

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

Court of Appeal Case No:
CA/COC/0003/26

In the matter of an application for a ruling of Contempt of Court under in terms of the Contempt of Court, Tribunal, or Institution Act No. 8 of 2024 read together with Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mohamed Haniffa Mohamed Hamsa,
No. 307/B, Kariyappar Road,
Maruthamunai - 06.

PETITIONER

Vs.

Hon. Jayalakshi De Silva
No. 06, Ediriweera Avenue,
Dehiwala.

RESPONDENT

Before : **K. M. S. DISSANAYAKE, J.**
R. P. HETTIARACHCHI, J.

Counsel : M. A. Sumanthiran PC with Sivaruban
Sivanja, Abraham Prashath
Rajaratnam, Isainilavan Kannadas and
Achchala Senaviratna instructed by
A. L. Aazath for the Petitioner.

Respondent is absent and
unrepresented.

Supported on : 16.07.2026

Decided on : 02.10.2026

K. M. S. DISSANAYAKE, J.

Instant application has been made to this Court by the Petitioner by presenting a petition, together with an affidavit and the documents annexed thereto, marked 'P1' to 'P15' in support thereof, under and in terms of section 9(1)(c) of the Contempt of a Court, Tribunal or Institution Act No. 08 of 2024 (hereinafter called and referred to as "the Contempt of Court Act") to be read with Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as "the Constitution") urging that Rule be issued against the Respondent to appear before Court and show cause as to why she should not be punished for the charge of contempt of Court for knowingly, filing false and misleading affidavits in case No. CA/WRIT/0565/2021 thereby, misleading this Court and interfering with the due administration of justice, as morefully, enumerated in his petition. The learned President's Counsel for the Petitioner was heard in support of the instant application and hence, the order today.

In the light of the averments contained in the petition presented to the Court by the Petitioner, the contemptuous acts alleged to have been committed by the Respondent which had according to the Petitioner, constituted Contempt of Court, have arisen out of the evidence adduced by the Respondent on affirmation in her affidavits dated 16.06.2022 and 10.10.2023 in an action bearing No. CA/WRIT/0565/2021 brought by the Petitioner before this Court designating the Respondent hereto, as the 4th Respondent thereto, and the Petitioner sets out the alleged contemptuous acts in the petition, particularly, in paragraphs 35 to 53 thereof, and they may be briefly, set out as follows;

Acting on instructions from the Respondent, the Counsel for the Respondent had made representations before this Court in the said Writ application specifically asserting that the Respondent never, ever had any

dealings with the Petitioner who being the Notary Public who executed the Deed of Transfer in question referred to in the petition and denied having called him at any time whether over the phone or otherwise; and that the Petitioner verily believes that the Respondent's said denial, made in her affidavits under oath and through counsel, was a deliberate falsehood, and intended to mislead this Court, on the presumption that the lapse of nearly a decade would have precluded the Petitioner from producing any proof or corroborative material in support of his assertion; and that however, in direct response to the Respondent's false denial, the Petitioner tendered to this Court incontrovertible and official call detail records (CDRs) (**P3** and **P4**), duly certified by the respective telecommunications service providers, Mobitel and Dialog pertaining to the mobile numbers of both the Petitioner and the Respondent and they (**P3** and **P4**) conclusively, establish that a telephone call did in fact originate from the Respondent's number (0718084195) to the Petitioner's number (0777578359) on the 12th of November 2010, precisely as pleaded in the Petition; and that the production of those CDRs (P3 and P4) irrefutably disproves the Respondent's denial and substantiates the Petitioner's claim that the Respondent had improperly interfered with his professional duties as a Notary; and that upon being confronted with the aforesaid incontrovertible documentary evidence, the Respondent, in a subsequent affidavit filed in the same proceedings, deliberately altered her position and advanced a new, misleading, and manifestly false version of events with the intent of deceiving this Court; and that having earlier unequivocally denied ever placing any call to the Petitioner, she thereafter averred that she was "unaware whether a third party had used such device to contact and/or approach the Petitioner," thereby seeking to evade responsibility for her prior false denial; and that the Respondent failed to make any contemporaneous complaint from 07.02.2011, being the date on which the Petitioner duly, informed the Criminal Investigation Department of the said telephone call requesting that the Deed not be registered, to the Police, the Bar Association, the Supreme Court, or the Judicial Service Commission, on the ground that the allegation was false and unfounded; and that, the Respondent has not stated that she made any inquiry from her

father, her husband, or any other person as to whether they had used her telephone, nor has any affidavit been filed asserting that any such inquiry was made; and that telephone records (P3 and P4) further establish that on the same day and within the same time-frame, calls were made from the Respondent's telephone to close family members, all routed through the same cellular tower location which establishes that the Respondent was in possession and control of the telephone at the material time; and that, the length, timing, and context of the said conversation are wholly, inconsistent with the Respondent's subsequent sworn position that she had no involvement in the transaction, had not contacted the Petitioner, or that some unidentified third party may have used her telephone; and that, in light of these events, the Respondent could not reasonably have forgotten either the telephone call made by her on 12 November 2010 or the prolonged and confrontational conversation with Muralitharan on 13 November 2010; and that the Respondent's sworn denial of the telephone call, followed by her shifting explanation that an unidentified third party may have used her device, is therefore a deliberate and calculated falsehood advanced to evade responsibility for her own misconduct; and that, at all material times, including on 12 November 2010 and at the time of swearing the affidavit referred to above, the Respondent was a State Counsel attached to the Attorney General's Department of Sri Lanka and by reason of her office and legal training, the Respondent was fully aware of: a) her legal obligation to state the truth on oath; b) the evidentiary nature of affidavits tendered to court; and c) the serious consequences of making false statements to court; and that the Respondent knew, or at the very least had reason to believe, that her statements denying the telephone call and denying knowledge of the transaction were false; and that the Petitioner respectfully submits that the aforesaid conduct of the Respondent constitutes a serious affront to the authority of this Court and amounts to a grave contempt of court, in that she has wilfully attempted to mislead the Court through inconsistent and false statements made under oath; and that making a false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice; and that hence, the essential

elements of giving false evidence are present, namely; a) a legal obligation to state the truth on oath; b) the making of statements which were false in fact; and c) knowledge of their falsity or belief that they were untrue; and that the offence of contempt of court is complete once a wilful falsehood with a tendency to mislead is placed before court, irrespective of whether the attempt ultimately succeeds; and that, the Respondent's conduct discloses a calculated attempt to obstruct this Court from arriving at a correct judicial determination;

It is in this factual context, I would now, propose to examine the law governing the offence of Contempt of Court in Sri Lanka.

Article 105(3) of the Constitution enacts thus;

“(3) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.”

As provided for by the proviso to Article 105(3) of the Constitution, Contempt of Court Act was enacted by the Parliament, conferring upon such other Court, Tribunal or Institution the power and/or the authority to punish for contempt of itself.

The preamble to the Contempt of Court Act reads thus;

“An act to provide for the uniform application of the law relating to the contempt of a court, tribunal or institution; to provide for the procedure in punishing the contempt of a court, tribunal or institution; and to provide for matters connected therewith or incidental thereto.”.

Section 2 of the Contempt of Court Act sets out the objects of the Act as follows;

“The objects of this Act shall be to-

- (a) uphold the dignity and authority of a court, tribunal and institution;
- (b) protect the due administration of justice;
- (c) ensure adherence to judicial directives;
- (d) preserve and maintain the effectiveness and impartiality of a court, tribunal and institution;
- (e) strike a balance between the right of expression, fair comment and compliance with judicial directives;

(f) set out with precision the ambit of contempt of a court, tribunal and institution; and

- (g) ensure the observance of, and respect for, the due process of law.”
- [Emphasis is mine]

In terms of section 2(f) of the Contempt of Court Act, one of the key objectives of the Act is to **set out with precision the ambit of contempt of a court, tribunal and institution;** [Emphasis is mine]

As provided for by section 2(f) of the Contempt of Court Act, section 3 thereof, lays down that, certain acts enumerated therein are deemed to be contempt of a court, a tribunal or institution and it may be re-produced as follows;

“(1) Save as provided for in any other written law and subject to the provisions of the Constitution, any person who commits an act or omission with intent to-

(a) bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or

(b) interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation,

commits contempt of a court, tribunal or institution, as the case may be.

(2) Save as provided for in any other written law and subject to the provisions of the Constitution, any person who does any of the following acts commits contempt of a court, tribunal or institution, as the case may be-

(a) wilful disobedience to any judgment, decree, direction, order, writ or other process of a court, tribunal or institution;

(b) wilful breach of an undertaking given to a court, tribunal or institution;

(c) expressing, pronouncing or publishing any matter that is false which, or doing any other act which-

(i) scandalizes or lowers the judicial authority or dignity of a court, tribunal or institution;

(ii) gravely prejudices, or unlawfully interferes with, the due course of any judicial proceeding; or

(iii) interferes with, or obstructs the administration of justice;

(d)

(i) use of any electronic device or other instrument for audio or visual recording or both, in a court, tribunal or institution, or bringing into a court, tribunal or institution any such device or instrument for the purpose of audio or

visual recording or both, without the leave of the court, tribunal or institution already obtained;

(ii) publication or transmission of an audio or a visual recording or both, of a proceeding or part of a proceeding of a court, tribunal or institution made by means of any electronic device or other instrument, or any such recording derived directly or indirectly from such device or instrument without the leave of the court, tribunal or institution already obtained;

(iii) use of any electronic device or other instrument, or publication or transmission of an audio or a visual recording or both, of a proceeding of a court, tribunal or institution, in contravention of any leave granted under sub-paragraph (i) or sub-paragraph (ii); or

(iv) tampering, altering or falsifying any audio or visual recording or both, of a proceeding of a court, tribunal or institution; or

(e) scandalizing a court, tribunal or institution, or a judge or judicial officer with intent to-

(i) interfere with the due administration of justice;

(ii) excite dissatisfaction in the minds of the public in regard to a court, tribunal or institution; or

(iii) cast public suspicion on the administration of justice.”

Section 6(1) of the Contempt of Court Act sets out the powers of the Supreme Court and the Court of Appeal to punish contempt of itself whether committed in its presence or hearing or elsewhere.

Section 6(1) thereof, enacts that; “The Supreme Court and the Court of Appeal shall have the power to punish for contempt of itself, whether committed in its presence or hearing or elsewhere.”.

Section 6(2) thereof, enacts that;

“Where the Supreme Court or the Court of Appeal, as the case may be, in the exercise of its jurisdiction as referred to in subsection (1), takes cognizance-

(a) of contempt of court committed in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 8; and

(b) of contempt of court committed otherwise than in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 9.”

Section 9 of the Contempt of Court Act sets out the procedure where Contempt of Court is not in the presence of the Supreme Court or the Court of Appeal and it enacts thus;

“9 (1) The Supreme Court or the Court of Appeal, as the case may be, may take cognizance of contempt of court committed against it, or in disrespect of its authority, other than contempt of court committed in its presence or hearing, on-

(a) its own motion;

(b) a motion filed by the Attorney-General, together with any document or thing in support of the motion; or

(c) a motion filed by any other person, together with an affidavit and any document or thing in support of the motion.

(2) Every motion or affidavit filed under subsection (1) shall set out the particulars of the contempt of court alleged to have been committed by the person alleged to have committed the contempt of court.

(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.

(4) On the date fixed for the hearing of the charge, the Attorney-General may lead the evidence of such witness relevant to the document filed under subsection (1), if necessary, subject to the right of cross-examination of the person charged with contempt of court.

(5) On the date fixed for the hearing of the charge, the person charged with contempt of court shall be afforded an opportunity to make his defence to the charge and shall be entitled to file an affidavit or to adduce evidence in his defence.

(6) The Supreme Court or the Court of Appeal, as the case may be, shall hear and determine the charge after considering the affidavit filed by the person charged with contempt of court or after hearing the evidence adduced by such person, as the case may be.

(7) Pending the determination of a charge under this section, the Supreme Court or the Court of Appeal, as the case may be, may direct that-

(a) the person charged with contempt of court under this section be detained in such custody as it may specify; or

(b) such person be released on bail subject to such conditions as it may deem fit to impose.”

The Petitioner in the averments in the petition, more particularly, in paragraphs 35 to 53 thereof, alleges that the Respondent has committed the offence of Contempt of Court as enumerated therein, under and in terms of the provisions of the Contempt of Court Act.

In light of the matters so averred by the Petitioner in the petition as enumerated above, the contemptuous acts alleged to have been committed by the Respondent that would according to the Petitioner, constitute the contempt of this Court, appear to come within the ambit of section 3(1)(a) and (b) of the Contempt of Court Act.

Hence, the threshold issue that would now, arise for our determination at this juncture, is whether this Court can satisfy itself upon a careful perusal of the application together with the affidavit and the documents annexed thereto, made to this Court by the Petitioner under section 9(1)(c) of the Contempt of Court Act that a *prima facie* case of Contempt of Court as enumerated by section 3(1) (a) or (b) of the Contempt of Court Act, has been established by the Petitioner in his petition against the Respondent alleged to have committed such contempt as required under section 9(3) of the Contempt of Court Act.

If this threshold issue can be answered in the affirmative only, this Court will cause a rule to be issued on the Respondent signed by the Registrar of this Court giving particulars in writing of the contempt of court, tribunal or institution with which he or she is charged as the case may be, as required by section 9(3)(a) of the Contempt of Court Act. [Emphasis is mine]

It is in this context, let me re-produce section 3(1) (a) or (b) of the Contempt of Court Act which reads thus;

“(1) Save as provided for in any other written law and subject to the provisions of the Constitution, any person who commits an act or omission with intent to-

(a) bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or

(b) interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation,

commits contempt of a court, tribunal or institution, as the case may be.”

The contemptuous acts constituting contempt of court as alleged by the Petitioner in his petition and as enumerated above, may be summarized as follows;

The Respondent has wilfully attempted to mislead the Court through inconsistent and false statements made under oath as enumerated above; and that making such false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice, and hence, the Respondent's conduct discloses a calculated attempt to obstruct this Court from arriving at a correct judicial determination.

Under section 3(1) of the Contempt of Court Act, a court, tribunal or institution should satisfy itself that, alleged act or omission has been committed by a person “**with intent to**” bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation. [Emphasis is mine]

Hence, it becomes manifest that, for the proper constitution of an offence of contempt of court under section 3(1) of the Contempt of Court Act, court, tribunal or institution must satisfy itself not only of the falsity of the statement made by the person alleged under oath or affirmation but also, must satisfy itself that, the false statement had been made by that person “**with intent to**” bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation. [Emphasis is mine]

Let me next, deal with the binding judicial precedents relevant and pertinent to the matter at hand.

In **Asnar vs. Andrew 15 NLR 406**, the appellant was, at the conclusion of the case, charged by the commissioner for giving false evidence by stating on oath or affirmation that the defendant signed the plaintiff's book when the account was looked into. The appellant admitted that his statement was untrue but stated, to quote his own words, "I admit that I lied but it happened a long time ago." On that, the learned Commissioner convicted him under section 800 of the Civil Procedure Code and sentenced him to two months rigorous imprisonment. It was held by the Supreme Court in appeal as follows;

"Now it has been held several times in this Court that a mere false statement on oath does not amount to a contempt of court punishable under section 800 of the Civil Procedure Code. A false statement may in 'some cases', be so transparently, false as to be disrespectful to the Court and so amount to a contempt. But a false statement unaccompanied by any special circumstances of this nature does not amount to a contempt of court within the meaning of part LX of the Civil Procedure Code."

In **Wickramasekera vs. Dingiri Banda 16 NLR 458**, the appellant, who was a witness, appealed from an order of the District Judge convicting him of contempt of Court and imposing on him a fine of Rs. 100. The alleged contempt, according to the District Judge, consists in prevarication. He records that the appellant is charged with "contempt of Court by trying to mislead it by prevarication," and the prevarication referred to here is thus set forth by the District Judge: "That he, on the 16th instant, denied that the Tambligahawatta, which had been transferred to him by a notarial deed, had been so transferred by the first defendant, and stated that she had no connection whatever with that transaction. It was held by the Supreme Court in appeal that,

"Now, deliberate prevarication no doubt, constitutes contempt of Court; but what is prevarication, and was the appellant guilty of prevarication, or

merely of making a false statement when giving evidence on oath? To prevaricate literally means **to shift or turn from one side to the other**. As commonly used, **it means to evade telling the truth, to shuffle, to quibble**. **The underlying idea is an artful mode of escaping the scrutiny of an inquirer by the use generally of loose and indefinite expressions. This being so, it is quite clear that the appellant was not guilty of prevarication. He was asked a certain question, and he gave a clear and definite though false answer.** That was not prevarication, and it follows that the conviction on the ground of prevarication cannot stand. Can it be said that the appellant is guilty of contempt in giving false evidence? **A Judge cannot be too careful and cautious in proceeding as for contempt against a witness who generally gives false evidence. If this course is freely pursued, some one witness or another may have to be punished for contempt of Court in almost every case. Ordinarily, a witness who gives false evidence in a Court of justice intends no contempt. Intention may, however, be presumed, and the witness may be guilty of contempt if the evidence is so transparently false as to give rise to a reasonable suspicion of an attempt on the part of the witness to trifle with the Court.** The position is clearly laid down by the Chief Justice in the case of Asanar v. Andrew. I cannot say that the answer given by the witness in the present case was evidence of the description mentioned above. I say nothing of the possible ways in which the witness might have been dealt with. I set aside the order appealed from. [Emphasis is mine]

The Petitioner states that the Respondent should be charged with contempt of Court by trying to mislead this Court by prevarication, and the prevarication referred to by the Petitioner in the instant application is thus, set forth by him in his petition, more particularly, in paragraphs 35 to 53 thereof as morefully, enumerated above, in that it was alleged that, the Respondent has wilfully attempted to mislead the Court through inconsistent and false statements made under oath as enumerated above; and that making such false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice,

and hence, the Respondent's conduct discloses a calculated attempt to obstruct this Court from arriving at a correct judicial determination.

Hence, in the instant application too, the alleged contempt, according to the Petitioner, consists in prevarication.

It is my view that, the prevarication is implicit in section 3(1) of the Contempt of Court Act too, inasmuch as the legislature deliberately, uses therein, the phrase “**with intent to**” as being direct and essential corollary for the constitution of a charge of contempt of court thereunder, for; as a general rule a mere utterance of a false statement under oath or affirmation alone, would not amount to contempt of court under section 3(1) of the Contempt of Court Act, unless, it is accompanied by a clear intention to bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation for; the Legislature in incorporating the phrase “**with intent to**” into the section 3(1) of the Contempt of Court Act clearly, intended that it was so as being direct and essential corollary for the constitution of a charge of contempt of court thereunder. [Emphasis is mine]

Hence, it becomes manifest upon a careful scrutiny of section 3(1) of the Contempt of Court Act and the binding judicial precedents of the Supreme Court as cited above, that, two essential ingredients must be present at the same time for the constitution of an offence of a contempt of court under section 3(1) of the Contempt of Court Act, namely;

- a) Commission of an act or omission;
- b) Commission of an act or omission as such must be in such a nature that the person alleged to have committed the offence of a contempt of a court, tribunal or institution, had by the commission of the alleged act or omission, clearly, and unequivocally, intended to bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation.

