

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

*In the matter of an Appeal under Section 154(p)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka and Provincial High Court (Special Provision) Act No. 19 of 1990 against the order of the Balapitiya Provincial High Court in Case No. HC Rev. 943/2016 dated 14.09.2016*

Officer in Charge,  
Police Station,  
Uragasmanhandiya.

**Complainant**

**Vs.**

Court of Appeal Application  
**No: CA/ PHC/105/16**

High Court of Balapitiya  
**No: HC/REV/943/2016**

Magistrate's Court of  
Balapitiya  
**No: 72270**

Wickremarachchilage Don Asela Sanjaya  
Kumara Gunawardena,  
Komalagewatte,  
Mahagoda, Haburugala.

**Accused**

1. Samantha Gamini Jayasinghe,  
No. 49, Stoyle,  
Gampaha.
2. Wedumkuli Koralalage Nihal Abeyratne,  
Mahagoda, Haburugala
3. Separamadu Merrannage Luxmi Kanthi,  
Dehigaha Thotupola, Thebuwana

**Respondents**

**And now between**

Separamadu Merrannage Luxmi Kanthi,  
Dehigaha Thotupola, Thebuwana

**3<sup>rd</sup> Respondent-Petitioner**

**Vs.**

Officer in Charge,  
Police Station,  
Uragasmanhandiya.

**1<sup>st</sup> Respondent-Respondent**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12

**2<sup>nd</sup> Respondent-Respondent**

**And now between**

Separamadu Merrannage Luxmi Kanthi,  
Dehigaha Thotupola, Thebuwana

**3<sup>rd</sup> Respondent-Petitioner-Appellant**

**Vs.**

Officer in Charge,  
Police Station,  
Uragasmanhandiya.

**1<sup>st</sup> Respondent-Respondent-  
Respondent**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12

**2<sup>nd</sup> Respondent-Respondent-  
Respondent**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Udaya Bandara for the Appellant  
Chathurangi Mahawaduge SC for the Respondents.

**Argued on** : 31.03.2022

**Written Submissions on** : 12.12.2019- (Appellant)  
16.01.2020 (Respondents)

**Decided on** : 19.05.2022

**Iddawala – J**

This is an appeal filed on 29.09.2016 against an order of the High Court delivered on 14.09.2016, by which a revision application of the instant appellant was dismissed without issuing notice. The impugned order dealt with a case falling under the purview of the Forest Ordinance (as amended) whereby the Magistrate Court ordered the confiscation of the vehicle bearing No. 68-6538 on 03.01.2012, which was utilised to commit a forest offence. The appellant claims to be an innocent buyer of the said vehicle after the commission of the forest offence (13.10.2013) and during the pendency of the vehicle inquiry and prays the vehicle is not be confiscated. This appeal pivots on the issue of whether an owner of a vehicle who got such ownership after the commission of a forest offence is entitled to relief under the Forest Ordinance (as amended).

The facts of the case are as follows: on or about 03.01.2012, a vehicle bearing No. 68-6538 was taken into custody for the transportation of timber without a valid license in violation of the Forest Ordinance (as amended). The trial was concluded with the accused pleading guilty and a fine of Rs. 5,000/- was imposed. Afterwards, a vehicle inquiry ensued, allowing parties to show cause as to why the vehicle should not be confiscated. At the inquiry stage evidence of

three persons were led, namely the owner of the vehicle at the time of the commission of the offence, the person in whose possession the vehicle was at the time the forest offence was committed and the appellant, the owner of the vehicle at the time the inquiry was taken up. The learned Magistrate delivering the order of confiscation directed the vehicle to be auctioned in a public auction. In the said order, the learned Magistrate has traced the legislative history of the Forest Ordinance (as amended) with a focus on the application of Section 40. The learned Magistrate has drawn a distinction between the owner at the time of the commission of the forest offence and the appellant, determining that the appellant cannot be considered as coming within the purview of the Forest Ordinance (as amended) (Vide page 59 of the Appeal Brief). The learned Magistrate holds that the appellant had no obligation to fulfil the requirements set out by Section 40 of the Forest Ordinance (as amended) at the time of the commission of the offence, a requirement which forms the basis of the vehicle inquiry. In delivering the confiscation order, the learned Magistrate determines that the owner pertinent to the vehicle inquiry is the owner at the time of the commission of the vehicle and that the said person has failed to satisfy the Court that he had taken all precautionary measures to prevent the use of the vehicle for the commission of a forest offence (Vide page 60 of the Appeal Brief). Aggrieved by the said order, the appellant has filed a revision application to the High Court, whereby the impugned order was delivered affirming the order of the Magistrate and dismissing the appellant application *in limine*.

This Bench has dealt with the law governing the confiscation of vehicles under the Forest Ordinance (as amended) in **CA PHC 119/18** CA Minute 15.03.2022, **CA PHC 24/17** CA Minute 03.03.2022, **CA PHC APN 139/19**. CA Minute Dated 09.11.2021 These applications dealt with claimants who were the owners of the confiscated vehicle at the time of the commission of the offence, and who made their claims under Section 40 of the Forest Ordinance (as amended). As held in **Samarasinghe Dharmasena v W. P. Wanigasinghe and Others** CA PHC 197/13 CA Minute dated 22.01.2019, “....it is well settled law that in a vehicle inquiry the claimant has to discharge his burden on a balance of probability. According to Section 40 for the Forest Ordinance (as amended) it is mandatory to prove on a

*balance probability that the owner took every possible precaution to prevent the vehicle being used for an illegal activity*". To claim any relief under the Forest Ordinance (as amended), the claimant ought to prove that all precautionary measures were taken at the time of the offence to prevent such an offence and that, in fact, the claimant had no knowledge of the commission of the offence. Following this logic, it is illogical for the appellant to claim any redress under the Forest Ordinance (as amended) when she was not in any way privy to the vehicle at the time the offence was committed. The offence was committed on 03.01.2012, and the appellant took over ownership on 13.10.2013.

In giving evidence, the person who sold the vehicle to the appellant after the commencement of the trial under the Forest Ordinance (as amended) states the following about informing the appellant (Lakshmi) regarding the pending case:

“ප්‍ර: ලක්ෂ්මිට කීවාද මේ වාහනය සම්බන්ධයෙන් උසාවියේ නඩුවක් තිබෙනවා කියලා?”

උ: පොඩි නඩුවක් තියනව කියල කීවා.”

(Vide Page 37 of the Appeal Brief)

The appellant giving evidence on the same point states the following:

“ප්‍ර: ඔය වාහනය මිලදී ගත්තේ කවදද?”

උ : 2013.10.13 වෙනි දින

ප්‍ර :ඒ දිනය වන විට මේ ලොරිය දැව ප්‍රවාහනය කිරීම සම්බන්ධයෙන් නඩුවක් තිබෙනවා කියලා දන්නවද අයිතිකරු කීවාද?

උ : පොඩි නඩුවක් තිබෙනවා කියල දන්නවා.

ප්‍ර : තමන් මේ නඩුව ගැන ඇසුවේ නැද්ද?

උ : නෑ ”

(Vide Page 43 of the Appeal Brief)

Subsequently the learned Magistrate poses a question to the appellant:

“ප්‍ර: 2012.01.03 වෙනිද මේ වාහනය තමන් ගාව තිබෙනවද?”

උ : නැහැ”

(Vide Page 44 of the Appeal Brief)

The appellant has failed to apply due diligence prior to purchasing the vehicle. While being aware of a pending case against the vehicle in question, the appellant failed to assess whether the transferor had any right to transfer the vehicle to the appellant. The vehicle was with the transferor having been released to the transferor on a bond pending the conclusion of the vehicle inquiry. At this juncture, the maxim of “*caveat emptor- qui ignorare non debuit quod jus alienum emit*” ought to be highlighted. “Let the Purchaser, who is not to be ignorant of the amount and nature of the interest, exercise proper caution”. In short, buyer beware. Hence, the facts and circumstances of the instant appeal disentitle the appellant from claiming any relief or redress under the Forest Ordinance (as amended).

Considering the above, this Court finds no reason to interfere with either the confiscation order dated 20.04.2016 delivered by the Learned Magistrate of Balapitiya or the order delivered by the Learned High Court Judge of Balapitiya dated 14.09.2016.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**