

In the matter of an Application for Leave to Appeal under section 754(2) of the Civil Procedure Code read with Article 138 of the Constitution

Kelani Valley Planation PLC
No. 400,
Deans Road,
Colombo 10.

Court of Appeal Case No:
CA LTA-0017-2023

Plaintiff

District Court Case No:
L/1930

Vs

Niliyan Yogeshan
No. 23,
Temple Road,
Halgranoya,
Ragala.

Defendant

AND

Kelani Valley Planations PLC
No. 400,
Deans Road,
Colombo 10.

Plaintiff-Petitioner

Vs.

Niliyan Yogeshan
No. 23,
Temple Road,
Halgranoya,
Ragala.

Defendant-Respondent

Before: **Prasantha De Silva,**
K.K.A.V. Swarnadhipathi, J.

Counsel: Ikram Mohomed, PC. with Vinura Jayawardhana AAL and Milhan Mohomed for the Plaintiff-Petitioner *[ex-parte]*.

Supported on: 04.09.2023

Delivered on: 06.09.2023

Prasantha De Silva J.,

Judgment

The instant leave to appeal application emanates from an order given by the District Court of Nuwara Eliya in case bearing no. L/1930 refusing to grant an *ex parte* enjoining order.

Kelani Valley Plantation PLC being the Plaintiff instituted an action bearing no. L/1930 in the District Court of Nuwara Eliya against the Defendant – Niliyan Yogeshan seeking the following reliefs,

- i. For a declaration that the leave and license granted to the Defendant for vegetable cultivation in the land morefully described in the schedule to the Plaint, became terminated on the 31st of July 2023,
- ii. For judgement and decree that the Defendant and/or his servants and/or his agents are not entitled to enter and/or do any activity and/or cultivate in the said land from 01.08.2023,
- iii. For a permanent injunction restraining the Defendant and/or his servants and/or his agents from entering and/or doing any activity and/or cultivating in the said land,
- iv. For judgement and decree to eject the Defendant and/or his servants and/or his agents from the said land and to handover vacant possession to the Plaintiff, if necessary,
- V. For an interim injunction pending the hearing and determination of the said action and for an enjoining order pending the same, restraining the Defendant and/or his servants and/or his agents from entering and/or doing any activity and/or cultivating in the said land.

Subsequently, the Plaintiff's application was supported *ex-parte* on 23.08.2023 and the learned District Judge made an order refusing to issue an enjoining order and granted only notice of interim injunction.

Being aggrieved by the said order of the Learned District Judge the Plaintiff-Petitioner [hereinafter sometimes referred to as the 'Petitioner'] made an application for Leave to Appeal to the Court of Appeal seeking following reliefs;

a. to grant leave to appeal to Your Lordships' Court against the order of the Learned District Judge dated 23.08.2023 marked "X2",

b. to set aside the said order made by the Learned District Judge dated 23.08.2023 marked "X2",

c. to grant and issue the enjoining order prayed for in prayer "" to the Plaint dated 23.08.2023 filed in the District Court of Nuwara Eliya in case no. L/1930,

d. to grant and issue an interim order,

i. directing the Learned District Judge of Nuwara Eliya in case no. L/1930 to grant the enjoining order prayed for by the Plaintiff in prayer "" to the plaint, pending the determination of the application made for the interim injunction by Court according to law, or,

ii. restraining the Defendant and/or his servants and/or his agents from entering and/or doing any activity and/or cultivation in the said land described in the schedule to the plaint filed in case no. L/1930 in the District Court of Nuwara Eliya, pending the determination of this application by Your Lordships' Court,

e. to grant costs, and

f. to grant such other further reliefs as to Your Lordships' Court shall deem meet.

The question before this court at this juncture, is whether the Court of Appeal should exercise its jurisdiction under Article 138 of the Constitution or whether this case should be transferred to a more appropriate forum i.e., the Provincial High Court of Central Province established under Article 154P of the Constitution read with the provisions of the High Court of Provinces (Special Provinces) Act No. 19 of 1990.

The learned counsel for the Petitioner has directed the attention of the court to the following cases to substantiate their position, *Sharif and Others v Wickramasuriya and Others (2010) 1 SLR 255* and the case of *Ramalingam v Prameswary and Others (2000) 2 SLR 340*.

In the case of ***Ramalingam v Prameswary and Others (2000) 2 SLR 340***, the reason for the Court of Appeal not to transfer the case to the Provincial High Court of the Northern Province is due to a lack of a Provincial High Court in Jaffna. According to Wigneswaran, J,

"To order the transfer of this case to the High Court of Northern Province holden at Vavuniya would be the height of insensitivity on the part of this Court. The Primary Court which made the impugned order is the Primary Court of Jaffna. The very fact that there is no High Court functioning in Jaffna but only in peripheral Vavuniya must no doubt be taken into consideration in consonance with the difficulty faced by persons to obtain security clearance to stay beyond 24 hours at Vavuniya.

High Court functioning in a peripheral area (at Vavuniya) being called upon to overlook the work of an appropriate Court (in Jaffna) for certain exigencies cannot be considered as the appropriate High Court established under the Law in terms of S.12 of Act No. 19 of 1990."

In the said case, the court further held that

Therefore we are of the opinion that even though the Thirteenth Amendment devolved judicial power earlier vested In the Court of Appeal to Provincial High Courts and proviso to Sec. 12(a) Act No. 19 of 1990 empowered this Court to transfer certain types of cases to the appropriate High Court if considered expedient to do so, yet the use of discretion by this Court to transfer such cases must consider inter alia the convenience of parties.

In the above case court was influenced by the conditions that prevailed in the Jaffna and Vavuniya regions due to the war situation in the country and the regulations which imposed curfews, travel restrictions etc on the litigants of the Northern Province. No such exigency exists in the present case for the Court of Appeal to hear this appeal.

In the case of ***Sharif and Others v Wickramasuriya and Others (2010) 1 SLR 255***, the court decided against the transfer of the case to the Provincial High Court as an order on the merits was also considered by the Court and it was deemed expeditious to resolve the matter without further litigation. I would further state that, if this case was brought before this Court today, it would be very unlikely for the Court of Appeal to not exercise its discretion to transfer the case to the relevant Provincial High Court as the Provincial High Court system has significantly developed in our country since 2010.

It should be noted that, unlike the cases cited on behalf of the Petitioner, the present case is not one which will effectively conclude after the appeal is heard in the Court of Appeal as the present appeal emanates from a refusal to grant an enjoining order by the District Court. This

would mean that, regardless of the decision of this court, this case will continue at the District Court of Nuwara Eliya. Furthermore, as the next step in a trial such as this is to consider granting of an interim order and as at all the levels of the trial, orders of the District Court can be appealed, it would be heavily prejudicial for the Defendant to have to travel all the way to Colombo every time an appeal is filed by the Petitioner when an appeal can just as easily lie to a court that is much closer to the land (tea estate) in question. Thus, it would cause undue hardships to the Defendant if this case is heard by the Court of Appeal.

I will now briefly analyse the discretion given to the Court of Appeal to transfer the cases to the relevant Provincial High Court exercising Civil appellate jurisdiction under the Act No. 19 of 1990 as amended.

The Court of Appeal has the jurisdiction to transfer the case to an appropriate Provincial High Court under Section 5D(1) [reproduced below] of the High Court of Provinces (Special Provinces) Act No. 19 of 1990 as amended by Act No. 54 of 2006

Section 5D(1) Where any appeal or application in respect of which the jurisdiction is granted to a High Court established by Article 154P of the Constitution by section 5A of this Act is filed in the Court of Appeal, such appeal or application, as the case may be transferred for hearing and determination to an appropriate High Court as may be determined by the President of the Court of Appeal and upon such reference, **the said High Court shall hear and determine such appeal or the application, as the case may be, as if such appeal or application was directly made to such High Court.**

Therefore, it is my considered opinion that since the introduction of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 the Court of Appeal should be cautious in exercising the concurrent jurisdiction it shares with the Provincial High Court. If the Court of Appeal allows all appeals filed by Petitioners purely because of their counsel being in Colombo or for a supposed convenience of the Petitioner alone, then that would open a flood gate of litigation in Court of Appeal, which would severely reduce the effectivity of the Provincial High Court system introduced under Act No. 19 of 1990 (as amended). The sole purpose of introducing Section 5D(1) and Section 12(a) in Act No. 19 of 1990 is to avoid this practice.

As such the Court of Appeal has discretion to transfer cases to the Provincial High Court where any appeal or application in respect of cases for which the jurisdiction granted to a High Court established by Article 154P of the Constitution read with section 5A of Act No. 19 of 1990 is filed in the Court of Appeal.

In this regard, the attention is drawn to the judgement of *Ella Addara Gedara Dasanayake Vs. J.M.C. Priyadarshani, CA PHC 200/16 [CAM 19.06.2020]* where *Dr. Ruwan Fernando J.* emphasized that the Court of Appeal has concurrent jurisdiction to hear and determine revision application of this nature, and yet despite the fact that the Court of Appeal had jurisdiction to hear and determine the appeal on its merits, the Case was sent back to the High Court for re-hearing on its merits to give effect to the Provincial High Court system introduced by the 13th Amendment to the Constitution.

Similarly, in the cases of *Watawala Plantation PLC. vs Sampath Subasinghe Arachchi, CA/MC/RV/24/2014 [CAM 13.01.2022]* and *J.M.C. Priyadarshani vs Ranawaka Arachchige Ariyawathi, CA (PHC) 129/2016 [CAM 30.03.2022]* this court has transferred the cases back to the relevant Provincial High Court to be adjudicated on the merits under section 5D(1) of Act No. 19 of 1990 exercising the jurisdiction of the court.

Therefore, unless there are valid and relevant reasons for the Court of Appeal to exercise the concurrent jurisdiction it shares with the Provincial High Court in a rare case, such as -relevant Provincial High Court being defunct or ineffective, complexity of the matter being too severe, agreement of both parties, apparent bias or prejudice that maybe caused to a party due to the case being heard in the relevant Provincial High Court; This court should be reluctant to hear appeals and revision applications which can be effectively heard by the Provincial High Court of Civil Appeal established under section 5A of Act No. 19 of 1990 as amended.

This understanding of the jurisdiction of the court is buttressed by the general statutory framework of jurisdiction followed by our courts. For example, under our Civil Procedure Code, the District Court where the land is situated has the jurisdiction to hear disputes relating to land and the location of the parties is only a secondary consideration.

As such, the location of the land should be a consideration that should be taken into account by the Court of Appeal, when deciding on the most expeditious manner to deal with a particular case and whether to transfer the case to the Provincial High Court of Civil Appeal for the relevant province.

As this leave to appeal application emanates from a refusal to grant an enjoining order by the learned District Judge and as the Petitioner has failed to substantiate the existence of any pressing circumstances for this case to not be transferred, the court is within its discretion to transfer the case to the relevant Provincial High Court of Civil Appeal for the Central Province.

Moreover, under Section 5A [reproduced below] of the Act No 19 of 1990, the Provincial High Courts are equipped with civil appellate jurisdiction to hear and determine appeals and revision applications filed against orders/judgments from the District Court. Therefore, the Provincial

High Court of Central Province exercising civil appellate jurisdiction has the jurisdiction to hear the instant application.

Section 5A(1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court, Family Court or Small Claims Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such of a District Court, of a Family Court or of a Small Claims Court, as the case may be.

In ***Rizleigh Bertram Grand v. Portia Kekulwala CA/RI/06/2016*** decided on 24.06.2019 it is stated that Act No. 54 of 2006 was introduced to confer appellate and revisionary jurisdiction to the Provincial High Courts against the judgments and orders of the District Courts of the relevant provinces.

Furthermore, it ought to be mentioned that the Provincial High Courts which were introduced by the 13th Amendment to the Constitution under Article 154P of the Constitution were based on the High Court system which existed in India. In India High Courts are established for each state of the Union of India and such a High Court has appellate and revisionary jurisdiction. It should also be noted that there is no Court of Appeal in India. In light of this, the appeals from the High Court lie directly to the Supreme Court similar to the Sri Lankan statutory framework under Act No. 19 of 1990. Therefore, the purpose of introducing the Provincial High Courts similar to the system in India, is to bring litigation closer to the people and to give effect to the concept of devolution of judicial power as provided for by the 13th Amendment to the Constitution.

In essence, the 13th Amendment to the Constitution, particularly Article 154P, aimed to empower Provincial High Courts, which are geographically proximate to litigants, with the power of overseeing appeals and revision applications within their respective provinces. This devolution of certain judicial powers to the provinces underscores the 13th Amendment's objective of devolving power to provinces. In instances where the Court of Appeal is invited to interfere directly in a judgement/order by the District Court, this court should be air caution in exercising such jurisdiction and if it is not in the best of interest of both parties of the litigation to continue at the Court of Appeal, then this court is duty bound to transfer such case the Provincial High Court.

If all appeals from any District Court of any province is brought to the Court of Appeal by passing the jurisdiction of the Provincial High Courts, that would amount to courts facilitating court shopping in favour of the Petitioner. It is unlikely that the draftmen of the Article 154P

and the Act No. 19 of 1990 intended to facilitate court shopping of one party to the disadvantage of the other.

Petitioner further submitted that, as this is an *ex-parte* order the Defendant is a mere silent observer in the appeal process, and hence their objections should not be taken into account in transferring the case. It should be noted that contrary to the Petitioner's submission enjoining orders issued *ex-parte* under section 664 of the Civil Procedure Code is vastly different to an order/judgement given by a court in default of appearance by the Defendant under section 84 of the Civil Procedure Code. The case cited by the Petitioner [***Geethika Sudhirani Samaraweera v Uduruwangala Gedarage Charaka and Others, SC/Appeal/78/2021***] deals with a situation where the Defendant was in default and has no applicability to the instant action and is an attempt to mislead this court.

The concept that the Defendant should be a 'silent observer' in an appeal for an order given *ex-parte* only applies to cases where the Defendant was in default of appearing before the court not for an enjoining order issued *ex-parte*. It would be a gross misuse of the appeal process to prevent a fair hearing for the Defendant, against whom an *ex-parte* enjoining order was issued/refused if the Defendant is not given notice and not allowed to present his case against the granting of such enjoining order/interim relief by an appellate court.

Therefore, in view of Section 5D(1), we transfer this leave to appeal application bearing No. LTA 0017/23 to the Provincial High Court of Central Province exercising civil appellate jurisdiction to hear and determine this matter.

Hence, the said Order may be sent to the President of the Court of Appeal to take appropriate steps in terms of Section 5D(1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 to transfer this application to the Provincial High Court of Central Province exercising Civil Appellate jurisdiction.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL