

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

K.G.A.N.Kumara,
Authorized Officer under the Food Act,
Public Health Inspector, Aththidiya.

Complainant Respondent Appellant

**Court of appeal case no.
CA/PHC/76/2009**

Vs.

**H.C. Colombo case no.
213/2008**

K.T.A.S.Perera,

Perera & Stores Grinding Mills,

**M.C. Mt. Lavinia case no.
3295/S/07**

No. 143/A, Main Road, Aththidiya, Dehiwala.

1st Accused Respondent Respondent.

Hon. Attorney General,

Attorney General's Department, Colombo 12.

Respondent Respondent

Adamjee Lukmanjee & Sons Ltd,

No. 140/5, Grandpass Road, Colombo 14.

2nd Accused Petitioner Respondent

1. K.T.Gulamhusein,

18/4, E.D.Dabare Mawatha, Colombo 05.

2. M.A.Lukmanjee,

176/6, New Bullers Road, Colombo 04.

3. C.M.Samarajeewa,

15/2, Gomas Path, Off the Fonseka Road,
Colombo 05.

Accused Petitioner Respondents

Before : P.R.Walgama J.

: L.T.B. Dehideniya J.

Counsel : W. Dayarathne P.C. with Ms. R.Jayawardane for the
Complainant Respondent Appellant.

: Mohamed Adamaly with Janaka Abayasundara for the 2nd
Accused Petitioner Respondent and 1, 2, 3 Accused Petitioner
Respondents.

Argued on : 04.03.2016

Written submissions filed on 04.07.2016 and 26.09.2016

Decided on : 15.11.2015

L.T.B. Dehideniya J.

The Complainant Respondent Appellant (the Appellant) as the competent authority under Food Act, instituted action against the 1st Accused Respondent in the Magistrate Court, Udugama for violating the Food Act. The 1st Accused pleaded guilty to the charge. The 2nd Accused Petitioner Respondent pleaded not guilty through an authorized officer and on the order of the Court, the Directors of the 2nd Accused were brought in as 2, 3, 4 accused. The 2nd Accused moved to discharge the accused since the Government Analyst has withdrawn the 1st adverse report and submitted a 2nd report which is not an adverse report. The learned Magistrate refused the application. The Accused Petitioner Respondents moved in revision in the High Court of Galle where the learned High Court Judge acquitted the Accused on the basis that the Magistrate cannot frame a charge against the Accused because of the 2nd report of the Government Analyst. The learned High Court Judge has further observed that the Appellant being a public officer, who has acted in the official capacity of a public officer, has no

right to retain a private lawyer in an appeal. The Appellant being aggrieved by the said judgment of the High Court, appealed to this Court.

At the argument, the Accused Petitioner Respondents (the Respondents) raised two preliminary objections to the maintainability of this appeal. The one of the said objections is that the appeal is time bared, but in the written submissions the Respondents submitted that they do not pursue the said objection. The other objection is that the Appellant had failed to tender a certificate by an Attorney at Law that the questions of law urged in the petition of appeal were fit questions for adjudication by the Court of Appeal, and thereby failed to comply with Rule 4(2) of the Court of Appeal (Procedure for appeals from High Courts established by Article 154P of the Constitution) Rules, 1988.

The said Rule 4(2) reads thus;

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 common ground that the petition does not contain such a statement, with a certificate of an Attorney at Law. The appellant's contention is that the petition is signed by an Attorney at Law and it is not necessary to include a separate certificate. The Respondents argue that the mandatory provisions of the Rules have to be complied with and the non compliance is fatal.

The grounds of appeal are stated in the paragraph 18 of the petition of appeal. All the grounds stated therein are matters of law. The legality of the order of the learned High Court Judge, the necessity for the Attorney General to represent the Appellant, whether the Respondents are estopped from challenging the right to be represented by a private lawyer, the effect of Government Analyst's withdrawal of the 1st report, are the grounds of

appeal stated in the petition. All these are matters of law that has to be considered in this appeal. As such, the Rule 4(2) directly applies to the present petition.

There is a long line of authorities decided by the Superior Courts that the non compliance of the Rules is fatal. In a recent case, R.A.Ranasinghe v A.G. CA/PHC185/2011 CA Minutes dated 05.08.2015 Malini Gunarathene J. with my sister Rohini Walgama J. agreeing considered the long line of authorities on the issue of non compliance of the Rules and held;

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 emphasized, and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court.

In the case of Coomasaru vs. Mis 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 Respondent that relates to the non compliance of Rules upheld and dismissed the case.

It was held in Nicholas vs. Macan Marker Ltd; (1981) 2 SLR 1, noncompliance with the Rule which is in imperative terms would render such application liable to be rejected.

Justice Soza stated in Navarathnasingham vs. Arumugam and Another (1980) 2 SLR 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 Rasheed Ali vs. Mohamed Ali (1981) 2 SLR 29.

In the case of Koralage vs. Marikkar Mohamed and others (1988) 2 SLR 299, it was held, compliance of the Rules is a mandatory requirement and non-compliance is a material defect in the application and cannot maintain the application.

Same decision was followed in cases Brown and Company Ltd. V s. Rathnayake (1990) 1 SLR 92, The Attorney General vs. Wilson Silva (1992) 1 SLR 44 and Balasingham and Another vs. Puvanthiram (2000) 1 SLR 163. It was stated by Perera J. in Balasingham case, failure to comply with Rules is indeed a failure to show due diligence. The appeal was accordingly dismissed. In the cases of Facy vs. Sanoon and Others (2003) 2 SLR, and Jeganathan vs. Sajyath (2003) 2 SLR 372 same decision has been followed.

It was held in Shanmugadivu vs. Kulatilake (2003) 1 SLR 215, the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules.

Hence, the weight of authorities mentioned above, thus favours the view, that non-compliance with the Rules is fatal to the application. Parties who invoke the jurisdiction of the Court cannot ignore the Rules and then ask to be heard.

It is to the best interest of the administration of Justice that Judges shall not ignore or deviate from the procedural law and decide matters on equity and justice as Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando and Others (1997) 3 SLR 12.....

Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando "there is the substantive law and the procedural law. Procedural law is not secondary. The two branches are complementary. Halsbury points out it is by procedure that the law which puts life into substantive law, gives it remedy and effectiveness and brings it into being".

Hence, in the interests of the administration of justice, there must be order, and therefore there must be compliance with the Rules of the Court of Appeal. As I have observed the defect was not of a purely formal or technical nature. Invoking the jurisdiction of the court is a crucial step in the proceedings.

In the present case the Appellant has failed to comply with the Rule 4(2). It is mandatory to contain a certificate from an Attorney At Law to the effect that the questions of law raised in the petition are matters fit for adjudication by the Court of Appeal. Since the petition is signed by an Attorney at Law, at least there should be an averment/pleading in the petition to that effect. Without such a statement in the petition the appeal cannot be maintained.

I uphold the preliminary objection. The appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal