

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

*In the matter of an application in terms of  
Article 105 (3) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka  
read together with section 183B of the  
Code of Criminal Procedure*

CA Contempt No:  
**COC-0006-21**

DC Kaduwela No:  
**878/L/2020**

Nature Resort (Private) Limited,  
No. 14, Upatissa Road,  
Colombo 04.

And

No. 19/3 Swarna Road,  
Colombo 06.

**Plaintiff**

**Vs.**

1. Pramuka Savings and Development  
Bank Ltd,  
No. 30/63J, Longdon Place,  
Colombo 07.

2. Pramuka Holdings Limited,  
No. 30/63M, Longdon Place,  
Colombo 07.

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3. Sri Lanka Savings Bank Ltd,  
No. 265, Ward Place,  
Colombo 07

**Defendants**

**AND NOW BETWEEN**

Upul Jayasuriya,  
Pahalawela Road,  
Pelawatta.

**Petitioner**

**Vs**

Senarath Pathirannahelage Ratna  
Prabath Senanayake,  
Assistant Manager,  
Sri Lanka Savings Bank Limited,  
No. 265, Ward Place,  
Colombo 07.

**Respondent**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Neil Unambuwa PC for the Petitioner,  
Nihal Somasiri with Hashini Rathnayake  
for the Respondent

**Decided on** : 21.03.2023

**Iddawala – J**

This is an application for contempt of court filed on 27.09.2021 against the respondent for allegedly, deliberately and maliciously stating false statements on his affidavit submitted for the original matter ongoing in the District Court of Kaduwela. In the instant matter, the Court by its order dated 18/07/2022 decided to have the benefit of the position of the respondent before taking a decision of issuing formal summons. And thereby directed the petitioner to issue notice including on all documents directly to the respondent. Respondent appeared before the Court on 06.12.2022 and made submissions. Respondent was then directed to file his position with regard to the issuance of summons by way of written submission. Written submissions were filed by the parties on 31.01.2023. Upon entertaining this application this Court is mandated to determine whether formal summons should be served on the respondent.

The facts of the original matter are briefly as follows. The plaintiff and one Slam Studio (Pvt) Ltd. have obtained a loan of 11,000,000 LKR from the 2nd defendant company via the 1st defendant bank to purchase a lot of land in Talangama. Upon defaulting to repay the loan with installments of 20,020,000 LKR in accordance with the loan agreement, the plaintiff and the other, being principal debtors, have agreed to handover the said land to the 1st and 2nd defendants claimed to be under constructive trust. However, plaintiff further claims that the 3rd defendant bank which has no involvement in the above incident allegedly attempts to encroach the said land obstructing the peaceful possession and enjoyment of the property by the plaintiffs. In the original matter the plaintiff has prayed *inter alia* for a declaration of title.

In the matter of contempt of court at hand, the petitioner alleges that the respondent in this application who is the assistant manager of the 3rd defendant company (Sri Lanka Savings Bank Limited) has submitted affidavits dated

22.02.2021 and 20.05.2021 for the proceedings of the aforementioned case at Kaduwela DC bearing No. 878/L/2020 with numerous false statements, deliberately and maliciously, attempting to evade the truth, mislead the Court and subvert the course of justice. The petitioner has stated in his petition that he is an individual of good repute; a prominent legal practitioner of 45 years, a President's Counsel and a senior member of the bar. He was elected as the secretary of the Bar Association from 1991-1993 thereafter as its president in 2013. He has further appeared for several well-known cases and has acted as the Chairman of Board of Investment from 2015-2017. There is no dispute on those facts.

The respondent has submitted that the 3rd defendant bank to which he is the assistant manager, has obtained the superimposition plan bearing No. 015101 (marked as R1 along with respondent's submissions) by a licensed surveyor and claims that it depicts an encroachment and an unlawful occupation by the petitioner and one Chula Jayasuriya the spouse of the petitioner. It is further claimed that the above-mentioned individuals had mortgaged portions of land which said Chula Jayasuriya claims in her affidavit to belong to the plaintiff company however as per the superimposition plan deem to be an encroachment.

To determine the matter at hand this Court would like to first resort to Section 181 of the Civil Procedure Code which states that "*Affidavits shall be confined to the statements of such facts as the declarant is able of his knowledge and observation to testify to, except on interlocutory applications in which statements of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit.*" Under Section 183 B it states that "*where any person willfully makes any false statement by affidavit or otherwise, in the course of any of the proceedings aforesaid he may be punished as for a Contempt of Court, besides his liability to be tried and punished under the Penal Code for the offence of giving false evidence, where such statement is on oath or affirmation.*"

Indubitably the superior courts are conferred overarching powers on contempt of court under Article 105 (3) of the Constitution. It states "*the Supreme Court of*

*the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere: Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself." (Emphasis added) Thus, the Court of Appeal is clearly conferred the jurisdiction to entertain contempt of court committed at any other court. However, in a matter as the one at hand, where determining the contempt of court largely depends on findings, perusal and examinations at lower Court trial, it is plausibly more appropriate for such a forum to determine on the contempt of court matter as well.*

This position was comprehensively analysed in the case of **Meththanda vs Kushan Fernando** (2006) 1 Sri LR 290 , where the Court of Appeal resorted to Section 55 (1) of the Judicature Act, proviso of section 105 (3) read with 183B of Civil Procedure Code and stated that the inherent jurisdiction on contempt of court of superior courts shall not prejudice the specific jurisdiction conferred to lower courts by above mentioned provisions when dealing with contempt of court by falsified affidavits. Section 55 (1) of the Judicature Act has endowed jurisdiction on contempt of Court to lower courts where it states that "*every District Court, Small Claims Court and Magistrates' Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of court committed in the presence of the court itself and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempt of court* (Emphasis added). Therefore, for the purpose of maintaining proper authority and efficiency any contempt of court committed at lower court proceedings shall be entertained by the such court.

Given that Article 105 (3) of the Constitution has specifically given jurisdiction to the Court of Appeal to deal with matters of contempt of court committed at other courts and tribunals, this Court would like to reiterate that it is clearly endowed with jurisdiction to entertain this matter whether it is committed '*in facie curiae*' (within the well of the Court) or '*ex-facie curiae*' (those committed outside the Court). However, if this Court is to serve summons and determine that there is contempt of court it would indicate that the respondent has lied in evidence and if decided otherwise it would indicate vice versa. This determination would clearly prejudice the proceedings at the trial court. And given that the trial court is inherently bound to determine boundaries and extent of land lots, this Court entertaining this application which is *inter alia* based on determining such boundaries, would result in inefficiency and delayed justice. This ascertainment on prejudice of rights, proper authority and efficiency is one of a case-by-case basis. Therefore, this Court believes that the best forum to entertain this matter is the trial court. Thereby, this Court refuses to issue summons to the respondent.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera-J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**