

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

In the matter of an application for Restitution, in the nature of *Restitutio-In-Integrum* under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal**

Case No: RII/0055/2025

WP/HCCA/MT/53/03(F)

DC Mt. Lavinia

Case No: 40/93/P

1. Vithanage Kusumawathie Perera  
No. 492/A, Welipara,  
Thalawathugoda
2. Vithanage Alice Perera (Deceased)
  - 2a. Meemanage Leelawathie  
No. 97/16, Railway Mawatha,  
Maharagama
3. H.D. Asilin  
No. 352, Pannipitiya Road, Thalawathugoda
4. P.G. Somapala Perera  
No. 125, Hiripitiya, Pannipitiya
4. Meemanage Simon Perera  
No. 383/15, Temple Road, Thalpathipitiya,  
Nugegoda.

**Plaintiffs**

**VS**

1. Bethmage Mary Nona  
No. 20/14, Wetakeiyyawala Road,  
Thalpathipitiya, Nugegoda
2. Vithanage Jayasiri Perera  
No. 20/14, Wetakeiyyawala Road,  
Thalpathipitiya, Nugegoda
3. Vithanage Asilin Perera  
No. 20/14, Wetakeiyyawala Road,  
Thalpathipitiya, Nugegoda

4. Vithanage Luis *alias* Brampy Perera  
No. 171, Madiwela Road,  
(Deceased)
- 4a. Vithanage Piyasena Perera
5. KurupuggeMagilin Perera
6. Vithanage Premawathie Perera
7. Vithanage Gunapala Perera
8. Vithanage Nandawathie Perera
9. Vithanage Kanthilatha Perera  
All of No. 492/A, Welipara, Thalawathugoda
10. Rupasinghe Arachchige Janenona
11. Vithanage Saranapala Perera
12. Vithanage Sugathapala Perera  
All of No. 293/20, Thalapathpitiya,  
Nugegoda
13. H.D. Premadasa Perera  
No. 352, Pannipitiya Road,  
Thalawathugoda
14. Vithanage Thigiris Perera  
No. 38 Pamunuwa, Maharagama
- 14a. Vithanage Premawathie Perera  
No. 38, Pamunuwa, Maharagama
15. Meemanage Siripala Perera
16. Meemanage Piyadasa Perera
17. Meemanage Kusumawathie Perera
18. Meemanage Sirimawathie Perera

19. Meemanage Nandawathie Perera
20. Meemanage Gunawathie Perera  
All of No. 383/15, Temple Road  
Thapalathpitiya
21. P.G. Thomas Perera  
No. 76/1, Mambulgoda, Pannipitiya
- 21a. Galagedarage Lili Nona  
No. 37, Mambulgoda, Pannipitiya
22. P.P. Karolis Perera  
No. 890, Rukmale Road, Kottawa
23. P.P. Podinona Perera  
No. 76/1, Mambulgoda, Pannipitiya
24. P.D. Premawathie Perera  
No. 1, Gajaba Place, Colombo 06
25. Vithanage Charlis Perera  
No. 38 Pamunuwa Road, Maharagama
- 25a. W. Babanona  
No. 38, Pamunuwa Road, Maharagama
26. S.L. Podinona
27. Vithanage Seelani Perera
28. Vithanage Swarne Malanie Perera
29. Vithanage Sriyalatha Perera
30. Vithanage Jayasiri Perera
31. Vithanage Sivantha Perera
32. Vithanage Deepika Chandanie Perera
33. Vithanage Rupamala Perera

All of No. 38/1, New Hospital Road,  
Pamunuwa, Maharagama

34. Vithanage Sayaneri Perera  
No. 38/2, Pamunuwa, Maharagama
- 34a. Amarathunga Aarachchige Leelawathie  
Perera  
No. 38/2, Pamunuwa, Maharagama
35. Naranpitage Karunawathie
36. Vithanage Wimalawathie Perera
37. Vithanage Pathmawathie Perera
38. Vithanage Kusumawathie Perera
39. Vithanage Chandrawathie Perera
40. Vithanage Anulawathie Perera
41. Vithanage Jagath Sri Lal Perera
42. Vithanage Nihal Perera
43. Vithanage Sunil Perera
44. Vithanage Raja Perera

All of No. 38/3, Pamunuwa,  
Maharagama

45. Vithanage Piyasena Perera  
No. 39, New Hospital Road, Pamunuwa,  
Maharagama
46. Vithanage Nihal Perera  
No. 38/4, New Hospital Road, Pamunuwa,  
Maharagama

**Defendants**

**IN THE HIGH COURT**

1. Vithanage Kusumawathie Perera  
No. 492/A, Welipura, Thalawathugoda
2. Vithanage Alice Perera  
(Deceased)
- 2a. Meemanage Leelawathie  
No. 97/16, Railway Mawatha,  
Maharagama
3. H.D. Asilin  
No. 352, Pannipitiya Road,  
Thalawathugoda
4. P.G. Somapala Perera  
No. 125, Hiripitiya, Pannipitiya
5. Meemanage Simon Perera  
No. 383/15, Temple Road,  
Thalapathipitiya, Nugegoda

**Plaintiff-Appellants**

**VS**

1. Bethmage Mary Nona  
No. 20/14, Wetakeiyyawala Road,  
Thalapathiptiya, Nugegoda.
2. Vithanage Jayasiri Perera  
No. 20/14, Wetakeiyyawala Road,  
Thalapathiptiya, Nugegoda
3. Vithanage Asilin Perera  
No. 20/14, Wetakeiyyawala Road,  
Thalapathiptiya, Nugegoda.
4. Vithanage Luis *alias* Brampy Perera  
No. 171, Madiwela Road,  
(Deceased)

- 4a. Vithanage Piyasena Perera
5. KurupuggeMagilin Perera
6. Vithanage Premawathie Perera
7. Vithanage Gunapala Perera
8. Vithanage Nandawathie Perera
9. Vithanage Kanthilatha Perera  
All of No. 492/A, Welipara, Thalawathugoda
10. Rupasinghe Arachchige Janenona
11. Vithanage Saranapala Perera
12. Vithanage Sugathapala Perera  
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Thapalathpitiya

21. P.G. Thomas Perera  
No. 76/1, Mambulgoda, Pannipitiya
- 21a. Galagedarage Lili Nona  
No. 37, Mambulgoda, Pannipitiya
22. P.P. Karolis Perera  
No. 890, Rukmale Road, Kottawa
23. P.P. Podinona Perera  
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28. Vithanage Swarne Malanie Perera
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31. Vithanage Sivantha Perera
32. Vithanage Deepika Chandanie Perera
33. Vithanage Rupamala Perera  
  
All of No. 38/1, New Hospital Road,  
Pamunuwa, Maharagama
34. Vithanage Sayaneris Perera

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Perera  
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36. Vithanage Wimalawathie Perera

37. Vithanage Pathmawathie Perera

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39. Vithanage Chandrawathie Perera

40. Vithanage Anulawathie Perera

41. Vithanage Jagath Sri Lal Perera

42. Vithanage Nihal Perera

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45. Vithanage Piyasena Perera  
No. 39, New Hospital Road, Pamunuwa,  
Maharagama

46. Vithanage Nihal Perera  
No. 38/4, New Hospital Road, Pamunuwa,  
Maharagama

**Defendant-Respondents**

**AND NOW BETWEEN**

46. Vithanage Nihal Perera  
No. 38/4, New Hospital Road, Pamunuwa,  
Maharagama

**Defendant-Respondent-Petitioner**

**Vs**

1. Vithanage Kusumawathie Perera  
No. 492/A, Welipara, Thalawathugoda
2. Vithanage Alice Perera  
(Deceased)
- 2a. Meemanage Leelawathie  
No. 97/16, Railway Mawatha,  
Maharagama
3. H D Asilin  
No. 352, Pannipitiya Road,  
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4. P G Somapala Perera  
No. 125 Hiripitiya, Pannipitiya
5. Meemanage Simon Perera  
No. 383/15, Temple Road,  
Thalapathipitiya, Nugegoda.

**Plaintiff-Appellant-Respondents**

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Thalapathiptiya, Nugegoda.
2. Vithanage Jayasiri Perera  
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Thalapathiptiya, Nugegoda
3. Vithanage Asilin Perera  
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No. 38, Pamunuwa Road, Maharagama
26. S.L. Podinona
27. Vithanage Seelani Perera  
No. 212, Horagala West, Padukka
28. Vithanage Swarne Malanie Perera  
No. 33, Bolawalana Mw, Negombo
29. Vithanage Sriyalatha Perera  
No. 254 Daampe, Meegoda
30. Vithanage Jayasiri Perera
31. Vithanage Sivantha Perera
32. Vithanage Deepika Chandanie Perera  
No. 89G, Kumudu Mw, Naampamunuwa,  
Piliyandala
33. Vithanage Rupamala Perera  
No. 9, Polwatta Road, Pamunuwa,

Maharagama

34. Vithanage Sayaneri Perera  
No. 38/2, Pamunuwa, Maharagama
- 34a. AmarathungaAarachchigeLeelawathie  
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All of No. 38/3, Pamunuwa,  
Maharagama

45. Vithanage Piyasena Perera  
No. 39, New Hospital Road, Pamunuwa,  
Maharagama

**Defendant-Respondent-Respondents**

Before : R. Gurusinghe, J.  
&  
Dr. S. Premachandra, J.

Counsel : Dr. Sunil F.A. Cooray with Neminda G. Kariyawasam  
Instructed by Gayeshani Perera  
**for the 46<sup>th</sup> Defendant-Respondent-Petitioner**

Supported on: 19-02-2026  
Decided on : 02-04-2026

### **ORDER**

R. Gurusinghe, J.

The 46th Defendant-Respondent-Petitioner (Petitioner) filed this *Restitutio-in-Integrum* application on 18-09-2025, seeking to set aside the judgment dated 03-10-2016, delivered by the Provincial High Court of Western Province (Holden at Mount Lavinia).

The petitioner, along with a few other parties, instituted a Special Leave to Appeal application bearing No. SC (HC) CALA 187/2016 before the Supreme Court, challenging the aforementioned judgment of the Provincial High Court of Western Province. The petitioners of that application, including the present petitioner, failed to diligently pursue the Special Leave to Appeal before the Supreme Court. That application remained pending before the Supreme Court from April 2016 until its dismissal on 23-05-2025.

The Supreme Court, by judgment dated 23-05-2025, dismissed the said application due to the petitioners' failure to prosecute it with due diligence, particularly their failure to effect substitution in respect of the deceased parties.

In the case of Sri Lanka Insurance Corporation Limited vs Shanmugam and another [1995] 1 Sri LR 55, the Court of Appeal held *inter alia* as follows:

*“Restitution is an extraordinary remedy and will be granted under exceptional circumstances. A party seeking Restitution must act with utmost promptitude. The Court will not relieve parties of the consequences of their own folly, negligence or laches.*

*Relief by way of Restitutio-in-Integrum in respect of judgments of original courts may be sought;*

- (a) Where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or*
- (b) Where fresh evidence has cropped up since judgments which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or*
- (c) Where judgments have been pronounced by mistake and decrees entered thereon, provided, of course, it is an error which connotes a reasonable and excusable error.*

It is settled law that the relief of Restitution is granted only in circumstances where no other remedy is available to the aggrieved party.

Section 5 C of the High Court of the Provinces (Special Provisions) Act No 19 of 1990, as amended by Act No. 54 of 2006, is as follows:

5C 1.

An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.

Accordingly, the appropriate remedy available for the petitioner was to file a Special Leave to Appeal application before the Supreme Court, which they have done. However, they failed to prosecute the said application.

Following the dismissal of the aforementioned application due to failure to prosecute it before the Supreme Court, the petitioner filed the instant application seeking to set aside the judgment of the High Court entered nine years ago. The application should be dismissed due to this undue delay.

Furthermore, the Supreme Court in Nilantha Fernando v. Nilanthi Perera SC/Appeal/65/2025, decided on 10-10-2025, held that,

*“the Court of Appeal has no jurisdiction, whether by way of final appeal, revision or restitutio-in-integrum to relieve judgments or orders of the Provincial High Court, whether in the exercise of its Appellate Jurisdiction*

*under Act No. 19 of 1990 as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court.”*

For the foregoing reasons, we refuse to issue notice to the respondents.

Application is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.