

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

*In the matter of an Application in Revision and
for the exercise of the inherent power and
jurisdiction of the Court of Appeal.*

CA/WRIT/137/2022

1. Nagananda Kodituwakku
General Secretary
Vinivida Foundation,
99, Subadrarama Road,
Nugegoda.

PETITIONER

Vs.

1. Chandana Suriyabandara
Director General
Department of Wildlife Conservation,
811A, Jayanthipura,
Battaramulla.
2. Chandana Wickramarathna
Inspector General of Police
Police Headquarters,
Colombo 1.
3. Thilak Premarathna
Director General
National Zoological Department,
Dharmapala Mawatha,
Dehiwala.
4. Rev. Bellanwila Dhammarathana
Bellanwila Rajamaha Viharaya,

Dehiwala Road,
Bellanwila.

5. Wimalaweera Dissanayake
Former Minister of Wildlife
Conservation

And now

C.B.Ratnayake
Ministry of Wildlife Conservation
1090, Sri Jayawardanapura,
Battaramulla.

6. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

And now between

1. Nagananda Kodituwakku
General Secretary
Vinivida Foundation,
99, Subadrarama Road,
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PETITIONER - PETITIONER

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Attorney General's Department
Colombo 12.

RESPONDENTS - RESPONDENTS

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Petitioner-Petitioner appeared in person

P. Ranasinghe PC ASG with Shemanthi Dunuwille SC for the 1st to 3rd and 7th to 8th Respondents- Respondents.

Supported on: 08.11.2023

Decided on: 08.11.2023

Sobhitha Rajakaruna J.

The Application bearing No. CA/WRIT/137/2022 has been finally concluded and this Court has delivered its final Judgment on 07.08.2023. The Petitioner-Petitioner ('Petitioner') has filed a purported 'Revision Petition' dated 09.10.2023 seeking to set aside the said Judgement dated 07.08.2023.

In terms of Article 139(1) of the Constitution, the Court of Appeal may in the exercise of its jurisdiction affirm, reverse, correct or modify any order, judgment, decree or sentence of a Court of First Instance according to law. This Court exercises the Writ jurisdiction under Article 140 of the Constitution as a Court of First Instance in respect of Writ applications such as the Petitioner's original Application bearing No. CA/WRIT/137/2022. Therefore, it is abundantly clear that this Court has no jurisdiction to affirm, reverse, correct or modify the said Judgment dated 07.08.2023. However, this Court may exercise its jurisdiction to a certain extent on an Application based on the doctrine of *per incuriam*.

The established rule is that a judge who has given the judgment no longer has the capacity to correct his decision as the judge has completed discharging his duty once the judgment has been delivered. The Roman jurist Ulpian has stated that after a judge has delivered his judgment, he immediately ceases to be the judge¹

¹"hoc jure utimur ut judex qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non posset; semel enim male vel bene officio functus est." (see: Alexandr Koptev, "Digestae Justinian" The Latin Library at Book 42, Title 1, Note 55)

The Petitioner in the said purported 'Revision Petition' claims that the said Judgement dated 07.08.2023 is a single judge order and it is *per incuriam*. It needs to be stressed that the said Judgement of this Court is a unanimous decision of two Hon. Judges of the Court of Appeal and both the Judges have placed their signatures therein. The Petitioner relies on the judgment in ***Jeyaraj Fernandopulle v. Premachandra De Silva and others (1996) 1 Sri L. R. 70*** in which the principle of *per incuriam* has been discussed. However, none of the reasons alleged in paragraph 4 of the said purported 'Revision Petition' falls within the circumstances described in the said judgment upon which this Court could correct the impugned Judgement on the basis of *per incuriam*. The Supreme Court in the said judgment has held that:

“A Court has no power to amend or set aside its judgment or order where, it has come to light or if it transpires that the judgment or order has been obtained by fraud or false evidence. In such cases relief must be sought by way of appeal or where appropriate, by separate action, to set aside the judgment or order. The object of the rule is to bring litigation to finality.”

It is noteworthy that the Supreme Court Rules 1990 provides for the Court of Appeal to grant leave to appeal to the Supreme Court from any final order, judgment, decree or sentence of the Court of Appeal which involves a substantial question of law. The Petitioner has neither framed such substantial questions nor made an application to the Court of Appeal for such leave to appeal under Rules 20(1) or 22(1) at the appropriate stage. Similarly, it has not been disclosed whether the Petitioner has lodged an appeal in Supreme Court against the said impugned Judgement.

Moreover, I cannot find, according to law, any exceptional circumstances as to why this Court should exercise its inherent powers to entertain the Petitioner's purported 'Revision Application'. Anna S.P. Wong in her article ***“Doctrine of Functus Officio: The Changing Face of Finality's Old Guard” 2020 98-3 Canadian Bar Review 543*** observes:

“The public interest in finality is pragmatic. No society, nor the average litigant, could afford an adjudication process with a revolving door policy. At some fixed, discernable point, the process must draw to a close. Once that point is reached and the narrow window for appeal has elapsed, the parties would be able to heave a sigh of relief and move on, rest assured that the matter would

not come back to haunt them in re-litigation. The decision-maker could likewise move on, knowing that a case is off her docket for good.”

In light of the above, I hold that this Court has no jurisdiction to entertain the purported ‘Revision Petition’ filed by the Petitioner based on the doctrine of *functus officio*. I must declare that the instant Application is unjust, unfair or improper and it is against the rules and laws regarding Appeals and Revisions. Thus, I proceed to refuse the instant Application. I, reluctantly, do not order for costs considering the fact that the Petitioner has appeared in person.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal