

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

CA/COC/APPLICATION: 06/2025

*In the matter of an application for
Contempt of Court under the provisions of
Article 105 (3) of the constitution read
with the relevant provisions of Contempt
of Court, Tribunal or Institution Act No. 8
of 2024.*

Azmi Abdeen
No 45/1, Ramakrishna Road,
Colombo 06.

PETITIONER

Vs.

M. Ameer Abdeen
No 44/B/1, Skelton Road,
Colombo 05.

RESPONDENT

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)
: Hon. K. Priyantha Fernando, J.(CA)

Counsel : Kamran Aziz with Ryan De Vas Gunasekara
instructed by M.R.M. Dhailamy for the
Respondents.

Written Submissions on : 01.09.2026 for the Respondent.

Decided on : 01.10.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner instituted contempt of court proceedings against the Respondent by the Petition dated 18.03.2025, but subsequently failed to diligently proceed with the application.
2. The crux of the contempt application is that an excessive sum of money has been allegedly paid by the Respondent namely Ameer Abdeen who was the Administrator in the testamentary case No. 18570/T to a fictitious lawyer called "Nilusha Jayasinghe". Upon being inquired from the Bar Association of Sri Lanka (BASL), by letter dated 25.02.2025 (vide P12) the Petitioner was informed that there was no such lawyer by the name of Nilusha Jayasinghe. The Petitioner then lodged a complaint with the Colombo Fraud Investigation Bureau on 30.01.2025 and complained that the Respondent has committed contempt of court by providing false information to the District Court of Colombo.

BACKGROUND:

3. It is stated in the Petition that, the Petitioner's late father namely Abdul Cader Abdeen died intestate in 1958 and testamentary proceedings were initiated in the District Court of Colombo case bearing No. 18570/T; the Petitioner's late father was married twice, the Petitioner being the second out of the two children born to his second wife; joint letters of Administration were granted to the Petitioner's mother Noor Zarina Abdeen in 1968 and her step sister Mrs. R.N. Mashoor, however, when the Petitioner's mother died in 1985, letters of Administration were granted to her only full blood sister Zeenathul Fawziya who was made administrator in 2017. The Petitioner further stated that she placed full trust and confidence that the Respondent will act in the best interest of all the beneficiaries and will perform his duties as an administrator with reasonable care and skill, and that to ensure the same, the Petitioner had on many occasions asked as to the status of the action and the steps taken by him as Administrator, to which she did not receive any reply.
4. It was the Petitioner's position that she did not receive a single sum of money from the time the Respondent was appointed Administrator, despite the fact that she could recall her sister Zeenathul Fawziya mentioning to her that her late father had left behind shares and money in bank accounts both in Sri Lanka and India.
5. The Petitioner further stated that she was informed by her lawyer of payments being made to a lawyer by the name of Nilusha Jayasinghe amounting to a sum of Rupees Twelve Million Nine Hundred from April 2021 to April 2024, payment of a sum of Rupees Five Hundred Thousand to one Janaka Herath to

find missing documents and another payment of Rupees Five Hundred Thousand to one Gunadasa Kapugedera to carry out searches at the Land Registry.

POSITION OF THE RESPONDENT:

6. The Respondent denied the allegations raised by the Petitioner and submitted instead that there have been repeated lapses on the part of the Petitioner in serving the necessary documentation, including the rule, charge sheet, and supporting documents.
7. In evidence of the same the Respondent drew the attention of this Court to the journal entry dated 07.07.2025 and based on the same contended that despite the case record indicating a dispatch date of 01.07.2025, the Respondent did not receive the Rule/Charge Sheet until a copy was handed over in open court. The Respondent further stated that these documents were ex facie not in conformity with established legal procedures, upon which the Counsel of the Petitioner admitted and undertook to rectify the mistake on record. The Respondent then referred to a subsequent journal entry dated 14.07.2025, which referenced the order made by this Court requiring an amended rule to be filed at the Registry dated 07.07.2025. However, the Respondent submitted that only the motion, summons, and charge sheet had been served.
8. The Respondent further submitted that the fixing of dates for inquiry and the subsequent conduct of the Petitioner points to a clear lack of diligence by the Petitioner. The inquiry which was initially fixed for 02.10.2025, was then

repeatedly re-fixed on applications made by the Petitioner for 19.12.2025, 07.05.2025, and 07.05.2026. When the matter was finally fixed for inquiry on 04.08.2026, the Junior Counsel for the Petitioner once again attempted to re-fix the case for argument. The Respondent submitted that the Petitioner failed to appear in person on any of these scheduled inquiry dates to commence the inquiry by giving evidence.

9. Finally, the Respondent submitted that the Petitioner completely failed to produce a medical certificate or any other documentary excuse for these absences throughout the pendency of the case, despite an explicit undertaking by her counsel to do so. Because of this continued non-appearance on a day finally fixed for inquiry, the Respondent argued that the application ought to be dismissed for non-prosecution pursuant to Rule 34 of the Supreme Court Rules 1990.

DISCUSSION ON THE FACTS AND CIRCUMSTANCES:

10. The contempt of court should not be abused or weaponized for the malevolent purpose of airing personal grievances. To support this legal position, the Respondent cited the Supreme Court decision in Hayleys Lifesciences (Pvt.) Ltd. Vs. Pathirana Karunarathne Sujeewa Prasanna Sandares and Others SC/Contempt/06/2025 decided on 28.01.2026, which in turn referred to the case of Virgina Perera v. M. B. A. Systems (Pvt.) Ltd. and Others SC/CHC/18/2018 decided on 23.07.2025.

11. In Hayleys Lifesciences (Pvt) Ltd. Vs. Pathirana Karunaratne Sujeewa Prasanna Sandares and Others it is stated as follows:

"As I observed in Virgina Perera v. M.B.A. Systems (Pvt) Ltd and Others (SC/CHC/APPEAL/18/2018, SC Minutes dated 23.07.2025), the exercise of the contempt jurisdiction is not intended for the glorification of the court. Its purpose is to safeguard the dignity and authority of the judicial office, without which public confidence in the administration of justice cannot be sustained. It must also be recognised that public confidence in the administration of justice is undermined not only by condoning unlawful intrusions upon the authority of court, but equally by permitting the contempt jurisdiction to be misused in furtherance of ulterior motives of litigants. Contempt of court is an offence against the court itself and not against any individual party. It is a jurisdiction to be exercised with great circumspection. "

12. The contempt jurisdiction exists to safeguard the dignity and authority of the judicial office, rather than for the glorification of the court, and that misusing it for the ulterior motives of litigants undermines public confidence in the administration of justice.

13. It is revealed by the Respondent that there are currently two parallel inquiries being conducted. One before the Magistrate Court of Colombo and the other before the District Court of Colombo in Case No. 18570/T in respect of the same subject matter to find out whether the Respondent has misappropriated monies as alleged by the Petitioner. As such, it was submitted by the learned Counsel for the Respondent that these proceedings be dismissed as it is

premature since no finding has been made either before the Magistrate Court or before the District Court.

14. It is observed that the Petitioner has not been present before this Court on any of the dates fixed for inquiry, i.e. on 02.10.2025, 19.12.2025, 07.05.2025, 04.08.2025. Since, this application concerns matters between two private parties pertaining to a testamentary proceeding pending before the District Court of Colombo, the Petitioner is a material witness. Furthermore, the burden of proof regarding contempt is on the Petitioner and charges should be proved to a higher degree than if it were to be proved on a balance of probabilities. Moreover, not only is the burden of proof on the Plaintiff, it is particularly high.

15. In Kumarihamy and Others v. Wimaladasa [1999] 3 Sri L. R. 175, Justice Jayasinghe held as follows (at page 180):

*“But, the question for determination as stated before is **whether the plaintiff has adduced enough evidence to support the position that the defendants in fact has acted in violation of the interim injunction. The trial Judge has given his mind to this aspect and had observed that the plaintiffs had failed to discharge that burden. He has in his order adverted to the discrepancies in the plaintiffs case and consequently held that there has been no violation of the interim injunction by the 3rd and 4th defendants as alleged and has found the defendants not guilty. In this connection it must be borne in mind that the **burden of proof in a charge of contempt is very high.****”*(the emphasis was added)

16. Having regard to the foregoing circumstances, it is the view of the Court that the Petitioner has failed to diligently prosecute this application. Thus, the application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal