

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

In the matter of an appeal made in terms of Section 5 and 6 of the High Court of the Provinces (Special Provisions) Act No.10 of 1996 as amended, read with chapter VIII of the Civil Procedure Code.

**SC / CHC / APPEAL / 22 / 2015**

**HC / Civil / 14 / 2012 / IP**

**Lucian Bulathsinhala,**

92 / 1, Udahamulla,

Nugegoda.

**PLAINTIFF**

**-Vs-**

**Torana Music Distributors Pvt. Ltd.,**

112 / 7, Kandewatta Terrace,

Poorvarama Road,

Colombo 5.

**DEFENDANT**

**AND NOW BETWEEN**

**Torana Music Distributors Pvt. Ltd.,**  
112 / 7, Kandewatta Terrace,  
Poorvarama Road,  
Colombo 5.

**DEFENDANT – APPELLANT**

**-Vs-**

**Lucian Bulathsinhala,**  
92 / 1, Udahamulla,  
Nugegoda.

**PLAINTIFF – RESPONDENT**

**Before:** A.H.M.D. Nawaz, J.  
Kumudini Wickremasinghe, J. &  
A.L. Shiran Gooneratne, J.

**Counsel:** M.S.A. Wadood, Palitha Subasinghe and Hashane Mallawarachchi for the  
Defendant – Appellant.  
Charith Galhena with Umagiliya Gamage Savidya Thathsarani, Yasara  
Senaratne and Shalani Jayasinghe for the Plaintiff – Respondent.

**Argued on:** 13.03.2024

**Decided on: 31.03.2026**

**A.H.M.D. Nawaz, J.**

1. Before this court comes an appeal against the judgment of the learned Judge of the Commercial High Court of the Western Province, dated 19 December 2014, delivered in favour of the Plaintiff – Respondent, Lucian Bulathsinhala (hereinafter referred to as “the Plaintiff” or “Lucian Bulathsinhala”), a well-known lyricist, journalist and artist of considerable repute. The Defendant – Appellant, Torana Music Distributors (Pvt.) Ltd (hereinafter referred to as the Defendant or “Torana Music”), being aggrieved by that judgment, preferred this appeal. This court has heard the arguments of both parties with care and has considered the written submissions tendered on their behalf. Let me unpack the facts.
2. The facts that give rise to this appeal are not, in their essential contours, in serious dispute, and may be stated as follows.
3. The Plaintiff, Lucian Bulathsinhala, is the author and lyricist of the song known as ‘පිනිබර යාමේ සැවුලන් හඬලනවා’. The music to this song was composed by the well-known musician Victor Ratnayake, and the song was sung by the celebrated vocalist Sunil Edirisinghe. The song became a widely popular and enduring musical work among the Sri Lankan public. It was common ground at the trial that the Plaintiff had written the lyrics of this song in the 1970s and that, from the time of its creation, Sunil Edirisinghe had performed the said song on many occasions, including at various live concerts, over a period spanning more than four decades, without any formal written agreement governing the extent or nature of the permission granted to him by the Plaintiff or by Victor Ratnayake.
4. In December 2009, Sunil Edirisinghe performed at a concert titled ‘සඳකඩ පහන අභියස’ held at the Bandaranayake Memorial International Conference Hall in Colombo. At this concert, Sunil Edirisinghe performed twenty-two songs, among which was the song ‘පිනිබර යාමේ සැවුලන් හඬලනවා.’ The performance at this concert

was recorded in audio-visual form. Sunil Edirisinghe thereafter brought this recording to the Defendant, Torana Music Distributors (Pvt.) Ltd., and requested that it be converted into DVD format for commercial distribution. Pursuant to this request, the Defendant, Torana Music Distributors (Pvt.) Ltd produced and, on or about 23 November 2011, released to the market a DVD containing the audio-visual recording of the said concert, including the performance of 'පිනිබර යාමේ සැවුලන් හඩලනවා'.

5. The Plaintiff instituted action in the Commercial High Court by plaint dated 4 May 2012, averring that the production and commercial distribution of this DVD by the Defendant constituted a violation of his *economic rights* as the author and copyright owner of the lyrics of the said song, in terms of the Intellectual Property Act No. 36 of 2003. The Defendant filed its answer on 28 November 2012, seeking the dismissal of the Plaintiff's action. An interim injunction sought by the Plaintiff was refused by the learned Commercial High Court Judge on 20 February 2013.
6. At the trial, three admissions were recorded; the first was as to jurisdiction. The second was that the Plaintiff is well known to the public as a song writer, journalist and artist, and that many songs written by him have received local and international recognition. The third, and critically important, admission was that the rights claimed by the Plaintiff are confined to the lyrics of the song 'පිනිබර යාමේ සැවුලන් හඩලනවා' as set out in the schedule to the plaint. There was, accordingly, no contest as between the parties that copyright in the lyrics vests exclusively in the Plaintiff – Lucian Bulathsinhala.
7. The Plaintiff testified and closed his case. On behalf of the Defendant, its Managing Director, Sarath Kotalawela, gave evidence by way of an affidavit together with his annexes. At the close of trial, the learned Commercial High Court Judge delivered his judgment dated 19 December 2014 in favour of the Plaintiff. It is against that judgment that the present appeal has been preferred.
8. The Defendant advanced, in essence, four grounds in support of this appeal;

1. *The learned Commercial High Court Judge had failed to consider the rights of the performer guaranteed under Section 17 of the Intellectual Property Act No. 36 of 2003 (sometimes referred to as “the Act”) and the rights of the record producer under Section 18 of the Act.*
2. *The rights of the Plaintiff are confined to the lyrics alone, and that the DVD in question is a fixation of a live concert performance, which is a separate and distinct work protected under Section 17 of the Act, quite apart from the underlying lyrics.*
3. *The Plaintiff lacks the locus standi to maintain this action, since the performance in question belongs to Sunil Edirisinghe and not to the Plaintiff – Lucian Bulathsinhala.*
4. *The learned Commercial High Court Judge had erred in law in failing to hold that the Defendant is protected under Sections 17 and 18 of the Act.*

9. This Court has considered all of these grounds and finds none of them to be sustainable. The reasons follow.

10. The analysis must begin with the relevant provisions of the Intellectual Property Act No. 36 of 2003. Section 6 (1) (e) of the Act provides that the following works shall be protected as literary, artistic or scientific works, which are original intellectual creations in the literary, artistic and scientific domain, including and in particular, musical works, with or without accompanying words. The lyrics of the song 'පිනිබර යාමේ සැවුලන් හඬනවා' is clearly an original intellectual creation in the literary domain. They are accordingly a work protected by the Act, and the economic rights that flows from that protection vest in their author, the Plaintiff.

11. The economic rights of the copyright owner are set out in Section 9 (1) of the Act. That section provides that *the owner of copyright of a work shall have the exclusive right to carry out or to authorize the carrying out of acts including the reproduction of the work, in any manner or form, and the distribution of the work to the public by sale, rental or otherwise.*
12. It is these economic rights that are at the heart of this case. The reproduction of the lyrics in the form of an audio-visual recording of a performance, and the commercial distribution of that recording, are acts that squarely fall within the exclusive rights conferred on the copyright owner by Section 9 (1) of the Act.
13. Section 17 of the Act confers upon performers certain related rights. A performer has the exclusive right to carry out or to authorize, among other things, the fixation of an unfixed performance or a substantial part thereof, and the reproduction of a fixation of a performance or a substantial part thereof. Section 18 of the Act confers rights upon producers of sound recordings. These related rights, however, exist alongside and do not supersede the rights of the copyright owner in the underlying work. This fundamental point is at the centre of the present controversy and must be addressed with much scrutiny.
14. The Defendant placed considerable reliance upon the fact that Sunil Edirisinghe had, for a period of over forty years, performed the song 'පිනිබර යාමේ සැවුලෙන් ඔබලනවා' without any objection from the Plaintiff or from Victor Ratnayake. From this, the Defendant sought to draw the inference that a broad and unqualified licence had been granted to Sunil Edirisinghe, and that this licence extended not only to the act of performing the song but also to the fixation of the performance and its commercial distribution by a third party. I am of the view that this argument cannot be accepted.
15. The permission granted to a performer to perform a copyrighted work is, as a matter of principle and logic, limited in its scope to the act of performance itself,

unless the copyright owner has expressly or by clear implication extended that permission to cover further acts of exploitation. The act of performing a song in public and the act of commercially reproducing and distributing a fixation of that performance are fundamentally different acts, engaging different economic rights of the copyright owner. The former is an act of communication to the public in the context of a live performance. The latter is an act of reproduction and distribution within the meaning of Section 9 (1) of the Act, which requires the separate and independent authorization of the copyright owner.

16. No such authorization was given in this case. There is no written licence. The evidence at trial disclosed no permission that extended beyond the act of live performance. The Plaintiff testified that the greatest injustice done to him was the commercial exploitation of his creation without his consent, and that he had not authorized any such commercial exploitation.
17. The evidence of the Managing Director of the Defendant himself was illuminating in this regard. He admitted under cross-examination that he had not investigated the rights of the lyricist, the composer, or the singer in respect of the works contained on the DVD before releasing it to the market. He further admitted that he had not obtained any written permission from Sunil Edirisinghe confirming that Sunil Edirisinghe had obtained the necessary approvals from the copyright holders. He conceded that his role was essentially a commercial one, namely to convert the recording provided to him into DVD format and to distribute it, domestically and internationally, at a price of Rupees 1000/- per disc.
18. In those circumstances, I find that the licence, if it may be characterized as such, that was granted to Sunil Edirisinghe was an oral licence of limited scope, confined to the act of live performance. Sunil Edirisinghe was not authorised, expressly or by implication, to go beyond performance, to fixate that performance in audio-visual form, and to hand it over to a third party for commercial reproduction and distribution. When he did so, and when the Defendant then commercially exploited that recording without the authority of the Plaintiff, the economic rights of the Plaintiff as copyright owner were infringed.

19. The Defendant's central legal argument was that the DVD in question does not deal with the lyrics of the Plaintiff at all, but only with the fixated performance of Sunil Edirisinghe. The Defendant urged that since the lyrics were not printed or distributed in textual form alongside the DVD, the economic rights of the Plaintiff in the lyrics were not engaged. This argument, in the considered view of this Court, is fundamentally misconceived and reflects a serious misunderstanding of copyright law.

20. When a performer sings lyrics that are the subject of copyright, the rendition of those lyrics in the form of a sound or audio-visual recording constitutes a reproduction of the underlying literary work within the meaning of Section 9 (1) (a) of the Act. The learned authors Professors Llewelyn and Aplin in the 10<sup>th</sup> edition of their authoritative work on intellectual property law confirm that where words are set to music, the two remain distinct works for copyright purposes, and that a sound recording of a song is a reproduction of the underlying musical and literary work. The celebrated work of Bentley and Sherman makes the same point plainly; a sound recording of a song is a reproduction of it. The fact that the lyrics are conveyed through the voice of a singer rather than printed on a page does not alter the legal character of the act of reproduction. The lyrics are in the recording. They are heard by every person who watches the DVD. They are reproduced in it.

21. Accordingly, when the Defendant reproduced the recording containing the performance of 'පිනිබර යාමේ සැවුලන්' හඬනවා' in DVD format and commercially distributed that DVD, it reproduced the lyrics of the Plaintiff and distributed that reproduction to the public. These acts required the authorization of the Plaintiff as the copyright owner, pursuant to Section 9 (1) of the Act. No such authorization was obtained. The infringement is accordingly made out.

22. This Court draws further support from the following observation of principle. If a performer performs a musical work or sings a lyrical work and the performance is recorded, that recording constitutes a copy, or reproduction, of the song inclusive of its lyrics, and requires the authorization of the copyright owner in the

underlying work. If the performer then provides the recording to a record company with a view to distribution, that further act amounts to an authorization of reproduction and public distribution within the meaning of Section 9 (1) of the Act, all of which require the consent of the copyright holder in the underlying work. This does not deny the existence of the performer's rights under Section 17 of the Act in the performance itself, but it does mean, as a matter of settled principle, that the performance and its recording cannot be commercially exploited without the consent of the copyright holder in the underlying lyrics and musical composition.

23. The Defendant relied with particular emphasis upon Section 17 of the Intellectual Property Act and upon the judgment of this court in *Dharmapala v. Officer-in-Charge, Colombo Special Crimes Division*<sup>1</sup>, which is described as the only reported Sri Lankan case dealing with Section 17 of the Act. That case held, correctly, that a performer has exclusive rights in respect of the fixation and reproduction of his performance, and that copying a compact disc of a singer's recorded performance without the singer's authorization infringes the performer's rights. The Defendant reads this decision as establishing that authorization from the performer alone is sufficient to entitle a record company to reproduce and distribute a recording, without any need to obtain the consent of the copyright owner in the underlying work.

24. This reading of the *Dharmapala case* is, in my view, incorrect. That case was concerned with the infringement of the performer's own rights and did not address, let alone resolve, the question of whether the exploitation of a fixated performance also requires the authorization of the copyright owner in the underlying literary or musical work. The passage cited from that judgment by the Defendant establishes no more than that the performer's rights exist as independent rights requiring the performer's own authorization. It does not say, and cannot be read as saying, that a record company which obtains authority from the performer is thereby absolved of the obligation to obtain the authority of the copyright owner

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<sup>1</sup> [2021] 1 Sri.L.R. 149

in the underlying work. The two obligations are independent of one another and both must be satisfied.

25. The scheme of the Intellectual Property Act makes this clear. Copyright in an original literary or musical work, and the related rights of a performer in a performance of that work, are distinct categories of right vesting in different right-holders. The Act does not provide, expressly or by implication, that the grant of a performer's right extinguishes or overrides the economic rights of the copyright owner in the underlying work. On the contrary, Section 9 (1) of the Act vests in the copyright owner the exclusive right to authorize acts of reproduction and distribution in relation to his work. A performer and a record producer who wish to commercially exploit a fixated performance of a copyrighted work must therefore obtain the authority of the copyright owner in the underlying work in addition to any authorization passing between themselves.

26. The argument advanced by the Defendant, that once the performer authorizes the record company to fixate and distribute his performance, no further permission is needed from the copyright owner of the underlying work, is, in the considered view of this Court, not only legally untenable but also deeply troubling in its implications. If this argument were to be accepted, it would effectively deprive the lyricist and composer of their economic rights whenever a performer chose to have his concert recorded and commercially distributed. The lyricist who poured creative skill and labour into the composition of the words of a song would be left without any share in the economic benefits flowing from the commercial exploitation of a recording that reproduces those very words. This cannot have been the intention of the legislature, and it would make a mockery of the carefully constructed framework of economic rights established by the Intellectual Property Act.

27. In some jurisdictions, the law provides for a so-called mechanical compulsory licence, by which a performer may record and distribute a copyrighted work upon payment of a prescribed royalty, without the need for individual consent from the copyright owner. Article 13 of the Berne Convention for the Protection of Literary

and Artistic Works permits contracting states to adopt such compulsory licensing regimes in respect of musical works. Sri Lanka, however, has not enacted any such provision. In the absence of a statutory compulsory licence, the full consent of the copyright owner in the underlying work is required before any fixation or commercial distribution of a performance of that work may lawfully take place.

28. The Plaintiff, making submissions before this Court, raised the question of whether the song 'පිනිබර යාමේ සැවුලන් හඩලනවා' may be regarded as a work of joint authorship in terms of Section 14 (2) of the Act, the copyright in which would vest jointly in the lyricist, the music composer, and arguably the singer. This Court does not consider it necessary to resolve the question of joint authorship in order to dispose of this appeal, given that the third admission recorded at the trial is that the rights claimed by the Plaintiff are confined to the lyrics of the song. There is no contest that copyright in the lyrics vests in the Plaintiff and him alone.

29. However, this Court takes note of the framework for joint authorship set out by the English Court of Appeal in *Kogan v. Martin*<sup>2</sup>. In this case, the Court of Appeal identified the four elements necessary to establish joint authorship, namely collaboration, authorship, contribution of an authorial nature, and the non-distinctness of each author's contribution from that of the other. This Court observes that even if one were to consider the song as potentially a work of joint authorship between the lyricist and the music composer, the contribution of the lyricist and that of the music composer remain, on the evidence before this Court, entirely distinct; the one composed the words, and the other composed the music. Section 6 (1) (e) of the Intellectual Property Act itself recognizes that a musical work may exist with or without accompanying words, which, as the Defendant's own submissions concede, reflecting the position in English law also, confirms that the copyright in the music and the copyright in the lyrics are separate works held by separate copyright owners. The joint authorship argument, in the form pressed by the Plaintiff, therefore adds little to the analysis. What is clear and

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<sup>2</sup> [2019] EWCA Civ 1645

determinative is that the Plaintiff is the sole copyright owner of the lyrics, and that those lyrics were reproduced in the DVD without his consent.

30. The Defendant sought to deploy *Kogan v. Martin* (supra) in support of the proposition that the performance by Sunil Edirisinghe of the song at the concert could be characterized as an original contribution giving rise to a separate copyright, thereby somehow diminishing or displacing the rights of the Plaintiff. This argument cannot be sustained. *Kogan v. Martin* is a case about authorship of a screenplay, addressing when contributions made by a person to the creation of a literary or dramatic work may give rise to joint authorship of that work. It has no application to the facts of the present case, where the question is not whether Sunil Edirisinghe acquired copyright in anything by reason of his performance, but whether the Defendant required the Plaintiff's consent before commercially reproducing and distributing a recording that contained the Plaintiff's copyrighted lyrics. The answer to that question is plainly in the affirmative.

31. It is appropriate at this point to address the principal arguments advanced by the Defendant with such directness as the occasion demands.

32. The Defendant contended that the case at hand dealt exclusively with the performer's rights of Sunil Edirisinghe, and that the lyrics of the Plaintiff played no part in its commercial activity. This argument confuses the legal classification of what was done with the commercial and artistic reality of what was contained in the DVD. The DVD contains a recording of Sunil Edirisinghe singing 'පිනිබර යාමේ සැවුලන් හඩලනවා'. Every syllable of the lyrics penned by the Plaintiff is audible in that recording. To say that the Defendant did not deal with the lyrics is to elevate legal abstraction over commercial and artistic reality. The DVD commercially exploits the lyrics of the Plaintiff, and no amount of characterization of the transaction as dealing only with performer's rights can alter that fact.

33. The Defendant further contended that, since the Plaintiff had permitted Sunil Edirisinghe to perform the song at the concert, and since the recording of that performance was thereafter entrusted to the Defendant for commercial

distribution, no further permission was needed from the Plaintiff. The Defendant relies in this regard upon the extract from **Redwood Music Ltd. v. Chappell and Co. Ltd.**<sup>3</sup>, which it submits shows that an arranger of a work may have copyright in the arrangement independently of the copyright owner in the original work.

34. This reliance on *Redwood Music* is misplaced. That case stands for the proposition that a person who makes an arrangement of a copyrighted work, with the licence of the copyright owner, acquires copyright in the arrangement, and that the copyright in the original work does not thereby transfer to the arranger. The passage relied upon by the Defendant confirms, importantly, that a licence to make an arrangement will normally carry with it a licence to perform the arrangement, but that it does not follow that the copyright owner in the original authorises unlimited exploitation. A performance licence, whether express or implied, does not authorise unlimited commercial reproduction and distribution. The ratio of *Redwood Music*, properly understood, reinforces rather than undermines the position of the Plaintiff.

35. The Defendant also cited *ZYX Music GmbH v. King*<sup>4</sup> for the proposition that a person may simultaneously acquire rights in a work while that work infringes the rights of another, and argues by analogy that this demonstrates that the performer's rights of Sunil Edirisinghe are unaffected by any infringement of the Plaintiff's copyright. This argument again misses the point. The proposition drawn from *ZYX Music* does no more than confirm that the birth of performer's rights is not prevented by infringement. This Court does not dispute that Sunil Edirisinghe may have performer's rights in his concert performance. The question is not whether those rights exist, but whether their existence relieves the Defendant of the obligation to obtain the Plaintiff's consent before commercially exploiting the recording. It does not.

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<sup>3</sup> [1982] R.P.C. 109

<sup>4</sup> [1996] E.C.C. 314

36. Perhaps the most procedurally acute argument advanced by the Defendant was that the Plaintiff did not have locus standi to maintain this action because Sunil Edirisinghe was not made a party to the proceedings, and that his non-joinder is fatal to the Plaintiff's claim. This Court rejects this argument without hesitation.
37. The Plaintiff's claim rests squarely upon his own economic rights as the copyright owner of the lyrics of the song. He does not need to impugn the performer's rights of Sunil Edirisinghe in order to establish his own case. He needs only to show that his copyright in the lyrics was infringed by the acts of reproduction and distribution carried out by the Defendant. This he has done. The question of whether Sunil Edirisinghe infringed the Plaintiff's copyright by authorizing the recording and its distribution is a separate matter, and is not necessary for the determination of the present claim before this Court.
38. Furthermore, it is telling that the Defendant, which itself raised the question of Sunil Edirisinghe's involvement at trial, took no steps to have Sunil Edirisinghe added as a party Defendant so that his evidence could be adduced in a fuller manner. The Defendant cannot now be heard to complain that Sunil Edirisinghe was not before the Court when it itself made no application to add him. The Plaintiff's locus standi to maintain this action in respect of his own copyright is beyond doubt.
39. Finally, the Defendant's underlying position appears to be that by permitting a singer to perform a song over many years, the lyricist is somehow precluded from asserting his economic rights when a third party commercially exploits a recording of that performance.
40. This Court finds this argument to be, in the words used in argument before this court, frankly astonishing. It would mean that any lyricist who permits a singer to perform his work thereby permanently and irrevocably surrenders his economic rights to any person who chooses to record and commercially distribute that performance. Such a position is wholly inconsistent with the foundational principles of copyright law, which vest in the creator of an original literary work

the exclusive right to authorize any and all acts of reproduction and distribution of that work. To accept the Defendant's argument would be to drive a horse and carriage through those accepted and settled principles.

41. This Court draws comfort from the development of Sri Lankan copyright jurisprudence, and in particular from the learned judgment of Suresh Chandra J. in *Fernando v. Gamlath*<sup>5</sup>. In that case, this court considered the English case of *Sawkins v. Hyperion Records Ltd*<sup>6</sup>, in which the Court of Appeal of England and Wales held that a musicologist who had prepared performing editions of earlier works had acquired copyright in those editions by reason of the skill, labour and judgment involved. The learned judge Suresh Chandra J., affirmed the principle that with the advancement in technology it is very easy to copy the works of original artists, composers, and singers, but there must be a way of safeguarding the rights of the original artists, and that the works of reputed original artists can be used by others only by obtaining permission from the original artist or from those who inherit such rights.

42. The Defendant invoked *Sawkins* in an entirely different and, in this Court's view, an erroneous manner. Mr Saadi Wadood contended that the performance by Sunil Edirisinghe of the song at the concert, involving as it does his unique vocal style and interpretive skill, cannot be equated to servile copying and therefore attracts its own copyright or at least gives rise to performer's rights that are enforceable independently of the underlying copyright. This Court accepts that performance involves skill and artistry and that performer's rights exist under Section 17 of the Act. But the question in this case is not whether the performance constitutes servile copying or whether performer's rights exist.

43. I do not wish to draw on the perennial disquisition whether performers must be held to have copyrights. I am not unaware of the performer's melancholia that has engaged the attention of copyright aficionados. That must await an informed

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<sup>5</sup> SC Appeal No. SC/CHC/04/2001, SC Minute dated 06.05.2011, 2011 BLR 251

<sup>6</sup> [2005] EWCA Civ 565

debate and discussion before it may eventuate in legislation so as to assuage the melancholia.

44. The question is whether those performer's rights as they exist per se in copyright law may be commercially exploited without the consent of the copyright owner in the underlying lyrics. The answer, as this Court has already observed, is that they may not. *Sawkins* does not assist the Defendant on this point. In *Sawkins* the Court was addressing the originality and copyrightability of a performing edition, not the relationship between performer's rights and underlying copyright. The Defendant's attempt to deploy *Sawkins* as a shield against the Plaintiff's – Lucian Bulathsinhala's copyright claim is therefore misconceived.

45. The Defendant also sought to argue that the Plaintiff's submission on joint authorship sits awkwardly with the third admission at trial, namely that the Plaintiff's rights are confined to the lyrics. This Court agrees that the Plaintiff's rights are indeed confined to the lyrics, but that is not a concession that diminishes those rights. On the contrary, it is a clear acknowledgment that the copyright in the lyrics is his alone, and it is those rights, confined as they are to the lyrics, that the Defendant infringed.

46. The learned Commercial High Court Judge, having heard the evidence and considered the submissions of both parties, found in favour of the Plaintiff. This Court has reviewed the evidence and the findings, and is entirely in agreement with the conclusions reached.

47. The evidence of the Plaintiff established clearly that he was the author of the lyrics and that no consent was given by him to the Defendant, or to Sunil Edirisinghe for the purpose of authorizing the Defendant, to commercially reproduce and distribute a recording of the song. The evidence of the Defendant's own Managing Director was, as this Court has observed, candid in its disclosure of the commercial imperative that drove the production and distribution of the DVD without any inquiry into or regard for the rights of the copyright owners. He stated expressly that it was his practice to release recordings brought to him without investigating

the individual rights of lyricists, composers, and singers in the works contained on the recording. He acknowledged that no written permission had been obtained from Sunil Edirisinghe confirming that the necessary approvals had been secured from the copyright holders.

48. This conduct discloses a blatant disregard for the intellectual property rights of creators, and it is precisely to address such conduct that the Intellectual Property Act No. 36 of 2003 was enacted. This Court has no hesitation in affirming the conclusion of the learned Commercial High Court Judge that the Defendant, Torana Music has infringed the economic rights of the Plaintiff Lucian Bulathsinhala.

49. For all of the foregoing reasons, this Court is firmly of the view that the appeal of the Defendant – Appellant (Torana Music) must be dismissed. The judgment of the learned Judge of the Commercial High Court dated 19 December 2014, entered in favour of the Plaintiff – Respondent, Lucian Bulathsinhala, is affirmed in its entirety.

50. The position of the Defendant, that a record company which obtains the permission of a performer to distribute a DVD of his concert performance need not also obtain the permission of the copyright owner of the underlying lyrics, is contrary to the plain text of Section 9 (1) of the Intellectual Property Act No. 36 of 2003, contrary to the scheme and purpose of the Act, contrary to the international obligations of Sri Lanka under the Berne Convention, and contrary to the settled principles of copyright law recognised in both Sri Lankan and comparative jurisprudence. This court emphatically rejects it.

51. As ordered by the Commercial High Court, the Defendant – Torana Music is directed to pay damages to the Plaintiff – Lucian Bulathsinhala for the infringement of his economic rights in the lyrics of the song 'පිනිබර යාමේ සැවුලන් ඔබලනවා'; such damages as was prayed for in a sum of Rs. 1,000,000/- (Rupees One Million) in the plaint dated 14 May 2012 and all other reliefs prayed for in the plaint.

52. The Defendant – Appellant shall pay the Plaintiff – Respondent the cost of this appeal and of the proceedings that were before the Commercial High Court.

**Judge of the Supreme Court**

**Kumudini Wickremasinghe, J.**

**Judge of the Supreme Court**

I agree.

**A.L. Shiran Gooneratne, J.**

**Judge of the Supreme Court**

I agree.