

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

01. Thennakoonge Somarathna,
Neluwa,
Yagirala.

02. Gammanaliyanage Dharmadasa,
Welimada.

03. Gammanaliyanage Somalatha,
Neluwa,
Yagirala.

2nd Party - Petitioners

**CA (PHC) 66/2007
HC Kalutara 24/05 (REV)
MC Matugama 190/05**

VS.

1. Thennakoonge Karunadasa,
2. Opatha Kankanamge Bandupala,
3. Gammanaliyanage Chandrasena,
Karapagala,
Yagirala.

1st Party - Respondents

BEFORE: : **W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL : Ranga Dayananda
for the Appellants

M.A. Chandana Sri Nissanka
for the Respondents.

Argued on : 07.07.2015

Written submissions

filed on : 10.08.2015 and 14.08.2015.

Decided on : 16.02 2016

Malinie Gunaratne, J.

Appellant has filed this case seeking the intervention of this Court to revise and set aside the Orders of the learned High Court Judge dated 20.03.2007 and the Order of the learned Magistrate dated 16.08.2005, stating that the Orders of both Courts are against the legal norms and stating that the orders delivered by both Courts are against the law and justice.

Before this Court proceeds to examine the merits of the case, it is pertinent to note that the Petition of Appeal of the Appellant is *per se* defective.

Firstly, it is relevant to consider whether this Appellant has filed this Petition of Appeal in accordance with Rule 2(1) (a) of the Court of Appeal Rules.

The Rule 2(1) (a) of the Court of Appeal (Procedure for Appeals from High Courts established by Article 154 P of the Constitution) Rules of 1998 which, specifically states that an Appeal against any judgment or final order or sentence of the Provincial High Court shall be addressed to the Court of Appeal.

The said Rule 2 (1) (a) reads as follows:-

2 (1) Any person who shall be dissatisfied with any judgment or final order or sentence pronounced by the High Court in the exercise of the Appellate or Revisionary Jurisdiction vested in by Article 154 P (3)(b) of the Constitution, may prefer an appeal to the Court of Appeal against such judgment for any error in law or fact.

(a) By lodging within fourteen days from the time of such judgment or order being passed or made with such High Court, a Petition of Appeal addressed to the Court of Appeal or

It is relevant to note that the purported Petition of Appeal dated 04.04.2007 is not addressed to the Court of Appeal and is instead addressed to the Provincial Appellate High Court of Kalutara as follows:

“.....
.....”

The Rule 14 (1) of the Court of Appeal reads as follows:

14 (1) The Petition of Appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:-

- (a) **the name of the Court in which the application is pending** (does not contain the name of the Court of Appeal, instead contains the Provincial Appellate High Court of Kalutara which does not exist);
- (b) the names of the parties to the application;
- (c) **the names of the Appellant and of the Respondent;** (does not contain in the Petition)
- (d) the address to the Court of Appeal;
- (e) a Plain and concise statement of the grounds of objection to the order appealed against such statement to be set forth in duly numbered paragraphs;
- (f) a demand of the form of relief claimed.

It is relevant to note that the Appellant has not complied with Rule 14 (1) (a) and (c) of the Court of Appeal Rules.

It is significant to note, in the Appeal, there is no application to consider the orders made by the learned High Court Judge and learned Magistrate, in order to exercise the appellate jurisdiction. In the recital of the Petition of Appeal only it is mentioned as follows:

.....

The view of the Court is, since the Appellant has not invoked the appellate jurisdiction in this Court, Appellant is not entitled to proceed with this case.

Hence, I am of the view that there is no proper Petition of Appeal since the Appellant has not properly invoked the jurisdiction of this Court and this Appeal should have been dismissed in *limine*.

It has been held over and over again by this Court as well as the Supreme Court, non compliance with the Court of Appeal (Appellate Procedure) Rules are fatal to the application. The importance and the mandatory nature of the observance of the Rules of the Court of Appeal in presenting an application has been repeatedly emphasised and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court.

The Petition of Appeal filed by the Appellant in this case has not been directed to the proper forum under the proper provision of law in as much as no proper legally tenable appeal is pending.

Accordingly, for the reasons stated above I dismiss this Appeal. Since this Court has dismissed the Appeal, the Court is of the view that it is not necessary to go into the merits of the Appeal.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed