

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

In the matter of an application made under  
Article 128(2) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka for  
Special Leave to Appeal against the Judgement  
dated 21<sup>st</sup> September 2020 of the Honourable  
Court of Appeal

Sri Lanka Telecom PLC,  
Telecommunication Headquarters Building,  
Lotus Road,  
Colombo 01

**SC/SPL/LA/No.224/2020**

Case No. CA/WRIT/387/2014

**Petitioner**

Vs.

1. Jagath P. Wijeweera,

Director General of Customs,

Sri Lanka Customs Department

No.40, Main Street, Colombo 11.

1B.Chulananda Perera,

Director General of Customs,

Sri Lanka Customs, Head Office,

Bristol Street, Colombo 01.

1C. P.S.M. Charles,

Director General of Customs,

Sri Lanka Customs, Head Office,

Bristol Street, Colombo 01.

1D. Rtd. Major General G.V. Ravipriya,  
Director General of Customs,  
Sri Lanka Customs, Head Office,  
Bristol Street, Colombo 01.

2. M. Paskaran,  
Director General of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.

3. Saman de Silva,  
Deputy Director of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.

4. D.K.S. Ravindra,  
Deputy Superintendent of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.

**Respondents**

**AND NOW BETWEEN**

Rtd. Major General G.V. Ravipriya,  
Director General of Customs,  
Sri Lanka Customs, Head Office,  
Bristol Street, Colombo 01.

*Presently at*

Sri Lanka Customs  
No.40, Main Street, Colombo 11.

**Respondent- Petitioner**

Vs.

1. Jagath P. Wijeweera,  
*Former* Director General of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.
2. Chulananda Perera,  
*Former* Director General of Customs,  
Sri Lanka Customs, Head Office,  
Bristol Street, Colombo 01.
3. P.S.M. Charles,  
*Former* Director General of Customs,  
Sri Lanka Customs, Head Office,  
Bristol Street, Colombo 01.
4. M. Paskaran,  
Director General of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.
5. Saman de Silva,  
Deputy Director of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.
6. D.K.S. Ravindra,  
Deputy Superintendent of Customs,  
Sri Lanka Customs Department  
No.40, Main Street, Colombo 11.

**Respondent- Respondents**

Sri Lanka Telecom PLC,  
Telecommunication Headquarters Building,  
Lotus Road,  
Colombo 01.

**Petitioner- Respondent**

Before : L.T.B. Dehideniya J.  
Kumudini Wickremasinghe, J

Counsels : Sumathi Dharmawardena PC, ASG with Manohara Jayasinghe DSG for the  
Petitioners.

Sanjeewa Jayawardena PC with Lakmini Warusavithana instructed by  
Vidanapathirana Associates for the Petitioner- Respondent.

Argued on : 14.11.2022

Decided on : 18.11.2022

**L.T.B. Dehideniya J,**

The Respondent- Petitioner filed this application before this court impugning the judgement of the Court of Appeal dated 21<sup>st</sup> September 2020. The matter came up for support for special leave to appeal on 14<sup>th</sup> October 2022. Prior to it been supported, the learned President Counsel Sumathi Dharmawardane ASG submitted to court that the Petitioner has failed to tender a copy of the impugned order of the Court of Appeal with the application and therefore made an application to submit a certified or uncertified copy of said judgement to this court prior to support.

The learned President Counsel Sanjeewa Jayewardane appearing for Petitioner-Respondent objected to the application on several grounds. One of such ground is that the petitioner has failed to reserve his right in the Petition to tender the copy of the judgment at a later stage. Another objection is that the Petitioner making this application after 2 years and 18 days of institution of this action.

The rule 2 of the Supreme Court Rules 1990 published in the Gazette extraordinary No. 665/32- Friday, June 7<sup>th</sup>, 1991 reads thus;

*“Every application for special leave to appeal to the Supreme Court shall be made by a petition in that behalf lodged at the, Registry, together with affidavits and documents in support thereof as prescribed by rule 6, and a certified copy, or uncertified photocopy, of the judgment or order in respect of which leave to appeal is sought. Three additional copies of such petition, affidavits documents, and judgment or order shall also be filed; Provided that if the petitioner is unable to obtain any such affidavit, document, judgment or order, as is required by this rule to be tendered with his petition, he shall set out the circumstances in his petition, and shall pray for permission to tender the same, together with the requisite number of copies, as soon as he obtains the same. If the Court is satisfied that the petitioner had exercised due diligence in attempting to obtain such affidavit, document, judgment or order, and that the failure to tender the same was due to circumstances beyond his control, but not otherwise, he shall be deemed to have complied with the provisions of this rule”.*

Under this rule tendering a copy of the judgement was made mandatory.

The rule reads that a certified copy or uncertified photo copy of the judgement or order, which is impugned, shall be filed together with the affidavit. By this rule the petitioner is further directed to tender the requisite number of copies of the said judgement or order. The rule has made it mandatory to tender the said documents at the time of filing the affidavit.

The counsel for the Petitioner submits that the Petitioner and Respondent both are aware of document, therefore, even if it is not tendered with the application, there will be no adverse effect to the Respondent. In an application for leave to appeal against a judgment or order of

the Court of Appeal, it is obvious that both parties are aware of the judgement or order. The application to the Supreme Court is to set aside the said order. Therefore it is very material for the petitioner to tender the copy of the order or judgement to the Supreme Court; otherwise this court not will be able to ascertain the correctness/ legality of the said order. When a Petitioner filling such an application to the Supreme Court, the procedure has to be adapted was regulated by these rules. It is mandatory to act as per rules in filing an application.

In the case of *Mary Nona v. Fransina* [1988] 2 Sri L R 250 Ramanathan. J. cited with approval the case of *Mohomad Haniffa Ali v. Khan Mohomad Ali* where Wanasundara J had considered the rule 46 whether it is a mandatory rule or not held that;

*The question is whether Rule 46 is mandatory was considered by the Supreme Court in the case of Mohamed Haniffa Rasheed Ali v. Khan Mohamed Ali and another (2). The majority of the Judges appeared to be of the view that Rule 46 is mandatory. Wanasundera, J. delivering the majority judgment stated thus: "While I am against mere technicalities standing in the way of this Court doing justice, it must be admitted that there are rules and rules. Sometimes courts are expressly vested with powers to mitigate hardships, but more often we are called upon to decide which rules are merely directory and which mandatory carrying certain adverse consequences for non-compliance. Many procedural rules have been enacted in the interest of the due administration of justice, irrespective of whether or not a non-compliance causes prejudice to the opposite party. It is in this context that Judges have stressed the mandatory nature of some rules and the need to keep the channels of procedure open for justice to flow freely and smoothly".*

In the case of *Ceylon Electricity Board and Others vs Ranjith Fonseka* [2008] 1 Sri LR it was held that;

*Rule 2 of the Supreme Court Rules, 1990 thus states quite clearly that an application for Special Leave to Appeal should be made by way of a petition. A petition for the said purpose therefore is a mandatory requirement and to fulfill such requirement, it is necessary for the petition to be a valid petition. A petition with an incorrect title therefore would not be acceptable for the purpose of making an application for Special Leave to Appeal in terms of Rule 2 of the Supreme Court Rules 1990, and thereby it is apparent that there had been non-compliance with the said Rule.*

Even the Hon. Attorney General, if he becomes a party, has to act according to the rules. In the case of *Attorney General Vs Williams Silva* [1992] 1 Sri LR 44 it has been held that Even the Attorney-General must comply with Rule 46 of the Supreme Court Rules. Non-compliance is fatal. The Attorney-General may not be able to file an affidavit and this may not be necessary where the question is one of law and not of fact. But he must file the documents and relevant proceeding in the absence of a satisfactory explanation for not doing it.

Under these circumstances I hold that the procedure prescribed in this rule are applicable to the Attorney General too.

If a party is facing a hardship beyond his control the rules have provided a relief to such a party. The rules have provided to file the documents at a later stage if the Petitioner is unable to obtain such document as required by the rules. In such a situation the Petitioner shall pray for permission to tender them as soon as he obtain them. Then if the court is satisfied that the Petitioner has exercised due diligence in attempting to obtain the said documents and due to

the circumstances beyond his control unable to file them he can be permitted to tender them later.

In this leave to appeal application the Petitioner has not prayed for permission to tender a copy of the said order at a later stage. The petitioner in his petition gives marking to the affidavit, counter affidavit, written submissions and further written submissions filed in the Court of Appeal. But he refers to the judgement without giving a marking to it as a document.

The petitioner in this petition stated that he will be filing additional document at a later stage. The copy of the judgement of the Court of Appeal cannot be considered as an additional document. It is one of the main document that the petitioner has to tender with the application. If is unable to tender it, he must act in according to proviso and pray for permission to tender the specific document at the later stage. The general application to tender additional document is not complains of the requisite of the proviso.

Under these circumstances I hold that the Petitioner has not made that an application under the proviso to the rule 2 to tender the copy of the judgement or order at a later stage.

The Petitioner had not tendered some of the marked documents with the affidavit when he filed the application, but by way of motions dated 29<sup>th</sup> October 2020, 06<sup>th</sup> January 2021 and 22<sup>nd</sup> October 2022 has tendered the entire set of document that he has pleaded in the Petition. The copy of the order or judgement of Court of Appeal is not pleaded as a document and not tendered with said documents. There is no evidence to establish that the Petitioner had exercised due diligence in attempting to obtain the copy of the order or judgement and on reasons beyond his control he was unable to obtain them.

The petitioner has taken 2years and 18 days to make the application to tender the copy of the judgement. This is an extra ordinary delay where the court cannot accommodate.



The learned Presidents' Counsel for the Petitioner argue that the Attorney General Department was unable to function normally because of the Covid pandemic situation prevailed in the country and thereafter the political unrest that the country had to meet. Any of these difficulties could not have an effect on pleading permission to file the copy of the order/judgement later. With all these problems, the Petitioner was able to file all other documents except the copy of the order/judgment. Therefore I do not think that the pandemic situation or the political unrest had any effect in not filing these documents.

Under these circumstances, I uphold the preliminary objection and dismiss the application.

Judge of the Supreme Court

**K.K.K. Wickramasinghe J.**

I agree

Judge of the Supreme Court