

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

In the matter of a Revision Application under  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Central Environmental Authority  
No. 104  
Denzil Kobbekaduwa Mawatha  
Battaramulla.

**Complainant**

**CA/PHC/APN/ CPA 046/25**

**HC of Avissawella Case No:**

**HCA/RE/12/2021**

**Vs.**

Teejay Lanka PLC  
D8-D14  
Seethawaka Export Processing Zone  
Avissawella.

**Accused**

**AND NOW**

Central Environmental Authority  
No. 104  
Denzil Kobbekaduwa Mawatha  
Battaramulla.

**Complainant-Petitioner**

**Vs.**

Teejay Lanka PLC

D8-D14

Seethawaka Export Processing Zone

Avissawella.

**Accused-Respondent**

**AND NOW BETWEEN**

Teejay Lanka PLC

D8-D14

Seethawaka Export Processing Zone

Avissawella.

**Accused-Respondent-Petitioner**

**Vs.**

1. Central Environmental Authority

No. 104

Denzil Kobbekaduwa Mawatha

Battaramulla.

**Complainant-Petitioner-Respondent**

2. The Attorney General

Attorney Generals Department

Colombo 12.

**Respondent**

**Before :**        **B. Sasi Mahendran, J.**  
                      **Amal Ranaraja, J**

**Counsel:**       Kalinga Indatissa PC with Mahesh Somaratne, Rashmini Indatissa, Razana Salih, G. Jayasundera and Ovini Hattutuwa for the Petitioner

**Supported**

**On:**             26.06.2025

**Order On:**     18.07.2025

### **ORDER**

**B. Sasi Mahendran, J.**

The Accused-Respondent-Petitioner, Teejay Lanka PLC( herein after referred to as ‘Petitioner’), filed this Revision Application seeking to challenge the order delivered by the Learned High Court Judge of the Provincial High Court of Western Province holding in Avissawella dated 15th May 2025 case no.HCA/RE/12/2021.

The Complainant-Petitioner-Respondent (herein after referred to as ‘complainant’) initially filed a private plaint before the Magistrate’s Court of Avissawella in Case No. 53767, seeking to initiate criminal proceedings under Section 136(1)(a) of the Code of Criminal Procedure Act. The basis of the complaint was that the Petitioner had allegedly:

- granted scheduled wastages as defined under the National Environmental Act without obtaining a waste management license;
- stored scheduled waste materials without a valid waste management license; and
- Transported scheduled waste in violation of the license requirement under the said Act.

Preliminary objections were raised on behalf of the Petitioner Company, challenging the legal standing and authority of the Complainant-Petitioner-Respondent to institute such proceedings. On 30th April 2021, the learned Magistrate upheld the objections and held that the Complainant lacked locus standi to file the complaint under Section 136(1)(a) of the Code of Criminal Procedure.

Being dissatisfied with the ruling, the Complainant-Petitioner-Respondent filed a Revision Application before the Provincial High Court of Avissawella on 11th November 2021. The Petitioner has taken some preliminary objections to maintain the said actions. One of the preliminary objections raised by the Petitioner was that the purported affidavit filed by the Complainant contradicts the Court of Appeal (Appellate Procedure) Rules 1990. Upon hearing the matter, the learned High Court Judge, on 15th May 2025, overruled the objections raised by the Petitioner and allowed the revision application.

The Petitioner challenges the said order on multiple grounds, including the assertion that the learned High Court Judge misdirected himself on critical legal principles and failed to appreciate procedural defects.

On 26 June 2025, the matter was taken up for support, during which counsel for the petitioner submitted to the court that the complainant-petitioner-respondent had failed to file the requisite affidavit along with the petition in the Provincial High Court of Awissawella, thereby contravening the Court of Appeal (Appellate Procedure) Rules, 1990. Although this procedural lapse was duly brought to the attention of the High Court, the objection was not duly considered. Upon examining the case brief, it is observed that the affidavit submitted by the complainant was affirmed on 08 November 2021, whereas the petition bears the date 11 November 2021. The purpose of submitting an affidavit alongside a petition is to substantiate the averments contained within the petition.

The issue is whether there is a proper affidavit filed by the complainant to proceed with the matter in the said High Court.

Rule 3 (1) (a) of the Court of Appeal (Appellant Procedure) Rules 1990, which states as follows:

3. (1) (a) 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 documents later. Where a petitioner fails to comply with the provisions of this rule, the Court may, ex mere mortu or at the instance of any party, dismiss such application.

**According to the Black's Law Dictionary, 11th edition**

#### **Affidavit**

A voluntary declaration of facts written down and sworn to by a declarant, usu. Before an officer authorized to administer oaths. A great deal of evidence is submitted by affidavit, esp. in pretrial matters such as summary-judgment motions.

**A Commentary on Civil Procedure Code and Civil Law in Sri Lanka, Volume I at page 843, by U.L. Abdul Majeed**

“An Affidavit means a solemn assurance of a fact known to the person who states it, and sworn to as his statement before some person in authority as a Judge, Magistrate, or a justice of the peace or a Commissioner of the Court or a Commissioner for Oaths.

Accordingly, the declarant making the declaration must possess personal knowledge of the facts stated in the affidavit.

Section 181 of the Civil Procedure Code further provides that

“Affidavits shall be confined to the statement of such facts as the declarant is able, of his own knowledge and observation, to testify to, except on interlocutory applications in which statement of his belief may be committed, provided that reasonable grounds for such belief are set forth in the affidavit.”

The wording in the said rule “ together with an affidavit in support of the averments therein” is also available in section 757 (1) of the Civil Procedure Code.” Section 757 (1) read as follows.

757. (1) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter shall be made by petition duly stamped, addressed to the Court of appeal and signed by the party aggrieved or his registered attorney. Such petition shall be supported by affidavit, and shall contain the particulars required by section 758, and shall be presented to the Court of Appeal by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced, exclusive of the day of that date itself, and of the day when the application is presented and of Sundays and public holidays, and the Court of Appeal shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled the Court of Appeal shall reject it. The appellant shall along with such petition, tender as many copies as may be required for service on the respondents.”

The above section was referred by **Andrew Somawansa, J (P/CA) in International Dresses (Pvt). Lts. V. Municipal Council of Moratuwa, 2006 (2) SLR 203 at page 204, Andrew Somawansa, J (P/CA) held that;**

“When this application was taken up for inquiry counsel for the defendants-respondents took up three preliminary objections to the maintainability of this application.

However, on an examination of the affidavit tendered in support of the petition, it is apparent that it does not comply with the mandatory provisions contained in section 183A of the Civil Procedure Code for nowhere in the affidavit is it stated that declarant has personal knowledge of the facts affirmed by him nor does he swear or affirm that he deposes from his own personal knowledge of the matters therein contained. Facts are stated by the plaintiff- petitioner company and not by the declarant as averred in paragraphs 4,9 and 10 of the affidavit. In effect the supporting affidavit is a statement of fact stated by the plaintiff-petitioner company converted to an affidavit by the addition of a verifying clause, which is a violation of the provisions contained in section 182 of the Civil Procedure Code, which reads as follows:

“A petition stating facts of observation and belief is not converted into an affidavit by the addition of a verifying clause, an affirmation or oath, to the effect that the statements in the petition are true”

In the case of **Simon Fernando vs. Goonasekera**, it was held:

”An affidavit must be confined to a statement of such facts as the declarant is able of his own knowledge and observation, to testify to. An exception is made in the case of an interlocutory affidavit in which a statement regarding his belief may be admitted provided reasonable grounds for such belief be set forth in the affidavit”

For the foregoing reasons, my considered view is that the plaintiff-petitioner has failed to tender a valid supporting affidavit in law and in the circumstances, the plaintiff-petitioner cannot maintain this instant application for leave.”

**Nagananda Kodithuwakku v. Chandana Sooriyabandara and others, CA WRT 137/2022, Decided on 07.08.2023, Sobhitha Rajakaruna J.** held that;

“The purported supporting affidavit of the Petitioner submitted along with the Petition dated 01.04.2022 seems to have been affirmed on 01.04.2021 in Colombo and it has been attested by a Notary Public/ Commissioner for Oaths. This clearly demonstrates that the Petition of the Petitioner in the instant Application was not in existence when the said affidavit was affirmed on 01.04.2021. Superior Courts

have persistently decided that the place and the date on which an affidavit is signed are essential elements of an affidavit.

The vital requirement according to the above Rules is to submit an affidavit in support of the averments of the Petition and as such, the said affidavit dated 01.04.2021 cannot be considered as an affidavit submitted in support of the Petition dated 01.04.2022. The Supreme Court considered an identical issue in *Rovlin Fernando v. W.A. Christian Gamini Fernando and others* SC/APPEAL No.18A/09 decided on 04.03.2016 and decided that the affidavit in question cannot be considered as an affidavit supporting the respective petition. Similarly, a reference has been made in the said case to the decision in *Thiyagarasa v. Arunodayam* [1987] 2 Sri L.R. 184 in which the court has concluded that ‘unlike a notarially executed deed, an affidavit is sworn evidence and the wrong date may not vitiate a deed but it affects the validity of an affidavit.’”

No material evidence has been tendered to Court by the Petitioner to consider this defect as a clerical error effected either by the Petitioner or the Notary. It is the duty of the Notary/ Justice of Peace/ Commissioner for Oaths to read over and explain the contents of the affidavit to the affirmant before signing it. Had it been properly read over and explained to the Petitioner by the relevant Notary/ Commissioner for Oaths, the Petitioner sometimes would have identified this issue. Thus, there is no option other than to assume that the Notary/ Commissioner for Oaths has not duly read over and explained the contents to the Petitioner before signing the affidavit.

Hence, I am compelled to conclude that the Petitioner has violated the provisions of the said Rule 3(1)(a) of the Court of Appeal Rules by not submitting a duly affirmed affidavit in support of the averments of the Petition dated 01.04.2021. Superior Courts have constantly held that the Supreme Court or Court of Appeal Rules are imperative.”



Given the aforementioned facts and judgments, we hold that the affidavit in question cannot be considered as one supporting the petition, as contemplated under Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990.

My considered view is that the Learned High Court judge of Awissawella has failed to consider the preliminary objection taken by the petition with regard to the affidavit. The objection raised by the Petitioner was that the affidavit filed in support of the Revision Application before the High Court was dated three days prior to the date of the petition itself. This indicates that the affidavit could not have been made in support of a petition that did not yet exist. The Learned High Court Judge has failed to correctly identify the affidavit objected to.

We are of the view that the Petitioner has sufficiently demonstrated that the order issued by the Learned High Court Judge is both erroneous and procedurally irregular. Accordingly, notice is issued to the respondent.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**