

Counsel: Manohara de Silva, P.C., for the Appellants.
S.A.D.S. Suraweera for the Respondents.
(No written submissions have been filed by
either party)

Decided on: 30.07.2019

Mahinda Samayawardhena, J.

The appellants filed this appeal against the Judgment of the High Court whereby the order of the Magistrate's Court was set aside on the sole basis that the Magistrate's Court can exercise jurisdiction in a section 66 application provided the first information under section 66(1) of the Primary Courts' Procedure Act, No.44 of 1979, is filed in Court within two months from the date of the dispute. In the instant case, according to the High Court Judge, as the first information has not been filed within two months from the date of the dispute, the Magistrate's Court did not have jurisdiction to entertain the application. This is completely a misdirection in law on the part of the High Court Judge.

The High Court correctly held that the dispute relates to a right of way and therefore the matter has to be decided in terms of section 69 of the Primary Courts' Procedure Act.

The identification of the difference between section 68 and 69 is important. Section 68 applies when the dispute is in regard to possession of a land. Section 69 applies when the dispute is in regard to an entitlement of any other right, such as, right to cultivate, right to a servitude etc.

The two-month period is applicable when the dispute is in relation to possession of a land. Under section 68(1), the Court shall confirm the possession of the party who was in possession of the land on the date of the filing of the first information in Court. That is the general rule. This is subject to an exception as provided for in section 68(3). That is, if the opposite party can prove that he was forcibly dispossessed by his opponent who is now in possession of the land within two months immediately before the filing of the first information, he shall be restored in possession. This two-month time limit has nothing to do with other rights contemplated in section 69 of the Primary Courts' Procedure Act.

It is relevant to note that the order under section 68 regarding possession can be made without reference to the merits of the claims of the parties. Conversely, when the order is under section 69, it shall be made upon consideration of the merits of the rival claims. However I must emphatically emphasize that this shall not be taken to mean that when the dispute is regarding a right other than possession, the Magistrate shall convert the inquiry into a full-scale District Court civil trial. The orders which are made both under section 68 and 69 are provisional until the matter is determined by a competent civil Court.

In the Supreme Court case of *Loku Banda v. Ukku Banda*¹, decided under the Administration of Justice Law, No. 44 of 1973, where similar but not identical provisions are found², Soza J., explained the law in this regard in the following terms.

¹ [1982] 2 Sri LR 704 at 707-708

² Vide sections 62-66

When the dispute relates to possession the Magistrate must determine who was in possession on the date when he issued notice on his having reason to believe that there was in existence a dispute affecting land and likely to cause a breach of the peace or within two months prior to the issue of such notice where a forcible dispossession has occurred. The order which the Magistrate then makes will declare which of the disputants is entitled to possession and prohibit all disturbance to his possession until he is evicted under the judgment, order or decree of a competent court. Where there has been forcible dispossession within the period of two months prior to the date of the issue of notice the Magistrate may in addition to such declaration and prohibition, direct that the party specified in his order be restored to possession. When the dispute relates to possession, the Magistrate may make his determination without reference to the merits of the rival claims of the parties - see the proviso to subsection 7 of section 63 [of the Administration of Justice Law].

Where the dispute relates to any right to any land or part of a land other than the right to possession, the Magistrate will declare that the person named in his order is entitled to the disputed right until he is deprived of it by virtue of the judgment of a competent court and prohibit all disturbance or interference with the exercise of such right other than under the authority of such judgment. The proviso to subsection 7 of section 63 does not apply here. Hence by implication the Magistrate would have to consider the merits of the rival claims in deciding who is entitled to the disputed right. This he will do on the basis of the material before him.

I set aside the Judgment of the High Court and restore the order of the Magistrate's Court.

Appeal is allowed. No costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal