

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

In the matter of an Appeal in terms of Article 154P (6) read with Article 138 of the Constitution against the order/judgment dated 07.12.2011 in Provincial High Court of the Central Province (holden in Kandy) in case No. HCR 71/09 .

Manoja Jayanetti,
The Competent Authority of the
Plantation Management Monitoring
Division of the Ministry of Plantation
Industries,
The Plantation Management
Monitoring Division,
Ministry of Plantation Industries,
55/75, Vauxhall Lane
Colombo 02.
Applicant

Vs

C,A, (PHC) No. 52/2012
PHC Kandy No. 71/2009(Rev)
M.C. Matale Case No. 82116

Loku Hetti Arachchilage Seneviratne,
Idangama, Udasgiriya
Matale.
Respondent

AND BETWEEN

Jayaweera Mudiyanseelage
Chandrika Priyadarshanie,
The Competent Authority of the
Plantation Management Monitoring

Division of the Ministry of Plantation
Industries,
The Plantation Management
Monitoring Division,
Ministry of Plantation Industries,
55/75, Vauxhall Lane
Colombo 02.

Petitioner

-Vs-

Loku Hetti Arachchilage Seneviratne,
Idangama, Udasgiriya
Matale.

Respondent-Respondent

AND NOW BETWEEN

Jayaweera Mudiyanseelage
Chandrika Priyadarshanie,
The Competent Authority of the
Plantation Management Monitoring
Division of the Ministry of Plantation
Industries,
The Plantation Management
Monitoring Division,
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane
Colombo 02.

Petitioner- Appellant

-Vs-

Loku Hetti Arachchilage Seneviratne,
Idangama, Udasgiriya
Matale.

**Respondent-Respondent-
Respondent**

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Daphne Peiris for the Petitioner-Appellant
D.D.P. Dasanayake with Dilip de Silva for the
Respondent Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 06-06-2018 (by the Respondent)
07-06-2018 (by the Appellant)

DECIDED ON : 13th July, 2018

ACHALA WENGAPPULI, J.

The Applicant-Petitioner-Appellant (hereinafter referred to as the "Appellant") moved Magistrate's Court of Matale, by her application under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, for an order of ejection of the Respondent-Respondent-Respondent (hereinafter referred to as the "Respondent") from the State land described in the schedule.

When the Magistrate's Court issued summons to show cause, the Respondent challenged the standing of the Appellant on the basis that she is not the Competent Authority who could institute an action for recovery of possession of State lands. Learned Magistrate in his order dated 01.12.2008 dismissed the application on the basis that the Appellant has

failed to establish the fact that she was appointed by the Hon. Minister who is in charge of the subject by production of an appointment letter either by tendering it to Court or annexing it to her application. In coming to this determination, learned Magistrate apparently followed the reasoning of the judgment of *Alwis v Wedamulla, Additional Director General, U.D.A.* (1997) 3 Sri L.R. 417.

The Appellant moved Provincial High Court holden in Kandy invoking its revisionary jurisdiction to set aside the order of dismissal by the Magistrate's Court of Matale. After an inquiry, the Provincial High Court, by its order dated 07.12.2011 dismissed her petition by holding that the Appellant has failed to establish that she was in fact the Competent Authority at the time of the order of the Magistrate's Court, although there was an appointment of a Competent Authority by the Secretary to the Ministry of Plantations, by his letter dated 13.03.2009.

It is clear upon perusal of both these orders, the Magistrate's Court as well as the Provincial High Court were of the view that the judgment of *Alwis v Wedamulla, Additional Director General, U.D.A.* (ibid) imposed a pre-condition for applying for an order of eviction under Section 5 of the State Lands (Recovery of Possession) Act, the Competent Authority must annex a copy of his letter of appointment.

The requirement imposed by the judgment of Jayasuriya J in *Alwis v Wedamulla, Additional Director General, U.D.A.* is that;

the petition and affidavit filed in the Magistrate's Court ought to have set out and pleaded such delegation or appointment. There is no averment in the affidavit and in the documents filed that the Powers of the Director-General have been delegated.

The Appellant, in the quit notice issued to the Respondent stated that she is the Competent Authority appointed by the State Plantations Corporation/Janatha Estates Development Board. In her petition and affidavit addressed to the Magistrate's Court of Matale, the Appellant has averred that she is the Competent Authority appointed by the State Plantations Corporation/Janatha Estates Development Board and has thereby satisfied the said requirement.

In these circumstances, the order of the Magistrate's Court in dismissing the application has been made upon a misapplication of the requirement imposed in *Alwis v Wedamulla, Additional Director General, U.D.A.*

In the revision application filed before the Provincial High Court, the Appellant has annexed a letter dated 05.05.2009, signed by Secretary to the Ministry of Plantation Industries that the contract of the officer who has functioned as Competent Authority would end on 30.09.2008. The quit notice issued by the said Competent Authority on the Respondent is dated 16.04.2008. The application seeking an order of eviction against the

Respondent by the said Competent Authority was filed in the relevant Magistrate's Court on 26.06.2008. In view of these circumstances, it is clear at the time of issuing the quit notice and of filing an application for ejectment, the officer who signed in as the Competent Authority had proper authority as her term of office came to an end only on 30.09.2008.

The Provincial High Court, in its order of dismissal of the revision application made two errors. Firstly, it erred in affirming the order of the Magistrate's Court on this erroneous premise and secondly, it failed to note that what is required is that the Competent Authority had to have such authority to institute proceedings to seek an order of eviction against the Respondent, at the time of institution of proceedings not at the time of the order of eviction.

In addition to these errors made by the Magistrate's Court and the Provincial High Court on the material placed before them, both these Courts have also made a fundamental error which resulted in the denial of relief to the Appellant. This fundamental error is a result of their failure to give effect to the Statutory Provisions available in Sections 5 and 9(1) of the State Lands (Recovery of Possession) Act No.7 of 1979 as amended.

The Respondent, when he was afforded an opportunity to show cause under Section 6(1) of the Act, has raised an objection as to the validity of the application for ejectment on the basis that the Appellant was

not appointed as the Competent Authority by placing reliance on the judgment of *Alwis v Wdamulla, Additional Director-General, U.D.A.*

In this judgment, Jayasuriya J, sitting alone, held the view that an Additional Director General is not a Competent Authority as per the definition of the term "Competent Authority" in the Urban Development Authority Act, in relation to the matter before him.

His Lordship further held that;

"If there had been a delegation of powers, rights and functions of the Director General of the Urban Development Authority to the Additional Director General, then the petition and affidavit filed in the Magistrate's Court ought to have set out and pleaded such delegation or appointment. There is no averment in the affidavit and in the documents filed that the powers of the Director General have been delegated to A. Wedamulla, the Additional Director General did not have a locus standi and a right and status to institute these proceedings."

It is clear that His Lordship considered only the question whether an Additional Director General could be considered as a Competent Authority as per the definition provided in the Urban Development Authority Act. In the instant appeal, the Respondent forwarded his objections under the Statutory Provisions of the State Lands (Recovery of Possession) Act No.7 of 1979.

Therefore, this judgment could not be considered as an authority for the proposition that when a Competent Authority makes an application under Section 5(1) of the State Lands (Recovery of Possession) Act, his standing as the Competent Authority could be challenged by a Respondent before the Magistrate's Court.

It is necessary to examine the relevant statutory provisions contained in the said Act, in determining the question whether a Respondent in an application for ejectment could challenge the standing of the Competent Authority, upon being summoned to show cause under Section 6(1) of the Act.

This sub section imposes a duty on the Magistrate's Court " *to issue summons on the person named in the application to appear and show cause ... why such person and his dependents, if any should not be ejected from the land...*".

When such person on whom show cause was issued appears on the due date and "states that he has cause to show against the issue of an order of ejectment" the Magistrate's Court could inquire into it.

Section 9(1) of the Act limits the scope of such an inquiry only to establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with

any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. The judgments of *Kandiah v Abeykoon* Sriskantha's Law Reports, Vol. IV, p.9., *Muhandiram v Chairman, Janatha Estates Development Board* (1992) 1 Sri L.R. 110 and *Nirmal Paper Converters (Pvt) Ltd., v Sri Lanka Ports Authority and Another* (1993) 1 Sri L.R. 219 have recognized this limitation.

In addition to the said limitation in the scope of the inquiry, Section 9(1) also imposes another restriction on the Respondent by the words "At such inquiry the person on whom summons under Section 6 has been served shall not be entitled to contest any of the matters stated in the application under Section 5 ..." except that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. (emphasis added)

Section 5(1) imposes a duty on the Competent Authority to set out certain facts in his application for ejection and has included these factors in Section 5(1)(a) and (b).

Section 5(1)(a)(i) of the Act reads thus;

"that he is a Competent Authority for the purpose of this Act."

When these two statutory provisions are read together, it is clear that the Legislature has intended that a Respondent, in an application for ejection should not be allowed to contest before the Magistrate's Court,

against the claim by the Competent Authority in his application under Section 5 that he is the Competent Authority for the purpose of this Act, i.e., to make an application for ejection.

In view of the aforesaid reasons, we are of the view that the grounds of appeal raised by the Appellant are with merit and her appeal ought to be allowed.

Accordingly, we make order by allowing the appeal of the Appellant by setting aside both the orders, and directing the relevant Magistrate's Court to issue an order under Section 10(1) of the said Act for ejection of the Respondent and his dependants from the land described in the schedule to the application.

The appeal is allowed. Parties will bear their costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL