

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

WRITTEN SUBMISSION OF THE 2ND PARTY RESPONDENT – PETITIONER – PETITIONER

Officer In Charge
Police Station
Negombo

Complainant

**Court of Appeal Case No:
CA PHC APN 152/2015**

Vs.

1. Rankaduwa Emmanuel
Fernando,
No: 58, Settappaduwa,
Pamunugama.

**High Court Netombo Case No:
HCRA/614/2013
M.C. Negombo Case No:
A 84229**

2. Rankaduwa Jude Nickulas
Dixon Fernando,
No: 64, Settappaduwa,
Pamunugama.

3. Rankaduwa Sujith Nishadh
Shriyantha Fernando,
No: 58, Settappaduwa,

Pamunugama.

4. Rankaduwa Isek Newton
Fernando,

No: 64, Settappaduwa,
Pamunugama.

5. Rankaduwa Jude Anton
Sulantha,

No: 61, Settappaduwa,
Pamunugama.

1st Party Respondents

Arappalage Ruwan Savior
Bernard,

No: 7, Fisheries Houses,
Settappaduwa,
Pamunugama.

2nd Party Respondent

AND BETWEEN

Arappalage Ruwan Savior
Bernard,

No: 7, Fisheries Houses,
Settappaduwa,
Pamunugama.

2nd Party Respondent –
Petitioner

Vs.

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

Respondent

1. Rankaduwaage Emmanuel
Fernando,
No: 58, Settappaduwa,
Pamunugama.
2. Rankaduwaage Jude Nickulas
Dixon Fernando,
No: 64, Settappaduwa,
Pamunugama.
3. Rankaduwaage Sujith Nishadh
Shriyantha Fernando,
No: 58, Settappaduwa,
Pamunugama.
4. Rankaduwaage Isek Newton
Fernando,
No: 64, Settappaduwa,

Pamunugama.

5. Rankaduwa Jude Anton
Sulantha,
No: 61, Settappaduwa,
Pamunugama.

**1st Party Respondent –
Respondent**

AND NOW BETWEEN

Arappalage Ruwan Savior
Bernard,
No: 7, Fisheries Houses,
Settappaduwa,
Pamunugama.

**2nd Party Respondent –
Petitioner – Petitioner**

Vs.

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

Respondent – Respondent

1. Rankaduwage Emmanuel
Fernando,
No: 58, Settappaduwa,
Pamunugama.
2. Rankaduwage Jude Nickulas
Dixon Fernando,
No: 64, Settappaduwa,
Pamunugama.
3. Rankaduwage Sujith Nishadh
Shriyantha Fernando,
No: 58, Settappaduwa,
Pamunugama.
4. Rankaduwage Isek Newton
Fernando,
No: 64, Settappaduwa,
Pamunugama.
5. Rankaduwage Jude Anton
Sulantha,
No: 61, Settappaduwa,
Pamunugama.

1st Party Respondent –
Respondent – Respondent

Before : P.R. Walgama, J

: L.T.B. Dehideniya, J

**Council : Shanaka Ranasinghe PC with P. Padmasiri for
the 2nd Party Respondent – Respondent –
Petitioner.**

: J. Joseph for the 1st Party – Respondent.

Argued on : 13.05.2016

Decided on: 29.07.2016

CASE-NO- CA /(PHC)/ APN / 152/15 ORDER- 29.07.2016

P.R. Walgama, J

The instant order concerns an application made by the 1st Party – Respondents for a dismissal of the Revision application in limine as the said application is contrary to the Article 138 of the Constitution and to the Section 12 of the High Court of the Provinces Act No. 19 of 1990.

Before embarking on the said legal issue it is considered vital to deal with the issue, as to the reason why the 2nd Party – Respondents had to come by way revision to have the said impugned orders of the Learned High Court Judge and the Learned Magistrate to be set aside.

The officer in charge of the police Station Negombo, filed an information in the Magistrate Court of

Negombo, in terms of Section 66 of the Primary Court Act No. 44 of 1979, of a land dispute which will affect the breach of the peace, or there is a likely hood of the breach of the peace due to the said land dispute.

The said information was filed by the police, pursuant to a complaint made by the 1st Party – Respondents, to the effect that the 2nd Party – Party Respondents, is using a roadway from the land belonging to the 1st Party – Respondents, which is being used for the purpose of the boatyard.

The Learned Magistrate by her order dated 10.10.2013 had observed the fact that the 2nd Party – Respondents has no right to use the disputed road way, over the said land, which is being used as a boat yard, by the 1st Party – Respondents.

Being aggrieved by the said order of the Learned Magistrate, the 2nd Party – Respondents – Petitioner, moved in revision in the High Court holden at Negombo, to have the said impugned order set aside or vacate.

The Learned High Court Judge after analyzing the facts therein arrived at the determination dated 19.11.2015, that there are no grounds to interfere with the order of the Learned Magistrate, and upheld the said order accordingly.

The 2nd Party – Respondents – Petitioner – Petitioner to assailed the said order of the Learned High Court Judge has appealed against the said order. Further the Petitioner has also filed a revision application, for the purpose of obtaining a stay order and stay order was granted on 30.12.2015.

As against the issuance of the stay order the 1st Party – Respondents had tendered their objection thus;

That a Revision does not lie under Section 11(1) of the High Court of the Province (Special Provisions) Act No. 19 of 1990 read with Section 138 of the Constitution in respect of an order made by the High Court.

Section 11(1) of the said Act reads thus;

The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154 P of the Constitution in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the constitution and sole and exclusive cognizance by way of appeal, revision and restitution in integrum of all causes, suits actions, prosecutions, matters and things of which such High Court may have taken cognizance:

Provided that, no judgment decree, or order of any such High Court shall be reversed or varied on account of any error, defect, or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

It is apparent from the paragraph (a) of the Statement filed by the 1ST Party – Respondents that they totally depend on the judgment of the divisional bench which is now pending in the Supreme Court without a determination.

Article 154 A of the Constitution has conferred jurisdiction by paragraph (3) (a) or (4), the original criminal jurisdiction of the High Court AND

Any order in the nature of Habeas corpus , and orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto.

Therefore it is abundantly clear the Court of Appeal will exercise its appellate jurisdiction to correct all the errors in fact or in law which shall be committed by the High Court had exercised the original criminal jurisdiction, as per Article 154 A (3 (a) of the Constitution.

In essence it is to be noted that the above Section 11(1) of the Court of Appeal is empowered to correct any error committed in fact or law made by the High Court only in respect of exercising the original

criminal jurisdiction as per Article 154 P (a) of the Constitution.

In the above context this Court has issued a stay order against the order of the Learned High Court Judge on the basis that in the event of a non existence of a stay order the Petitioner's business would have come to a standstill. In the Revision application a stay order was issued as in the Appeal the Petitioner – Appellant cannot move for a stay order. Nevertheless it was brought to the notice of court that the Petitioner – Appellant has filed an appeal against the order of the Learned High Court Judge, and as the preparation of the brief will take some time and as the urgency has arisen to obtain a stay order the Petitioner has also filed the instant application in revision.

It is pertinent to note when the appellant has filed an appeal the case has to be resolved basically in the appeal. Therefore as the Petitioner has to carry on his business, for the said limited purpose this court granted a stay order.

Nevertheless the substantive relief claimed by the Petitioner – Appellant cannot be decided in this Revision application.

Therefore Registrar is directed hereby to prepare the appeal brief as early as possible to enable this court to commence the hearing of the appeal.

Accordingly preliminary objection is overruled. Stay order is extended till the commencement of the Argument in Appeal.

We order no costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree,

JUDGE OF THE COURT OF APPEAL