

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

In the matter of an Application for
revision of an order of the Provincial
High Court in the exercise of its
revisionary jurisdiction.

C A (PHC) APN / 65 / 2017

High Court of Colombo

Case No. HCRA 50 / 2017

Magistrate's Court Nugegoda

Case No. 21538 / A

Nadugala Vidhana Pathiranage Piyadasa
Rathuralagewatte,
Hiththatiya Meda,
Matara.

ACCUSED - PETITIONER -

PETITIONER

Vs

- i. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

- ii. Officer-in-Charge,
Police Station,
Maharagama.

**RESPONDENT - RESPONDENT -
RESPONDENTS**

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel : K Deekiriwewa with L N Deekiriwewa and Dr Kanchana De Silva
and Mrs. N K Herath for the Petitioners.

Varunika Hettige DSG for the Attorney General.

Argued on : 2017 - 11 - 21

Decided on : 2018 - 01 - 25

JUDGMENT

P Padman Surasena J (P/CA)

At the commencement of the argument learned counsel for the Accused - Petitioner - Petitioner (who will hereinafter be called and referred to as the Petitioner) objected to the learned Deputy Solicitor General making submissions before this Court. The said objection was on the basis that the Respondent - Respondent - Respondents (who will hereinafter be called and referred to as the Respondents) had failed to submit an affidavit along with the statement of objections.¹ It is on that basis that the learned counsel for the Petitioner attempted to argue that it is a breach of Court of Appeal (Appellate Procedure) Rules 1990.

¹ As required by Court of Appeal (Appellate Procedure) Rules 1990.

It was the submission of the learned counsel for the Petitioner that the compliance of the rules is mandatory and that this Court must strictly adhere to and enforce the said compliance.

It was in this backdrop that the learned Deputy Solicitor General also took up a preliminary objection to the maintainability of this application at the very inception of the argument. It is the submission of the learned Deputy Solicitor General that there is no material for this Court to consider as the Petitioner has failed to submit a certified copy of the impugned proceedings. It is the position of the learned Deputy Solicitor General that the Petitioner has defaulted compliance with rule 3 (1) (a).²

We have perused the documents filed by the Petitioner in this Court. It is a fact that the original docket of this court does not contain any certified copy of the impugned proceedings.

Learned counsel for the Petitioner however sought to argue that the 'true copy' he has filed, would be sufficient to comply with the above rule.

This Court has to observe that it is the Petitioner who has first insisted before this Court that it should strictly enforce the compliance with the

² Court of Appeal (Appellate Procedure) Rules 1990

Court of Appeal (Appellate Procedure) Rules 1990. Thus, it is the view of this Court that the Petitioner (who has so insisted as mentioned above) is under a duty by himself to make sure that he complies with the said rules before pointing his finger at the opposite party for such noncompliance. Unfortunately, it is a fact that the Petitioner has failed to ensure such compliance.

Rule 3 (1) (a) and (b)³ is as follows:

"... Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later. Where a petitioner fails to comply with the provisions of this rule the Court may, *ex mere mortu* or at the instance of any party, dismiss such application.

³ Court of Appeal (Appellate Procedure) Rules 1990.

(b) Every application by way of revision or restitutio in intergrum under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, tribunal or other institution to which such application relates."

This Court in the case of the Attorney General vs Ranjith Weerawickrama Charles⁴ considered the same question that arose in that case. Having considered the relevant aspects pertaining to this issue, this Court underlined the importance of tendering to Court, authentic copies of impugned documents, which must bear an authoritative and responsible signature. This is not only just to certify such copies but also to take the responsibility for the authenticity of such documents.

In that case this Court held that a photocopy of proceedings certified by an Attorney-At-Law as a 'true copy' cannot be considered as a certified copy within the meaning of rule 03 (1) (a) of the Court of Appeal (Appellate procedure) Rules 1990.

Further, it must be stated here that a photocopy of a certified copy of proceedings would not be a certified copy in as much as a photocopy of the original would not be an original.

⁴ CA (PHC) APN 74/2016 decided on 2017-10-09

For the foregoing reasons, this Court has to conclude that, there is no material before this Court to consider the application filed by the Petitioner.

Rule 3 (13)⁵ has placed a duty upon the petitioner to take necessary steps to prosecute his application with due diligence. Rule 3 (1) (a)⁶ further provides that where a petitioner fails to comply with the provisions of this rule the Court may, *ex mere mortu* or at the instance of any party, dismiss such application.

The petitioner has not stated in his petition any reason as to why he failed to tender certified copies of relevant documents material to his application.

It is noteworthy that Rule 3 (1) (a)⁷ makes provisions for any party who would have a genuine reason to state such inability and seek the leave of Court to furnish such documents later. The wish of the Petitioner has never been that. Perusal of the averments in the petition shows clearly that he has never been interested in filing certified copies to comply with the rules.

⁵ Court of Appeal (Appellate Procedure) Rules 1990.

⁶ Court of Appeal (Appellate Procedure) Rules 1990.

⁷ Court of Appeal (Appellate Procedure) Rules 1990.

This Court therefore takes the view that the Petitioner is not entitled to proceed to the next step without compliance with a valid invocation of jurisdiction in the first place.⁸

In these circumstances, this Court decides to refuse this application. This application should therefore stand dismissed without costs.

Application is dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

⁸ Brown & Co. Ltd. and another Vs. Ratnayake, Arbitrator and others 1994 (3) SLR 91.