

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

Officer in Charge,
Police Station,
Gampaha.

Complainant

Vs.

Court of Appeal Case
No: **CA (PHC) 77/2018**

Provincial High Court
Gampaha
No: **REV 24/2015**

Nanhimi Arachchi Kankanamalage
Nimal Kumara Padmasiri,
No. 78/A, Sri Dharmananda Mawatha,
Paththagedara,
Veyangoda.

Magistrate Court
Gampaha
No: **298/13/S**

Accused

AND BETWEEN

Nanhimi Arachchi Kankanamalage
Nimal Kumara Padmasiri,
No. 78/A, Sri Dharmananda Mawatha,
Paththagedara,
Veyangoda

Accused-Petitioner

Vs.

1. Officer in Charge,
Police Station,
Gampaha.

Complainant- Respondent

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2. Hon. Attorney General
Attorney General's Department,
Colombo 12

3. People's Leasing PLC,
No. 65, Yakkala Road,
Gampaha.

Respondents

AND BETWEEN

Nanhimi Arachchi Kankanamalage
Nimal Kumara Padmasiri,
No. 78/A, Sri Dharmananda Mawatha,
Paththagedara,
Veyangoda

Accused-Petitioner-Petitioner

Vs.

1. Officer in Charge,
Police Station,
Gampaha.

**Complainant- Respondent-
Respondent**

2. Hon. Attorney General
Attorney General's Department,
Colombo 12

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3. People's Leasing PLC,
No. 65, Yakkala Road,
Gampaha.

Respondent-Respondents

AND NOW BETWEEN

**In the matter of Application for
relisting**

Nanhimi Arachchi Kankanamalage
Nimal Kumara Padmasiri,
No. 78/A, Sri Dharmananda Mawatha,
Paththagedara,
Veyangoda

**Accused-Petitioner-Petitioner-
Petitioner**

Vs.

1. Officer in Charge,
Police Station,
Gampaha.

**Complainant- Respondent-
Respondent-Respondent**

2. Hon. Attorney General
Attorney General's Department,
Colombo 12

3. People's Leasing PLC,
No. 65, Yakkala Road,
Gampaha.

**Respondent-Respondent-
Respondents**

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : R. Wimalaratne for the Petitioner
Hansa Abeyratne SC for the State

Supported on : 06.02.2023

Decided on : 21.03.2023

Iddawala – J

This is an application made on 27.12.2022 to re-list the case bearing No. CA- PHC-77/2018 which has been previously dismissed by this Court on 17.12.2021 due to non-compliance of the Court of Appeal (Appellate Procedure) Rules 1990. The facts of the case are briefly as follows. The petitioner was charged in the Magistrate's Court of Gampaha under the provisions of the Forest Ordinance for transporting timber without a permit. The petitioner pleaded guilty to the charge and was fined 20,000 LKR on 30.12.2014. Subsequently a vehicle inquiry was held for the vehicle bearing no. WP GY 5229 where the learned Magistrate ordered to confiscate the vehicle. Aggrieved by the said order the petitioner has filed a revisionary application to the Provincial High Court holden in Gampaha where the application was dismissed by the learned High Court Judge.

Thereafter the petitioner filed this appeal in this Court and the notice was issued to the parties on 10.12.2020. Registrar has informed this Court seeking for directions from

the court on 01.12.2021 that the brief fees have not been paid by the petitioner. It has been noted by this Court on 13.12.2021 that as per the docket a notice has been issued to the petitioner to deposit the brief fees, on 29.01.2021 by the Registered post which had not been returned and thereafter matter was set to be mentioned on 17.12.2021. On 17.12.2021 both parties were absent and unrepresented thereby the application was dismissed. The judgment was dispatched to the PHC Gampaha on 04.01.2022.

The petitioner concedes that he received a notice to pay brief fees on 14.12.2020 however he was saddled with adverse economic and health situations due to Covid-19 and the curfews imposed. The petitioner further mentions that on he received notice from PHC Gampaha notifying the matter will be called to Court on 02.05.2022 to notify the decision of the Court of Appeal. The petitioner states that he became aware that his case has been dismissed on 25.10.2022 for non-appearance/ noncompliance of the AP Rules. He further claims that such non-appearance was not due to negligence but due to the aforementioned circumstances.

The present application is based on motion filed 23.01.2023 to relist the application. The case was mentioned in open Court on 06.02.2023. It has be brought into the light that the initial application was dismissed duly based on the Court of Appeal (Appellate Procedure) Rules 1990. Under PART II on APPLICATIONS, **Rule No. 3 (1) (a)** states *inter alia* 'where a petitioner fails to comply with the provisions of this rule the Court may, ex mero moru or at the instance of any party, dismiss such applications.' **Rule No. 3 (13)** states that 'it shall be the duty of the petitioner to take such steps as may be necessary to ensure the prompt service o notice, and to prosecute his application with due diligence'. **Balasingham and another vs. Puvanthiram** (2000) 1 SLR 163. It was held that failure to comply with Rules is indeed a failure to show due diligence. The appeal was accordingly dismissed. In **Shanmugadivu vs. Kulatilake** (2003) 1 SLR 215, the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules. Hence, in light of the authorities mentioned above, thus favours the view, that non-compliance with Rules is fatal to the application. Parties who invoke the jurisdiction of the Court cannot ignore the Rules and then ask to be heard.

This Court is unable to accept the adverse circumstances detailed by the petitioner on one hand as the judicial system has adequately provided options and alternatives for economically struggling individuals to ensure equal access to justice and on the other hand the petitioner has not taken any action until 25.10.2022 even with the knowledge of having a prior application been filed and been notified by the Court at multiple occasions including to pay brief fees. The petitioner could have appeared on the day for mention, ordered by this Court and submit his circumstances to this Court. Moreover, the petitioner could seek *pro bono* services if he could not finance the legal actions. There are multiple recourses the petitioner could have sought and taken to actually establish in this Court that the petitioner's prayers and reasons are legitimate. However, it is deemed by this Court that the petitioner has slept on his rights. *Vigilantibus Non Dormientibus Jura Subveniunt* - The law assists only those who are vigilant, and not those who sleep over their rights. Allowing the relisting of this application would be a precedent that would seriously undermine justice and open floodgates to negligent and passive seekers of justice. Therefore, this Court does not provide for the relisting of the instant application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL