

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

In the matter of an application for writs
of certiorari and mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C A (Writ) 345 / 2012

Jayantha Perera Bogodage,

47/15,

Hyde Park Corner,

Colombo 02.

Petitioner

Vs

D S P Senaratne,

Controller of Imports and Exports,
Imports and Exports Control
Department,
1st Floor, Hemas Building,
75/13,
York Street,
Colombo 01

RESPONDENT

Before: P. Padman Surasena J (P / C A)

A H M D Nawaz J

Arjuna Obeyesekere J

Counsel : Hijas Hisbullah with Shifan Maharooof for the Petitioner.

Chaya Sri Nammuni SC for the Respondent.

Decided on : 2018 - 12 - 12

JUDGMENT**P Padman Surasena J**

I have had the opportunity of reading in draft form, the judgment of His Lordship Justice A H M D Nawaz. I regret my inability to agree with His Lordship's conclusions and hence thought it fit to write this judgment.

The Petitioner in this application prays from this Court, following main relief;

- I. a writ of certiorari to quash the determination produced marked **P 20**,
- II. a writ of certiorari to quash the document produced marked **P 23 A**,
- III. a writ of mandamus to compel the Respondent to issue an import license to the Petitioner as per his application produced marked **P 1 4**.

On the date of the argument, the learned State Counsel for the Respondent raised a preliminary objection to the maintainability of this case on the basis that the Petitioner has failed to submit originals or duly

certified copies of the documents he had relied upon, to obtain the prayed relief, through this application. It was the submission of the learned State Counsel for the Respondent that the Petitioner has breached rule 3 (1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990.

It would be in order to commence examining this issue with the re-production of Rule 3 (1) (a)¹ which states 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.

¹ Court of Appeal (Appellate Procedure) Rules 1990.

(b) Every application by way of revision or restitution 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."

....."

Our Courts have repeatedly held that the compliance of this rule is mandatory. The Petitioner also did not seek to advance any contrary argument. His argument was that he has complied with the said requirement. It is his contention that the handwriting found on the reverse side of the last page of the brief serves as the required compliance of this rule. Thus, the question this Court has to primarily answer is whether that entry can be taken as a compliance of the above rule.

Other than the sole sentence referred to above, appearing on the reverse side of the last page of the brief (i.e. on the reverse of the document marked '**P 24 F**') it is a fact that the Petitioner has not submitted any other form of certification or any certified copy of any document to this Court annexed to his application. He has also not tendered to Court any original document with his application.

In countering the objection raised by the learned State Counsel, the Petitioner takes up the position that the common certification on the back of the document marked '**P 24 F**' certifies all the documents (marked from **P 1** to **P 24 F**) to be true copies.² In view of this, the task of this Court becomes two fold. Firstly, this Court has to decide whether the 'common certification' is a genuine certification at all. Then this Court has to decide whether such 'common certification' could be considered as a sufficient compliance of the above rule even if that entry is a genuine one.

The 'common certification' relied upon by the learned counsel is just a hand written sentence which states that they are true copies. Although there is something like a signature, nobody would ever know who actually had placed that signature. This is because no name, stamp, or date could be seen below that signature. The first impression that this Court would get when it sees the said 'common certification' is that some interested party has inserted that entry in a hurry, taking the advantage of the availability of the record possibly after the learned State Counsel had taken up the preliminary objection to the maintainability of this application. This thought is justifiable because there is no indication as to when that entry was made. The absence

² Paragraph 3 of the written submissions filed on 2017-06-30 by the Petitioner.

of even such a certification in the other copies of the brief would also substantiate the above proposition. In these circumstances, this Court cannot and should not demean itself by coming down to an unacceptable level to uphold such presumably deceitful practices. Such practices must be frowned upon by all possible measures. Doors of Courts must be closed for those who attempt to get undue benefits from engaging in such practices. Having regard to its nature, its location, its format and the absence of any sign of authentication, it is the view of this Court that the 'common certification' relied upon by the Petitioner is not a genuine certification but a deceitful entry.

Although above conclusion is sufficient to dispose this matter, I will proceed to deal with the second issue as well.

It is common knowledge that the original case record or its certified copy is generally before Court, when it exercises its appellate or revisionary jurisdiction. However, one must be mindful that the writ jurisdiction of this Court is an original jurisdiction. In other words, this Court is called upon to totally depend on the material supplied by the parties of such writ application. Thus, there is an incumbent and sacred duty on the part of the

Petitioner in particular, to adduce sufficient admissible and reliable evidence to prove its case before Court.

According to Rule 3 (1) (a) cited above, it is a 'duly certified copy' of the document (in the absence of original), material to the application in hand and not a 'true copy' that the Petitioner is required to submit with his application. It must be borne in mind that there are two requirements in the above phrase. The first is that the relevant copy must be certified and the second is that the said certification must be duly done.

The phrase 'duly certified copy' must mean that the authority responsible for its issuance must have certified the copy submitted to Court as a copy duly obtained from the original. It is only then that a Court of Law can rely and act on such document.

It cannot be difficult for anybody to understand that the Attorney at Law for the Petitioner³ cannot have any authority to duly certify a set of documents, which the Petitioner himself states has been issued by his bank.

³ Who is generally expected to make out a case for himself relying on the document he says is a 'true copy'.

As has been pointed out by the learned State Counsel, the Petitioner in this application has claimed that he has fulfilled the requirement of remitting in foreign currencies, his earnings in overseas, to his bank account. However, the documents the Petitioner has submitted to this Court are nothing more than photocopies of some documents. Such copies cannot be adduced as evidence before any Court of Law. A document that is neither the original nor a duly certified copy has no evidential value. Therefore, this Court has to conclude that the Petitioner has adduced no evidence to prove his claim.

It would be relevant at this stage to quote the following paragraph from the judgment of this Court in the case of Attorney General Vs Ranjith Weera Wickrema Charles Jayasinghe.⁴ Having considered the importance and the underlying reasons for the insistence of strict compliance of the above rule, this Court in that case stated as follows;

" Moreover, the above rule underlines the importance of the presence of an authoritative and responsible signatory certifying such copies taking the responsibility for the authenticity of such documents. Insisting on tendering to Court, such duly certified copies of relevant proceedings is not without any valid and logical reasons. Courts make orders relying on such

⁴ C A (PHC) APN / 74 / 2016 Decided on 2017 - 10 - 09.

documents. They may sometimes have serious effects on people. The persons who may be so affected might sometimes be not limited to parties of the case only. Drastic repercussions may ensue in case the Court makes such orders on some set of papers, authenticity of which would subsequently become questionable. That is one of the reasons as to why tendering of duly certified copies of the relevant documents to Court has been made mandatory by the Rules. ”

Rule 3 (1) (a)⁵ 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.

In the case of Shanmugawadivu Vs Kulathilake⁶ the Supreme court has held as follows "..... the new Rules permit an applicant to file documents later, if he has stated his inability in filing the relevant documents along with his application, and had taken steps to seek the leave of the Court to furnish such documents. In such circumstances, the only kind of discretion that could be exercised by Court is to see whether and how much time could be permitted for the filing of papers in due course. ... ”

⁵ Court of Appeal (Appellate Procedure) Rules 1990.

⁶ 2003 (1) S L R 216.

The Petitioner has made no such statement in his petition. Therefore, this Court has to conclude that the Petitioner at no stage entertained any idea of tendering to Court any duly certified copies of relevant documents for the perusal of Court.

As has been decided in the case of Brown & Co. Ltd. and another Vs. Ratnayake, Arbitrator and others⁷ (which is a case where the dismissal of an application for a Writ by the Court of Appeal on the basis of a failure on the part of the petitioner in that case to annex to the petition, certified copies of relevant proceedings with regard to the particular dispute), the Petitioner in the instant case too is not entitled to proceed to the next step without compliance with a valid invocation of jurisdiction in the first place.⁸

Thus, the resultant position before this Court is that the Petitioner has adduced no evidence to substantiate his claim. Therefore, this Court has no legal basis to consider the issuance of writs the Petitioner has prayed in this application.

In these circumstances, this Court decides to refuse this application. This application should therefore stand dismissed with a cost of Rs. 250,000/=

⁷ 1994 (3) SLR 91.

⁸ (Ibid) at page 100.

payable by the Petitioner to the state. The Registrar of this Court is directed to take steps to recover from the Petitioner the ordered costs.

Application is dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

Arjuna Obeyesekere J

I agree with the judgment of His Lordship the President of the Court of Appeal P Padman Surasena J.

JUDGE OF THE COURT OF APPEAL