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

Dr. B.B.A.M. Perera,
Medical Officer-PCU,
Base Hospital,
Wathupitiwala.
Petitioner

CASE NO: CA/WRIT/9/2016

Vs.

K.A. Chulananda Perera,
Director General of Customs,
Customs Department,
Customs House,
No.40,
Main Street,
Colombo 11.
And 6 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: K. Deekiriwewa for the Petitioner.

Susantha Balapatabendi, Senior D.S.G., for the Respondents.

Decided on: 24.06.2019

Mahinda Samayawardhena, J.

The petitioner filed this writ application seeking several reliefs against the Director General of Customs, Minister of Finance, Secretary to the Treasury etc. on calculation of taxes and levies in relation to importation of a "Permit Vehicle". As seen from the proceedings dated 26.10.2018, upon counsel for the petitioner vehemently objecting another date being granted to the State to file objections to the application of the petitioner, this Court was compelled to refix the matter for argument on 13.11.2018 without objections being filed. Subsequent to oral submissions, this Court granted both parties to file written submissions and fixed the matter for the Judgment for today.

When I read the case record to prepare for the Judgment, I realized that this is not a case which could be decided *ex parte* without affording an opportunity for the State to file objections, as the Judgment of this case, if decided *ex parte* in favour of the petitioner, will confine to the two parties to the case, but might result in grave repercussions, if applications are made by those who are similarly circumstanced, leading to serious fiscal implications.

This was put into writing by me on 03.06.2009 and handed it over to the counsel for the petitioner (and the respondents) to see whether the counsel for the petitioner is agreeable to allow the State to file objections and refix the matter for argument. Despite writ being a discretionary remedy, counsel for the petitioner on 10.06.2019 informed Court that he was not

agreeable to that suggestion of Court and wanted the Judgment to be delivered on the due date.

In the meantime, counsel for the petitioner has, by way of a motion dated 04.06.2019, informed Court that:

> *On that day (13.11.2018) Counsel for the Respondents appeared and made an Oral Submission which was not limited to 45 minutes though the Court of Appeal Rules states so. Thereafter they have given a written submission as well against the Court of Appeal Rules with regard to hypothetical unacceptable and untenable facts without substantiated those facts and mixed questions of facts and law with an affidavit. As per the Court of Appeal Rules there is no provision for the Court to accommodate written submissions if the Respondents have not complied with Rules and not filed Statement of objections with an affidavit.*

What the counsel for the petitioner says is that, in violation of the Rules, the Court allowed the Senior DSG for the respondents to make oral submissions more than 45 minutes and thereafter to file written submissions. It seems that counsel for the petitioner wants the Court to disregard them. Then I am left only with the petitioner's application.

Counsel for the petitioner is very keen on strict compliance with the Court of Appeal Rules.

I am a firm believer that (a) Rules are there not to thwart justice but to facilitate justice—put differently, not to defeat justice but

to achieve justice; (b) A decision of a Court shall be based on a fair hearing; and (c) Cases shall be decided on merits and not on technical grounds.

However, in this case, as the counsel for the petitioner is very particular on complete compliance with Rules, I am compelled to see whether the petitioner in the first place has strictly complied with the Rules.

Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 reads 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 and 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 document later. Where a petitioner fails to comply with the provisions of this Rule, the Court may ex mero motu or at the instance of any party dismiss such application.*

According to the said Rule 3(1)(a), a petitioner in a writ application "shall" tender "originals of documents" or "duly certified copies thereof". The petitioner has violated this Rule. None of the documents tendered by the petitioner along with his petition and affidavit is an original or a duly certified copy

thereof. All are photocopies signed as "True Copies" by an Attorney-at-Law whose identity is unknown. They are certainly not "duly certified copies". There is difference between "True Copy" and "Duly Certified Copy". Strictly speaking, this is violative of Rule 3(1)(a). That Rule further says that "*Where a petitioner fails to comply with the provisions of this rule, the Court may ex mero motu or at the instance of any party dismiss such application.*"

When the Court is compelled to consider the petitioner's application *ex parte*, Court cannot rely on photocopies signed as "True Copies" by an Attorney-at-Law whose identity is unknown to Court. The situation would have been different, if the respondents were allowed to file objections, in which event, there is no burden on the part of the Court to check the authenticity of the documents.

I dismiss the application of the petitioner on the basis of non-compliance with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules of 1990 in that the supporting documents are neither originals nor duly certified copies. No costs.

Judge of the Court of Appeal