

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

In the matter of an application for revision against the Judgement dated 26.07.2022 delivered by the Provincial High Court of Southern Province holden at Galle: in terms of Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 11(1) of the High Court of the Provinces (Special Provisions Act) No.19 of 1990 as amended.

Officer-in-Charge,
Police Station,
Ahangama.

Complainant

Court of Appeal Case No:
CA/CPA/116/22

Vs.

High Court of Galle Case No:
RE/483/2019

Magistrate's Court of Galle Case No:
95610

1. Hewawasam Jayakodige Priyantha
2. Thumbe Gamage Deepa Priyani
Both of
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

Party of the First Part Respondent

1. Olexander Kobet
2. Roman Kusumenko
Both of
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

Party of the Second Part Respondent

AND BETWEEN

1. Hewawasam Jayakodige Priyantha
2. Thumbe Gamage Deepa Priyani
Both of
Greenland Vila, Maliyagoda,

Kurunduwatta,
Ahangama.

**Party of the Second Part Respondent-
Petitioner**

1. Olexander Kobet
2. Roman Kusumenko (Defaulting Party)
Both of
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

**Party of the Second Part Respondent-
Respondent**

Officer-in-Charge,
Police Station,
Ahangama.

Complainant-Respondent

AND NOW BETWEEN

Hewawasam Thuduawaththage
Susil Priyashantha
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

Petitioner

Vs.

1. Hewawasam Jayakodige Priyantha
2. Thumbe Gamage Deepa Priyani
Both of
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

**Party of the First Part Respondent-
Petitioner-Respondent**

Olexander Kobet
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

**First named of the Party of the
Second Part-Respondent-Respondent-
Respondent**

Roman Kusumenko (Defaulting Party)
Greenland Vila, Maliyagoda,
Kurunduwatta,
Ahangama.

**Second named of the Party of the
Second Part-Respondent-Respondent-
Respondent**

Officer-in-Charge,
Police Station,
Ahangama.

**Complainant-Respondent-
Respondent**

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Charith Galhena AAL with Shalani Jayasinghe AAL and
Dilhara Arachchige AAL, instructed by Pushparajah
Muthusamy for the Petitioner.

Application supported on: 10.10.2022

Order delivered on: 19.10.2022

Prasantha De Silva, J.

Order

The application of the Petitioner Hewawasam Thuduawaththage Susil Priyashantha was supported on 10.10.2022. Petitioner sought an interim order to stay the execution of the Judgment dated 26.07.2022 delivered by the learned High Court Judge of Galle

in case bearing No. RE/483/2019 and any further proceedings before the learned Magistrate of Galle in case bearing No. 95610

It appears that the said Petitioner is not a party to the said Magistrate's Court case or the High Court case. However, it was averred in the petition that he was advised as being entitled in law to make this application to this Court in terms of Article 138 (1) of the Constitution of the Democratic Socialist republic of Sri Lanka.

However, the Petitioner states that on or about 22.09.2022, Loza Hanna Volodymyrivna appointed him as her Power of Attorney holder to effectively superintend, manage and control the subject matter in the said case bearing No. 95610 and to appear on behalf of her before the Magistrate's Court, District Court, Court of Appeal or Supreme Court of Sri Lanka by a Power of Attorney attested in Ukraine on or about 22.09.2022.

The original Power of Attorney was not presented to Court due to the stoppage of transportation and delivery between Ukraine and Sri Lanka, and a scanned copy of the Power of Attorney had been tendered to Court. It is seen that the said Loza Hanna Volodymyrivna, the Principal of the Power of Attorney was not a party to the said Magistrate's Court case and the High Court case.

The Complainant had filed information on 16.08.2018 in the Magistrate's Court of Galle in case bearing No. 95610 in terms of Section 66 (1) (a) of the Primary Courts' Procedure Act No. 44 of 1979 making the 1st named of the party of the 1st Part Respondents namely, Hewawasam Jayakodige Priyantha and Thumbe Gamage Deepa Priyani and the party of the 2nd Part Respondent-Respondents namely, Olexander Kobet and Roman Kusumenko as parties.

After parties filed affidavits, counter affidavits and written submissions, the learned Magistrate delivered the Order on 05.04.2019 deciding that the Petitioner-Respondents were unable to prove the fact that they were forcibly dispossessed from the premises in dispute within a period of 2 months immediately before the date on which the information was filed and that the 1st named of the party of the 2nd Part Respondent-

Respondent namely, Olexander Kobet is entitled to the possession of the land in dispute.

The learned Magistrate has directed the Petitioner-Respondents to handover the vacant and peaceful possession of the premises in dispute to the said 1st named of the party of the 2nd Part Respondent-Respondent.

Being aggrieved by the said Order dated 05.04.2019, the Respondent-Respondent invoked the revisionary jurisdiction of the High Court of Galle. After objections were filed by the 1st named of the party of the 2nd Part Respondent-Respondent namely, Olexander Kobet, the Petitioner-Respondents tendered their written submissions and the matter was argued before the High Court of Galle.

It appears that after considering the oral and written submissions made by both parties, the learned High Court Judge delivered the Order on or about 26.07.2022 in favour of the Petitioner-Respondents by setting aside the Order of the learned Magistrate of Galle dated 26.07.2022.

Being aggrieved by the said Order of the learned High Court Judge, the Petitioner, on behalf of the Principal of the Power of Attorney holder Loza Hanna Volodymyrivna, has invoked the revisionary jurisdiction of this Court.

In this instance, Court observes that, the said Loza Hanna Volodymyrivna was not a party in the said Magistrate's Court case or the High Court case of Galle. This is an application emanating from the Order of the learned High Court Judge setting aside the Order made by the leaned Magistrate in terms of Section 66 of the Primary Courts' Procedure Act.

Legislature in its wisdom has introduced Part VII of the Primary Courts' Procedure Act vesting jurisdiction in terms of Section 66 to prevent a breach of the peace threatened or likely to be threatened among the parties and to preserve the *status quo*.

It is significant to note that the Principal of the Power of Attorney holder Loza Hanna Volodymyrivna was not a party in the Magistrate's Court case and was not involved in

the dispute which led the jurisdiction of Section 66 of the Primary Courts' Procedure Act to be invoked.

Therefore, the said Principal of the Power of Attorney has no *locus standi* to make this application by way of a revision to get any relief prayed for in the prayer to the petition.

Hence, we dismiss this application *in limine* with costs.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL