

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

In the matter of an application for the grant of a Writ of *Quo Warranto*, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sharmila Roweena Jayawardene Gonawela,  
30/2, Albert Crescent,  
Colombo 07.

**PETITIONER**

Case No: CA/WRIT/388/2018

*Vs.*

1. Hon. Ranil Wickramasinghe,  
No. 177, 5<sup>th</sup> Lane, Colombo 03.  
And also of  
No. 58, Sir Earnest De Silva Mawatha,  
Colombo 07.
2. Akila Viraj Kariyawasam,  
General Secretary,  
United National Party,  
Sirikotha, No. 400, Kotte Road,  
Sri Jayawardenapura Kotte.
3. W.B. Dhammika Dasanayake,  
Secretary General of Parliament,  
Parliament of Sri Lanka,  
Sri Jayawardenapura Kotte.

4. Bank of Ceylon,  
No. 01, BOC Square,  
Bank of Ceylon Mawatha,  
Colombo 01.
5. People's Bank,  
No. 75,  
Sri Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**RESPONDENTS**

**Before :**      **A.L. Shiran Gooneratne J.**

**&**

**K. Priyantha Fernando J.**

**Counsel :**                      Uditha Egalahewa, PC with N.K. Ashokbharan  
instructed by Mr. H.C. de Silva for the Petitioner

K. Kanag-Isvaran, PC with Suren Fernando and  
Niranjan Arulpragasam instructed by G.G.  
Arulpragasam for the 1<sup>st</sup> Respondent

Suren Fernando with Ms. K. Wickramanayake  
instructed by G.G. Arulpragasam for the 2<sup>nd</sup>  
Respondent

Vikum de Abrew, DSG with Manohara Jayasinghe,  
SSC for the 4<sup>th</sup> Respondent instructed by G. de Alwis,  
AAL

M.I. Sahabdeen for the 5<sup>th</sup> Respondent

**Written Submissions:** By the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 01/04/2019

By the 4<sup>th</sup> Respondent on 01/04/2019

By the 5<sup>th</sup> Respondent on 02/04/2019

By the Petitioner on 02/04/2019

**Supported on** : 26/02/2019

**Decided on :** 21/05/2019

**A.L. Shiran Gooneratne J.**

The Petitioner states that she is a citizen of Sri Lanka and makes this application in the public interest. In this application the Petitioner complains that the 1<sup>st</sup> Respondent, (Hon. Ranil Wickramasinghe), as at the time of the parliamentary elections held on 17/08/2015, held a financial interest in several contracts entered into with his family company "Lake House Printers and Publishers PLC", by the public corporations, referred to below, on behalf of the Republic of Sri Lanka, while holding the office of Prime Minister of the Republic within the Cabinet of Ministers. In the said circumstances, the Petitioner states that the 1<sup>st</sup> Respondent is guilty of having an interest in such contracts entered into with state institutions or public corporations as contemplated by Article 91(1)(e) of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, and, therefore, the Petitioner is entitled to a mandate in the nature of a writ of Quo Warranto requiring the 1<sup>st</sup> Respondent to show by what authority he claims to hold

office as a Member of Parliament. Article 91(1)(e) of the Constitution provides as follows –

*“(91)1 No person shall be qualified to be elected as a Member of Parliament or to sit and vote in parliament –*

*(e) if he has any such interest in any such contract made by or on behalf of the State or public corporation as Parliament shall by law prescribe”*

In paragraph 13, sub paragraphs, a. to i. of the Petition, while describing the 1<sup>st</sup> Respondent as a major shareholder of Lake House Printers and Publishers PLC, the Petitioner makes reference to, two public corporations, Bank of Ceylon and People’s Bank, (4<sup>th</sup> and the 5<sup>th</sup> Respondents), owned by the Republic of Sri Lanka, alleged to have been awarded contracts to obtain services, including the printing of cheque books, embossing and engraving of consumer debit and credit cards and employee identity cards, by the said company.

The Petitioner contends that the Annual Report for the years 2014, 2015, 2016, 2017 and 2018, describe the 1<sup>st</sup> Respondent as the 9<sup>th</sup> largest shareholder of the said company, holding 38,964 shares of the company. The Petitioner in support of such contention has annexed parts of the Annual Report from 2014 to 2018 of the said company marked, P6 (a) to P6 (e), and the relevant pages where the list of major shareholders appear marked, P7 (a) to P7 (e), and claims that the said electronically published documents can be accessed from the Colombo Stock Exchange official website.

In response to Paragraph 13 of the Petition, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their written submissions filed of record submit that *“the claim that the 1<sup>st</sup> Respondent is a major shareholder of Lake House Printers and Publishers PLC, lies at the core of the Petitioner’s case, as the Petitioner claims that the 1<sup>st</sup> Respondent by virtue of holding such shares and by entering into a (undisclosed) contract with the government, is disqualified from office”*.

When this application came up for support on 12/02/2019, prior to the application for notice, counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents raised preliminary objections to the maintainability of the Petition.

Preliminary objections raised on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, inter alia, are that;

1. The Petitioner had failed to comply with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 (hereinafter referred to as the “Court of Appeal Rules”) inasmuch as;
  - i. Several material documents relied on by the Petitioner have not been duly certified, and not even been duly certified as a true copy by an Attorney at Law.
  - ii. Documents material to the Petitioner (material documents) have not been furnished (even copies of the relevant contracts).
  
2. Necessary parties to this application have not been named as Respondents.

3. No final relief has been sought against the 4<sup>th</sup> and 5<sup>th</sup> Respondents, and as such no interim relief can be sought against them.

The learned Deputy Solicitor General associated himself with the aforesaid preliminary objections and, in addition, raised the following Preliminary objections on behalf of the 4<sup>th</sup> Respondent;

1. The application of the Petitioner in respect of prayers (b) and (c) to the Petition is misconceived in law.
2. In the absence of necessary parties, the Petitioner cannot proceed with this application.
3. The Petitioner has failed to exhaust alternate remedies.

The first preliminary objection on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is based on the non-compliance of Rule 3(1)(a) of the Court of Appeal Rules, and thus the failure of the Petitioner to validly invoke the writ jurisdiction of this Court and seeks that this application be dismissed in limine.

Rule 3(1)(a) of the Court of Appeal Rules states that;

*“Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Article 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 meromotu or at the insistence of any party, dismiss such application.”*

In support of his contention, the learned President’s Counsel for the 1<sup>st</sup> Respondent has referred to the judgment of *Shiranee Bandaranayake J. (as she then was) in Shanmugavadivu V. Kulathilake (2003) 1 SLR 215*, where she held that;

*“The requirements of Rules 3(1)(a) ..... are imperative”, and gone on to state “that there were only very limited circumstances in which the non-compliance with the said rule would not lead to the dismissal of the case.”*

The learned President’s Counsel submits that, when the Petitioner has not complied with the rule, but has stated the reason for the inability to submit the necessary documents, and sought the leave of Court to furnish the said documents, the Court, in limited circumstances, could permit such application.

In response, the learned President’s Counsel for the Petitioner contends that, the documents marked P6a to P6e and P7a to P7e are electronically accessible public documents published by the Colombo Stock Exchange in its official website, which are acceptable and admissible in terms of Section 5(1)(c) of the Evidence (Special Provisions) Act No. 14 of 1995, and therefore compliant with the said Rule.

Without prejudice to the above stand, the learned Counsel for the Petitioner further contends that non-compliance with rule 3(1)(a) of the Court of Appeal Rules, does not ensure automatic mandatory dismissal, since the said Rule by the following words, "*Where a Petitioner fails to comply with the provisions of this rule the Court may, ex meromotu or at the instance of any party dismiss such application*" has given a liberal interpretation to the said Rule by providing the Court with a discretion not to dismiss the Petition in the case of non-compliance. The said argument is based on the construction of the Court of Appeal Rules, as providing a discretion to Court to uphold an objection as opposed to Rule 46 of the Supreme Court Rules 1978, where such discretion was not provided.

The Petitioner submits that, following the decision in *Kiriwanthe and another V. Nawaratne and Another (1990) 2 SLR 393, the newly Gazetted Court of Appeal Rules*, which came into effect, shortly thereafter, expressly provided that "*where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek leave of the Court to furnish such documents later*".

It is to be noted that the decision In *Kiriwante and Another V. Nawaratne and Another (Supra)* has considered the effect of non-compliance of the Supreme Court Rules of 1978 and not the Court of Appeal Rules of 1990. With regard to the adoption of *Rules 3(1)(a) and 3(1)(b) of the Court of Appeal Rules, the Supreme Court, in Shanmugavadivu Vs. Kulathilake (Supra)*, held that



*“the new Rules indicate that the objectivity of exercising judicial discretion, as intended in Kiriwanthe’s case has been incorporated as it enables an applicant to submit to Court the relevant documents at a later stage”*. It further held that;

*“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 *Hon. A.H.M. Fowzie and 2 others Vs. Vehicles Lanka (Pvt) Ltd. S.C. (spl.) L.A. Application No. 286/2007, Shiranee Bandaranayake J.* (as she then was) cited with approval the case of *Samantha Niroshana Vs. Senerath Abeyruwan (S.C. Spl.) L.A. 145/2006 – S.C. Minutes of 02/08/2007*, where Her Ladyship observed;

*“that in certain instances, taking into consideration the surrounding circumstances, the Court could exercise its discretion either to excuse its non-compliance or to impose a sanction. Notwithstanding the above position, it is to be borne in mind that in the decision of Kiriwante Vs. Nawaratne (supra) this Court has not suggested automatic exercise of its discretion to excuse the non-compliance of Supreme Court Rules.”*

By motion dated 22/02/2019, the Petitioner has reserved her right to tender any further evidence or affidavits and documents as necessary, substantiating the averments in her Petition and accordingly has submitted documents marked P9 to P18, and has moved that the Court accept same. The said documents alleged to be

material to this application are not supported by an affidavit and the reasons for inability to tender such documents at the time of filing the application, are not stated.

According to paragraph 28 of the written submissions, the Petitioner makes reference to documents marked P14 to P18 and submits that they are new documents, which corroborate, support and substantiate the facts contained in the documents marked P6a to P7e. In the circumstances, the alleged default alluded to by the Respondents, that the material documents relied on by the Petitioner have not been duly certified nor been duly certified as true copies by an Attorney-at-Law, in respect of documents marked P6a to P7e, in compliance of Rule 3(1)(a), is unexplained.

The stand taken by the Petitioner, in respect of documents marked P6a to P7e, is that the said documents are electronically accessible public documents, which do not require further proof in terms of Section 5(1)(a ) of the Evidence (Special Provisions ) Act No. 14 of 1995 and, therefore, are compliant with Rule 3(1)(a) of the Appellate Procedure Rules.

The object of Rule 3(1)(a) is, that an affidavit filed in support of the averments to the Petition, shall be accompanied by the original documents material to such application or duly certified copies, thereof. The Petitioner has filed additional documents by motion dated 22/01/2019; however, reasons for the inability to tender such documents with the Petition are not explained. It is noted

that by the said motion, the Petitioner has failed to purge his default by providing the originals or certified copies of the specified documents annexed to the Petition. It is also noted that several of the documents (including the said documents marked P6(a) to P6(e) and P7(a) to P7(e), which are submitted with the Petition, bear the impression of a rubber stamp of an Attorney-at-Law, but there is no indication why it has been placed on the documents or any signature relating to its use.

In the circumstances, leading to this application, it is observed that the documents marked P6a to P7e, annexed in support of averment 13 of the Petition, are material documents for the determination of this application.

The learned President's Counsel for the 1<sup>st</sup> Respondent has cited *Brown & Co. Ltd. and Another V. Ratnayake (1994) 3 SLR 91 at 99-100*, where the Court held that;

*"the burden of presenting a proper application is on the party that seeks the intervention of the Court. The procedure is specified for this threshold stage. The Rule regulates the mode of enforcing a legal right. The Petitioner has to tender all relevant material to the Court in order to invoke its jurisdiction. If he fails to do this, there is failure to comply with a substantial aspect of the Rule"*.

The Court of Appeal Rules make provision, under Rule 3(1)(a), for a Petitioner to tender originals of documents or certified copies thereof, in support of the averments contained in an application to exercise powers vested in this

Court by Articles 140 or 141 of the Constitution. The documents marked P6(a)-(e) and P7(a)-(e), attached to the affidavit, are not original documents or certified copies of original documents. The failure to comply with the said Rule remains unexplained. The Rule relating to the discretion of Court in consideration of surrounding circumstances, as noted above, in my view, cannot be outweighed by considerations which disregard the objective of the Rule. I observe that there is a clear and consistent non-compliance of the said Rule in the application submitted to Court. Accordingly, the Petitioner has failed to satisfy the procedure for invoking the writ jurisdiction of this Court, the strict compliance of which is imperative.

For the reasons aforementioned, I uphold the preliminary objection raised by the Respondents and dismiss the Petitioner's Application for non-compliance with Rule 3(1)(a), of the Court of Appeal Rules.

Since this determination would decide the application pending before Court, it is not necessary to deal further with the rest of the preliminary objections raised by the Respondents.

I make no order as to costs.

**JUDGE OF THE COURT OF APPEAL**

**K. Priyantha Fernando, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**