

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

In the matter of an Appeal under Section 754 read with Section 758 of the Civil Procedure Code and Section 55A of Muslim Mosques and Charitable Trusts, Act No. 51 of 1956 as Amended.

Court of Appeal Case No:

CA/Wakfs/01/2019

WT/254/2017

WB/7660/2017

1. **M. K. M. Ramzi,**
2. **M. Naif,**

Both of:

Fort Jumma Mosque

No. 87, Chatham Street,

Colombo 0 1.

Appellants

Vs

1. **M. R. M. Malik,**
2. **M. Noorul Ameen,**

Both of Department of Muslim
Religious and Cultural Affairs
No. 180, T. B. Jayah Mawatha,
Colombo 10.

3. **M. Azhar Kamaldeen, DIG (Retired)**
No. 431 K/1, Church Garden,
Enderamulla, Wattala.

4. **M. C. Mohamed Jiffry, DIG**
No. 110, Meethotumulla,
Wellampitiya.
5. **Mohamed Mohinudeen**
No.91, 1/1, Chatham Street,
Colombo 01.
6. **M. I. Mohamed Rafeek**
(Secretary, Prime Minister's Office),
No. 114, Senanayaka Avenue,
Nawala, Rajagiriya.
7. **M. Ali Hassan**
(Director-Information)
No. 635B, Malwatta,
Malwana.
8. **M. Z. Naleer**
No. 51, York Street, Colombo 01.
9. **A. Sufiyan Mohideen**
No. 90, York Street, Colombo 01.
10. **M. T. Meera Sahib**
No. 9, Macky Plaza Building,
Mudalige Mawatha, Colombo 01.
11. **G. M. Nazar**
No. 89, Chatham Street,
Colombo 01.

Respondents

AND NOW BETWEEN

1. M. K. M. Ramzi
2. M. Naif,

Both of :

Fort Jumma Mosque

No. 87, Chatham Street,

Colombo 01.

Appellant-Appellants

-Vs-

1. **M.R. M. Malik**
2. **M. Noorul Ameen**

1st and 2nd Respondents

1A. **Ibrahim Ansar**

2A. **Ala Ahamed**

Both of Directors of Department of
Muslim Religious and Cultural
Affairs

No. 180, T. B. Jayah Mawatha,

Colombo 10.

**Substituted 1st and
2nd Respondents.**

3. Azhar Kamaldeen, DIG (Retired)

No. 431 K/1, Church Garden.

Enderamulla, Wattala.

4. M. C. Mohamed Jiffry, DIG

No. 110, Meethotumulla,

Wellampitiya.

5. Mohamed Mohinudeen

No.91, 1/1, Chatham Street

Colombo 01.

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(Secretary, Prime Minister's Office).

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9. M. T. Meera Sahib

No. 9, Macky Plaza Building,

Mudalige Mawatha, Colombo 01.

10. G. M. Nazar

No. 89, Chatham Street,

Colombo 01.

Respondent-Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Ikram Mohamed, P.C with Ms. Tanya Marjan for the
Appellants.

Hejaaz Hizbullah with Shifan Maharoo for the 5th
Respondent-Respondent.

S. Wimalasena, D.S.G. for the State.

Argued on: 08.08.2023

Written Submissions on: 26.09.2023 by the Appellants.

03.05.2023 by the 5th Respondents.

Decided on: 11.12.2023

MOHAMMED LAFFAR, J.

This is an Appeal preferred by the Appellant-Appellants (hereinafter referred to as the “Appellants” from the Order of the Wakf Tribunal dated 09-06-2018 under Section 754 read with Section 758 of the Civil Procedure Code seeking Orders *inter-alia* to set aside the said Order of the Wakf Tribunal and for a hearing *de novo* before the said Tribunal.

When the Appeal was taken up for argument on 08-08-2023, the learned Counsel for the Respondents raised a preliminary legal objection as to the maintainability of this appeal on the basis that the Appellant, under Section 754 (3) and (4) of the Civil Procedure Code, failed to file a notice of appeal and therefore, the instant Appeal is liable to be dismissed in *limine*. The learned President’s Counsel appearing for the Appellants, having accepted the fact that the Appellants have not filed a notice of appeal against the impugned Order, took up the position that it is not mandatory to file a notice of appeal against the Orders of the Wakf Tribunal.

In terms of section 9G of the Wakf Act, the jurisdiction exercisable by the Wakf Tribunal in respect of matters relating to Muslim Mosques and Charitable Trusts or Wakfs shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any Court or Tribunal of first instance.

Section 9G of the Wakfs Act, reads thus;

*“In any proceedings under this Act, the Tribunal shall follow the procedure of a **District Court**, and in the execution of its orders and judgments, shall have all the powers of a District Court and the provisions of the Civil Procedure Code, relating to the procedures and powers of execution of a District Court, shall mutatis mutandis, apply to and in relation to the procedures and powers of execution of the Tribunal.”*

Having scrutinized the said section 9G of the said Act, the following matters have been clarified without any ambiguity.

- (1) The Tribunal shall follow the procedure of a District Court in respect of all the proceedings.

- (2) The Tribunal shall have all the powers of a District Court in respect of the execution of its Orders and Judgments in accordance with the provisions of the Civil Procedure Code.

According to Section 9G of the Act, it is apparent that the Tribunal is obliged to follow the procedure of a District Court, and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code. Every Order made by the Tribunal shall be deemed to be an Order made by a District Court and the provisions of the Civil Procedure Code governing appeals from Orders and Judgments of a District Court shall, *mutatis mutandis*, apply to and in relation to appeals from Orders of the Wakfs Tribunal. In **Shahul Hameed and Others v. Aliyar and Others, CA/Wakfs/01/2011, CA Minutes of 26.06.2013, Salam, J. (agreeing with Ani Gooneratne and Sisira de Abrew JJ.)**, at page 7 held as follows;

“Certain decisions of the Wakfs Board including an order of confirmation and appointment of trustees of a Mosque are appealable to the Wakfs Tribunal. The Members of the Tribunal are appointed by the Judicial Service Commission. The Tribunal is obliged to follow the procedure of a District Court and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code. Every order made by the Tribunal shall be deemed to be an order made by a District Court and the provisions of the Civil Procedure Code governing appeals from orders and judgments of a District Court shall, mutatis mutandis, apply to and in relation to appeals from orders of the Tribunal....”

In the case of **Abdul Hameed Mohamed Jhafir Vs. Tuan Sajjar Jainudeen and Others (CA No. LTA-0004-2021, CA Minute dated 21-09-2022)** this Court took up the same position.

In these circumstances, it is the considered view of this Court that in respect of appeals from the Orders and Judgments of the Wakf Tribunal, the procedure laid down in the Civil Procedure Code should be adhered to.

Under Section 754 of the Civil Procedure Code, an Appeal to the Court of Appeal from the Judgment of the original Court shall be lodged by giving notice of appeal to the original Court, which reads thus;

“(3) Every appeal to the Court of Appeal from any judgment or decree of any original court, shall be lodged by giving notice of appeal to the original court within such time and in the form and manner hereinafter provided.

The notice of appeal shall be presented to the court of first instance for this purpose, by the party appellant or his registered attorney within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays, and the court to which the notice is so presented shall receive it and deal with it as hereinafter provided. If such conditions are not fulfilled, the court shall refuse to receive it.”

It is prudent at this point to recall the importance attached to the filing of a notice of appeal, which is to inform the Respondent that the jurisdiction of the lower Court will be suspended once the appeal is taken and to deprive the Respondent temporarily of the fruits of his victory.

It is the considered view of this Court that according to Section 754(3) of the Civil Procedure Code, the process of appeal is initiated upon filing a notice of Appeal and that it is, therefore, a mandatory requirement. There lies no right of appeal without notice of appeal being filed.

In the case of **Perera Vs. Perera and Another**¹ Soza, J held that

“the filing of the petition of appeal is an essential concomitant of the filing of the notice of appeal. Both steps are mandatory and imperative steps in lodging an appeal.”

¹ [1981] 2 SLR, 41 at Page 43.

I hold that if a party seeking to appeal does not file a notice of appeal in the original Court the intention of filing an appeal is not met and accordingly, such an Appeal can be dismissed *in limine*.

For the foregoing reasons, it is the considered view of this Court that the instant Appeal is bad in law for the reason that the notice of appeal is not tendered by the Appellant in terms of Section 754 of the Civil Procedure Code, and therefore, the Appeal is liable to be dismissed *in limine*.

Thus, the preliminary objection raised by the learned Counsel for the Respondents is upheld, and accordingly, the Appeal is dismissed with costs fixed at Rs. 35,000/-.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL