

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

In the matter of an Appeal from the High Court of the Provinces (North Western Province) holden in Chilaw established in terms of Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Officer in Charge
Police Station,
Madampe.

Complainant

Court of Appeal Case No:
CA/PHC/0033/2023

Vs.

High Court of Chilaw
Case No. HCR 17/2020

Chilaw MC No.97558

Santhanadewage Susil De Silva
Irattakulam,
Madampe.

Accused

AND BETWEEN

A.T. Lincy Fernando
No. 15,
Ihalagama,
Madampe.

Registered Owner-Petitioner

Vs.

Officer in Chage
Police Station,
Madampe.

Complainant- 1st Respondent

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

2nd Respondent

AND NOW BETWEEN

A.T. Lincy Fernando
No. 15,
Ihalagama,
Madampe.

Registered Owner-Petitioner-Appellant

Vs.

Officer in Chage
Police Station,
Madampe.

Complainant - 1st Respondent-Respondent

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

2nd Respondent-Respondent

Before: **Amal Ranaraja, J.**
 Dr. Sumudu Premachandra, J.

Counsel: Dhanushka Rahubadda with Danusha Udahawatta and
 Dilini Erandika instructed by Praveen Premathilake for the
 Appellant.

Shezan Mahboob, S.C. for the State.

Argued on: 01.07.2026

Judgment on: 06.08.2026

Judgment

Amal Ranaraja. J.

1. On November 22nd, 2017, officers of the *Madampe* Police Station have arrested a person named *Sakky Devage Susil De Silva* for transporting *Halmilla* and *Kohomba* timber logs valued at Rs. 9,381.78 without a valid permit. This has occurred in a vehicle bearing Registration Number NWLH 2943.
2. Thereafter, the office in charge of the *Madampe* police has instituted proceedings in the *Chilaw* Magistrates Court against the person referred to above, for illegally transporting *Halmilla* and *Kohomba* timber logs, an offence punishable under Section 24(1) read with Sections 25(2) and 40 of the Forest Ordinance No.16 of 1907 (as Amended). The accused upon pleading guilty to the charge has been convicted and sentenced.

3. Subsequently, a confiscation inquiry has been held regarding the vehicle bearing Registration No. NWLH 2943. By order dated August 23rd, 2019, the learned Magistrate has ordered the confiscation of said vehicle. Aggrieved by the order, the registered owner petitioner-appellant (herein after referred to as the appellant) has filed an application in revision (HCR 17/20) in the High Court of *Chilaw*.
4. The learned High Court Judge by order dated January 27th, 2022, has dismissed the revision application and affirmed the order of the learned Magistrate. The appellant also being aggrieved by the order of the learned High Court Judge of *Chilaw* dated January 27th, 2022, has preferred the instant appeal to this Court.
5. It is common ground that the officer in charge at the *Madampe* police, has instituted proceedings against *Sakkya Devage Sunil De Silva* for illegally transporting *Halmilla* and *Kohomba* timber logs valued at Rs. 9,381.78 on November 22nd, 2017, thereby committing an offence punishable under Section 24(1) read with Sections 25(2) and 40 of the Forest Ordinance No.16 Of 1907 (as Amended)
6. Section 40 of the Forest Ordinance No.16 of 1907 (as Amended) provides as follows;

40.

(1) Where any person is convicted of a forest offence-

(a) all timber or forest produce which is not the property of the State in respect of which such offence has been committed; and

(b) all tools, vehicles, implements, cattle and machines used in committing such offence,

shall in addition to any other punishment specified for such offence, be confiscated by Order of the convicting Magistrate:

Provided that in any case where the owner of such tools, vehicles, implements and machines used in the commission of such offence, is a third party, no Order of Confiscation shall be made if such owner proves to the satisfaction of the Court that he had taken all precautions to prevent the use of such tools, vehicles, implements, cattle and machines, as the case may be, for the commission of the offence.'

(2) Any property forfeited to the State under subsection (1) shall

(a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires;

(b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection, 'relevant conviction' means the conviction in consequence of which any property is forfeited to the State under subsection (1).'

7. Section 40 of the Forest Ordinance, states that upon a conviction, all timber and forest produce that have been the subject matter of the offence, and vehicles used for the commission of such offence, would be confiscated. If the owner of the vehicle himself was the accused in the

preceding case, then the issue before the Court in a confiscation inquiry will not be complicated. However, if the owner is a third party, it would be necessary for a Court to ascertain whether the offence was committed by a particular accused with the knowledge and the connivance of the owner of the vehicle used for the commission of the forest offence.

8. The owner of the vehicle must establish on a balance of probability, that he took all precautions to prevent the vehicle from being used in the commission of a forest offence. The specific precautions deemed relevant will vary from case to case; there are no universal measures that all vehicle owners must follow. It is crucial that the precautions taken are convincing and clearly demonstrate the owner's diligence.
9. As per the disputed order of the learned Magistrate dated August 23rd, 2019, the learned Magistrate has merely recounted the testimony lead at the confiscation inquiry. However, he has not applied the facts emerging from that testimony to the relevant law or established judicial precedent. The evidence has not been evaluated for the purpose of determining whether the legal requirements for confiscation were satisfied, nor has the learned Magistrate provided cogent and adequate reasons to justify the conclusion reached.
10. In these circumstances, the disputed order of the learned Magistrate cannot be sustained. Accordingly, I set aside the said order, together with the order of the learned High Court Judge of *Chilaw*, and direct that a fresh inquiry in respect of vehicle bearing Registration No. NWLH 2943 be conducted by the learned Magistrate of *Chilaw*.
11. I make no order regarding costs.

Appeal allowed.

12. The Registrar of this Court is directed to send this Judgement to the Magistrates Court in *Chilaw* for compliance.

Judge of the Court of Appeal

Dr. Sumudu Premachandra, J.

I agree

Judge of the Court of Appeal