

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

*In the matter of Contempt of Court
under and in terms of the Contempt of
a Court, Tribunal or Institution Act No.
8 of 2024 for the offence of Contempt
of Court of a Court of First Instance
and the Court of Appeal read together
with Article 105(3) of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.*

**CA Application No.
COC/13/2025**

1. Trico Maritime (Pvt) Ltd.

No. 50, K. Cyril C. Perera
Mawatha,
Colombo 13.

**2. Don. Chandrasoma Gazara
(Kannangara)**

No. 21, Chase Ridings, Enfield,
Middlesex EN2 7QQ,
United Kingdom.

Complainants

Vs.

**1. Worldwide Trigo Cargo (Pvt)
Ltd (Formerly Known as: Trygo
International Cargo (Pvt) Ltd)**

No.500/18, Ave Maria Mawatha,
Minuwangoda Road,
Negombo.

Supported on : 06.11.2025

Decided on : 22.01.2026

K. Priyantha Fernando, J.(CA)

The Complainants invoked the jurisdiction of this court by way of Affidavit dated 14th May 2025 under and in terms of sections 8 and 10 of the Contempt of Court, Tribunal or Institution Act seeking a Rule against the 1st to 5th Respondents for allegedly acting in willful disobedience to the Judgment dated 26th May 2023 delivered in action before the Commercial High Court bearing No. HC/Civil/14/2020/IP, and which decree was duly served on the Accused on or around 9th August 2024.

POSITION OF THE COMPLAINANT:

The Complainants submitted that the Commercial High Court Case bearing case No. HC/Civil/14/2020/IP was filed regarding the registered trademark of the 1st Complainant bearing No. 115674 which consists of the name ‘Trico’. The Complainant alleged that the 1st Respondent-Accused has been using the names ‘Trygo’ and/or ‘Trigo’ in signage and business cards, which the Complainants alleged are “misleadingly similar” to the 1st Complainant’s registered trademark.

The Learned Judge of the Commercial High Court granted enjoining Orders and the interim injunctions following an *inter partes* inquiry. However, as the 1st Respondent failed to file Answer, the matter proceeded *ex parte*. Subsequently, the Learned Judge granted the following permanent injunctions as prayed for by the prayers marked (c) and (d) in the Plaint. The Permanent injunctions granted restrain the 1st Respondent-Accused from using as trade mark, service mark or trade name the Registered Service mark No. 115674, the name ‘Trico’ or any mark confusingly similar to it in relation to similar goods and services that the mark has been registered for.

Following the *ex parte* judgment delivered by the Commercial High Court, the Respondents-Accused took no steps to have the judgment set aside in terms of Section

86(2) of the Civil Procedure Code, nor have the Respondents-Accused preferred an appeal.

It was further submitted that the Accused in the instant case are not entitled to contend the merits of the delivered judgment as the matter has been decided by the Commercial High Court which has the competent jurisdiction to do so, and as an appeal has not been preferred nor the decision set aside it has become binding on the Accused.

The Complainants state that the alleged contemptuous conduct of the Respondents-Accused can be evidenced through a Departmental Order dated 21st February 2025 bearing reference No. DOPL 1676 issued to the 1st Respondents-Accused. The document showcases the use of the Tradename “Trigo” in a cargo handling context and has been marked as ‘X7’. Furthermore, the Complainants allege that the 1st Respondent-Accused has displayed a board name, maintains a website, issues invoices and distributes flyers all showing the trade-name of the 1st Respondent-Accused as “Trigo”. Relevant documents evidencing the alleged contempt have been annexed and marked as ‘X8’, ‘X9’, ‘X10(a)’ and ‘X10(b)’ respectively.

Furthermore, the Complainants submitted that in accordance with section 14 of the Contempt of a Court, Tribunal or Institution Act No. 8 of 2024, Directors at the time of commission of the alleged contemptuous act shall be deemed as having committed them.

Moreover, the Complainants cited and relied on the following judgments which reiterate the importance of obedience to orders delivered by a court in upholding the effective administration of justice; **Pushpika Sanjeewa Samarakoon and another v Hon. Attorney General** CA No. 377/2015 (Rev) decided on 01.08.2019, **Croos and another v Darbrera** (1999) 1 SLR 205.

The Complainants relied on the following authority especially and submitted of its relevance to the instant case; **Spokes v Banbury Board of Health** (1865) LR 1 ER 42. The judgment reads;

“I think it is due to the dignity of the court, to say, that that is not the view which the Court can take of any of its orders; but that the simple and only

view is, that an order must be obeyed, and that those who wish to get rid of that order must do so by the proper course, an appeal...”

THE POSITION OF THE RESPONDENT:

The Respondents argued that an executing court cannot go behind a decree or question its legality, but that it is however able to entertain an objection that the decree in question is a nullity and can on such basis, refuse to execute the decree. In evidence of the same, the Respondent cited and relied on the case of **Sunder Dass v Ram Prakash** 1977 AIR 1201, 1977 SCR (3) 60.

The Accused brought to the attention of court that the trade mark of the 2nd Complainant was issued on the 20.12.2023 for a validity period of only 10 years. Furthermore, the Accused put forth that the trade mark of the 1st Respondent-Accused was filed in Kuwait on 24.04.2013, a date prior to the filing of the trademark of the Complainant. As such, the Accused argued that the 2nd Complainant was not entitled to obtain the trade mark marked H and obtain the relief which was obtained.

In support of the argument put forth by the Accused, the Supreme Court case of **Upali D.Welaratne v Jeyaraj Moses** S.C. Appeal No. 65/2003, decided on 27.05.2009 was relied on for the purpose of proving to this court that interim injunctions granted without the holding of an inquiry, was not a relief which was prayed for and hence was unjust and arbitrary. The Respondents further relied on the cases of **Sirimavo Bandaranaike v Times of Ceylon** (1995) 1 SLR 22 and have referred to page 665 of the 7th edition of Cornish on Intellectual Property in an attempt to evidence the Respondent's position on the manner in which findings are required to prove that the right of an owner of trade mark has been violated, and that it is of utmost importance that such is done only after having heard both parties; **Upali Welaratne v Moses**.

ANALYSIS AND CONCLUSION:

This Court has to decide whether a prima facie case of contempt of court has been established by the Complainant, for this Court to issue a summons under Section 9 (3) of the Contempt of Court, Tribunal or Institution Act No.8 of 2024 which reads as

follows:

‘9. (3) “The Supreme Court or the Court of Appeal, as the case may be, shall, after perusing the motion, and the affidavit, document or thing filed under subsection (1) and satisfying itself that a prima facie case of contempt of court has been established against the person alleged to have committed such contempt

a. cause a rule to be issued on such person signed by the Registrar of the Court, giving particulars in writing of the contempt of court with which he is charged;

b. direct that such rule, together with a copy of the document filed under subsection (1), be served personally on such person; and

c. fix a date for the hearing of the charge.’

Our Courts have held that it is necessary for the Courts to be satisfied that sufficient evidence has been placed by the Petitioners that an offence of contempt appears to have been committed before issuing summons.

In *Jayaratne v. Bandaranaike*, 69 NLR 184, H.N.G. Fernando, S.P,J (as he was then) held that;

“The learned Deputy Solicitor-General appearing on notice from this Court has referred to the fact that for a long period, the practice of the Court has been that a Rule Nisi for contempt of Court is only issued if there is available evidence which can lead the Court to conclude that an offence appears to have been committed. In the instant case, the only material which might lead to the opinion that the first Respondent made the statements attributed to her is the newspaper report of a speech alleged to have been made by her. There is no affidavit before the Court nor any sworn testimony before the Court alleging that the first Respondent made these statements which are attributed to her. On this material there is no legal ground upon which to base a conviction for the alleged offence of contempt. We are therefore in agreement with the

learned Deputy Solicitor-General that, in accordance with the practice of the Court, a rule should not now issue against the first Respondent on the present application. The application for rule against the first Respondent is therefore refused.”

The above dictum was considered by His Lordship Wimalachandra, J in *Media Image Ltd v. Dissanayake* 2006 (3) SLR 215 at page 220:

*“It seems to me that before taking steps to issue summons the Court must be satisfied that there is a prima facie case to frame contempt charges against the respondents on the material facts placed before Court. When a party institutes contempt proceedings it resembles instituting criminal proceedings in a Magistrate's Court by filing a private plaint. When a private plaint is filed the Magistrate is required to consider and form an opinion that there are sufficient grounds to proceed against the accused. In the case of *Dayawathie and Peiris VS. Dr. S. D. M. Fernando* and other at 338, Justice Jameel held that contempt proceedings even to punish for civil contempt are in the nature of criminal proceedings. Even if a contempt is not a crime it bears a criminal character”.*

ARE THERE SUFFICIENT EVIDENCE BEFORE THIS COURT TO ISSUE SUMMONS?

The Complainants have established that the Decree entered in accordance with the Judgment marked as ‘X3’ has been duly served on the 1st Respondent-Accused on 9th August 2024. (vide Decree and the Fiscal Report dated 20th August 2024 confirming the service thereof on the 1st Respondent annexed to the Affidavit dated 14th May 2025 marked as X4 and X5). Due compliance with the said Judgment and Decree requires the 1st Respondent-accused to restrain from using;

- a. Name ‘Trico’ or any mark or sign confusingly similar to it including the names ‘Trigo/Trygo’ as a trademark, service mark or trade name in relation to cargo handling, transport and warehousing services;
- b. The registered service mark No. 115674 or any mark or sign confusingly similar to it including marks or signs consisting of the names ‘Trigo/Trygo’ as a trademark,

service mark or trade name in relation to services for which the said Service Mark No. 115674 has been registered, namely cargo handling transport and warehousing services.

Despite the Decree having been duly served on the 1st Respondent-Accused, it has continued to use a confusingly similar trade name 'Trigo' for cargo handling, transport and warehousing services; continued to use trademarks/service marks consisting the name 'Trigo' confusingly similar to the name 'Trico' relating to cargo handling, transport and warehousing services and continued to use trademarks or service marks confusingly similar to the Service Mark No. 115674.

In proof of the above conduct of the 1st Respondent-Accused following documentary evidence has been produced before this Court:

- a. A Departmental Order dated 21.02.2025 No. DOPL 1676 issued to the 1st Respondent-Accused containing instructions relating to the operation of its Bonded Warehouse evidencing the use of Tradename consisting of the name 'Trigo' by the 1st Respondent marked as X7.
- b. An affidavit of one Sandaru Senanayake (marked as X8) who had obtained photographic evidence demonstrating the operation of a Bonded Warehouse by the 1st Respondent displaying a name board consisting of the Tradename 'Trigo'.
- c. Several screenshots taken in April 2025 of a website maintained by the 1st Respondent evidencing the use of a Tradename/Trademark/Service Mark consisting the word 'Trigo' marked as 'X9'.
- d. An invoice dated 29.03.2025 evidencing the use of a Tradename/Trademark/service mark consisting of the word 'Trigo' by the 1st Respondent or its agents or principals marked as 'X10a'.
- e. A flyer distributed by the 1st Respondent giving publicity to a promotional event organized in Dubai evidencing its use of a tradename of the word 'Trigo' marked as 'X10b'.

f. A compact disk containing a video recording of the opening ceremony of the Bonded Warehouse operated by the 1st Respondent marked as 'X11'.

Furthermore, the name and contact details of the 1st Respondent appears in the documents marked 'X7', 'X8', 'X9', 'X10a' and 'X10b' clearly proves that the aforesaid conduct is attributable to the 1st Respondent-Accused and none other.

Thus, it is the considered view of this Court that there is sufficient evidence placed by the Complainant that an offence of contempt appears to have been committed.

In the above circumstances, I am inclined to issue Rule on the 1st to 5th Respondent-Accused; to cause the said Rule to be served personally on them; and to fix a date for the hearing of the charges against them.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal