

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

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

FATHIMA NUZHA IRSHAD,

No. 250, 6/7, R.A. De Mel Mawatha,
Colombo 3.

PETITIONER

CASE NO: CA/COC/22/2025

Vs.

LENADUWA LOKUGE THARINDU
DARSHANA

No. 37C, East Tower,
One Galle Face Residencies,
Colombo 2.

RESPONDENT

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

Counsel : Kamran Azeez with Samadi Mahagodage
 Instructed by Nasreen Naushadh for the
 Petitioner.

Chamara Nanayakkarawasam with Apoorwa
Nanayakkara instructed by Sampath Yalewatta
for the Respondent.

Written Submissions on : 10.11.2025 for the Petitioner

Decided on : 10.12.2025

K. Priyantha Fernando, J.(CA)

This Petition dated 29.07.2025 was formally instituted by the mother (Petitioner) against the father (Respondent) seeking relief by way of the enforcement of subsisting custody and access orders, which were originally issued by the District Court of Colombo in proceedings concerning the welfare and custody of their two minor children, born in 2017 and 2020.

The substantive cause of action advanced in this Petition centered upon the Respondent's alleged wilful, deliberate, and sustained failure to comply with the lawful judicial directives governing the Petitioner's right of access to the said minor children. This persistent non-compliance, it was contended, constituted the offence of Contempt of Court, thereby undermining the authority of the judiciary and frustrating the intent of its orders.

The underlying dispute had originated with a custody action filed by the Respondent (father) in the District Court (Case No. DCG 09/2024). On 19.06.2024, the Learned Additional District Judge had issued an Order granting interim physical custody of the children to the Respondent, while simultaneously directing the Respondent to allow the Petitioner unobstructed access to the children for three hours each on every Saturday and Sunday at a court-approved location. A subsequent clarification Order on 03.03.2025 fixed the access venue at the Colombo City Centre and Courtyard by Marriott Hotel.

THE POSITION OF THE PETITIONER:

The Petitioner had contended that since July 2024, the Respondent had consistently disregarded these mandatory access Orders. The Respondent was alleged to have repeatedly denied access to the children on the mandated weekends (specifically citing numerous dates across early 2025) without valid reason or court permission. Instead of adhering to the Orders, the Respondent had allegedly provided access arbitrarily and ad hoc on irregular weekdays or random days, often at short notice, rendering the Petitioner's right to access conditional upon the Respondent's personal convenience and whims.

The Petitioner had averred that this pattern of non-compliance was primarily motivated by the Respondent's personal pursuit of motor racing events on weekends, which he prioritized over the court's directives and the children's best interests. This was evidenced by his non-production of the children on days coinciding with motor racing events. Furthermore, the Petitioner had stated that the Respondent had attempted to justify his non-compliance with frivolous reasons, such as children's alleged dance and Sunday school classes, which the children themselves had reportedly denied attending.

The Petitioner pointed to this continuous pattern of conduct, which included failures to comply with multiple Orders across different forums including access via weekend meetings, adherence to a Magistrate's Court Interim Protection Order, production of children before Court, and facilitating Whatsapp calls for a minimum duration—as proof of the Respondent's blatant disregard for judicial authority. The Petitioner had previously filed two Petitions for Contempt of Court in the District Court to address these violations. The Petitioner therefore submitted that the Respondent's actions constituted a serious and substantive case of Contempt of Court, causing emotional distress and disrupting the children's right to a meaningful relationship with their mother. The Petitioner prayed for the issuance of a Rule against the Respondent, a determination that

he had committed the offence of Contempt of Court, and the imposition of a penalty in terms of the law.

The Written Submissions on behalf of the Petitioner (mother), was presented to establish that a *prima facie* case of Contempt of Court had been constituted against the Respondent (father) for his persistent and wilful failure to comply with access Orders concerning their two minor daughters, Ms. Lenaduva Lokuge Khaira Heshini (born 15.09.2017) and Ms. Lenaduva Lokuge Arissa Roshini (born 20.09.2020). The Petitioner contended that this pattern of non-compliance not only frustrated her rights but also undermined the authority of the court.

The substantive cause of action advanced in the Petition centered upon the Respondent's failure to adhere to the interim Orders issued in the District Court of Colombo Case No. DCG/09/2024. Following the institution of the action by the Respondent, the Learned Additional District Judge had issued an Order on 19.06.2024, which granted interim custody of the children to the Respondent but expressly directed that the Petitioner be allowed access every Saturday and Sunday for three hours each day. A subsequent clarification Order on 03.03.2025 further specified the venue for this access as the Colombo City Centre and Courtyard by Marriott Hotel. These Orders continued to be in full force and effect.

The Petitioner submitted that **since as early as July 2024**, the Respondent had acted in contravention of these mandatory access Orders. He was alleged to have repeatedly denied the Petitioner access to the children on the specific mandated weekends. Instead of adhering to the Court's clear directive, the Respondent had unilaterally and arbitrarily granted access *ad hoc*, typically on irregular weekdays and at inconsistent times.

The Petitioner averred that the Respondent's persistent failure to grant weekend access was motivated by his personal pursuit of motor racing events which occurred over the weekends, an interest which took precedence over the well-being of the children and compliance with the District Court's Orders. This was

evidenced by the Respondent unilaterally rescheduling access to earlier days to prioritize his participation in a motor racing event and the annexing of a Facebook post confirming his attendance. The submissions further highlighted that the Respondent had put forth "false, frivolous and baseless reasons" to justify his breaches, such as claiming the children had weekend dancing classes or attended 'දහම් පාසල' (Sunday School). The Petitioner had provided documentary evidence, including a timetable and a video of the elder child, to refute these specific claims. Additionally, the Respondent had failed to produce the elder child on 09.07.2025 without explanation, thereby denying access. The Petitioner pointed out that even when the matter was taken up before the court, the Respondent's counsel had admitted that the Respondent had failed to act in terms of the District Court Order, although asserting the failure was not deliberate.

The Petitioner relied on the established legal principle that a Rule Nisi for contempt should be issued where the Court was satisfied that a *prima facie* case appeared to have been committed based on the material presented. This proposition was supported by the precedents *Dr. Ajith Shanmuganathan Vs. Chaminda Sooriyapatabendi and Others [COC/30/2024]*, *R. A. Jayaratne Vs. Sirimavo R. D. Bandaranaike 69 NLR 184*, *Gnendra Shani Abeysekara Vs. Hon. Upaly Abeyrathne and Others [COC/10/2021]* and *Media Image Ltd V. Dissanayake 2006 [3] SLR 215*. The Petitioner argued that the Petition and its duly affirmed affidavit, supported by documentary evidence, conclusively established a *prima facie* case against the Respondent. The Petitioner prayed that a Rule be issued on the Respondent for the offence of Contempt of Court.

THE POSITION OF THE RESPONDENT:

The District Court Order of June 19, 2024, had granted interim custody of the children to the Respondent, noting the Petitioner's "long prevailing conduct and behaviours," including alleged illicit relationships. The Order had directed that the Petitioner be provided two hours of access on Saturdays and Sundays at a

court-approved location, with the Respondent facilitating this access without obstruction.

The Respondent contended that the Petitioner's application was fundamentally flawed, particularly regarding the period from the Order's date (June 19, 2024) to the first specific alleged denial (January 25, 2025). While the Petitioner had generally alleged that access was inconsistent and often substituted with random weekday dates, **she failed to plead any specific missed weekend date for this period, which involved 31 potential weekends, rendering her allegations vague and defective for a contempt claim.**

Regarding the period from January 25, 2025, onwards, the **Petitioner had specifically alleged denial on only 23 days out of a potential 54 days of access. For every remaining weekend during this period, the Respondent asserted that he had in fact granted, and the Petitioner had in fact taken, access on both Saturday and Sunday.**

The Petitioner's total silence on these remaining weekends was submitted to be a tacit admission that access was given exactly as ordered.

Crucially, the Respondent argued that even for the days the Petitioner had alleged denial, he immediately offered alternative access on the nearest weekday, which the Petitioner eagerly accepted and fully enjoyed without objection until instituting the contempt proceedings. **This repeated acceptance of substituted weekday access was submitted to constitute waiver and estoppel, thereby preventing the Petitioner from now alleging contempt.**

Furthermore, the Respondent asserted that the Petitioner was guilty of material misrepresentation. Specifically, she had deliberately misstated the access granted as three hours, **when the Sinhala text of the Order clearly granted only two hours.**

Additionally, the Petitioner had maliciously mis-characterized two perfectly compliant weekend dates (Saturday, 07.06.2025 and Sunday, 06.07.2025) as

"irregular weekdays / ad-hoc arrangements" in her list of accepted access dates, thereby falsely portraying compliance as a breach to inflate the alleged denial.

The Respondent further submitted that the Order did not require him to deliver the children, only to not obstruct access at a court-approved venue. **As no permanent venue was approved until March 3, 2025, and the Petitioner failed to plead that she presented herself at an approved venue and was obstructed, the claim of contempt was deemed weak.**

The prolonged delay by the Petitioner in filing the application, from the Order date in June 2024 to the application in July 2025, was pleaded as fatal *laches*. **Her prolonged acquiescence and active participation in rescheduling arrangements demonstrated that no deliberate or wilful contempt ever occurred**, but rather that the Petitioner was using the contempt application as a "weapon". The Respondent concluded that the Petition disclosed no deliberate or wilful contempt and was an abuse of process.

Finally, the Respondent respectfully submitted that while Section 10(3) of the Contempt of a Court Act did not expressly refer to a hearing being given prior to the issuance of a Rule, the principle of natural justice should operate as a supervening norm. This would have preserved natural justice and immensely assisted the court if the Respondent was also heard and provided with an opportunity to controvert the factual position alleged in the Petition, prior to the issuance of a Rule. The Respondent therefore prayed for the dismissal of the Petition *in limine*.

CONCLUSION:

It is revealed that the Order dated 19.06.2024 has become operative on that day, and the first specific alleged denial pleaded by the Petitioner is 25.01.2025 (vide paragraph 24 of the Petition). From 19.06.2024 to 24.01.2025 (the day before the first alleged denial), there were 31 weekends (62 days) on which the Petitioner was entitled to access. The Petitioner alleges that from July 2024, instead of providing weekend access, the Respondent provided access on random days,

often on Wednesdays and Fridays. (vide paragraph 22 and 23 of the Petition). Despite this general allegation, the Petitioner failed to plead any specific granted weekday date between July 2024 and 24.01.2025. This amounts to a failure to specify dates for that period, and contempt requires precise averments of willful disobedience.

From 25.01.2025 (the first specific alleged denial) to 27.07.2025 (the last weekend before the Petition on 29.07.2025), there are approximately 27 weekends (54 days) on which the Petitioner was entitled to access. However, the Petitioner alleges denial on only 23 days. Every one of the remaining weekends in the period 25.01.2025-27.07.2025 (on which the Petitioner pleads no denial), the Respondent has in fact granted and the Petitioner has in fact taken the access on both Saturday and Sunday. Thus, the Petitioner's total silence on these remaining weekends is a total admission that access has been given exactly as ordered.

It is seen that on every single day the Petitioner alleged denial, the Respondent had immediately offered alternative access on the nearest weekdays, an offer the Petitioner has accepted and fully enjoyed. It is seen that these swaps have not been unilateral or arbitrary as the Petitioner has never objected until instituting these contempt proceedings. The Petitioner herself has pleaded (vide paragraph 51) that she received alternative access on 11 weekend/weekday dates. The Petitioner has stated (vide paragraph 51 of the Petition) that access was provided "mostly on irregular weekdays" and given a list as examples ("being on"), thereby admitting to additional weekday access beyond the 11 listed. Therefore, the petitioner has failed to plead the full list of weekday dates on which she accepted access, rendering her pleadings vague. This shows that she has received substantial access but selectively pleaded only denials.

In paragraph 9(b) of her Petition, it is misstated that the District Court Order dated 19.06.2024 (vide A4/A5 to the Petition) entitles the Petitioner to three (03)

hours of access on weekends, whereas the order in Sinhala unambiguously granted only two (02) hours each day.

It was revealed that the Petitioner has misstated at paragraph 51 of the Petition two perfectly compliant weekend dates as “irregular weekdays/ad-hoc arrangements”. The two dates in question are 07.06.2025 (Saturday) and 06.07.2025 (Sunday). These are exactly the days mandated by the District Court order dated 19.06.2024 (vide A4/A5). Therefore, access on these dates was 100% compliant with the order.

Even if this Court ultimately finds any technical non-compliance on a single weekend or some weekends, such isolated instances **could not constitute deliberate or willful contempt for the following reasons:**

(a) The Petitioner, upon the very first alleged irregularity ought to have moved District Court or this Court forthwith if she genuinely believed the Respondent was acting in defiance of the order. Instead, she remained silent and actively participated in rescheduling access to weekdays and repeatedly accepted the children on the substituted dates.

(b) This prolonged acquiescence, coupled with her voluntary acceptance of alternative arrangements amounts to waiver and estoppel.

(c) A party who sleeps on her rights while enjoying substantial access and negotiating fresh dates each week, cannot suddenly opt for “contempt” on 29th July 2025.

(d) The Petitioner’s inexplicable delay from 19.06.2024 to 29.07.2025 amounts to *laches* rendering this application an abuse of process demonstrating that no deliberate contempt of court ever occurred.

In totality, it is the considered view of this Court that the facts and circumstances in the instant case does not fulfil the threshold contemplated in Section 2 and 3 of the Contempt of Court Act No. 8 of 2024 and therefore, the contempt of court

application should be dismissed. Accordingly, the Application is dismissed. The parties should bear their own costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal