

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

In the matter of an appeal to the Honourable Supreme
Court of the Democratic Socialist Republic of Sri Lanka

1. Malavi Pathirannahelage Vindya
Ruwangi Perera
2. Malavi Pathirannahelage Rukshala
Santhsini Perera
3. Malavi Pathirannahelage Tarindu
Perera

All of No.86/9 Lesly Ranagala Mawatha
Colombo 8

**7th to 9th Defendant-Appellant-
Petitioner-Appellants**

SC Appeal 157/2013
WP/HCCA/COL 375/2007(F)
DC Colombo 17741/P

Vs

1. Walpola Mudalige Podihamine
No.87, Walpola Watta, Kalanimulla,
Angoda.
Plaintiff-1st Respondent-Respondent

2. MPRT Perera
3. MPS Perera
4. MPI Perera
5. MPP Perera
All of No.87/1, Walpola Watta, Kalanimulla
Angoda
6. MPWD Perera
No. 145, Siridamma Mawatha
Colombo 8

**2nd to 6th Defendant-
Respondent-Respondents**

Vs

No.

Before : Buwaneka Aluwihare PC J
Sisira J De Abrew J
Anil Gooneratne J

Counsel : Sunil Abeyratne with Thushara Gunatilake
for the 7th to 9th Defendant-Appellant-Petitioner-Appellants
Chandrika Morawake for the Plaintiff-Respondent-Respondent

Argued on : 3.3.2017

Written Submission

Tendered on : 1.11.2013 by the Defendant-Appellant-Petitioner-Appellants
20.12.2013 by the Plaintiff-Respondent-Respondent

Decided on : 13.09. 2017

Sisira J De Abrew J.

The 7th, 8th, 9th Defendant-Appellant-Petitioner-Appellants (hereinafter referred to as the Defendant-Appellants) in this case filed an appeal in the Civil Appellate High Court challenging the judgment of learned District Judge dated 20.8.2017. The learned Judges of the Civil Appellate High Court (hereinafter referred to as the High Court) by their judgment dated 15.3.2012 dismissed the petition of appeal on the ground that it had not been presented to the District Court within 60 days from the date of the judgment which is the stipulated time period prescribed to present a petition of appeal in Section 755(3) of the Civil Procedure Code (the CPC). Section 755(3) of the CPC reads as follows.

“Every appellant shall within sixty days from the date of the judgment or decree appealed against present to the original Court a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed

by the appellant or his registered Attorney. Such petition of appeal shall be exempt from stamp duty:

Provided that, if such petition is not presented to the original Court within sixty days from the date of the judgment or the decree appealed against, the court shall refuse to receive the appeal.”

Being aggrieved by the said judgment of the High Court, the Defendant-Appellants have filed this appeal. This Court by its order dated 20.9.2013 granted leave to appeal on the questions of law which are set out below.

1. Did the learned Judges of the Civil Appellate High Court err in concluding that the petition of appeal filed in that court had been filed out time?
2. Was there a valid notice of appeal and petition of appeal filed on behalf of the Appellants in the Civil Appellate High Court?

It is undisputed in this case that the petition of appeal should have been presented to the District Court on or before 19.10.2007. Learned counsel for the Defendant-Appellants contended that the petition of appeal had been presented to the District Court on 19.10.2007. But learned counsel for the Plaintiff-Respondent-Respondent-Respondents (hereinafter referred to as the Plaintiff-Respondents) contended that the petition of appeal had not been presented to the District Court on 19.10.2007. Therefore the most important question that must be decided in this case is whether the petition of appeal had been tendered to the District Court on 19.10.2007 or not. I now advert to this question. When the petition of appeal tendered to the District Court is examined, it appears that the said petition of appeal bears the date stamp of the Record Room of the District Court. According to the date stamp, the date is 19.10.2007. Learned counsel for the Defendant-Appellants relying on the said date stamp contended that the petition of appeal had been tendered to the District Court on 19.10.2007.

Although learned counsel for the Defendant-Appellants contended so, the Registrar of the Record Room of the District Court had made a minute addressed to the Chief Registrar of the District Court to the following effect.

“Chief Registrar. 23.10.2017.

This Petition of appeal had been put to the motion box of the Record Room by mistake. Submitted for necessary action.

Registrar in Charge of the Record Room.”

The above minute clearly shows that the Petition of Appeal had not been handed over to the Registrar of the District Court or to the Registrar in Charge of the Record Room on 19.10.2007 although it bears the date stamp of the Record Room of the District Court indicating the date as 19.10.2007.

When a Petition of Appeal or a Notice of Appeal is handed over to the District Court, the accepted practice is to hand over the same to the Registrar of the District Court who shall state the date and time of presentation of the document and initial it. The other practice is when a Petition of Appeal or a Notice of Appeal is tendered to the Registrar of the District Court, he will place the date stamp of the District Court; state the time of presentation; and initial on the date stamp. The fact that there is a practice of this nature is evident when one examines the Notice of Appeal tendered to the District Court which bears the date and time of handing over of the document and the signature of the Registrar of the District Court. The fact that there is a practice of this nature is also established by the judgment of Justice SN Silva (as he then was) in the case of Nachchiduwa Vs Mansoor[1995] 2SLR 273 at page275 which reads as follows.

“We have carefully considered the submission of learned counsel. We note that in terms of Section 755(3) the appellant has to present to the original court a petition of appeal within a period of 60 days of the judgment. The act of the registered attorney of the defendants-appellants in tendering the petition of appeal to the Registrar and the act of the Registrar in placing the date stamp

and his initials on the petition of appeal constitute a presentation of the petition of appeal.”

The petition of appeal submitted to the District Court does not bear a minute by the Registrar of the District Court stating the date and time of handing over the said document. It does not have any minute made by the Registrar of the District Court on 19.10.2007. It has a minute made on **23.10.2007** by the Registrar in charge of the Record Room which I have referred to above. There is another matter that should be considered in finding an answer to the question whether the petition of appeal had been tendered to the District Court on 19.10.2007 or not. The entries of the Motion Book of the District Court relating to 19.10.2007 had been produced marked ‘A’ in the High Court. The learned Judges of the High Court have considered this Motion Book. The last entry in page 318 of the Motion Book is entry No.46. Therefore the next entry in page 319 of the Motion Book should be entry No.47. The entry No.47 had been correctly entered in page 319 on the first line and this entry should be the first entry in page 319 of the Motion Book. But when page 319 of the Motion Book is examined it can be clearly seen that above the said entry No.47 there is another entry and the number of the said entry is also 46. Therefore it is seen in this Motion Book there are two entries under No.46. The second entry No.46 relates to the Petition of Appeal in this case and this entry had been made on the line where printed letters of the book are printed. This line is not meant for making entries.

When I consider all the above matters, I hold that the Petition of Appeal had not been handed over to the District Court on or before 19.10.2007. In view of the above conclusion reached by me, I answer the 1st question of law in the negative.

For the above reasons, I hold that that the Petition of Appeal had not been presented to the District Court within 60 days from the date of the judgment of

the District Court. In view of the conclusion reached above, I answer the 2nd question of law as follows.

“There was no valid petition of appeal filed on behalf of the Appellants in the Civil Appellate High Court.”

For the above reasons, I hold that the learned Judges of the High Court were correct when they dismissed the appeal of Defendant-Appellants. For the above reasons, I dismiss the appeal of the Defendant-Appellants with costs.

Appeal dismissed.

Judge of the Supreme Court.

Buwaneka Aluwihare PC J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.