

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

*In the matter of an application for
mandates in the nature **Mandamus** and
Prohibition in terms of **Article 140** of the
Constitution of the Republic of Sri Lanka.*

CA / Writ / 280 / 2023

A & A Merchandise (Pvt) Ltd,
29, Ketawalamulla Lane,
Colombo 09.

Petitioner

V.

1. P B S C Nonis
The Director General of Customs
Customs Headquarters
40, Main Street
Colombo 11.
2. D P M Gunawardena
Former Deputy Director of Customs
Customs Headquarters
40, Main Street
Colombo 11.
3. A K K Thushara
Assistant Superintendent of Customs
Customs Headquarters
40, Main Street
Colombo 11.

Respondents

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

Counsel : Nilshantha Sirimanne with Deshara
Goonathilake instructed by Amila Kumara for
the Petitioner.

P. Jayasuriya, SC for the 1st – 10th Respondents.

Written Submissions on : 23.02.2026 for the Petitioner.

Decided on : 12.03.2026

K. Priyantha Fernando, J. (CA)

1. When this case came before the Court on 20th January 2026 for inquiry into the Amended Petition dated 05th December 2025, it was decided to conclude said inquiry by way of written submissions.
2. The original Petition has been filed on 24th may 2023 which contained 29 paragraphs and 8 prayers. While the original Application was pending, 1st to 3rd Respondents have concluded the impugned Customs Inquiry and Order has been delivered on 07th August 2023, accompanied by a Seizure Notice under Section 125 of the Customs Ordinance.
3. Consequently, the Petitioner filed an Amended Petition dated 31st August 2023, introducing only two fresh facts: (i) the impugned Order (Document “X33”), and (ii) the Seizure Notice (Document “X34”). The prayers were amended to reflect the same.

However, the Petition was filed without an accompanying Affidavit, which became the sole objection raised by the Respondents.

4. By Journal Entry dated 08th February 2024, the Court has expressly permitted the Petitioner to file an Affidavit on or before 20th February 2024, and fixed the matter for inquiry on 02nd May 2024. The Petitioner has duly filed an **Affidavit dated 15th February 2024.**
5. At the inquiry held on 05th November 2024, the Court has permitted the filing of an Amended Petition along with an Affidavit. In compliance, the Petitioner filed an Amended Petition dated 05th December 2024, supported by an Affidavit of the same date. This Petition contained 32 paragraphs and 6 prayers, with no fresh facts introduced save for paragraphs 31 and 32, which were necessary to comply with procedural rules.
6. On 18th February 2025, the Respondents have filed Limited Objections supported by an Affidavit of the 1st Respondent, contending that the Petitioner had failed to obtain leave of Court to file an Amended Petition, and that permission had been granted only to file an Affidavit. The Petitioner, by Counter Affidavit dated 07th July 2025, has refuted these objections, relying on the Journal Entry of 05th November 2024 which clearly states that leave was granted to file an Amended Petition along with an Affidavit.
7. The Petitioner has submitted that the Respondents' objections are misleading, frivolous, and devoid of merit, and that they amount to a grave attempt to mislead the Court in violation of Rule 51 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1978. Rule 51 of the Supreme Court Rules 1978 published in Gazette Extraordinary No. 9/10 reads as follows:

“51. Where any papers are filed under rule 50 the application shall be listed for an order of Court within a week of such filing.”
8. Furthermore, it was argued by the Petitioner that is apparent that the Amended Petition introduces no fresh facts beyond those already pleaded, causes no prejudice to the Respondents, and is consistent with the Court's rules.

9. It is pertinent to note that as argued by the Petitioner, one of the primary objectives of judicial administration is to diminish the costs of litigation: In Seylan Bank PLC v. New Lanka Merchants Marketing (PVT) Ltd and others SC Appeal No. 198/2014, decided on 19th May 2017 by a divisional bench comprising Sisira J. De Abrew J. Upaly Abeyrathne J. Prasanna Jayawardena, PC. J, the Supreme Court endorsed the principle that Courts should adopt a broad construction of procedural rules to avoid multiplicity of proceedings and unnecessary expense.

The relevant portion of the judgment reads as follows:

“Thus, in BYRNE”s case (at p.666), Lord Esher M.R. observed, “One of the chief objects of the Judicature Act was to secure that, whenever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence, and the main inquiry, will be the same, and the Court then has the power to bring in the new parties; and to adjudicate in one proceeding upon the rights of all the parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those Acts in order to carry out as far as possible the two objects I have mentioned”.

In MONTGOMERY”s Case (at p.324), Lord Esher M.R. stated, “I can find no case which decides that we cannot construe the rule as enabling the Court under such circumstances to effectuate what was one of the great 7 objects of the Judicature Acts, namely that, where there is one subject-matter out of which several disputes arise, all parties may be brought before the Court, and all those disputes may be determined at the same time without the delay and expense of several actions and trials.” [emphasis added].

10. Accordingly, the Objections filed by the Respondents are baseless and legally untenable and have wasted judicial time, causing a loss to the Petitioner as his application was not able to be supported since 2023.

11. For all the above reasons, the objections are overruled and the Amended Petition dated 05th December 2024 is accepted.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal