

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

H.A.A. Perera,
Shop No.3, Temple Road,
Kelaniya.

C.A. Case No.1094/1999 (F)

D.C. Colombo Case
No.12437/MR

PLAINTIFF

-Vs-

1. The Attorney-General,
Attorney-General's Department,
Colombo 12.
2. Kelaniya Pradeshhiya Sabha,
Mahara, Kadawatha.
3. L.F.W. Balasuriya,
Oliyamulla, Negambo Road,
Peliyagoda.

DEFENDANTS

AND NOW BETWEEN

H.A.A. Perera,
Shop No.3, Temple Road,
Kelaniya.

PLAINTIFF-APPELLANT

-Vs-

1. The Attorney-General,
Attorney-General's Department,
Colombo 12.
2. Kelaniya Pradeshiya Sabha,
Mahara, Kadawatha.
3. L.F.W. Balasuriya,
Oliyamulla, Negambo Road,
Peliyagoda.

DEFENDANT-RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Athula Perera with Chathurani de Silva for the
Plaintiff-Appellant
Chaya Sri Naimmuni for the 1st Defendant-
Respondent
Aravinda R.I. Athurupane with Bernard
Hettiarachchi and Dr. Chamila S. Talagala for the
2nd Defendant-Respondent
Chandrasiri de Silva with Nadeera Werasinghe for
the 3rd Defendant-Respondent

Decided on : 25.10.2018

A.H.M.D. Nawaz, J.

By a plaint dated 07.03.1992, the Plaintiff-Appellant (hereinafter sometimes referred to as "the Plaintiff") instituted this action against the Attorney-General, Kelaniya Pradeshiya Sabha and a private individual named Balasuriya as the 1st, 2nd and 3rd Defendants respectively seeking, *inter alia*,

- a) damages in a sum of Rs.225,000, continuing damages in a sum of Rs.6,250 per month and interest thereon;
- b) an order that would direct the 3rd Defendant-Balasuriya to prohibit unauthorized sales which the Plaintiff claimed were taking place within the Sacred City around the Kelaniya Raja Maha Temple.

A perusal of the plaint brings out the following salient facts.

- i. The Plaintiff is in lawful occupation of a business premises within the Sacred City.
- ii. Any engagements in unauthorized businesses within the Sacred City are unlawful.
- iii. The 1st Defendant (Attorney-General) and 2nd Defendant (Kelaniya Pradeshiya Sabha) have permitted multiple vendors to conduct unauthorized business within the Sacred City.
- iv. The 1st and 2nd Defendants have assigned the 3rd Defendant with the tasks of
 - a) organizing the vendors who conduct unauthorized business;
 - b) allotting specific places from where these vendors could transact their business;
 - c) collecting revenues from these vendors; and
 - d) providing safeguards to the said vendors.

The plaint further averred that owing to the aforesaid conduct of the 1st and 2nd Defendants, the Plaintiff had suffered a loss of Rs.225,000 during the preceding three years to the institution of the action and was continuing to suffer a loss of Rs.6,250 per month.

The Attorney-General (the 1st Defendant) filed answer pleading that no cause of action accrued against him as the Town and Country Planning Department had taken all steps to prohibit unlawful business activities within the Sacred City.

The 2nd Defendant-Kelaniya Pradeshiya Sabha traversed in its answer that there were no exclusive rights granted to any person to conduct business within the Sacred City, and that the Defendants had no legal duty towards the Plaintiff to allow her any exclusive right to transact business within the Sacred City.

The 3rd Defendant-filing his answer denied that a cause of action had accrued to the Plaintiff and averred that he was only a commission agent appointed by the incumbent priest of the Kelaniya Temple and thus was responsible only to the incumbent chief priest of Kelaniya Temple and its Board of Trustees. It was the position of the 3rd Defendant that the Board of Trustees of the Kelaniya Temple had allowed traders to engage in business outside the Sacred City and had also collected authorized rentals from them on behalf of the Kelaniya Temple. In any event, he traversed that he was not bestowed with a special permission that enabled him to stop anyone doing business in the sacred area or outside the sacred area.

Thus the basis of this action, as I enumerated above, is that an area surrounding the Kelaniya Raja Maha Vihāra is demarcated and gazetted as the Kelaniya Raja Mara Vihara Urban Development Area and the area earmarked within it is the sacred area which is administered by the Department of Town and Country Planning. The Sacred City is set apart for Buddhist pilgrims but the 1st and 2nd Defendants have permitted unauthorized vendors especially on *Poya* Days to ply their wares within the Sacred City causing a loss of business to the Plaintiff.

This litigation went to trial on 42 issues and some of the relevant issues pivotal to the case could thus be set down.

3rd Defendant

The Plaintiff had not specified the damage that had been specifically caused to her and there are no rights set out in the plaint that could enable the Plaintiff to transact business in the area described in the plaint.

2nd Defendant's Issues

- i. Has the 2nd Defendant-Kelaniya Pradeshiya Sabha permitted the 3rd Defendant to collect rentals from the vendors conducting business within the Sacred City?

-Issue No.8

- ii. Whether the 2nd Defendant-Kelaniya Pradeshiya Sabha has caused or is causing any loss to the Plaintiff by allowing vendors to transact business within the Sacred City?
Issue No.II(iii)
- iii. Whether there was any contract between the Plaintiff and 2nd Defendant-Kelaniya Pradeshiya Sabha?

1st Defendant's Issue

Should the plaint be dismissed for want of jurisdiction as there is no cause of action and there is no right to claim compensation?

All these issues have been answered in favour of the Defendants and by a judgment dated 09.II.1999-the learned Additional District Judge of Colombo dismissed the action of the Plaintiff-Appellant specifically holding that she could not maintain the action.

What unfolded in the Plaintiff's case was that on Poya days, when large crowds gathered at the Sacred city, vendors plied their wares and transacted mobile sales. The Plaintiff showed that the authorities had made attempts to prevent these happenings but their efforts were futile. The testimony of the plaintiff, albeit lengthy, does not go to show a legal obligation that the defendants owed her, contractual or statutory. The evidence proffered by the Defendant does not disclose any cause of action against the 1st Defendant (the Attorney General) nor does her testimony point to a breach of contract or any breach of law on the part of 2nd and 3rd Defendants.

Upon a perusal of the plaint and the answer vis-à-vis the evidence led in the case a common thread that emerges is the unified stance that the Plaintiff did not disclose a cause of action in the plaint and the issues raised on behalf of the Defendants and the evidence does not establish any wrong that might found an action.

According to Section 5 of the Civil Procedure Code, a "cause of action" is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury".

A cause of action generally imports two things. viz., a right in the plaintiff and a violation of it by the defendant and a 'cause of action' means the whole cause of action, i.e., all the facts which together constitute the plaintiff's right to maintain the action.... In section 5, 'cause of action' is defined as 'the wrong for the redress of which an action may be brought.... The 'wrong' is the combination of the rights and its violation". *Per de Sampayo A. J. in Lowe vs. Fernando* 16 N.L.R 398 (F.B).

On the other hand, the term cause of action implies not only the wrong for the prevention or redress of which action may be brought, but connotes the grounds upon which such wrong arises and thus enable their destruction. *Amarasekera and Co. vs. Duckworth* (1909) 5 A.C.R 2.

In the case of an action on a contract, "the cause of action" consists of the making of the contract and of its breach in the place where it ought to be performed.

A failure to perform a contract is a wrong within the meaning of the definition of the expression "cause of action". English decisions as to the meaning of the expression "cause of action" were not followed-see *Pless Pol vs. Lady de Soysa et al* 9 N.L.R 316.

The case brought by the Plaintiff constitutes no cause of action within the confines of the above constructions and the learned Additional District Judge of Colombo reached the correct decision when he stated that no cause of action had accrued to the Plaintiff-Appellant against the Defendant-Respondents and in the circumstances I see no reason to disturb the conclusion of the learned District Judge and I proceed to affirm the judgment. The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL