

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

*In the matter of an application for a mandate in the
nature of Writ of Certiorari and Writ of Mandamus
made in terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.*

CA Application No:
CA/Writ/381/2014

And Now Between

Wanniarachchi Kankanamge Piyadasa
Aluth Wewa Gaawa Koratuwa,
Pallemulana,
Medamulana.

Petitioner – Petitioner

Vs –

01. C.P. Wanniarachchi
Divisional Secretary,
Divisional Secretariat Office,
Weeraketiya.

01A. Kumudu Lokuhewagamage
Divisional Secretary,
Divisional Secretariat Office,
Weeraketiya.

02. P.B. Ruwan Pathirana
Deputy Commissioner of Land,
(Southern Province)
Southern Provincial Deputy Land
Commissioner's Office,
2nd Floor,
Magam Ruhunupura Administrative Complex,
Siriboopura,
Hambantota.

03. R.P.R. Rajapaksha,
Commissioner of Land,
Land Secretariat Office,
No.1200/6, Rajamalwatta,
Battaramulla.

04. Wanniarachchi Kankanamge Hendric,
Katakela gaha Watta,
Pallemulana,
Medamulana.

05. Wanniarachchi Kankanamge Aranolis,
Katakela gaha Watta,
Pallemulana,
Medamulana.

Respondents – Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: Chandana Dias instructed by K.C. Govinnage for the Petitioner
N. Jayasinghe with Mahanama Dissanayake for the 4th Respondent
Chaya Sri Nammuni, DSG for the State

Argued On: 07.09.2022

Decided On: 20.10.2022

C.P. Kirtisinghe – J

When this case was taken up for argument on 16.07.2021, the Petitioner had been absent and unrepresented and as a result the Court had dismissed the Petitioner's application without costs. Thereafter, the Petitioner has filed this relisting application to get the case relisted. The Petitioner states that the Petitioner had prosecuted this matter with due diligence at all times. The Petitioner states that on 19.03.2021 when this matter was refixed for argument on 16.07.2021, the

Petitioner's Counsel had mistakenly updated his diary and noted down 25.08.2021 as the next argument date. The Petitioner had annexed the extracts of his Counsel's diary marked X1 and X2. The Petitioner states that the Petitioner believed in good faith that the matter would be taken up for argument on 25.08.2021. The learned State Counsel for the 1st and 3rd Respondents had informed Court that the State is not objecting to this relisting application. In their Statement of Objections, the 4th and 5th Respondents state that the negligence of the Attorney-at-Law for the Petitioner is the negligence of the Petitioner. They further state that the Attorney-at-Law for the Petitioner has not submitted an affidavit to the effect that he had noted down a wrong date in his diary. They further state that the Petitioner has not explained his delay in making this application for relisting.

When one examines the journal entries in this case it appears that the Petitioner was represented in Court by his Counsel in most of the dates. This was one of the rare occasions when he was absent and unrepresented. Although it is an accepted principle that a litigant is responsible for the negligence of his Attorney-at-Law and bound by that negligence, there is a difference between negligence and mistake. From the two documents marked X1 and X2, the extracts of the diary of the Counsel for the Petitioner, it is apparent that the Counsel for the Petitioner had taken down the next date of argument as 25.08.2021 and not as 16.07.2021. Therefore, it is a mistake of the Counsel for the Petitioner. Although the Counsel for the Petitioner has not tendered an affidavit to that effect, it is apparent from the extracts of his diary and the same Counsel has appeared for the Petitioner at this inquiry. The next question that has to be taken up for consideration is the delay on the part of the Petitioner in making this relisting application. The proceedings in this case were terminated on 16.07.2021. This relisting application was filed on 18.01.2022, six months after the dismissal of the writ application. The Petitioner has not explained this delay. However, the Court can take judicial notice of the situation that prevailed in the country when the Covid-19 epidemic was there. The Courts did not function in their normal course and in most of the courts only urgent matters were taken up during this period. According to the lists and other documents available at the Registry of this Court from July 2021 up to November 2021, most of the cases had been postponed and refixed by notice. Therefore, it is apparent that the Covid-19 epidemic was at the peak during this period and the transport system in the country did not function properly. According to the address which appears in the

caption, the Petitioner was a person living in Medamulana in the deep-down South and with the prevailing Covid-19 epidemic he may have had a difficulty to travel to Colombo. That is obvious. Therefore, we are of the view that in the interest of justice we should allow this relisting application. Therefore, we vacate the order of this Court dated 16.07.2021 and relist this application.

Judge of the Court of Appeal

Mayadunne Corea – J

I Agree

Judge of the Court of Appeal