

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

In the matter of an application for the revision of order dated 16.05.2017 by the Provincial High Court of Uva Province holden in Badulla.

Officer – in Charge,  
Police Station,  
Ella.

Court of Appeal Case No:

**Complainant**

**CA (PHC) APN 22 / 2018**

**Vs.**

High Court of Badulla Case No:

01. Mohomed Mohomed Aniz,

**Rev. 41/2017**

No. 45/B/1, Ella Road,

Magistrate Court of Bandarawela Case

Hill Oya, Bandarawela.

No: **76369**

02. Mohomed Cabeer Sedu Mohamed,

No. 77/03, Vishaka Mawatha,

Bandarawela.

**Accused**

**AND NOW BETWEEN**

01. Irangani De Silva,  
Chairman  
International Animal Welfare Trust,  
No. 93/20, Elvitigala Mawatha,  
Colombo 08.

02. K.M Dilan Indika,  
Secretary,  
International Animal Welfare Trust,  
No. 93/20, Elvitigala Mawatha,  
Colombo 08.

03. Piumika Sathsarani Wanasinghe,  
Mahaulpatha,  
Bandarawela.

**Petitioner – Petitioner**

Vs.

01. Officer in Charge  
Police Station,  
Ella.

**Complainant – Respondent –  
Respondent**

02. Mohamed Mohamed Aniz

No. 45 /B / 1, Ella Road,

Hill Oya, Bandarawela.

03. Mohamed Cabeer Sedu Mohamed,

No. 77 /03, Vishaka Mawatha,

Bandarawela.

04. Mohamed Saroof Sakoor  
Mohamed,

No. 40A, Boralandu,

Bandarawela.

05. Tennakoone Mudiyansele  
Piyadasa,

Weragama, Yahalakanduragama,

Etampitiya.

**Accused – Respondents –  
Respondents**

06. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**Respondent – Respondent**

Before : Menaka Wijesundera J.

Neil Iddawala J.

Counsel : Leslie J. Siriweera with A. H. Senevirathna for the Petitioners.

Chathurangi Mahawaduge SC for the State.

Argued on : 08.02.2022

Decided on : 08.03.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order of the learned High Court Judge dated 16.5.2017 and the judgment of the Magistrate dated 11.1.2017.

The petitioner petitioners are the office bearers of International Animal Welfare Trust. (Hereinafter referred to as the petitioners).

The 1<sup>st</sup> and the 2<sup>nd</sup> respondents (hereinafter referred to as the respondents) have been arrested for allegedly transporting 7 buffaloes without a license on 1.12.2015, and produced before the Magistrate of Bandarawela.

Both had pleaded guilty and had been convicted and sentenced by the Magistrate.

The purported registered owner to the vehicle namely the 4<sup>th</sup> respondent had claimed the vehicle and the Magistrate has had an inquiry and has released the vehicle to the 4<sup>th</sup> respondents and in the same inquiry the 5<sup>th</sup> respondent also has been handed over the animals based on two documents marked as E2 and E3 which

are the a certificate issued by the Gramasevaka from the area of the 5<sup>th</sup> respondents and E3 is a voucher by the previous owner of the buffaloes.

In the meantime the petitioners had been handed over the buffaloes at the inception of the inquiry to look after the animals until the conclusion of the inquiry on a bond by the Magistrate.

The petitioners had not intervened at the inquiry. **But they had filed a revision application to the High Court Claiming that the learned High Court Judge had followed the wrong procedure in releasing the buffaloes because he had based his order on the two documents produced by the 5 the respondents marked as E2 and E3 which is in contravention of the Animals Act no 29 of 1953 sections 3D 6, 7 and 8 (2).**

**The petitioner further cited the gazette dated 26.11.2009 issued by the Minister in charge in which it is stated that a license is needed to transport cattle.**

**The learned High Court Judge dismissed the application of the petitioners on the basis that there is delay and the delay is not explained and that the petitioners have no locus standy.**

Being aggrieved by the said orders the instant application has been filed.

It is well settled law that a party **filling a revision application has to do so without delay and if there is it has to be explained. But the Counsel for petitioners urged that it is a technical matter with which the Court should not bother.**

**Delay has been considered to be fatal in many of our decided cases and it has been held by this bench that if there is a delay it has to be explained to the satisfaction of Court in CA/PHC/APN 78/2021.**

But in the instant matter the delay has not been explained in the High Court but before this Bench the petitioner stated that the, petitioners were a welfare Organization and that there were practical difficulties in obtaining the relevant Court proceedings, but nevertheless the animals were in their custody and they were gravely prejudiced by the order of the Magistrate.

Revisionary power of the Court Of Appeal is enshrined in the Constitution under article 138 and 145 under which the Court of Appeal acting in revision can correct any error in fact or in law committed by the High Court or the lower Court, if the situation demands, in the interest of justice.

In the instant matter the welfare of the animals are in question and this Court also notes that the petitioner is canvassing a legal issue which this Court thinks is fit enough to consider in spite of the delay of nearly 5 months in filling the instant matter.

Under the provisions of the act cited by the petitioner section 8 (1) and (2) it is very clearly stated how a cattle voucher should be prepared and why an owner should be inposession of one.

Further to that the gazette notification submitted by the petitioner also specifies the form, according to which the voucher should be prepared.

But the E3 produced by the 5<sup>th</sup> respondent in the Magistrates Court does not fall in to that category; as such this Court is of the opinion that the 5<sup>th</sup> respondent has not established his ownership as per the provisions of the relevant act and the Magistrate has been misled by the 5<sup>th</sup> respondent.

The next issue is whether the petitioners had locus standy to appear in this matter in the High Court. The learned State Counsel appearing for the Attorney General

strenuously stated that the petitioners do not have locus standy to appear in this matter and as such cited the judgment of Dehideniya J CA(PHC)APN 144/2016, in which the term locus standi and aggrieved party has been discussed.

It has said that “the intervenient petitioners must show that they have sufficient interest in the matters to which the revision applications relates to.....’ and has gone on to cite the dictum of Lord Denning in R.V.Paddington Valuation Office (1996) 1 QB380 at401 which has discussed locus standi and had cited A.R.Perera and Others VS Central Freight Bureau of Sri Lanka and another (2006)1 SLR 83 in which it has been held as “the Court would not listen,. To mere busy body that is interfering in things which did not concern him. *But it will listen to anyone whose interests are affected by what has been done*”.

*Therefore as the petitioners were given the custody of the animals and as the animals were handed over to the 5<sup>th</sup> respondent in contravention of the provisions of the act and as the petitioners are a welfare organization for animals, this Court is of the opinion that as per the judgment cited above the petitioners have a grievance to be addressed and as such as decided in the judgment cited above the petitioners are an aggrieved party.*

*As such it is the opinion of this Court that the Magistrate has founded his order on improper procedure which makes it an illegal order, hence the learned High Court Judge in refusing the application of the petitioners has caused a grave miscarriage of injustice which prompts this Court to act in revision and set aside the order of the Magistrate and the judgment of the High Court.*

*As such the instant application for revision is allowed and the paragraphs in the prayer to the petition, a, b, and c are hereby granted.*

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**