

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

In the matter of an appeal under Section 9 of the High Court of Provisions (Special Provisions) Act No.19 of 1999, read with paragraph 4 of the Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA PHC No.202/2014**

P.H.C. Kandy – Writ Case No.53/12

GoigodaGunawrdanage Don Raja  
SenanayakeGunawardene  
No.39, 1<sup>st</sup> Lane Dangolla, Kandy.

**Petitioner**

**Vs.**

1. Kandy Municipal Council, Kandy.
2. Mahindra Rathwathe  
The Mayor,  
Municipal Council, Kandy.
3. ChandanaThennakoon  
Municipal Commissioner  
Municipal Council, Kandy.
4. Thalagoda, Land Officer  
Municipal Council, Kandy.
5. R.M.K. Bandara,  
Planning Officer  
Municipal Council, Kandy.

**Respondents**

**AND NOW**

Goigoda Gunawardanage Don Raja Senanayake  
Gunawardene,  
No.39, 1<sup>st</sup> Lane Dangolla, Kandy.

**Petitioner-Appellant**

1. Kandy Municipal Council, Kandy.
2. Kesara Senanayake,  
The Mayor,  
Municipal Council, Kandy.
3. ChandanaThennakoon,  
Municipal Commissioner,  
Municipal Council, Kandy.
4. Inoka Kulathunga,  
Section Head Officer,  
Municipal Council, Kandy.
5. R. M. K. Bandara,  
Planning Officer,  
Municipal Council, Kandy.

**Respondent-Respondents**

Before: **PRASANTHA DE SILVA, J.**  
**K.K.A.V. SWARNADHIPATHI, J.**

Counsel: Zam Zam Ismail and M.C.M. Muneer  
For the Petitioner-Appellant

Bharatha Nanayakkara (S.C)  
For the Respondent-Respondents

Argued on: 10.06.2022

Delivered on: 19.10.2022.

**K.K.A.V. SWARNADHIPATHI, J.**

### **JUDGMENT**

The Petitioner-Appellant had come before this Court aggrieved by an order delivered on 17.12.2014 by the learned High Court Judge of Kandy in case No.53/2012/Writ.

The original application was filed in the High Court of Kandy, praying;

- Writ of Certiorari to quash the decision dated 19.09.2012 made by the 2<sup>nd</sup> Respondent.
- Writ of Prohibition against the 1<sup>st</sup> – 5<sup>th</sup> Respondents preventing them from acting according to document marked as [P18].

For an interim order preventing 1<sup>st</sup> to 5<sup>th</sup> Respondent-Respondents from acting as per the document marked [P18] until the hearing and determination of the said writ application.

When the matter came up before the High Court, an objection was taken by the Respondent that the Appellant had not complied with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules of 1990.

The Rule reads as; “Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the constitution shall be by way of Petition, together with an Affidavit in support of the averments therein and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the court to furnish such document later where a Petitioner fails to comply with the provisions of this rule, the court may *ex meromotu* or at the instance of any party, dismiss the such application.”

The Respondent had pointed out to the High Court that the Petitioner had failed to produce the originals of vital documents. When perusing the counter objections, it is evident that the Petitioner had failed to address the issue.

The learned High Court Judge had observed that the Petitioner had failed to file originals or certified copies of essential documents on which the Petitioner had based his application. The High Court Judge had settled his order dated 17.12.201 at that point.

Even in this Court, the Appellant had failed to bring to the notice of the Court the crucial matters. The Appellant had taken the position that by case No.24013 of the Primary Court of Kandy, the Magistrate had accepted the long-term possession of the Appellant.

Perusing the said order marked as [P17], it depicts that the Magistrate had dismissed the application of the Petitioner in the said case No.24013 on 03.02.2004. The case was a private Plaint under Section 66(1) (b) of the Primary Courts Procedure. The Petitioner, in that case, is the Appellant of this case, namely Raja Senanayake Gunawardena.

If aggrieved by the decision in the Primary Court, the Appellant should have sought the intervention of the District Court. The Appellant had failed to furnish evidence of his litigating in the District Court in the present case.

He had spoken of mutual partition of the land and exchange of land. If so, he should have established his rights in the District Court when he failed at the Primary Court, which proves his negligence. As to the equity maxim *vigilantibus non dormientibus jura subveniunt*, the law assists only those who are vigilant and not those who sleep on their rights. Therefore the Court cannot help when one is sleeping on his rights.

The learned High Court Judge had correctly analysed all materials before him and concluded that the Petitioner had not complied with mandatory rules. The word shall in Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules of 1990 gives no other option than to reject the application for a writ to the High Court Judge.

For the above reasons, I dismiss the Appeal of the Appellant and affirm the order dated 17.12.2014 of the learned High Court of Judge of Kandy.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**