

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

In the matter of an application for Revision under
Article 138 of the constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No: CA/PHC/APN/144/16
Colombo High Court Case No: HC (Rev) 76/2016
Colombo MC Case No: B 23073/2016

- 1) Officer in Charge,
Special Investigation Unit,
No: 01, Criminal Investigations
Department,
- 2) Attorney General,
Attorney General's Department,
Colombo 12

Petitioners

Vs

- 1) Vijayanthi Perera,
Retiyagala, Govinna,
Horana.
- 2) Daranagama Kusala Dhamma Thero,
Sambodi Viharaya, Colombo 07.
(Licenses Nos: 148, 347, 348)
- 3) Suneth Chaturanga Weerasinghe,
Monroviyawatta, C Division,
Colombo Road, Alauwa.
(Licenses No: 206)
- 4) W.P.M. Deepthi Kumara,
No: 199/2, Biyagama.
(Licenses No: 227)
- 5) P.S. Meeyanapalana,
Nikapitiya, Ussapitiya,
Mawanella.
(Licenses No: 230)
- 6) P.W.S. Hapuarachchi,

- “Indrani”, Veediyagoda,
Bandaragama.
- 7) Ajith Gallage,
62/2, Ramanayake Road,
Hokandara
(Licenses No: 331)
- 8) Bharatha Amarathunga,
No: 563, Old Road,
Meegoda
(Licenses No: 226)
- 9) Buddika Deshapriya Niriyaela,
Pallewatta, Mawela,
Higula.
(Licenses No: 335)
- 10) Waruna Lanka Wijesinghe,
Kananwila, Kahatapitiya,
Horana.
(Licenses No: 203)
- 11) W.L.D.S.U. Wijemanna,
No: 72/1A, Gangabadawatta,
Amithirigala, Medagoda.
(Licenses Nos: 332, 184)
- 12) J.P.P. Kamal Kithsiri,
No: 665, Athurugiriya Road,
Kottawa.
(Licenses No: 228)
- 13) W.S.K. Pathirana,
Director General (Cover Duty)
Department of Wild life Conservation,
No: 811/A, Jayanthipura Road,
Battaramulla.

RESPONDENTS

AND NOW

- 1) Sujeewa Jayasinghe
- 2) Sudarshani Fernando,

Both of
Center for Environmental And
Cultural Studies,
Diyakepilla, Sigiriya
And
P.O. Box No; 03, Diyakepilla.

INTERVENING PETITIONERS

Vs

- 1) Officer in Charge,
Special Investigation Unit,
No: 01, Criminal Investigations
Department,
- 2) Attorney General,
Attorney General's Department,
Colombo 12

PETITIONER

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Department of Wild life Conservation,
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Battaramulla.

RESPONDENT- RESPONENTS

Before : L.T.B. Dehideniya J. (P/CA)

: Shiran Gooneratne J.

Counsel : Aruna Laksiri Unawatuna for the Petitioner.

: Asthika Devendra with Kaneel Maddumage for the 5th, 6th, 7th,
8th, 12th and 13th Respondents.

: Varunika Hettiga DSG for the Attorney General

Supported on: 16.10.2017

Decided on : 24.10.2017

L.T.B. Dehideniya J. (P/CA)

This case was decided on 09.03.2017 and the proceedings were terminated. The petitioner made an application for a certified copy the judgment translated in to Sinhala language. Since this Court has no facilities to issue a translated copy of the proceedings, the Court as a curtesy towards the litigants, made a request to the Ministry of Justice to make available a translation of the judgment but was unsuccessful. Thereafter the learned Counsel supported this matter in the open Court to establish his entitlement for a translated copy.

The learned Counsel's argument is that a party is entitle for a translated copy in to his language under the provisions of the Constitution. Counsel submits that under Article 24(3) of the constitution, a party is entitle for a translated copy of the record. He admits that the Gazette in force allowing the superior courts to function in English language. He categorically state that he is not making any application to hear the case in Sinhala language but his contention is that the subsidiary legislation cannot override the provisions of the Constitution his entitlement for a Sinhala translation under the Constitution remains.

The learned DSG appearing for the Attorney General submits that this argument involves the interpretation of the Constitution and therefore under Article 125, this matter has to be referred to the Supreme Court for a determination.

The Article 24 of the Constitution reads thus;

24. (1) Sinhala and Tamil shall be the languages of the courts throughout Sri Lanka and Sinhala shall be used as the language of the court situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the court. In the event of an appeal from any court records shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred :

Provided that the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers direct that the record of any court shall also be maintained and the proceedings conducted in a language other than the language of the court.

(2) Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings, and submit to court pleadings and other documents, and participate in the proceedings in court, in either Sinhala or Tamil.

(3) Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the language used in a court, shall be entitled to interpretation and to translation into Sinhala or Tamil, provided by the State, to enable him to understand and participate in the proceedings before such

court, and shall also be entitled to obtain in such language, any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law.

(4) The Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers, issue directions permitting the use of English in or in relation to the records and proceedings in any court for all purposes or for such purposes as may be specified therein. Every judge shall be bound to implement such directions.

(5) In this Article -

"court" means any court or tribunal created and established for the administration of justice including the adjudication and settlement of industrial and other disputes, or any other tribunal or institution exercising judicial or quasi-judicial functions or any tribunal or institution created and established for the conciliation and settlement of disputes ;

"judge" includes the President, Chairman, presiding officer and member of any Court; and

"record" includes pleadings, judgments, orders and other judicial and ministerial acts.

Under Sub Article (3), a party's entitlement can be summarized as follows,

(3) Any ... party ... who is not conversant with the language used in a court, shall be entitled to translation into Sinhala provided by the State, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in such language, any such part of the record or a translation thereof,

The first part of this sub Article refers to "enable him to understand and participate in the proceedings". Therefore his entitlement of a translation is

limited for the purpose of participating in the proceedings. The 'proceeding' is what takes place in a Court. The proceeding in the present case has been terminated and the petitioner need not or cannot take part in the proceedings any further. Therefore there is an issue whether the first part of the sub article has any application to the Petitioner at this stage. The second part of the said sub article relates to the entitlement of a translation of a part of the record. According to the interpretation, the judgments and orders include in to the word 'record'. The judgment or order comes in with the termination of the proceedings. Therefore whether there is any application of the limitation in the first part of the sub article to the second part or whether the Court is obliged to issue a translated copy of the record to a party is in issue. This being a matter of interpretation of the Constitution, acting under Article 125 of the Constitution I refer the following question to the Supreme Court for determination.

Is the Court required to issue a Sinhala translation of a Judgment/Order or any part of the record, maintained in English to a party who state that he ia unable to understand the language of the Court?

President of the Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal