

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

Officer in Charge,
Police Station,
Elpitiya.

Complainant

**Court of Appeal Case No.
CA (PHC) 124/22**

Provincial High Court of Balapitiya
Case No. Rev 1052/22

Magistrate Court of Elpitiya Case
No. 9267

Vs.

1. Kumarawadu Pubudu Sampath
2. Halamba Udesh Madhuranga Mendis
3. Kumarawadu Hashan Madhuranga
4. Kaludewa Sadun Sampath de Soyza

All of, Galagoda, Kuligoda.

Accused

Sunil Nandasara Akuratiya
'Kalugala' (Kalugala Road),
Ambana, Kahaduwa.

Possession Holder of Vehicle & Pw 1

L.B. Finance PLC,
No. 275/75, Prof. Stanley Wijesundara
Mawatha,
Colombo 07.

Absolute Owner of Vehicle

Hewage Indrasiri Fonseka,
No. 142/5, Polwatta Road,
Poramba, Ambalangoda.

Registered Owner Vehicle & Pw 2

AND BETWEEN

Sunil Nandasara Akuratiya
'Kalugala' (Kalugala Road),
Ambana, Kahaduwa.

Possession Holder- Petitioner

Vs.

L.B. Finance PLC
No. 275/75, Prof. Stanley Wijesundara
Mawatha,
Colombo 07.

Absolute Owner - Respondent

Hewage Indrasiri Fonseka,
No. 142/5, Polwatta Road,
Poramba, Ambalangoda.

Registered Owner - Respondent

1. Kumarawadu Pubudu Sampath,
Galagoda, Kuligoda.

1st Accused – Respondent

2. Halamba Udesh Madhuranga Mendis,
Galagoda, Kuligoda.

2nd Accused – Respondent

3. Kumarawadu Hashan Madhuranga,
Galagoda, Kuligoda.

3rd Accused – Respondent

4. Kaludewa Sadun Sampath de Soyza,
Galagoda, Kuligoda.

4th Accused – Respondent

Officer in Charge,
Police Station,
Elpitiya.

Complainant- Respondent

Hon. Attorney General,
Attorney General's Department.
Colombo 12.

Respondent

AND NOW BETWEEN

Sunil Nandasara Akuratiya
'Kalugala' (Kalugala Road),
Ambana, Kahaduwa.

**Possession Holder – Petitioner- Appellant
Vs.**

L.B. Finance PLC,
No. 275/75, Prof. Stanley Wijesundara
Mawatha,
Colombo 07.

Absolute Owner - Respondent- Respondent

Hewage Indrasiri Fonseka,
No. 142/5, Polwatta Road,
Poramba, Ambalangoda.

Registered Owner – Respondent- Respondent

1. Kumarawadu Pubudu Sampath,
Galagoda, Kuligoda.

1st Accused Respondent – Respondent

2. Halamba Udesh Madhuranga Mendis,
Galagoda, Kuligoda.

2nd Accused Respondent – Respondent

3. Kumarawadu Hashan Madhuranga,
Galagoda, Kuligoda.

3rd Accused Respondent – Respondent

4. Kaludewa Sadun Sampath de Soyza,
Galagoda, Kuligoda.

4th Accused Respondent – Respondent

Officer in Charge,
Police Sation,
Elpitiya.

Complainant- Respondent- Respondent

Hon. Attorney General,
Attorney General's Department.

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Tharindu Kavirathna for the Appellant.
Asanka Ranwala instructed bt Wikrama Punchihewa for the 1st Respondent.
Kelum Maithipala and Sahan Kulathunga for the Registered owner- Respondent.

Argued: 17.12.2025

Written submissions tendered on: 03.09.2025 & 20.02.2026 by Possession Holder – Petitioner-Appellant
03.03.2026 & 03.09.2025 by Registered Owner-Respondent-Respondent
10.10.2025 & 24.02.2026 by Absolute Owner – Respondent-Respondent

Judgment Delivered: 05.05.2026

Thotawatte, J.

Introduction

This appeal arises from the order dated 22 June 2022 of the learned Judge of the High Court of the Southern Province holden at Balapitiya made in Revision Application No. Rev/1052/22, whereby the learned High Court Judge affirmed the interlocutory order of the learned Magistrate of Elpitiya in Case No. 9267 directing the temporary release upon the execution of a bond, of the vehicle bearing registration No. SP HI 9009 (hereinafter

sometimes referred to as the “vehicle”), which had been taken into custody in connection with the main proceedings before that Court, to the Absolute Owner-Respondent-Respondent (hereinafter sometimes referred to as the “Absolute Owner”).

The description of the parties in the caption of the original petition of appeal, being in the Sinhala language and having regard to the manner in which it is drafted, does not permit an exact translation into English. Accordingly, for the purposes of this judgment, the Court has adopted the caption as set out by the Appellant in his written submissions.

History and Factual Matrix

The case No. 9267 had been instituted consequent to action taken by the 1st to 4th Accused-Respondent-Respondents (hereinafter sometimes referred to as the “Accused”) on behalf of the Absolute Owner to repossess the vehicle upon alleged default in the payment of lease rentals under a finance lease facility.

The Person who has described himself as the Possession Holder–Petitioner–Appellant (hereinafter sometimes referred to as the “Appellant”) claims that he was in physical possession of the vehicle at the time of repossession.

Upon allegations that the repossession had been affected in circumstances occasioning resistance and a breach of the peace, and in a manner alleged to be inconsistent with the procedure contemplated under the Finance Leasing Act, the Accused had been charged before the Magistrate Court of Elpitiya under Sections 332 and 380 of the Penal Code for wrongful restraint and robbery (charge sheet appearing at page 65 of the brief).

Accordingly, the vehicle was taken into police custody in connection with the said criminal proceedings and was thereafter produced before the Magistrate’s Court of Elpitiya as a production.

The existence of a finance leasing agreement with regard to the said vehicle between the Absolute Owner and the Registered Owner-Respondent-Respondent (hereinafter sometimes referred to as the “Registered Owner”) is not contested in this Appeal. Under the said arrangement, the Absolute Owner, being a registered finance leasing establishment, retained proprietary rights in the vehicle while granting possession and use thereof to the Registered Owner subject to the terms and conditions of the lease.

Before the conclusion of the aforesaid criminal proceedings, the learned Magistrate of Elpitiya, upon a request made by the Registrar of the Magistrate's Court to remove the vehicle from the Court premises, caused notice to be issued on all concerned parties and, having considered the competing claims thereto, made an order that the vehicle be released to the Absolute Owner subject to the execution of a bond.

The Appellant, whose claim in respect of the vehicle is founded solely upon his possession thereof at the time the vehicle was taken by the Accused, asserts that he was neither present nor afforded an opportunity of being heard when the said matter was taken up for consideration. Being dissatisfied with the order of the learned Magistrate dated 08.03.2022, the Appellant thereafter invoked the revisionary jurisdiction of the Provincial High Court.

Progression of Litigation Proceedings Before High Court

The learned High Court Judge dismissed the revision application on the basis that the order of the learned Magistrate releasing the vehicle to the Absolute Owner subject to the execution of a bond did not disclose any illegality, jurisdictional defect, or procedural irregularity warranting the exercise of revisionary jurisdiction. The learned High Court Judge observed that the Magistrate had acted within jurisdiction in determining interim custody of the vehicle, had afforded an opportunity to the interested parties to present competing claims, and had exercised discretion in a manner consistent with the statutory framework governing the disposal of productions. In these circumstances, the learned High Court Judge concluded that the grounds urged in revision not amounted to exceptional circumstances and accordingly dismissed the application declining to issue notices.

Being aggrieved by the said order of the learned Judge of the High Court the Appellant has filed the present appeal against that order.

Reliefs Sought Before the Court of Appeal

The Appellant has preferred the present appeal *inter alia* seeking:

1. To set aside the order of the learned High Court Judge
2. To vacate the order of the learned Magistrate
3. To grant custody of the vehicle to the Appellant

Grounds Urged by the Appellant

The Appellant has urged several grounds in support of the present appeal, the principal among which may be summarized as follows:

1. That the learned Magistrate erred in law in directing the release of the vehicle to the Absolute Owner without affording the Appellant a full and fair opportunity to be heard.
2. That the Appellant, being in possession of the vehicle at the relevant time, had a lawful possessory interest which ought to have been recognized by the learned Magistrate.
3. That the learned Magistrate failed to properly evaluate the documentary material relied upon by the Appellant in support of his claim to possession.
4. That the learned High Court Judge erred in law in declining to interfere with the order of the learned Magistrate despite alleged procedural irregularities.
5. That the impugned orders resulted in substantial prejudice to the Appellant and therefore warrant appellate intervention.

Material Observation

The paragraph reproduced below appears in the Written Submissions of the Possession Holder–Petitioner–Appellant dated 03.09.2025 at what appear to be Page 04.

According to the summery statement of registered owner of vehicle mentioned that subjected vehicle belonged to Appellant and for immidiate cash flow, He requested to Appellant to lend his vehicle to registered owner to get a lease under the LB Finance. How ever the registered ownere failed to repay the lease amount and the Appellant started to pay on behalf and use the vehicle for his personal transportations.

The meaning sought to be conveyed by the above paragraph is unclear. However, it is to be noted that, in the course of oral submissions before this Court, learned Counsel for the Appellant submitted that the vehicle belonged to the Appellant and had been given to the Registered Owner.

In that context, it is further to be observed that, although the Registered Owner has explained the existence of a finance leasing arrangement with the Absolute Owner, no material has been placed before the Court to explain the Appellant's claim with regard to the said vehicle other than the fact the Appellant was using it at the time. As such the Appellant's claim over the remains that of a mere user.

Position of the Absolute Owner

The Absolute Owner, in resisting the appeal, contends that the learned Magistrate acted within the powers conferred by law in directing the release of the vehicle. It is submitted that, under the Finance Leasing Act, No. 56 of 2000, (hereinafter sometimes referred to as the "Leasing Act"), the Absolute Owner, as lessor, retains proprietary rights in the leased equipment and is entitled to recover possession upon default, and that the Appellant, not being the registered owner nor vested with proprietary rights under the lease, lacks standing to challenge such release. It is further contended that the learned High Court Judge correctly declined to exercise revisionary jurisdiction in the absence of exceptional circumstances.

Legal Framework

The determination of the present appeal requires consideration of the statutory provisions governing the proprietary rights arising under finance leasing arrangements and the powers of the Magistrate's Court in relation to property produced before the Court.

Under the Leasing Act, a finance lease is an arrangement whereby possession and use of equipment are transferred to the lessee while ownership remains vested in the lessor. Section 15 of the Leasing Act obliges the lessee to return the equipment upon termination or expiry of the lease, failing which the lessor is entitled to recover possession thereof. Further, Section 25 of the Leasing Act reinforces the entitlement of the lessor to recover possession of leased equipment in accordance with the procedure recognized by law, thereby preserving the proprietary superiority of the lessor notwithstanding physical possession by another party.

Section 431(1) of the Code of Criminal Procedure Act No. 15 of 1979 (hereinafter sometimes referred to as the "CCP Act"), vests in the Magistrate a general discretionary power to make appropriate orders regarding the custody of property produced before the

Court pending the conclusion of proceedings, such determination ordinarily being guided by considerations of preservation of the property and the competing claims placed before the Court. In contrast, Section 433A of the CCP Act introduces a specific statutory rule applicable to vehicles subject to hire purchase or finance leasing arrangements, whereby the person registered as the absolute owner under the Motor Traffic Act is deemed, for the purposes of this Chapter, to be the person entitled to possession of such vehicle. Accordingly, while Section 431(1) of the CCP Act, leaves the question of interim custody to judicial discretion, Section 433A of the CCP Act operates to statutorily identify the person *prima facie* entitled to possession in the limited class of cases involving leased or hired vehicles.

Standing of the “Possession Holder”

The Appellant claims entitlement to retain possession of the vehicle solely on the basis of physical possession at the relevant time. However, under the statutory scheme governing finance leasing arrangements, proprietary rights remain vested in the lessor notwithstanding possession by the lessee or any person claiming through the lessee. In the present case, the Absolute Owner, as lessor, established proprietary entitlement to the vehicle, whereas the Appellant, being neither the registered owner nor the lessor, failed to demonstrate any proprietary right capable of displacing the superior title of the Absolute Owner. The Appellant’s possession must therefore be regarded as subordinate to the proprietary entitlement of the Absolute Owner.

Analysis of Grounds

At the outset, it is necessary to identify the true legal character of the dispute before this Court. The controversy does not concern the final determination of proprietary rights but relates to the interim custody of a vehicle produced before the Court in the course of criminal proceedings. The order made by the learned Magistrate was therefore provisional and custodial in nature.

The material before the Court establishes that the Absolute Owner, being the lessor under a finance leasing arrangement, claimed ownership of the vehicle in that capacity. The statutory scheme governing finance leasing arrangements recognizes the proprietary superiority of the lessor and preserves the right to recover possession of leased equipment upon default or termination. In contrast, the Appellant has not demonstrated any

proprietary title or lawful entitlement capable of displacing the superior claim of the Absolute Owner. His connection to the vehicle is confined to mere possession at the relevant time, without proof of any legal right arising under the lease.

In those circumstances, and having regard to the limited nature of the Appellant's connection to the vehicle, it was not necessary for the learned Magistrate to afford the Appellant an opportunity of being heard prior to directing interim custody of the vehicle to the Absolute Owner. The order made was directed solely to interim custody and did not determine any substantive rights in favour of either party.

Moreover, even assuming without prejudice to the previous position that there had been a procedural irregularity in the manner in which the order was made, no demonstrable prejudice has caused to the Appellant justify appellate interference. The Appellant has failed to establish any legally recognizable interest in the vehicle capable of being adversely affected by the impugned order.

The learned High Court Judge, exercising revisionary jurisdiction, correctly identified the absence of exceptional circumstances disclosing illegality, jurisdictional error, or miscarriage of justice, and properly declined to interfere with the order of the learned Magistrate. The discretionary order granting interim custody to the Absolute Owner, being consistent with the statutory framework recognizing the superior proprietary entitlement of the lessor, does not call for appellate intervention.

Accordingly, the grounds urged by the Appellant fail to disclose any error of law, jurisdictional defect, or a miscarriage of justice warranting interference by this Court.

Upon a consideration of the material placed before Court, I am satisfied that the learned Magistrate acted within statutory authority in directing the release of the vehicle to the Absolute Owner upon bond, and that the learned High Court Judge correctly declined to interfere in revision. The Appellant has failed to establish any legal entitlement superior to that of the Absolute Owner, and the grounds urged disclose no error of law, procedural irregularity, or circumstance warranting appellate interference with the concurrent findings of the learned Magistrate and the learned High Court Judge. Accordingly, the order of the learned High Court Judge affirming the order of the learned Magistrate directing the release of the vehicle to the Absolute Owner shall stand affirmed. Further, this Court is of the view that the present appeal has been pursued without any *bona fide* basis and in circumstances warranting the invocation of the appellate jurisdiction of this Court.

Accordingly, the appeal is dismissed, subject to costs fixed at Rs. 50,000/-, payable by the Appellant.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal