

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

*In the matter of an application for Leave to
Appeal to the Honourable Supreme court in
respect of the Order of the Honourable Court
of Appeal dated the 1st day of December 2021
delivered in the Application bearing
CA/COC/8/2019*

Kamal Priyadarshana Pannila Vithanage,
34/1, Sri Wimalasiri Road
Kalubowila,
Dehiwala.

Petitioner

Vs.

Court of Appeal
Contempt of Court Application
No :
CA/ COC/8/19

Ms. Vayoma Paranagama Attorney-at-Law
Deputy Chief Legal Officer,
Seylan Bank PLC,
No 90, Galle Road,
Colombo 03.

1st Respondent

Ms. Udayani Madanayake Attorney-at-Law
Legal Officer,
Seylan Bank PLC,
No 90, Galle Road,
Colombo 03.

2nd Respondent

Mr. Shanaka De Livera Attorney-at-Law
Senior Counsel,
No 39/6, Shrubbery Gardens,
Colombo 04.

3rd Respondent

Mrs. Samanda De Livera Attorney-at-Law,
Registered Attorney
No 39/6, Shrubbery Gardens,
Colombo 04.

4th Respondent

Mr. Priyan De Livera Attorney-at-Law
Registered Attorney,
No 33 1/1, Shrubbery Gardens,
Colombo 04.

5th Respondent

Mr. Sithumini Wijayarathne Attorney-at-Law
Professional Assistant – De Livera Associates,
115/1, Kahantota Road,
Malabe.

6th Respondent

(In the matter to invoke inherent powers of
the Honourable Court of Appeal in respect of
the Order dated the 4th day of March 2020)

And now between

Kamal Priyadarshana Pannila Vithanage,
34/1, Sri Wimalasiri Road
Kalubowila,
Dehiwala.

Petitioner-Petitioner

Ms. Vayoma Paranagama Attorney-at-Law
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No 90, Galle Road,
Colombo 03.

1st Respondent-Respondent

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Colombo 04.

5th Respondent-Respondent

Mr. Sithumini Wijayarathne Attorney-at-Law
Professional Assistant – De Livera Associates,
115/1, Kahantota Road,
Malabe.

6th Respondent-Respondent

(In the present Application to obtain Leave to
Appeal to the Honourable Supreme Court)

Kamal Priyadarshana Pannila Vithanage,
34/1, Sri Wimalasiri Road
Kalubowila,
Dehiwala.

Petitioner-Petitioner-Petitioner

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No 90, Galle Road,
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1st Respondent-Respondent-Respondent

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Professional Assistant – De Livera Associates,
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Malabe.

6th Respondent-Respondent-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Kamal Priyadarshana Pannila Vithanage
Petitioner-Petitioner-Petitioner appearing in
person.

Supported on : 20.01.2022

Decided on : 15.02.2022

Iddawala – J

Court heard the submission of the petitioner in support of this application.

This Leave to Appeal application relates to an Order delivered by this Court on 01.12.2021 which dismissed the application of the petitioner which sought to invoke the inherent jurisdiction of the Court of Appeal to set aside an Order dated 04.03.2020 of the Court of Appeal itself. Both Orders were instances where the applications were dismissed without issuing notice to the respondents.

In dismissing the application of the petitioner, the Order dated 01.12.2021 held that the threshold required to invoke the inherent jurisdiction of the Court of Appeal to revisit a matter *res judicate* was not met by the petitioner. In holding so, the Order dated 01.12.2021 observed that the petitioner failed to dispense the burden of establishing a

‘grave miscarriage’ of justice caused by the Order dated 04.03.2020 of the Court of Appeal. To that end, the application of the petitioner was dismissed without issuing notice.

The petitioner filed Leave to Appeal applications on 13.12.2021 delineating the following questions of law be entertained, and leave be granted accordingly

- A) *Did the Honourable Court of Appeal get misdirected or err in fact by holding that the Order dated 4th day of March 2020 considered all the evidence before the Honourable Court of Appeal in dismissing the Application numbered CA/COC/8/2019 without issuing Notices to the Respondents?*
- B) *Did the Honourable Court of Appeal get misdirected or err in fact or in law by holding that reasons for dismissal are clearly set out in the Order dated the 4th day of March 2020 without considering the legal validity of the reasons?*
- C) *Did the Honourable Court of Appeal get misdirected or err in fact or in law by not considering the ‘damage’ caused by the Order dated the 4th day of March 2020 in dismissing the Application numbered CA/COC/8/2019 without issuing Notices to the Respondents?*

Having considered the Order dated 01.12.2021 which refused to examine the merits of the case by virtue of the matter being *res judicate* as per Order dated 04.03.2020, this Court is of the view that there is no merit in this application.

Leave refused.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL