

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

*In the matter of an application for
mandates in the nature of Writs of
Certiorari, Mandamus and Prohibition
under and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

CA (Writ) Application: 123/2022

D.M.P. Banda
No. 11, Track 09,
Diwulankadawala,
Medirigiriya.

PETITIONER

Vs.

1. D.M. Muthu Manike Dahanayaka,
No. 04, Main Street,
Medirigiriya.
2. K.D. Bandula Jayasinghe,
Land Commissioner General
Land Commissioner General's Department,
Ministry of Land and Land Development,
Mihikatha Medura, Rajamalwatta Road,
Battaramulla.
3. W.M. Indika Karunarathna
Divisional Secretary,
Divisional Secretariat,
Medirigiriya.
4. K.H.M.D. Wijewardana
Provincial Land Commissioner,
Land Commissioner's office,
Polonnaruwa.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: M.U.M. Ali Sabry, PC with Samhan Munzir and Akila Aluthwatte instructed by Athula de Silva for the Petitioner.

Upul Kumarapperuma, PC with Shalini Weeraratne, Minushi Peiris and Adithya Karalliadde instructed by Thushari Jayawardena for the 1st Respondent.

Shemanthi Dunuwille, State Counsel for the 2nd to 5th Respondents.

Inquiry on: 04.09.2025

Written Submissions: Petitioner on 18.09.2025.
1st Respondent on 18.09.2025.

Decided on: 03.12.2025

Mahen Gopallawa, J.

ORDER

Introduction

In the instant application, the Petitioner has impugned the decision made by the Land Commissioner General to grant a long-term lease in favour of the 1st Respondent contained in the letter dated 22.02.2022 ('P17') and has also prayed that steps be taken in terms of the law to grant the allotment of land in dispute to him. However, the Court has been called upon at this time, in relation to the application made by the Petitioner to amend the petition by way of the motion dated 10.04.2025.

The 1st Respondent has objected to the said application to amend the petition and filed her objections on 23.07.2025. When the application to amend the petition was taken up for inquiry on 04.09.2025, the learned President's Counsel for the Petitioner and 1st Respondent invited this Court to determine the matter by way of written submissions, and the Learned State Counsel for the 2nd to 5th Respondents informed Court that the said Respondents will abide by any order of the Court. Accordingly, the written submissions of the Petitioner and the 1st Respondents were filed on 18.09.2025.

Grounds to Amend the Petition and Analysis

The grounds to amend the petition relied upon by the Petitioner and the factual background relevant thereto are set out as follows. In order to ensure that the issues in dispute in the

substantive application are not pre-judged herein, I have endeavoured to confine the narrative only to the facts that are indispensable to determine the matter at hand.

The Petitioner filed the instant writ application on 22.03.2022. When the application was scheduled for support on 26.07.2022, the learned Counsel for the Petitioner sought permission of this Court to amend the petition, with the amended petition dated 26.08.2022, and the said amended petition was accepted by Court on 26.09.2022. Thereafter, limited objections to the substantive application were filed by the 1st Respondent on 22.12.2022.

After an inter-partes inquiry on 24.06.2024, wherein learned President's Counsel and learned State Counsel also raised several preliminary objections, the Court issued formal notice on the Respondents and set the application down for argument. Thus, it is observed that the instant application to amend the petition is the second occasion on which the Petitioner has moved to amend the petition and that it was made whilst the substantive application had been fixed for argument.

In the motion dated 10.04.2025 seeking to amend the petition, the Petitioner has stated that "vital documents pertaining to the subject matter" have been made available to him upon invoking the provisions of the Right to Information Act, No. 12 of 2016 ("the RTI Act") and that it had become "expedient" to amend the petition. In the draft amended petition annexed to and filed with the said motion, the Petitioner has pleaded the necessity to amend the petition in the following terms;

*The Petitioner states that Petitioner after initiating this application, on legal advise, invoked the provisions of the Right to Information Act and sought communication relevant to the approval granted to the issuance of the Permit relevant to the subject matter and accordingly several communication which are vital and important to decide the rights of the parties had come to light to the Petitioner for the first time after instituting the application and thus it has become expedient to the Petitioner to seek Your Lordships' Court's indulgence and permission to amend the existing pleadings particularly inter-alia to produce the documents marked with this Petition marked **P1, P1(i), P2, P15, P18, P19, P20, P21** and have been further substantiated with an affidavit furnished by the Petitioner marked as **Z** with this Amended Petition.*

As reflected in the draft amended petition and his written submissions, the Petitioner (through his daughter) appears to have made several applications under the RTI Act to the 3rd Respondent (Divisional Secretary, Medirigiriya) (Ref Nos. MGRTI 0154, MGRTI 0211, MGRTI 0216, MGRTI 0217 and MGRTI 0218) and the said 3rd Respondent had responded to the same and submitted the documents sought by letters dated 05.03.2024 ('P1') and 26.03.2025 ('P18').

In his written submissions, the Petitioner has sought to explain the significance of the documents received by him through such RTI Applications in the following manner (vide paragraphs 4.2 and 4.5);

*4.2 Pursuant to the Petitioner's RTI Application bearing No. MG/RTI/0154, the Divisional Secretariat, by its cover letter dated 05.03.2024 (**P1**), responded and uncovered the following documents:*

Marking	The Nature of the Document	The significance
P1(i)	Development Plan Medirigiriya (1984)	These documents show the Petitioner's original claim to the subject land
P2	List of the owners to whom the lands were allocated to in Medirigiriya Town	These documents show the Petitioner's original claim to the subject land

4.3 Pursuant to the Petitioner's RTI Applications bearing No. MG/RTI/0211, MG/RTI/0216 and MG/RTI/0217, the Divisional Secretariat, by its cover letter dated **26.03.2025** (P18), responded and uncovered the following documents:

Marking	The Nature of the Document	The significance
P15	Letter issued by the Divisional Secretariat to the District Secretariat (02.11.2020)	Address to the misinformation provided by 1 st Respondent in her application for long-term lease permit
P19	Letter of approval granted to 1 st Respondent by Divisional Secretariat – Medirigiriya (2017.01.23)	Recommendation granted despite the misinformation provided by 1st Respondent in her application for long-term lease permit suggestive of collusion whereas the Respondents have interpolated the relationship as Sister which was initially written as Daughter.
P20	Letter of approval granted to 1 st Respondent by Deputy Land Commissioner (2017.01.23)	Recommendation granted despite the misinformation provided by 1 st Respondent in her application for long term lease permit suggestive of collusion
P21	Application preferred by the 1 st Respondent	the 1st Respondent has falsely claimed that she is the daughter of the Petitioner and whereas, it is clear that the said relationship had been altered to "sister". (see bottom page 62) the 1st Respondent has falsely claimed her husband employment as cultivation. (see bottom page 62)

4.4 Thus, it is evident that each document obtained through the Petitioner's RTI applications is directly relevant to substantiating his claim.

4.5 The Petitioner has nevertheless annexed an affidavit setting out the circumstances leading to the ascertainment of the aforementioned documents, which is marked as "Z" and pleaded as part and parcel of the draft amended Petition.

It is observed that, in terms of Article 14A of the Constitution, the right of access to information provided for by law, being information that is required for the exercise or protection of a citizen's right held by the State or any public authority, has been enshrined as a fundamental right. The Right to Information Act, No. 12 of 2016 (the RTI Act) is the principal legislative enactment providing for the public to apply for and obtain information from public authorities in the exercise of their right of access to information. Therefore, in the current context, it is seen that the Petitioner has obtained the documents that he has sought to produce through the amended petition by exercising his constitutional rights and in accordance with the procedure established by law, as aforesaid.

Furthermore, the Petitioner has tendered an explanation regarding the significance and materiality of the documents sought to be produced in his draft amended petition and the written submissions. Without prejudice to the substantive matters, I am of the view that the explanation provided in the aforementioned paragraphs 4.2-4.5 of his written submissions sufficiently demonstrates the significance and materiality of the documents sought to be produced and the consequent necessity to amend the petition.

A comparison to the reliefs sought in the amended petition dated 26.08.2022 (which had been accepted by Court) and the instant draft amended petition also reveals that there are no significant variations to the scope or substantive reliefs sought by way of writs of *Certiorari*, *Prohibition* and *Mandamus*, although the draft amended petition contains prayers to quash the documents marked 'P19' and 'P20', which have been obtained by the Petitioner through the aforementioned RTI Applications.

1st Respondent's Objections to the Amendment of the Petition and Analysis

In her written submissions, the 1st Respondent has taken up 03 objections to the Petitioner's application to amend the petition, which are as follows;

- (1) Non-compliance with Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990;
- (2) Amendment of Pleadings at a Belated Stage of Proceedings; and
- (3) Laches on the part of the Petitioner.

It is proposed to examine the aforementioned objections with recourse to the material placed before Court and the judicial authorities relied upon by the parties.

(1) Non-compliance with Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990

The 1st Respondent has taken up the position that the Petitioner has failed to comply with the procedure for amendment of pleadings set out in Rule 3(8) of the Court of Appeal (Appellate

Procedure) Rules 1990 in that he has failed to obtain the prior permission of Court for such purpose and follow the procedure specified therein.

Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990, which appears in Part II of the said Rules relating to “Applications” provides as follows;

3(8). A party, may with the prior permission of the Court, amend his pleadings, or file additional pleadings affidavits or other documents, within two weeks of the grant of such permission, unless the Court otherwise directs. After notice has been issued, such permission shall not be granted ex parte.

In support of such position, the 1st Respondent has relied upon the decision of this Court in **Subramaniam Parameshwaran v. Robert Maurice Perera and another**,¹ wherein it was held as follows (per Sasi Mahendran, J.);

It is observed that the Petitioner has failed to disclose that he has obtained the prior permission of this Court to file this amended Petition. On a perusal of the journal entries prior to 08.11.2021 there is no indication that the Petitioner has obtained permission to file the amended Petition prior to filing it. It shows that only after the amended Petition has been filed that he has sought to obtain this Court's permission. This will amount to non-compliance of the Rules of the Court of Appeal.

Furthermore, reference has also been made to the discussion of Rule 3(8) in **Dias v. Karawita**² by this Court to the following effect (per J.A.N. de Silva, J. as he then was);

The Court of Appeal (Appellate Procedure Rules 1990 - Rule 8) permits a party “with prior permission, amend his pleadings or file additional pleadings or other documents within two weeks of the grant of such permission unless the court otherwise directs.” Rule 15 specifically states that: “These rules shall also apply mutatis mutandis to applications made to the court under any provision of the law, other than Articles 138, 140 and 141 of the Constitution.” The above-mentioned rules therefore empowers the Court of Appeal to permit amendments of any application made to the Court of Appeal.

Accordingly, the 1st Respondent submitted that the discretion of Court to allow amended petitions must be exercised within defined limits, and that, the Petitioner's attempt to file a further amended petition at the stage of argument with new documents is irregular, prejudicial to the Respondents, and amounts to an abuse of process.³

The Petitioner has addressed such issue in paragraph 5.3 of his written submissions, as follows;

*5.3.1 In the instant case, the Petitioner filed a draft of the Amended Petition along with a motion dated 10.04.2025, and **sought to support the contents of the said motion** on 30.04.2025, with a copy of the motion dispatched to the Respondents.*

¹ CA RII 05/2019, decided on 18.03.2022.

² [1999] 1 Sri L.R. 98 at 102.

³ Vide paragraph 14 of the 1st Respondent's Written Submissions.

5.3.2 Therefore, it is clear that the Petitioner had sought prior permission from Your Lordships' Court to accept the draft Amended Petition. In the event the draft Amended Petition is not filed of record, neither Your Lordships' nor the Respondents would know what are the contents of the amended petition.

5.3.3 When the matter came up on 30.04.2025 for support, the learned President Counsel appearing for the Petitioner supported the contents of the motion and appraised Your Lordships' as to the necessity to accept the proposed amended Petition dated 07th of April 2025 and moved to issue notices of the amended Petition on the Respondents to allow them an opportunity to object, if any.

5.3.4 The 1st Respondent, upon receiving notice, objected to the Court receiving the draft of the amended Petition. Consequently, the matter was fixed for inquiry, and the order on the amendment is reserved.

5.3.5 Therefore, we respectfully submit that the above procedure adopted by the Petitioner is in line with procedure set out in the Rules 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990; the Rules 50 and 51 of the Supreme Court Rules (1978) and also with the principles of natural justice.

The aforementioned sequence of events narrated by the Petitioner is borne out by the record of proceedings in the Case Docket, and, as such, I am guided by same. Accordingly, the Petitioner had sought prior permission of Court to effect the instant amendment to the petition, with notice to the Respondents, as reflected in the minutes of proceedings dated 30.04.2025 and 02.06.2025. Thereafter, upon Court being informed on 02.06.2025 that the Respondents wished to object to the amendment of the petition, the Respondents were granted an opportunity to file objections and the matter had been fixed for inquiry, in compliance with the procedure contemplated in Rule 3(8). In such circumstances, I am satisfied that there has been due compliance with the provisions of Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990.

(2) Amendment of Pleadings at a Belated Stage of Proceedings;

The second objection raised by the 1st Respondent relates the belatedness of the application to amend the petition and it is argued that the Petitioner's attempt to introduce a further amended petition at the stage of argument, accompanied by new documents, is irregular, wrongful and contrary to well established principles governing the appellate court procedure.⁴

It was argued that although the documents sought to be introduced were in the Petitioner's possession as early as 05.03.2024, he had only sought to amend the petition over a year later, demonstrating undue delay and causing serious or irreparable injustice to the 1st Respondent.⁵ Accordingly argues that the Petitioner fails to meet the necessary threshold for amendment, and granting such relief at this stage would be procedurally improper and prejudicial to the 1st Respondent. However, as documented above, the Petitioner had made several RTI

⁴ Vide paragraph 15 of the 1st Respondent's Written Submissions.

⁵ Vide paragraph 17 of the 1st Respondent's Written Submissions.

Applications and the documents marked 'P15', 'P19', 'P20' and 'P21' had been received from the Medirigiriya Divisional Secretariat with the cover letter 'P18' dated 26.03.2025, and, the petitioner had filed the motion to amend the petition on 10.04.2025. Thus, there has not been any inordinate delay on the part of the Petitioner, as alleged by the 1st Respondent.

To support the objection, the 1st Respondent has referred to the decision of this Court in referred in **Gunasekara and another v. Abdul Latiff**⁶ wherein the Court dealt with permitting amendments under the Civil Procedure Code. Those rules are quite distinct from Rule 3(8) of the 1990 Rules, and as such, the degree of reliance that can be placed on such decision is minimal. Similarly, it is doubtful whether **Ranasinghe v. Somawathie and Others**,⁷ which was an appeal to this Court from a judgment of the District Court, are applicable to the instant situation.

The 1st Respondent also sought to rely on **Brown and Co. Ltd. And Others v. Ratnayake and Others**,⁸ wherein a preliminary objection relating to non-compliance with Rule 46 of the Supreme Court Rules 1978 by the failure to tender certified copies of the proceedings was upheld. However, as observed above, since the Petitioner has specifically obtained prior permission of Court to effect the instant amendment to the petition, I am of the view that the above decision cannot be applied to the instant factual situation.

I further re-iterate that the amendments to the petition sought to be effected herein do not have the effect of "materially" altering the scope of the case presented in the initial petition filed by the Petitioner or the reliefs claimed therein.

The clear and unambiguous text of Rule 3(8) does not prohibit amendments to pleadings being effected or additional pleadings, affidavits or documents being filed after notice has been issued and the application has been set down for argument. Where the application to amend is made after issuance of notice, the requirements stipulated in the Rule are that the party seeking to amend (or file additional pleadings, affidavits or documents) should obtain prior permission of the Court and the grant of permission should be pursuant to an *inter-partes* hearing. Such requirements have been complied with in the instant occasion.

(3) Laches on the part of the Petitioner

The third objection raised by the 1st Respondent is that the Petitioner is guilty of laches; that despite being in possession of the documents marked 'P1(i)' and 'P2' since 05.03.2024, the Petitioner has failed to act with due diligence and sought to amend the petition only on 07.04.2025, *i.e.*, over a year later.⁹ The same factual matrix has been relied upon for raising the previous objection relating to belatedness as well and there appears to be considerable overlap between the two. In such circumstances, my findings in the above objection will apply with equal force to this objection relating to laches.

⁶ [1995] 1 Sri L.R. 225 at 234.

⁷ [2004] 2 Sri. L.R. 154 at 156.

⁸ [1990] 1 Sri L.R. 92 at 94.

⁹ Vide paragraph 20 of the 1st Respondent's Written Submissions.

As cited in the 1st Respondent's written submissions, "laches" has been defined in the *Black's Law Dictionary* (12th Edition) as follows;

1. *Unreasonable delay in pursuing a right or claim- almost always an equitable one- in a way that prejudices the party against whom relief is sought.*
2. *The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought.*

The 1st Respondent's contends that the Petitioner's unreasonable delay in asserting his alleged rights has caused substantial prejudice to the 1st Respondent, who has been in uninterrupted possession and has expended considerable effort and resources in developing the land, and, accordingly, the Petitioner's claim is barred by the equitable doctrine of *laches*, and he is not entitled to the discretionary relief sought from this Court.¹⁰

Several decisions of our Superior Courts were cited wherein the consequences of the doctrine of laches have been set out, including *Seneviratne v. Tissa Dias Bandarnayake and Another*,¹¹ *Paramalingam v. Sirisena and Another*,¹² *Gunasekara v. Abdul Latiff*,¹³ *Lindsey Petroleum Co. v. Hurd*,¹⁴ and *Ranaweera v. Jinadasa*.¹⁵

Whilst I am in full agreement with the reasoning in the aforementioned authorities, nevertheless the factual matrix in the instant case does not establish that the Petitioner has been guilty of laches in moving for the instant amendment of the petition. Nor can the instant application for amending the petition be considered as being "unnecessary".

Notwithstanding such position, I also wish to consider whether any substantial prejudice has been caused by the Petitioner's action to the 1st Respondent. Whilst a degree of delay in determining the case is an inevitable consequence when an application to amend pleadings is made, the Court is obliged to consider whether such delay outweighs all other considerations relevant to such application. This Court has considered the task before Court in such instances in several cases. Considering the manner in which Rule 3(8) should be interpreted and applied, in *Nagananda Kodituwakku v. Chulananda Perera and Others*,¹⁶ the Court has opined as follows (per Janak de Silva, J.);

*By this rule court is given discretion on whether to allow amendment of pleadings, or file additional pleadings affidavits or other documents. However, the Rules are silent on the matters that must be considered by court in exercising this discretion. In my view Court must approach this task with the interest of justice uppermost in mind. At the same time this Rule should not be used by parties who by negligence omitted to produce documents.*¹⁷

¹⁰ Vide paragraph 22 of the 1st Respondent's Written Submissions.

¹¹ [1999] 2 Sri L.R. 341.

¹² [2001] 2 Sri L.R. 239 at 247.

¹³ See note 6 at p 235.

¹⁴ [1873] 5 AC 221.

¹⁵ SC Appeal No. 41/91, SC Minutes 27.03.1992 and (1992) BAL Vol. IV, Part II 18.

¹⁶ CA Writ Application No. 374/2012, decided on 05.02.2020. Cited in the Petitioner's Written Submissions.

¹⁷ Ibid, at p 2.

In his written submissions, the Petitioner has also referred to **Road Development Authority v. Hon. Manusha Nanayakkara and Others**,¹⁸ wherein on the same issue this Court has observed as follows (per Mohammed Laffar J (as he then was):

Accordingly, in view of the above rule in the Court of Appeal (Appellate Procedure) Rules 1990, the amendment of pleadings are permitted in law where there is no prejudice is caused to the opposing party.

*Addressing my mind next to the question of whether any prejudice has been caused to the Respondents by the Petitioner amending the pleadings. In Page 3 of 5 deciding this question in law this Court is mindful of the decision in **Cassim Lebbe v. Natchiya** [21 NLR 205] wherein Shaw, J. stated that,*

“The general rule with regard to amendments of pleadings which has been laid down by this Court in previous cases that an amendment which is bona fide desired should be allowed at any period of the proceedings, if it can be allowed without injustice to the other side, and in most cases conditions as to costs will ensure no prejudice being caused to the other side.”

.....

Thus, I am of the view that, the amendments to the petition do not change the pith and substance of the case inasmuch as the Petitioner has not attempted neither to take up new or different position, nor to introduce a new cause of action nor to pray different reliefs than the reliefs sought in the original Petition. Accordingly, it has not impeded or undermined the Respondent’s ability to address the claims of the Petitioner on its merits.¹⁹

Such decision has also been cited with approval in **W. M. P. V. K. Wijenayake and Others v. Sri Lanka Institute of Architects (SLIA) and Others**,²⁰ wherein the Court allowed an amended petition (per Karalliyadde J).

Reverting back to the facts and circumstances of the instant case, I re-iterate that the Petitioner has sought to amend the petition in order to produce certain documents and he sufficiently demonstrated the significance and materiality of the said documents. The said documents have been obtained during the pendency of the proceedings with recourse to the Right to Information Act. I have also found that there has not been any inordinate delay on the part of the Petitioner in moving to amend the petition once the requisite documents had been received. Furthermore, I have found that there have not been any significant variations to the scope or substantive reliefs sought in the application introduced by the draft amended petition. I am of the view that the aforementioned factors should be considered in favour of permitting the amended petition and that such factors outweigh any delay in determining the application.

With regard to any prejudice that may be caused to the 1st Respondent by permitting the amended petition, granting her an opportunity of responding to the contents of such amended petition by filing objections would adequately address such concern.

¹⁸ C.A. Writ Application No. 831/2023, decided on 27.11.2024

¹⁹ Ibid, at pp 4-5

²⁰ CA Writ Application No. 649/2024, decided on 29.08.2025. Cited in the Petitioner’s Written Submissions

Conclusion and Orders of Court

For the reasons set out above, I allow the amended petition of the Petitioner dated 07.04.2025 tendered with the motion filed on 10.04.2025. I further permit the 1st Respondent and other Respondents to file their objections in respect of the aforementioned amended petition, if they so wish. The date for filing of objections of the Respondents will be fixed on the date of delivery of this order.

Amended petition is allowed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal