraph (3) of the Petition of Appeal, that the Order of the learned High Court Judge is unlawful and illegal for the reasons stated in subsequent paragraph, it is relevant to note that no reasons are stated in the subsequent paragraph.

Apart from that, according to the Rule 14 (1) (e) of the Court of Appeal Rules in the petition **shall** contain a plain and concise statement of the grounds of objection to the order appealed against such statements to be set forth in duly numbered paragraphs.

The Appellant has not complied with Rule 4 (1) and 14 (1) (e) either of the Court of Appeal Rules.

The learned Counsel for the Respondents contended that since this appeal has preferred upon a matter of law, the Appellants have to state the matters of law on which they canvas the Order of the learned High Court Judge and also a certificate by an Attorney-at-Law stating that those are fit and proper matters to be adjudicated by the Court of Appeal.

I am of the view since the Appellants have not stated any matters of law in the Petition of Appeal, question of bearing a certificate by an



Attorney-at-Law in the Petition does not arise. However, it is to be noted that the Appellants have not complied with Rule 4 (1) of the Court of Appeal Rules.

It is relevant to note that the Appellants have not complied with Rule 14 (1) (a) of the Court of Appeal Rules. It says, the Petition of Appeal **shall** contain the name of the Court in which the application is pending. At the top of the petition it is mentioned as “ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අභියාචනාධිකරණයේදීය. උඩු පලාත්වද බදුල්ල මහාධිකරණයේදීය.” and it cannot be considered as the name of the Court in which the application is pending.

Furthermore, it is vital to note, that in the recital of the Petition of Appeal it is mentioned as follows:-

“ශ්‍රී ලංකා ජනරජයේ සමාජවාදී ජනරජයේ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 154(ග) වගන්තිය සමඟ කියැවෙන 1990 අංක 19 දරණ පලාත්වද මහාධිකරණයේ විශේෂ විධි විධාන පනතේ 5 වන වගන්තිය යටතේ කරනු ලබන ප්‍රතිරෝධන අයදුම”

Hence, the Appellants have not complied with the Rule 14 (1) (a) of the Court of Appeal Rules as well.

Hence, I am of the view that there is no proper Petition of Appeal and the Appellants have not properly invoked the jurisdiction of this Court.

The next objection which arises for decision is whether the prayer of the Petition of Appeal is defective. In the written submissions filed in this Court by the Respondents, it was contended that the Appellants have only prayed to set aside the order dated 27.02.2004 of the learned High Court Judge by prayer (a) and (b) of the Petition; but not prayed for a dismissal of

the revision application filed in the High Court nor prayed to affirm the Order of the Primary Court.

Since the main relief which have been sought by the Appellants is, to set aside the Judgment of the learned High Court Judge and if this Court decides this appeal in favour of the Appellants, the Order of the learned Magistrate would prevail. Therefore, I am of the view it is not essential to pray for dismissal of the Revision Application.

However, it has been held over and over again by this Court as well as the Supreme Court, non-compliance with the Court of Appeal (Appellate Procedure) Rules is fatal to the application. The importance and the mandatory nature of the observance of the Rules of the Court of Appeal in presenting an application has been repeatedly emphasised, and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court.

In the case of *Coomasaru vs. M/s. Leechman and Co. Ltd., and Three Others*, Tennekoon C.J. stated as follows:

“Rules of procedure must not always be regarded as mere technicalities which parties can ignore at their whim and pleasure”. In that case, the preliminary objection raised on behalf of the Respondents that relates to the non-compliance of Rules upheld and dismissed the case.

It was held in *Nicholas vs. Macan Markar Ltd., (1981) 2 S L R 1*, non compliance with the Rules which is in imperative terms would render such application liable to be rejected.

Justice Soza stated in *Nava Rathnasingham vs. Arumugam and Another* (1980) 2 S L R 1 “This petition therefore should have been rejected for non-compliance with Rules”. Further he stated that the Supreme Court Rules are imperative and should be complied with.

Same decision was followed in the case of *Rashid Ali vs. Mohamed Ali* (1981) 2 S L R 29. It was held in *Shanmugadivu vs. Kulatilake* (2003) 1 S L R 215, the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules.

The Petition of Appeal by the Appellants in this case has not been directed to the proper forum under the proper provision of law in as much as no proper legally tenable appeal is pending. Therefore, my considered view is that the Appellant has not invoked the jurisdiction of this Court in a proper manner complying with the Rule 4 (2) and 14 (1) (e) of the Court of Appeal Rules.

For the reasons stated above I uphold the first preliminary objection raised by the learned Counsel for the Respondents.

This Appeal is dismissed accordingly subject to costs.

**JUDGE OF THE COURT OF APPEAL**

P.R.Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed