

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

In the matter of an Appeal in terms of Article 138
of the Constitution of the Democratic Socialist
Republic of Sri Lanka

Officer in Charge,
Police Station, Alawwa.

Complainant

Vs.

W.M Robert Gunawardane,
Udakekulawala, Bujjomuwa, Alawwa.

**Court of Appeal case no.
CA/PHC/159/2006**

1st Party Respondent

**H.C. Kegalle case no.
1957/Rev**

H. Podiappuhamy,
Siyambalaapitiya, Bujjomuwa.

**M.C. Warakapola case
no. 7140**

W.M. Abeypala,
Udakekulawala, Bujjomuwa, Alawwa

Intervenient of the 1st Party Respondent.

W.M. Amarasinghe,
Kekulawala, Bujjomuwa.

2nd Party Respondent

And

W.M. Amarasinghe,
Kekulawala, Bujjomuwa.

2nd Party Respondent Petitioner

Vs.

W.M Robert Gunawardane,
Udakekulawala, Bujjomuwa, Alawwa.

1st Party Respondent Respondent

H. Podiappuhamy,
Siyambalaapitiya, Bujjomuwa.

W.M. Abeypala,
Udakekulawala, Bujjomuwa, Alawwa

**Intervenient of the 1st Party Respondent
Respondents.**

And Now

W.M Robert Gunawardane,
Udakekulawala, Bujjomuwa, Alawwa.

**1st Party Respondent Respondent
Appellant**

Vs.

W.M. Amarasinghe,
Kekulawala, Bujjomuwa.

**2nd Party Respondent Petitioner
Respondent**

H. Podiappuhamy,
Siyambalaapitiya, Bujjomuwa.

W.M. Abeypala,
Udakekulawala, Bujjomuwa, Alawwa

**Intervient of the 1st Party Respondent
Respondent Respondents.**

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Parties absent and unrepresented.

Decided on : 08.12.2016

L.T.B. Dehideniya J.

This is an appeal filed by the Appellant personally against an order of the learned High Court Judge of Kegalla. The Appellant being paid the brief fees after notice, the briefs were prepared and the parties were noticed again to list the case for argument. The parties were absent and unrepresented. The Court reissued the notices but the result was the same. Thereafter the Court fixed the matter for judgment. The notices never returned undelivered.

The police filed information in the Magistrate Court Warakapola on a land dispute threatening the breach of the peace. The dispute was obstructing a threshing floor and the access road. The learned Magistrate after filing the affidavit, documents and written submissions determined that the threshing floor and the road has been obstructed and ordered that the 1st party Respondent Respondent Appellant is entitle to use them. Being aggrieved by the said order, the 2nd Party Respondent Petitioner Respondent (the Respondent) moved in revision in the High Court of Kegalla. The learned High Court Judge after considering the relevant dates held that the learned Magistrate erred in deciding that the Appellant is entitle to regain the possession of the threshing floor and the road

because the first information filed in Court after two months of the purported obstructions and set aside the order of the learned Magistrate.

The Appellant personally presented this appeal against the said order but did not participate in the hearing.

The Appellant made the first complaint to the police on 17.06.2003 stating that the road leading to the threshing floor has been closed. The police filed the first information in the Magistrate Court of Warakapola on 15.09.2003 that is after two months from the date of the first complaint and definitely after two months from the purported obstruction. The learned High Court Judge considered this situation and held that the learned Magistrate shouldn't have entertained this application. The learned High Court Judge further considered that this was a pong lasting dispute because the parties have gone before the Agrarian Services Authorities and sought relief before coming to Court and failing only they have come to Court. Therefore the learned High Court Judge expressed her doubt about the threat to the breach of the peace. The learned High Court judge considered all the circumstances before making the order.

I see no reason to interfere with the finding of the learned High Court Judge.

The appeal dismissed without costs.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal