

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

- i. U.W.R. Upul Bandara  
No. 06, Old Market,  
Ginigathhena.
- ii. U.W. Ratnapala  
Kotahela,  
Ginigathhena.

**Petitioner- Appellants**

**CA (PHC) No.166/2008  
HCCA Kandy writ 39/2006**

**Vs.**

- 1. Ambagamuwa Pradeshiya Sabha  
Ambegamuwa,  
Ginigathhena.
- 2. Ganapthi Naguleshwaran  
Prasident, Ambagamuwa Pradeshiya Sabha,  
Abagamuwa, Ginigathhena.
- 3. U.K.P. Amarasinghe  
Secretary, Abagamuwa Pradeshiya Sabha,  
Abagamuwa, Ginigathhena.

**Respondents- Respondents**

**Before : H.C.J. Madawala , J  
&  
L.T.B. Dehideniya, J**

Counsel : P.S.Ekanayake for the Respondent-Respondent  
Appellant is absent and unrepresented

Argued on : 20 /06 /2016

Judgment Date : 25 / 07 /2016

**H. C. J. Madawala , J**

The petitioner–appellant has preferred this appeal to set aside the order dated 11/12/2008 of the Learned High Court Judge of the High Court of the Central Province holden in Kandy (exercising Civil Appellate Court Jurisdiction) and further the relief as prayed for Notices to all parties and there registered Attorney-at Law has been issued on 18-01-2016. Petitioner has been absent and unrepresented. Counsel for the respondent has appeared in court and argument has been concluded. Court has ordered to the respondent-respondent to file written submissions and he has filed same. We have considered the petition and affidavit and the evidence and both oral and written submissions of the respondent-respondent. The Learned High Court Judge by his Order dated 11-2-2008 has held inter alia that the appellant is not entitled to seek writs of certiorari and mandamus as prayed in the petition for reasons of non-compliance of rule 3.1(a) of the Court of Appeal in that the appellants had failed to annex to their petition originals or certified copies of documents on which they relied upon to establish the discretionary remedy.

On a perusal of the original record I find that Photostat copies of documents that marked, පැ1 පැ2 පැ3 පැ4 පැ5 පැ6 පැ7 පැ8 පැ9 පැ10 පැ11 පැ12 පැ13 පැ14 පැ15 පැ16 පැ17 පැ18 පැ19 පැ20 පැ21 has been tendered to court and documents marked, වග1 වග2 වග3 වග4 වග5 වග6 වග7 වග8 වග9 වග10 වග11 වග12 වග13 වග14 වග15 duly certified by the Secretary of Abagamuwa Pradeshiya Sabha has been produced the court. The documents tendered to court by the appellant contains a seal as

true copy of the original and a sign placed thereof but, however it does not contain as to who certified the documents.

According to the Court of Appeal (Appellate Procedure Rules) rule 3.1 (a) which read as follows,

“Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero motu or at the instance of any party, dismiss such application.”

We find that the appellant has not forward to court the original or duly certified copies of the documents tendered to court by him. Accordingly I hold that the appellant has not complied with rule 3.1(a).

The case of **CA (PHC) 164 / 2008 HCCA Kandy Writ 37/2006** decided on 29-04-2004, A.W.A Salam, J has stated,

“The petitioner-appellant (hereinafter referred to as the appellant) sought the writ of certiorari to quash the notice marked as P28 and a writ of mandamus to enforce the decision contained in document marked P 24. The Learned High Court Judge by judgment dated 11-12-2008 held inter alia that the petitioner is not entitled to seek writs of certiorari and mandamus as prayed for in the petition for reason of his non-compliance of rule 3.1(a) of Court of Appeal in that the petitioner had failed to annex to his petition originals or certified copies of documents on which he relied upon to establish his case against the respondents to obtain the discretionary remedy.

Since the petitioner has failed to comply with the rules regarding the production of the documents on which he relied upon to prove his case, the petitioner is not entitled to succeed in his appeal.”

Accordingly as the appellant has not tendered to court the original or certified copies of said documents පැ1 පැ2 පැ3 පැ4 පැ5 පැ6 පැ7 පැ8 පැ9 පැ10 පැ11 පැ12 පැ13 පැ14 පැ15 පැ16 පැ17 පැ18 පැ19 පැ20 පැ21. We hold that the Learned High Court Judge has come to a correct decision when he decided that section 3.1(a) of the rules has not been complied with by the appellant and that the case should be dismissed in limine “ ඒ අනුව මුල් අවස්ථාවේම නිශ්චිත කළ යුතුය”

Accordingly we accept the submissions made by the Learned Counsel for the respondent-respondent and dismiss this appeal with cost. The Registrar is directed to return the original case record together with a copy of the order to the Learned High Court Judge of the Central Province (exercising Civil Appellate Jurisdiction) of Kandy.

Judge of the Court of Appeal

L.T.D.Dehiddeniya, J

I agree.

Judge of the Court of Appeal