Now, the pertinent question is whether this Court has satisfied itself after a careful perusal of the petition, verifying affidavit and the documents annexed thereto, that a *prima facie* case of contempt of court has been established by the Petitioner against the Respondent alleged to have committed such contempt.

The Petitioner describes in his petition “the act or omission” alleged to have been committed by the Respondent, to be the Respondent’s wilful attempt to mislead this Court through inconsistent and false statements made by her under oath as morefully, enumerated in his petition by the Petitioner as being the first direct and essential corollary for the constitution of a charge of contempt of court under section 3(1) of the Contempt of Court Act specified under limb a) above.

And, the making of such false statements by the Respondent to this Court in the said action knowing them to be false thereby, directly, interfering with the administration of justice, thus, obstructing this Court from arriving at a correct judicial determination in the said case, has been described by the Petitioner therein, as being the second direct and essential corollary for the constitution of a charge of contempt of court under section 3(1) of the Contempt of Court Act as specified under limb b) above.

Now, the pertinent question would be; **Is the Respondent guilty of prevarication by making those two statements on oath?**[Emphasis is mine]

It may now, be examined.

The Petitioner had in paragraph 29 of the petition dated 06.11.2021 (**P13**) presented by him to the Court of Appeal in instituting the said case bearing No. CA/WRIT/565/2021, stated as follows;

“The Petitioner states that on or around 12.11.2010, the Petitioner received a telephone call from the 4th Respondent, the daughter of the 3rd Respondent requested him not to tender the Deed of Transfer bearing no. 320 for registration stating that the Vendor has not been

paid the full consideration. The Petitioner explained to her that he could not consider his request as he had act in the best interest of his client and safeguard his right to priority by registration.”.

Apparently, in response to the averments so contained in paragraph 29 of the petition dated 06.11.2021 (**P13**) the Respondent had in paragraph 5(c) of her affidavit dated 10.06.2022, that had been furnished to the Court of Appeal in the said case, stated as follows;

“I have never ever called the petitioner nor met him in his capacity as a notary public”.

In response to averments in paragraph 5(c) of the affidavit of the Respondent, the Petitioner had in paragraph 41 of the counter-affidavit dated 21.01.2023 (**P13**) presented by him to the Court of Appeal in the said case bearing No. CA/WRIT/565/2021, stated as follows;

“Answering paragraph 5 of the said Statement of Objections of the 4th Respondent, I reiterate paragraph 29 and 30 of the Petition and state that the 4th Respondent called me on the 12th of November 2020 and requested me not to tender the said deed of transfer for registration for the reason that the vendor has not paid the full consideration. I informed her that I cannot accede to her request as I have to act in the best interest of my client. I specifically deny the averments contained in paragraph 5 (d) and I state that to the best of my knowledge and belief that the 4th Respondent's mobile number is 0718084195. This is evidenced by the telephone directory issued by the Attorney General's Department in the year 2015. A true copy of the relevant telephone directory containing the 4th Respondent's name and mobile number is annexed hereto marked 'X1'. My mobile number is 0777578359. This is evidenced by a mobile bill issued in my name marked as 'X2'. A copy of a mobile payment receipt relating to the mobile no. 0718084195 which is registered under the name of the 4th Respondent is marked as X3. I state that the 4th Respondent called me from her mobile no. 0718084195 to my mobile no. 0777578359 on the 12th of November

2010. The call lasted for two minutes and twenty-four seconds. By way further answer, I state that the 5th Respondent had made a complaint to the Periyaneelavani Police Station on 26th November 2022 alleging that an undue influence had been exerted on the Notary relating to the said land transactions. Consequent to the said complaint, the Police had filed a B report No. B/940/22 in the Magistrate's Court of Kalumanait with a view to carry out an investigation under the supervision of the Learned Magistrate of Kalmunai. Thereupon, the police requested the said Learned Magistrate to issue an order directing for a detailed report pertaining to the mobile number 0718084195 relating to the month of November 2010. Consequent to the said order, SLT Mobitel (formerly Sri Lanka Telecom) has filed a report setting out in detail of telephone calls of the outgoing and incoming calls relating to the said mobile number namely 0718084195 with regard to the month of November 2010. I annex hereto a certify copy of the case record in case no. B/940/22 containing the incoming and outgoing calls in with regard to mobile number 0718084195 which is registered under the name of the 4th Respondent marked as 'X4'. I also annex hereto the translation of the B-report marked as 'X5'."

The Respondent in response thereto, had in paragraph 21 of her further affidavit dated 10.10.2023, that had been furnished to the Court of Appeal in the said case, stated as follows;

"In response to statements contained in paragraph 41 of the counter affidavit of the Petitioner whilst denying the same I re-iterate my position as set out in my statement of objections and state that I did not contact the Petitioner and I am unaware of the accuracy of the statements and also I am unaware whether a third party had used such devise to contact and/or approach the Petitioner."

Hence, the Respondent in her further affidavit dated 10.10.2023, had while denying the statements contained in paragraph 41 of the counter affidavit of the Petitioner as quoted above, and re-iterating the position so adverted to by

her in her original affidavit dated 10.06.2022 as quoted above, stated that she did not contact the Petitioner and she was unaware of the accuracy of the statements and also she was unaware whether a third party had used such device to contact and/or approach the Petitioner.

It was on the said premise that the Petitioner asserted that the Respondent's sworn denial of the telephone call, followed by her shifting explanation that an unidentified third party may have used her device, was a deliberate and calculated falsehood advanced to evade responsibility for her own misconduct which constitutes a serious affront to the authority of this Court and amounts to a grave contempt of court, in that she had wilfully attempted to mislead the Court through inconsistent and false statements made under oath; and that making a false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice.

However, a careful perusal of the position so adverted to by the Respondent in her further affidavit dated 10.10.2023, shows that, the Respondent had not made an endeavour to make a shift on the original position adverted to by her in paragraph 5(c) of her original affidavit dated 10.06.2022, that she had never ever called the Petitioner nor met him in his capacity as a notary public in view of the fact that, the Respondent had while re-iterating and re-affirming the very position so adverted to by her in her original affidavit as quoted above, categorically, stated in paragraph 21 of the further affidavit that she did not contact the Petitioner.

Furthermore, she had therein, adverted to a position that she was unaware of the accuracy of the statements referred to in paragraph 41 of the counter affidavit of the Petitioner, namely; so called itemized telephone call records marked as **P3** and **P4** which were heavily relied on by the Petitioner in support of the assertion so made by him as enumerated above.

With regard to the position so adverted to by the Respondent in her further affidavit dated 10.10.2023 on the question of the accuracy of the so called itemized telephone call records marked as **P3** and **P4** which were heavily

relied on by the Petitioner in support of the assertion so made by him as enumerated above, it is to be observed that the itemized telephone call records marked as **P3** are neither originals nor duly certified copies issued by the issuing authority under its hand but rather mere photocopies bearing a certificate by the Attorney-at-Law for the Petitioner to be true copies even without a covering letter indicating who had issued the same, while itemized telephone call records marked as **P4** too, are neither originals nor duly certified copies issued by the issuing authority under its hand but rather mere photocopies bearing a certificate by the Attorney-at-Law for the Petitioner to be true copies, hence, they are unauthenticated itemized telephone call records thus, constituting hearsay evidence thereby, preventing this Court from acting on them in satisfying itself that a *prima facie* case of contempt of Court has been established against the Respondent alleged to have committed such contempt as required by section 9(3) of the Contempt of Court Act-the threshold issue to be satisfied by this Court thereunder, in determining as to whether rule should be issued or not under section 9(3)(a) thereof.

It is to be further observed that, the Petitioner did not make any endeavour to furnish to this Court either the originals or the duly, certified copies of the itemized telephone call records (**P3** and **P4**) which were heavily relied on by the Petitioner in support of the assertion so made by him in the instant application as enumerated above, despite the unequivocal position so adverted to by the Respondent in her further affidavit filed in the said case alleging that she was unaware of the accuracy of the same.

In view of the foregoing, it clearly, appears that the Petitioner has not furnished material to this Court in proof of his assertion as enumerated above, which are necessary for this Court to satisfy itself that, a *prima facie* case of contempt of Court has been established against the Respondent alleged to have committed such contempt as required by section 9(3) of the Contempt of Court Act-the threshold issue to be satisfied by this Court thereunder, in determining as to whether rule should be issued or not under section 9(3)(a) thereof.

In the circumstances, it clearly, appears that, the Petitioner has not established that the sworn statement made by the Respondent in her further affidavit furnished to Court in the said case, namely; she had never ever called the Petitioner on the day in question, was a false statement made on affirmation and therefore, the Respondent's sworn denial of the telephone call, followed by her shifting explanation that an unidentified third party may have used her device, was a deliberate and calculated falsehood advanced to evade responsibility for her own misconduct which constitutes a serious affront to the authority of this Court and amounts to a grave contempt of court, in that she had wilfully attempted to mislead the Court through inconsistent and false statements made under oath; and that making a false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice.

There remains a further point for our consideration and it may now, be examined.

It was the position of the Petitioner that the Respondent's sworn denial of the telephone call, followed by her shifting explanation that an unidentified third party may have used her device, was a deliberate and calculated falsehood advanced to evade responsibility for her own misconduct which constitutes a serious affront to the authority of this Court and amounts to a grave contempt of court, in that she had wilfully attempted to mislead the Court through inconsistent and false statements made under oath; and that making a false representations to this Court knowing them to be false amounts to Contempt of Court as it directly, interferes with the administration of justice.

Upon a careful perusal of the petition filed by the Petitioner in the said case **P13**, it clearly, appears that even though the Respondent hereto, had been made 4th Respondent thereto, no relief whatsoever, had been sought from her by the Petitioner in prayer thereto, hence, it clearly, appears that, the Respondent was neither a necessary party nor a proper party to the said writ application in terms of the law.

In the circumstances, it clearly, appears that no case had been made out by the Petitioner against the Respondent in the said case for her to meet or to defend even though she had been made a mere party thereto, by the Petitioner. Hence, it clearly, appears that the Respondent had been a mere spectator in the said case.

In these state of facts and circumstances, can it be said that, the Respondent had any reason to make a deliberate falsehood on affirmation in her further affidavit furnished to the said case with the intent to mislead the Court through alleged inconsistent and false statements made under oath thus, directly, interfering with the administration of justice? I think not in view of the reasons stated above.

It cannot thus, be said that, the Respondent is guilty of prevarication by making those two statements on oath.

In view of the foregoing, I would hold that the Petitioner had totally, failed to establish the two ingredients a) and b) as enumerated above-the direct and essential corollary for the constitution of a charge of contempt of court namely; a) Commission of an act or omission; b) Commission of an act or omission as such must be in such a nature that the person alleged to have committed the offence of a contempt of a court, tribunal or institution, had by the commission of the alleged act or omission, clearly, and unequivocally, intended to bring the authority of a court, tribunal or institution and administration of justice into disrespect or disregard; or interfere with, or cause grave prejudice to the judicial process in relation to any ongoing litigation.

In the circumstances, I would hold that this Court has not satisfied on the material furnished to it by the Petitioner that, a *prima facie* case of contempt of Court has been established against the Respondent alleged to have committed such contempt as required by section 9(3) of the Contempt of Court Act-the threshold issue to be satisfied by this Court thereunder, in determining as to whether rule should be issued or not under section 9(3)(a) thereof.

In the result, I would refuse to issue a Rule under 9(3)(a) of the Contempt of Court Act, on the Respondent.

I would thus, refuse the instant application however, without costs.

JUDGE OF THE COURT OF APPEAL

R. P. HETTIARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL