

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal under the Article 154 p (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer in Charge

Police Station

Lunugamwehera

Court of Appeal Case No:
CA/PHC/168/2018

Complainant

High Court Case No:
HC/RA 14/15

Vs.

Magistrate Court Case No:
MC/ 31054

Abdul Kadam Haseem

Pallikudiruppu, Kadal

Akkarapaththu

Accused

AND

Officer in Charge

Police Station

Lunugamwehera

Complainant

Arabage Chandrani

No 88/1, Aluthgamara,
Ranmuduwara,

Suryawewa

Applicant

Arabage Chandrani

No.88/1, Aluthgamara,
Ranmuduwawa,

Suryawewa

Applicant

AND

ArabageChandrani

No.88/1, Aluthgamara,
Ranmuduwawa,

Suryawewa

Applicant- Petitioner

Vs

1) Officer in Charge
Police Station
Lunugamwehera

2) Hon Attorney General
Attorney General
Department
Colombo

AND NOW

ArambageChandrani
No. 88/1, Aluthagamara,
Ranmuthuduwewa
Suriyawewa

Applicant-Petitioner-Appellant

Vs

- 1) Officer in Charge
Police Station
Lunugamwehera
- 2) Hon. Attorney General
Attorney General's
Department
Colombo 12

Respondent – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Mohamed Nazar with Rismina Iqbal for the Appellant.

Indika Nelummini, SC for the State.

Argued on: 12.09.2022

Decided on: 01.11.2022

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the order dated 29.09.2018 of the High Court of Hambanthota.

The appellant in this matter has been first noticed to collect the brief and pay the fees on 10.01.2022.

Thereafter, the matter had been mentioned in open court on 18.02.2020 on which date written submissions of the appellant were fixed for the 01.04.2020 and the written submissions of the respondent were to be filed on or before 10.05.2020 and the argument was fixed for the 06.06.2020

Thereafter, this matter was removed from the argument list because the respondent had notified Court that the appellant had failed to file the written submissions on 10.05.2020.

Thereafter, the matter had been re-fixed for argument on 12.09.2022.

Then, on 31.08.2022, the State Counsel had filed a fresh motion stating that argument may be re-fixed because the appellant has not filed any written submissions.

Thereafter, when the matter was taken up on 12.09.2022, the Counsel appearing for the appellant wanted the case to be refixed on the basis of a personal difficulty. The appellant was totally unaware as to the position of the written submissions, and Court directed that there is no inclination on the part of Court to grant a postponement but fixed the matter for the judgment and directed the appellant to file written submissions if any on or before 19.09.2022. But the appellant has failed

to file written-submissions as directed but the respondent had filed written submissions.

According to Court of Appeal Rules 4 (2), **“No party to an appeal shall be entitled to be heard unless he has previously lodged three copies of his written submissions (hereinafter referred to as “Submissions”), complying with the provisions of this rule”.**

Section 4(6) states as below, **“Where a party fails to lodge submissions, or lodges submissions which are not in compliance with the foregoing provisions, the Court may restrict the duration of the oral submissions of such party at the hearing of the appeal or application to 45 minutes”.**

But in the instant matter the appellant failing to file written submissions on 01.04.2022 had not divulged the same to Court, upon the matter being fixed for argument on 06.06.2022 and on 12.09.2022 makes an application for the matter to be refixed for argument on personal grounds, the said application has not been notified to Court and neither to the other party by way of a motion as a matter of courtesy. Therefore, the appellant has in fact violated the Court of Appeal Rules and moreover has scant disregard for the traditions followed in the Superior Courts. As such this matter was fixed for judgment but still the Court of Appeal gave the 19.09.2022 for the appellant to file a written submission if any.

The petitioner in the instant matter, has employed the accused namely Abdul Cader Haseem to look after 27 heads of cattle. The accused had been arrested for offences under the Animals Act. He had pleaded guilty.

The petitioner had claimed the cattle and an inquiry has been held and upon the conclusion of the said inquiry, the Magistrate has held that the

petitioner has failed to establish before the Magistrate that she had ownership of the cattle in terms of the provisions of the relevant act.

The law relating to the instant matter falls within the Animals Act no 29 of 1958 and it has specifically stated as to how a cattle owner should prepare the cattle voucher in terms of the Animals Act of No.29 of 1958 to be read with the Gazette Notification dated 26/11/2009 which has said that ***“any cattle sold, the buyer and the owner of the cattle shall sign the cattle voucher before the Government Veterinary Surgeon of the area in which the cattle is kept and the Government Veterinary Surgeon shall handover the perfected cattle voucher to the buyer or the new owner of the cattle”***, but the document marked as E1 submitted by the petitioner at the inquiry is not in compliance of the said regulation. Therefore the Magistrate had disregarded her evidence and has confiscated the cattle.

This matter has been discussed in the case of **CA (PHC) APN 22/2018** by this bench on 08.03.2022 where it has discussed the **Cattle Voucher** which should be in the possession of a person who claims ownership to cattle under the provisions of the Animals Act No.29 of 1958, Section 3(d) 6, 7, 8(2).

Therefore as the petitioner has failed to produce the relevant documents in compliance of the act, Learned High Court Judge has observed that there is no exceptional illegality in the Order of the Magistrate.

Therefore as per the law cited above we do not see any reason to interfere with the judgment of the learned High Court Judge hence the instant application is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.