

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

Pallage Indrasiri
Iddagoda, Kahaduwa.

Respondent Petitioner Appellant

**Court of appeal case no.
CA/PHC/75/2008**

Vs.

**H.C. Balapitiya case no.
747/07**

1. Hon Attorney General,
Attorney General;s Department,
Colombo 12.

1st Respondent 1st Respondent.

2. Rannulu Chandrasiri De Soyza,
Divisional Secretary, Elpitiya.

**Complainant 2nd Respondent
2nd Respondent.**

Before : H.C.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Nishanthi Mendis for the Respondent Petitioner Appellant.

: Nayomi Kahavita SC for the Respondent - Respondents.

Argued on : 09.08.2016

Written submissions filed on : 26.09.2016 and 24.10.2016

Decided on : 10.11.2016

L.T.B. Dehideniya J.

This is an appeal from an order of the High Court of Balapitiya. The facts in the case are briefly as follows. The Complainant 2nd Respondent 2nd Respondent (hereinafter sometimes called and referred to as the Respondent) issued quit notice under State Land (Recovery of Possession) Act No. 07 of 1979 (as amended) against the Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant). The Appellant being disobeyed the quit notice, the Respondent instituted action in the Magistrate Court of Elpitiya under section 5 of the Act to eject the Appellant. The Appellant contested the correctness of the application for ejectment i.e., the copy of the quit notice, the application and the affidavit. The Appellant's argument is that the inapplicable words in the said application for ejectment have not been deleted or struck off and therefore the papers are not in conformity with the Act. The learned Magistrate considered the issue and observed that in the certified copy issued to the Appellant those inapplicable words have not been deleted, but in the original document in the record, the inapplicable words have been deleted. Accordingly the learned Magistrate has overruled the objections and issued the ejectment order in favour of the Respondent. Being aggrieved by the said order the Appellant moved in revision in the High Court of Balapitiya where the order of the learned Magistrate was affirmed. This appeal is from the said order of the High Court.

The learned Counsel's argument is that the strict compliance of the Act is necessary in an application for ejectment under State Land (Recovery of Possession) Act. I agree with the Counsel on this point. The forms of the quit notice, the application and the affidavit are prescribed in the Act by the Legislature. Those forms are also a part of the law relating to the recovery of possession of state lands and the competent authority is

bound to adhere to those forms to proceed under State Lands (Recovery of possession) Act. Otherwise the application to ejectment is bad in law. In the case of *Kandiah V. Abeykoon* (Srisikantha Law Reports Volume iv page 96) wherein Their Lordship expressed thus; "I am of the view that upon a true construction of the statute as a whole, the form of notice, application and affidavit had to be in strict compliance with those which the legislature has thought important enough to set out in the schedule before the jurisdiction of the Magistrate to eject a person in possession or occupation could be exercised." In a more recent case of *S.S.B.D.G.Jayawardane v. K.N.Deen* CA (PHC) 149/2014 CA minutes dated 17.06.2015 *Walgama J.* held that "Therefore it is abundantly clear that the strict compliance of the conditions contained in the above Act should be followed in this process."

Issue in the present case is whether there is a non compliance of the law. In the certified copy issued to the Appellant by the Court, the inapplicable word in the quit notice, the application and the affidavit have not deleted. In the quit notice out of the words "in occupation/possession" the inapplicable words have to be deleted and in the application out of the words "the notice served on/exhibited in or upon the said land" and in the words "in occupation/possession" the inapplicable words have to be deleted. In the affidavit out of the words "sworn/affirmed" the inapplicable word has to be deleted. The learned Counsel for the Appellant argues that the application is bad in law because of the inapplicable words were not deleted. As I said early, the learned Magistrate has observed that in the original record the inapplicable words have deleted.

It is an observation of the learned Magistrate. This observation cannot be challenged because the case record bears the proof. The

certified copies issued to the Appellant are also tendered to Court for perusal. These copies are not photo copies, they are type written copies. Therefore there is a possibility of not including the striking off by pen in the type written copy.

The learned Counsel submitted that in the original record those inapplicable words were deleted “mysteriously”. I don’t find any mysterious act in missing the hand written deletion in the type written copy. The person who deleted the inapplicable words has initialed them. Therefore the authentication of the deletion is also not in issue.

I agree with the finding of the learned High Court Judge that there is no reason to interfere with the order of the learned Magistrate.

The order of the learned High Court Judge is affirmed.

Appeal dismissed.

Judge of the Court of Appeal

H.C.J.Madawala, J.

I agree.

Judge of the Court of Appeal