IN THE COURT APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

In the matter of an Application for Revision in term of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Application No: **CPA 46/23**

HC Kandy Revision Application No: **60/2021**

MC Kandy Case No: **31345/21**

Sujeewa Suranga Palliyaguruge

No.48/01, Rajapihilla Mawatha,

Kandy,

Petitioner

Vs

1. Kahawatte Pallegedara Chandraratne
   No.06, Bremo Park,
   Katugasthota

2. Pinpare Sumanaratne Thero
   No.04, Kudarawatte Road,
   Kandy.

Respondents

AND THEN

1. Kahawatte Pallegedara Chandraratne

No.06, Bremo Park,

Katugasthota

Petitioner

Vs.

1. Sujeewa Suranga Palliyaguruge
   No.48/01, Rajapihilla Mawatha,
   Kandy,
   Petitioner – Respondent

2. Pinpare Sumanaratne Thero
   No.04, Kudarawatte Road,

   Kandy.

   Respondent- Respondent

AND NOW BETWEEN

Sujeewa Suranga Palliyaguruge

No.48/01, Rajapihilla Mawatha,

Kandy

Petitioner – Respondent – Petitioner

Vs.

1. Kahawatte Pallegedara
   Chandraratne
   No.06, Bremo Park,
   Katugasthota

Respondent – Petitioner – Respondent

2. Pinpare Sumanaratne Thero
No.04, Kudarawatte Road,

Kandy.

Respondent – Respondent – Respondent

Before	:	**Hon. M. Ahsan R. Marikar, J.(CA)**
	:	**Hon. R. P. Hettiarachchi, J.(CA)**
Counsel	:	Kalinga Indatissa, P.C. with Savinda Herath and Dilmi Paranawitharana for the Petitioner-Respondent-Petitioner
		Pradeep Perera for the 1st Respondent-Petitioner-Respondent
Argued on	:	27.02.2025
Decided on	:	02.04.2025

Hon. R. P. Hettiarachchi, J.(CA)

1. This Judgment shall dispose of the Revision Application preferred by the Petitioner-Respondent-Petitioner challenging the Order dated 04.04.2023 of the learned High Court Judge of Kandy, by which he set aside the Order dated 03.10.2021 of the learned Magistrate of Kandy.

2. The Order of the Magistrate Court relates to a case filed under Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 (hereinafter referred to as the "Primary Courts' Procedure Act") in the Magistrate Court of Kandy, following a report submitted by the Officer in Charge of the Mawathagama Police Station.

3. Being aggrieved by the Order of the learned High Court Judge of Kandy, the Petitioner preferred the instant Revision Application.

4. Upon receiving notices, the 1st Respondent-Petitioner-Respondent (hereinafter referred to as "the 1st Respondent") filed his Objections. In the Objections, the 1st Respondent raised several preliminary objections, challenging the maintainability of the Petitioner's Revision Application.

5. The objections raised by the 1st Respondent are as follows:

- The Revision Application is unlawful, illegal and misconceived in law
- The Affidavit of the Petitioner is unlawful, illegal and contrary to law
- The Revision Application is contrary to Rules 2 and 3 of the Court of Appeal Rules 1990
- The Petitioner has suppressed and/or misrepresented material facts
- The Petitioner has not come to court with clean hands and lack of *uberima fides*
- The Affidavit of the Petitioner is undated which renders the Affidavit illegal and void *ab initio*
- The schedule to the Petition which is the subject matter of the Revision Application as per 4th paragraph of the Petition is erroneous and incorrect which renders the Revision Application null and void *ab initio*
- The Petitioner failed to identify the corpus of the action
- The Petitioner in the Revision Application failed to plead any exceptional circumstances which are recognized by law necessitating and/or warranting indulgence for invoking revisionary jurisdiction.

6. When the matter was taken up for argument on 27.02.2025, both counsels agreed to conclude the argument with the documents already submitted. Thus, no further submissions were made by either of them.

7. Rule 3 of the Court of Appeal (Appellate Procedure) Rules sets out the manner in which applications are made to the Court of Appeal. For ease of reference, I will reproduce the relevant part.

> *3(1) (a). Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Article 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the court to furnish such document later.* ***Where a petitioner fails to comply***

with the provisions of this rule, the Court may ex-motu or at the instance of any party, dismiss such application. *(emphasis added)*

(b). Every application by way of revision or restitutio in integrum under Article 138 of the constitution shall be made in like manner together with copies of relevant proceedings (including pleadings and documents produced) in the Court of First Instance, tribunal or other institution to which such application relates.

8. Thus, for revision applications also Rule 3 (1) (a) shall apply. In other words, when a revision application is made it must be by way of a petition together with an affidavit.

9. One of the objections raised by the Respondent is that the affidavit submitted by the Petitioner along with the Petition is unlawful and contrary to law. In Sri Lanka, the requirements for an affidavit are governed by the Oaths and Affirmations Ordinance, which sets out the law relating to oaths and affirmations in judicial proceedings.

10. I will now advert to the validity of the affidavit as it remains undated. The manner in which an oath or an affirmation is to be administered in an affidavit is described in the Oaths Ordinance No.9 of 1895 (as amended). Section 12 of that Ordinance stipulates thus: "A Commissioner for Oaths appointed under this Ordinance may administer any oaths or affirmation or take any affidavit for the purpose of any legal proceedings or otherwise in all cases in which a Justice of the Peace is authorized by law so to do ..."

11. In the present Revision Application, it is observed that the Affidavit filed by the Petitioner along with the Petition is undated. An affidavit must typically be signed and dated to establish the authenticity of the statements made therein. The absence of a date may raise questions regarding the time of execution, potentially affecting its evidentiary value.

12. As observed by Justice Sharvananda (as he then was), in the case of ***Kobbekaduwa V Jayawardene*** [1983] 1 Sri LR 419 ;

"The function of an affidavit is to verify the facts alleged in the petition. The affidavit furnishes prima facie evidence of the facts deposed to in the affidavit. Section 13 of the Oaths and Affirmation Ordinance (Cap.17) furnishes the sanction against a false affidavit by making the deponent guilty of the offence of giving false evidence. In an affidavit a person can depose only to facts which he is able of his own knowledge and observation to testify".

13. In ***FACY vs. SANOON AND OTHERS*** [2003] 3 Sri LR 8 it was held by Udalagama, J as follows:

> *"Having regard also to the need to maintain consistency in judgments I would also hold as held repeatedly by this Court that a faulty affidavit could not be considered a mere technicality but in fact fatal to the entire application and as also held by the Court on numerous occasions a defective affidavit is bad in law and warrants rejection."*

14. Courts have decided, in a plethora of cases, that where a rule of Court specifies the mode, manner and procedures for something to be done (such as an act for example) such thing should be carried out in the manner prescribed by the appropriate rules. In the Nigerian case of ***Nyaro v Zading*** (YL 124 of 2015) [2016 NG CA 10] (28th July 2016), Onalaja, JCA, made the following statement;

> "*The law, no doubt, is that rules of Court should be obeyed*".

15. In ***Lablache De Charmoye v. Lablache De Charmoye*** SCA 9 of 2019 SCCA 34 (17th September 2019) the Court of Appeal of Seychelles held that;

> "*Rules cannot be overlooked for the sake of expedience or simplicity because rules are to be followed".*

16. The Petitioner has instituted this Revision Application by way of a Petition and Affidavit as required by the Court of Appeal (Appellate Procedure) Rules. The purpose of filing an affidavit is to affirm the contents of the petition. The purpose and legal significance of affidavits in legal proceedings has been observed in ***Kumarasinghe v Ratnakumara and Others*** [1983] 2 Sri LR 393 (at pg.396) by Sharvananda, A.C.J., (as he then was) as follows:

> *" An affidavit is an oath in writing signed by the party deposing, sworn before and attested by him who had authority to administer the same. " 1 Bacon's Abridgement 124. An affidavit is a declaration as to facts made in writing and sworn before a person having authority to administer an oath. Any particular fact may be proved by an affidavit. The law provides for the admissibility, in certain circumstances, of evidence by affidavit. The evidence given by way of an affidavit is a substitute for testimony given by word of mouth. The affidavit can be used as evidence of facts*

stated therein. Any person acquainted with the facts may give the affidavit. An affidavit is only intended to satisfy the Court, prima facie, that the allegations in the application are true so that the Court may take legal action such as issuing notice on the opposite party on the basis of the evidence, provided by the affidavit. If the allegation of fact made in an affidavit in support of the application is not refuted by counter affidavit by the opposite party, then the allegation in the application is treated as true. Affidavit in support of the application thus serves the purpose of proof of facts stated therein. It furnishes the evidence verifying the allegation of facts contained in the petition. Affidavit evidence carries equal sanctity as oral evidence.

17. Therefore, it is of paramount importance that the affidavit is in proper order. However, in the present Application, the supporting affidavit does not bear the date on which it was attested. As a result, there is no valid affidavit to affirm the contents of the petition. Consequently, the very institution of the Revision Application is invalid and contravenes the Court of Appeal Rules of 1990.

18. ***In Kumarasiri and Another v. Rajapakse*** [2006] 1 SLR 359***, it was held inter alia that:***

On an examination of the affidavit, it is clear that the jurat therein is not in conformity with the law. It is rather confusing and incorrectly worded; it does not state where the affidavit was affirmed.

Per Somawansa J., (P/CA) ;

"It is to be seen that, it is the flesh and blood of the affidavit which gives life to the skeleton in the petition."

19. The affidavit filed by the Petitioner in this case, in my view, being fatally flawed need to have been rejected *in limine* resulting in the absence of a proper affidavit under the Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules referred to above. Consequently, a revision application that fails to conform to the Court of Appeal Rules and should be rejected. As a result, there is no valid revision application before the Court of Appeal.

20. It is also important to note that the description of the property in the case before the Magistrate Court differs entirely from the description provided in the Petition filed in the Court of Appeal. This discrepancy indicates that the Petitioner failed to exercise due diligence in filing the present Revision Application.

21. In the schedule to the Petition filed in the Magistrate Court, the property was described as follows:

*මධ්‍යම පළාතේ, දිස්ත්‍රික්කයේ, ගගවට කෝරළයේ, ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ මහනුවර මහනගර සභා සීමාව තුල අනිවත්ත බටහිර නිලධාරි කොට්ටාශයේ දොඩන්වල පිටකන්ද පිහිටි "ගිනිහපුවේ හේන සහ ගල්කඩුල්ලේ හේන" නැමැති ඉඩමට මිනින්දෝරු ඒ. එම්. ඩී. අතපත්තු විසින් මැන සාදන ලද අංක **678** සහ **2016-11-13** දින දරණ පිඹුරේ නිරූපිත අංක **1** දරණ පර්චස් පහලොවයි දශම අටක් (අ. 00 රූ. 00 පර්. 15.8) ක් හෙවත් හෙක්ටයාර් 0.03996ක් වපසරිය ඇති ඉඩමට මායිම් වන, **උතුරු නැගෙනහිරට** - වෛද්‍ය සෙනෙවිරත්නට අයිති ඉඩමද, **දකුණු නැගෙනහිරට** - ජෝර්ජ් ඊ ද සිල්වා මාවතේ වරිපනම් අංක 307/1/1 දරණ දේපල සහ මිනින්දෝරු ඊ වී සිරිසුමන විසින් මැන සාදන ලද අංක **1880** දරණ පිඹුරේ කැබලි අංක 3 දරණ ඉඩම් කොටසක්ද, **දකුණු බස්නාහිරට** - කැබලි අංක 5 දරණ ප්‍රවේශ මාර්ගය සහ දේපල මිනින්දෝරු ඊ වී සිරිසුමන විසින් මැන සාදන ලද අංක **1880** දරණ පිඹුරේ කැබලි අංක 3 දරණ ඉඩම් කොටසක්ද **උතුරු බස්නාහිරට** - ජෝර්ජ් ඊ ද සිල්වා මාවත යන නම මෙකී මායිම් තුළ පිහිටි වරිපනම් අංක **3098** දරණ ගොඩනැගිල්ල ඇතුලු සෑම සියලු දේ ත් වේ.*

22. However, in the schedule to the Petition filed in the Court of Appeal, the property is described as follows:

<u>ඉහත කී පළමු උපලේඛනය</u> *මධ්‍යම පළාතේ, මහනුවර දිස්ත්‍රික්කයේ ගගවට කෝරලේ ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ මහනුවර මහ නගර සභා සීමාව තුළ සියඹලාගස්තැන්න ග්‍රාම නිළධාරී වසමේ සියඹලාගස්තැන්න පිහිටි පල්ලේවත්ත නැමැති ඉඩමට බලයලත් මිනින්දොරු ඒෆ්. මාපලගම මහතා විසින් 1955.06.15 වෙනි දින මැන සාදන ලද අංක.3069 දරණ පිඹුරේ ප්‍රකාර බෙදා වෙන්කල කැබලි අංක 05 දරණ කොටස වන උතුරු - නැගෙනහිරට :- කටුගස්තොට පාරද, දකුණු නැගෙනහිරට :- පාරද, දකුණට :- මැක්ලම්ස් ඩ්‍රයිව් ද, උතුරු - බස්නාහිරට :- මෙම පිඹුරේ කැබලි අංක 3 ද මායිම් තුළ පිහිටි පර්චස් 24.75 ක් වපසරිය ඇති ඉඩම සහ ඒ තුළ පිහිටි අංක 429 දරණ තුන් මහල් ගොඩනැගිල්ල සහිත ඉඩම වේ.*

23. A comparison of the aforementioned schedules clearly shows that the property described in the schedule to the Petition before the Magistrate Court is entirely different from the property described in the schedule to the Petition filed in the Court of Appeal.

24. To elaborate, in averment No. 4 of the Petition, the Petitioner stated that the case instituted in the Magistrate Court of Kandy relates to premises bearing assessment No. 429, Katugasthota Road. It is further stated that the subject matter before the Magistrate Court is described in the schedule to this petition. However, in the schedule to the instant Revision Application, assessment No. 429 is not mentioned. Instead, it describes Lot 1 of Ginihapuwehena and Galkadullehena in plan No. 878, dated

13.11.2016, along with the building bearing assessment No. 3098 as the subject matter. Thus, the Petitioner's own averments in the Revision Application contradict his stated position.

25. It is noteworthy that when two different properties are mentioned in the schedules to the petitions filed in the Magistrate Court and the Court of Appeal, no determination can be reached with certainty regarding possession. Moreover, the Petitioner filed a Revision Application seeking to have the Order dated 03.10.2021, issued by the learned High Court Judge of Kandy, set aside. Therefore, when the subject matter referred to in the Petition filed in the Magistrate Court is entirely different from the subject matter mentioned in the schedule to the Petition filed in the Court of Appeal, the Petitioner's Revision Application is bound to fail.

26. Furthermore, the Order challenged by the Petitioner in this Revision Application was delivered by the High Court while exercising its revisionary jurisdiction. In other words, through this application, the Petitioner seeks to set aside the Order made in a previous revision application. To that end, the Petitioner invites this Court to exercise its revisionary jurisdiction over the order of the High Court of the Provinces, which was issued in the exercise of its own revisionary jurisdiction under Article 154P(3)(b) of the Constitution.

27. Notably, the Petitioner has failed to advance any valid reason as to why he invoked revisionary jurisdiction instead of appellate jurisdiction. The Petitioner could have filed an appeal against the Order of the High Court, yet he chose to file a revision application.

28. When filing a revision application instead of an appeal in Sri Lanka, the Petitioner must provide sufficient reasons for the revision. This is particularly important because a revision application is an exceptional remedy that is not commonly granted, and it generally deals with jurisdictional errors or unique circumstances surrounding the original court's decision.

29. Further, the courts do not exercise its revisionary jurisdiction where there is an alternative remedy, unless there are 'exceptional circumstances' which warrants the invocation of the revisionary jurisdiction of the court.

30. A similar view was held in ***Gunasekera v Chitra Silva and Others*** [2006] 3 Sri LR 188 where it was held;

"Where an alternative remedy is available and if a party fails and or neglects to exercise such remedy due to the parties' own conduct and or negligence court will not exercise the extraordinary powers of revision. However, when the party is able to show exceptional circumstances, Court will not hesitate to exercise such jurisdiction."

31. In ***Ishak V. Laxman Perera Director of Customs and Others*** [2003] 3 Sri LR 18 it was held as follows;

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy, the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision." Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with the judicial review being properly regarded as being a remedy of last resort. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the Court will attach importance to the indication of Parliament intention."

32. Furthermore, it is important to emphasize that Courts exercise revisionary jurisdiction only in 'exceptional circumstances' that justify the exercise of judicial discretion. Therefore, the Petitioner must establish the existence of such exceptional circumstances that shock the conscience of the Court. In this regard, following authorities would be of much relevance:

33. In ***Dharmaratne and Another v Palm Paradise Cabanas Ltd. and Others*** [2003] 3 Sri LR 24 (at pg. 30), it was held;

"The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

34. Further, in ***Wijesinghe v Tharmaratnam*** Sri Skantha's Law Reports Vol. IV 47 (at pg. 49) it was held;

> *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which 'shocks the conscience of the court'."*

35. Therefore, a petitioner must establish 'exceptional circumstances' by expressly pleading such grounds in their revision application to invoke the court's discretion. However, in the present Application, the Petitioner has failed to plead any such exceptional circumstances.

CONCLUSION

36. In the final analysis, for the reasons discussed in the preceding paragraphs of this judgment, I dismiss the Petitioner's Revision Application with costs in the sum of Rs 25000/-

Judge of the Court of Appeal

Hon. M. Ahsan R. Marikar, J.(CA)
I agree.

Judge of the Court of Appeal