

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

*In the matter of an Appeal made under
and in terms of Section 55A of the
Muslim Mosque and Charitable Trust
or Wakf Act 51 of 1956 as amended
read with Section 754(1) and 755 of the
Civil Procedure Code as amended an
appeal against the order dated
16.04.2025 of the Wakf Tribunal*

Court of Appeal Case No.

CA/WKF/02/2024

Wakf Tribunal Case No.

WT/301/2024

Wakf Board Case No.

WB/9500/2023

1. Mohamed Ibrahim Mohamed
Kaamil,
No. 148, Galbokka Road,
Weligama.
2. Mohamed Uwais Moharned,
No. 41, Mohamad Lane,
Weligama.
3. Mohamed Hussein Muhammadu,
No. 20, Badurlane, Galbokka Road,
Weligama.
4. Mohamed Mohamed Mufallal,
No. 17, Kottegoda, Weligama.
5. Muhammed Saheel Muhambadu,
No. 156, Galbokka Road,
Weligama.
6. Mohamed Kowzer Hajjiar Ahmad,
No. 108, Galbokka Road,
Weligama.

PETITIONER-APPELLANT-
APPELLANTS

Vs.

1. M.T.M Areel,
No. 46/10, Jinnah Road, Galbokka,
Weligama.
2. A. Mohamed,
No. 110, Galbokka Road,
Weligama.
3. A.K. Muhammad,
No. 39/12D, Rubbaer Watta Road,
Nedimala, Dehiwala.
4. A.K.M Athraf,
No. 55/20, Vagirajana Mawatha,
Korattuwa, Weligama.
5. M. Mohideen Cader,
No. 07, 36th Lane,
Off Shady Grove Castle Street,
Colombo 08.

RESPONDENT- RESPONDENT-
RESPONDENTS

Court of Appeal Case No.
CA/WKF/03/2025
Wakf Tribunal Case No.
WT/302/2024
Wakf Board Case No.
WB/9548/2023

1. Mohamed Usman Abubakkar,
Buhary Mosque and Madrasa,
Weligama.
2. Mohamed Waisu Mohamed, Wasik
Buhary Mosque and Madrasa,
Weligama.

3. Mohamed Zubair Ahmed Hai,
No. 46/12, LL Lane, Galbokka,
Weligama.
4. Mohamed Zubair Ahmed Nazeer
Rizwan,
No. 195/15, LL Lane, Galbokka,
Weligama.

RESPONDENT-APPELLANTS-
APPELLANTS

Zaid Mukrim Hafeel,
Buhary Mosque and Madrasa,
Weligama.

RESPONDENT- RESPONDENT-
APPELLANT

Vs.

1. M.T.M Areel,
No. 46/12, Jinna Road, Galbokka,
Weligama.
2. A. Mohamed,
No. 110, Galbokka Road,
Weligama.
3. A.K. Muhammad,
No. 39/12D, Rubbaer Watta Road,
Nedimala, Dehiwala.
4. A.K.M Athraf,
No. 55/20, Vagirajana Mawatha,
Korattuwa, Weligama.
5. Mohideen Cader,
No. 07, 36th Lane,
Off Shady Grove Castle Street,
Colombo 08.

PETITIONER- RESPONDENT-
RESPONDENTS

Before: Mahen Gopallawa, J.

Dr. D. F. H. Gunawardhana, J.

Counsel:

Saliya Pieris, P.C., with Anjana Ratnasiri and Ishan Jayasundara instructed by Eksith Madawala for the Appellants.

Sanjeewa Jayawardena, P.C., instructed by Amila Kumara for the 1st to 3rd Respondents.

Suren Gnanaraj with Sandun Batagoda for the 4th Respondent.

N.M. Riyaz with L.M.C.D. Bandara for the 5th Respondent.

Supported on: 24.08.2026

Delivered on: 28.08.2026

Order

Introduction

After delivering the judgements of this Court in Appeals bearing Nos. WKF 02/2024 and WKF 03/2025, Mr. Peris moved Court, in terms of Rule 22 of the Supreme Court Rules, to obtain leave from this Court on certain ‘substantial questions of law’, and requested that the matter be mentioned for him to make an oral application within 21 days from the date of the judgment.

Accordingly, the Court fixed it on the 24.08.2026 for the making of the said oral application. On that day, Mr. Peris made the oral application, and in support thereof, made submissions as well.

However, on the other hand, counsel for the Respondents objected to the application made by Mr. Peris; hence, this order.

Arguments

Mr. Peiris contends that in the course of his reply, when the reply particularly to the submissions by the learned Counsel for and on behalf of the Respondents on the preliminary issue raised as to the maintainability of the two final appeals preferred by the Appellants, he moved the Court to exercise revisionary powers conferred on this Court in respect of these Appeals, though it is filed as appeals because the facts of this case demands that revisionary powers be exercised *ex mero motu*. In support of this submission, he cited the case of *Abdul Cader v. Sittinisa*,¹ a judgement by Justice Gratiaen.

¹ (1951) 52 NLR 536.

Further elaborating his argument, he referred to the fact that when the Appeal was taken up before the Wakf Tribunal, three members of the Wakf Tribunal heard the case bearing Appeal No. WT/301/2024; however, due to the retirement of certain members, only the Chairperson of the Tribunal signed the order given. Therefore, the decision of the other members who heard the case and comprised of the quorum, had not subscribed to the order; thus, their decision is not finally reflected in the said order. As such, the order lacks its *vires*, and therefore, this is a fit case to exercise the revisionary powers of the Court *ex mero motu* since the Appellants orally moved for that.

Mr. Peiris raises this now as a substantial question of law in the following form;

Whether their Lordship's of the Court of Appeal erred in failing to exercise the revisionary jurisdiction of the Court as sought by the Appellant notwithstanding the dismissal of the appeal on a preliminary ground in the light of a substantial miscarriage of justice as the WKF Tribunal Order had not been made or signed by all three members of the said tribunal.

Mr. Peiris also relied upon *Collettes Limited v. Bank of Ceylon*,² where Justice Sharvananda proposed the formula as to how a substantial question of law can be formulated.

On the other hand, it is the submission of the Mr. Jayawardena, the learned President's Counsel for the 1st to 3rd Respondents, that there is no substantial question of law that arose in this case since the judgement by this Court delivered on 07.08.2026 only followed the interpretation given to Section 754(1) read with Section 754(5), initially by the Divisional Bench of five Judges that settled the law in *S.R. Chettiar and Others v. S.N. Chettiar*,³ and in addition to that, the same was followed and affirmed in two Benches of seven Judges. Therefore, those Benches

² [1984] 2 Sri L.R. 253.

³ [2011] 2 Sri L.R. 70.

have been handed down by the Benches of the Superior Court, which is a hierarchically and numerically higher court than this Court; thus, this Court has correctly held in the said judgement delivered on 07.08.2026 is bound by those previous judgements, as the procedure is concerned. Therefore, no substantial question of law arises in this case.

Mr. Gnanaraj's argument is that no question of substantial law has arisen in this case, as submitted by Mr. Jayawardena, because if there was a question of substantial law, it should have been raised in the course of his arguments where he never raised in terms of Rule 20(1) and (2).

Having associated with the arguments of Mr. Jayawardena, Mr. Riyaz argued that if the Respondents really wanted to file a Revision Application, still they can do so, as long as they explain the delay.

However, in reply, Mr. Peiris argued that his Application is only in terms Rule 22.

Therefore, now I will have to consider whether there is a question of substantial law arises. Before that, I will also have to decide under what stage and what provision of Rule that Mr. Peiris raised his substantial question of law.

Now I will consider the Rules concerned made in terms of Article 136 of the Constitution published in the Extraordinary Gazette No. 665/32, dated 07.06.1991, and which is titled as the “Supreme Court Rules 1990”.

In Part I, the Rules deals with regard to the special leave applications. Rule 20(1) deals with the leave to appeal application made following the Court of Appeal to the Supreme Court. According to Rule 20(1), in the course of submissions, a substantial question of law can be raised, if any, in addition to the other questions. Therefore, in this case, though Mr. Peiris moved the Court to exercise the revisionary powers of this Court, he never raised that question in terms of Rule 20(1) of the Supreme Court Rules.

For further clarity, Rule 20(1) of the Supreme Court Rules is reproduced below;

20. (1) When a submission is made, by or on behalf of a party to any matter or proceeding in the Court of Appeal, at any time before the conclusion of the hearing by the Court of Appeal, that a substantial question of law is involved in such matter or proceeding, it shall be lawful for an application to be simultaneously made, by or on behalf of any party, that such question of law be forthwith recorded and that the Court of Appeal, in its final order or judgement, do grant leave to appeal to the Supreme Court in respect of such question.

Secondly, Rule 20(2) deals with the substantial question of law dealt by the Court in a judgement or a separate order, which also does not arise in this case since we never raised any question or decided upon any substantial question of law in our judgement dated 07.08.2026.

Rule 20(2) of the Supreme Court Rules reads thus;

20. (2) The Court of Appeal shall, either in its final order or judgment in a separate order made at the time of such final order or judgment, consider such submission and application and grant or refuse such leave. Where the Court of Appeal fails to make an order in respect of such submission and application, it will be deemed for all purposes to have refused to grant leave to appeal. A certified typed copy, or an uncertified photocopy, of such judgment or order of the Court of Appeal shall be issued to any party requiring such copy, within forty eight hours.

Accordingly, Mr. Peiris, after delivering this judgement, made this application orally when this was formally raised on 24.08.2026 before this Court in terms of Rule 22, he specifically mentioned so. Therefore, he sought leave from this Court to appeal to the Supreme Court. Once leave is granted on such a substantial question of law, Mr. Peiris does not need to go to the Supreme Court by way of a special leave to appeal because the Appellants can circumvent that

threshold; therefore, if leave to appeal is granted from this Court on a substantial question of law as stipulated in the Rules 20(1), 20(2) or 22, Mr. Peiris's clients can directly argue the appeal and the Supreme Court has to fix the matter for Arguments when the record reaches the Supreme Court.

For further clarity, the relevant section of Rule 22 of the Supreme Court Rules is reproduced below and reads thus;

22. (1) Notwithstanding that no such submission or application has been made in terms of rule 20(1), an application may be made orally by or on behalf of any party aggrieved by such final order, judgment, decree or sentence on the day such final order or judgment is delivered.

(i) for leave to appeal to the Supreme Court in respect of a substantial question of law, which shall then be specified and recorded; or

(ii) for time to consider the making of an oral application for such leave.

On the other hand, it is the collective submission of the Counsel for the Respondents that there is no ‘substantial question of law’ involved in this matter; therefore, this Application should not be allowed. If at all, the Appellants can still make an application to the Supreme Court as long as it is within time.

For the purpose ascertaining whether there is a ‘substantial question of law’, I wish to deal with certain matters according to the chronological order of this Application.

The Appellants have preferred this Appeal bearing No. 02/2024 to this Court dated 18.06.2024, where he has only sought to invoke the Appellate jurisdiction of this Court conferred on this Court in terms of Article 138 of the Constitution.

As per the judgement of Justice Jameel in the case of *Martin v. Wijewardena*,⁴ Article 138 only confers the jurisdiction of this Court. However, procedure is not laid down there; therefore, according to Justice Jameel, the procedure is laid down in respect of different procedural statutes or rules. Accordingly, as I have also referred to in the judgement dated 07.08.2026, to look for the procedure under the Wakf Act, one has to refer to Section 55A of the Act which refers to when there is an application to the Wakf Tribunal, that has to be treated as an application to the District Court. If one prefers an appeal therefrom, he has to follow the Rules laid down in the Appellate procedure in the Civil Procedure Code. Therefore, one has to look for the Civil Procedure Code and the relevant Rules stipulated in the Supreme Court Rules, which I have also dealt above.

In this case, Mr. Peiris was not serious about his so-called ‘substantial question of law’ that he raised on 24.08.2026 based on whether this Court should have exercised revisionary jurisdiction or not until he took the opportunity in reply, to the submission made by the other three counsel because Mr. Peiris only made submissions on the substantive matters, namely, based on the grounds of appeal and nothing else, which I have referred to in my judgement dated 07.08.2026. He moved the Court to only as a passing remark in reply to the preliminary objections raised and submissions made thereon by his opponents (by the Counsel for the Respondents), where Mr. Peiris casually moved the Court to convert his appeal to a revisionary application.

In fact, when the preliminary objection was raised as to the maintainability of this Appeal, Mr. Peiris could have then and there in the course of his submissions or even in his original submissions, could have sought to move the Court on the same question that he raised on 24.08.2026 to convert the Appeal to a revisionary application by filing the necessary papers,

⁴ [1989] 2 Sri L.R. 409.

which he failed to do. He only in reply as a passing remark moved the Court to exercise its revisionary powers if the preliminary issue is decided against the Appellants. However, later in his Written Submissions, he moved the Court as such and also cited certain judgements that are cited now.

When the appeal first commenced before us, at the very commencement of the submissions, all the counsel for the Respondents reserved their rights to raise preliminary objections as to the maintainability of both Appeals, since without obtaining leave to appeal, the Appellants had preferred two appeals bearing Nos. 02/2024 and 03/2025. Therefore, Mr. Peiris could have easily sought and moved the Court in terms of Rule 20 to decide whether it is a substantial question of law. Now, after delivering the judgement, Mr. Peiris is seeking leave from this Court to appeal against the judgement which was delivered on 07.08.2026 dismissing the two Appeals, on the basis that without first obtaining leave, the Appellants could not have appealed. However, his applications on the substantial question of law based on whether this Court should have considered converting these Appeals into revisionary applications exercising revisionary powers in respect of the order, where the necessary subscription of at least one more member of the Wakf Tribunal failed to subscribe to the judgement since only one member's decision is reflected in the given judgement.

However, the Appellants could have easily filed a Revision Application elaborating his substantial question of law, initially when the Mr. Peiris commenced his submissions on the substantive issues. Therefore, since the Appellants have failed to take that opportunity and made the said Applications, it is my view that the Appellants have failed in that respect and that there is no 'substantial question of law'.

In addition to that, since the Appellants had retained a very senior President's Counsel of the calibre of Mr. Saliya Peiris, the Appellants could have definitely been advised as to what sort

of suitable course of action should have been recourse to. Therefore, this itself shows that the so-called substantial question of law was not seriously raised and was not serious about any Revision Application to be made before this Court.

Therefore, it is my view that we have only followed the procedural law as settled by the Supreme Court in preferring an application against an order made by the Wakf Tribunal in respect of an application made to it by the Appellants, and thus, it is my view that it is not a substantial question of law which falls within the ambit of Paragraph (X) and (XI) proposed by His Lordship Justice Sharvananda in His Lordship's very well cited judgement of *Collettes Limited v. Bank of Ceylon*.

As I mentioned above, in chronological order, if the Appellants so desired to invoke the revisionary jurisdiction of this Court, when the Counsel for the Respondents informed the Court before the commencement of the Arguments of the Appellants that all the counsel would raise their preliminary objection as to the maintainability of this Appeal since the Appellants had preferred a direct appeal without first obtaining leave from this Court against an interlocutory order made by the Wakf Tribunal, the Appellants could then-and-there either moved the Court to treat their Appeal as a revision application and could have at least taken steps to file the necessary papers if they so desired; or otherwise, they could still file a revisionary application separately, and moved this Court to invoke its revisionary powers to revise any so-called illegal order, which the Appellants had not done or bothered to do. As such, it cannot be treated as a substantial question of law.

In any case, the Appellants have obtained the service of the best of the counsel, and they could have been advised by their Counsel on what course of action they should have taken. In that respect as well, it is my view that no revision lies in this case. Therefore, such question cannot be treated as a substantial question of law just because a party has made a wrong application.

If such erroneous course of action taken by the Appellants should be treated as the base or cause to invoke the revision jurisdiction of this Court, then the question arises on what the purpose of is having a procedural law and the legal provisions. Therefore, following an erroneous course of action by a party should not be the base for the Court to exercise its revisionary powers since they had ample opportunity at every stage as I quoted above to invoke revisionary powers or resort to such course of action, which they either derelicted, neglected, or ignored.

Even as Mr. Riyaz argued, even now if they so want and can explain the delay, they can invoke the revisionary jurisdiction. Therefore, the negligence or ignorance of a party does not amount to a substantial question of law.

As such, the Court is compelled to refuse leave to the Supreme Court.

Conclusion

Leave to appeal sought from this Court to the Supreme Court in terms of Rule 22 is refused.

JUDGE OF THE COURT OF APPEAL

Mahen Gopallawa, J.

I agree.

JUDGE OF THE COURT OF APPEAL