

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

In the matter of an appeal from the decision of the University Appeals Board in Appeal No. UNIVOTEC/ UBA01/ 2018/01 under and in terms of section 37 of the University of Vocational Technology Act, No. 31 of 2008.

C.A. MISC/ 03/2019

University Appeals Board No:
UNIVOTEC/UBA 01/2018/01

P.H.S.S. Wijaratna

No. 3/44,

Manimmulla,

Ambalangoda.

APPELLANT

-Vs-

1. **University of Vocational Technology**
No. 100,
Kandawala,
Ratmalana.
2. **Present Board of Governors of the University of Vocational Technology**
 - (i) Prof. G.L.D. Wickramasinghe (President)
 - (ii) Mr. P. Raneperuma (member)
 - (iii) Mr. D.C. Dissanayake
 - (iv) Mr. L.W.S. Kularatne
 - (v) Dr. D.D.D. Suraweera
 - (vi) Mr. C. Jayasooriya
 - (vii) Mrs. P.N.K Malalasekara
 - (viii) Dr. Lionel Pinto

- (ix) Mr. Shehan Senerviratne
- (x) Mr. Rahula Senanayake
- (xi) Mr. L.R. Waidyaratne
- (xii) Mr. S. Kulasinghe
- (xiii) Mrs. Rifha Musthafa
- (xiv) Mrs. T.K. Malwatta
- (xv) Mr. S.G.A.R.S. Jayathilake
- (xvi) Mr. Jayavilal Meegoda
- (xvii) Mr. W.A.U. Gunawardena
- (xviii) Mr. Chandrarathne Withanage
- (xix) Representative of the Board of Investments of Sri Lanka

RESPONDENTS

AND NOW BETWEEN

1. University of Vocational Technology
No. 100,
Kandawala,
Ratmalana.
2. Present Board of Governors of the University of Vocational Technology
 - (i) Prof. G.L.D. Wickramasinghe (President)
 - (ii) Mr. P. Raneperuma (member)
 - (iii) Mr. D.C. Dissanayake
 - (iv) Mr. L.W.S. Kularatne
 - (v) Dr. D.D.D. Suraweera
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 - (vii) Mrs. P.N.K Malalasekara
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- (ix) Mr. Shehan Senerviratne
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- (xvi) Mr. Jayavilal Meegoda
- (xvii) Mr. W.A.U. Gunawardena
- (xviii) Mr. Chandrarathne Withanage
- (xix) Representative of the Board of
Investments of Sri Lanka

RESPONDENT-APPELLANTS

-Vs-

P.H.S.S. Wijaratna

No. 3/44,

Manimmulla,

Ambalangoda.

APPELLANT-RESPONDENT

AND

1. Mr. Piyasena Wijesinghe

University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.

2. Mr. Sanath Weerakoon

University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.

3. Mr. Rasanga Harischandra
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.

ADDED RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J. (P/CA)
&
Sobhitha Rajakaruna J.

COUNSEL : M. Sri Metta S.C. for the Respondent-Appellant.
Chandana Wijesuriya for the Appellant
Respondent

Decided on : 30.11.2020

A.H.M.D. Nawaz, J. (P/CA)

When this matter was taken up for argument along with CA Misc 05/2019 and CA Misc 06/2019 Mr. Chandana Wijesuriya, Counsel for the Appellant-Respondent (the Respondent) raised a preliminary objection that the University of Vocational Technology (the UNIVOTEC –the Appellant) cannot maintain this appeal, as there is no right of appeal bestowed on it.

I have already dealt with this issue in a judgment delivered in both CA 05/2019 and CA 06/2019 in which the same objection was raised. I have overruled the objections and held in the two judgments delivered in those cases to the effect that the UNIVOTEC enjoys the right of appeal to have and maintain this appeal before this court. The reasoning that I have adopted in the two judgments applies with equal force in this case as well.

However, the learned Counsel for the Appellant-Respondent took up an objection to the maintainability of this appeal on another basis namely time bar. The objections of the learned Counsel for the Respondent could be set out in this manner. The decision of the University Appeals Board in this matter was read out in the well of the tribunal on 05.04.2019 and a copy of the decision was handed over to the Vice Chancellor and the Director General of the University of Vocational Technology on 08.04.2019. In other words, it was received by the Board of the University on 08.04.2019. However, the lodgment of the instant appeal in the Court of Appeal took place only on 24.04.2019. It was thus argued that even if the University of Vocational Technology enjoys a right of appeal, they had not come within the prescribed period of 14 days prescribed in section 37 of the University of Vocational Technology Act, No 31 of 2008. Therefore it is this question of time bar that remains to be answered by this court.

Mr. Chandana Wijesuriya, the learned Counsel for the Respondent pleaded for a rejection of this appeal based on time bar. His contention was that the decision was read out in the open by the University Appeals Board on 05.04.2019 and it was handed over subsequently on 08.04.2019. Even if the Appellant had the right of appeal, the 14 day period allowed by Section 37 of the University of Vocational Technology Act would expire on 21.04.2019, which was a Sunday. But the petition of appeal was filed in the Court of Appeal on 24.04.2019 and it was out of time. This was the crux of the argument of the Counsel for the Respondent on 23.07.2020.

Both Counsel were given time to file written submissions but an affidavit deposed to by the Director General of the Appellant has been filed without having obtained the prior permission of this Court. This deponent makes a valiant attempt by way of this affidavit to proffer an explanation, rather belatedly, as to why she could not prefer the appeal on time. In other words the delay in filing the appeal, which is admitted in the affidavit, is sought to be explained by the deponent without having obtained the prior permission of this Court, long after the pleadings had closed. The Petition of Appeal, although it is dated 23rd April 2019, has been filed in this Court only on 24th April 2019 as the date stamp

indicates but the affidavit contradicts this fact by a self serving assertion in paragraph 11 of the affidavit that the appeal was filed on the 23rd April 2019.

Even legal advisers have to bear in mind that deponents cannot seek to introduce explanations for their delay in a manner that is unauthorized and anticipate that this Court should place reliance on such self serving affidavits however true such explanations could be, long after the opportunity for offering a credible explanation had long passed. The Petition of Appeal filed in this Court on 24th April 2019 does not contain any explanation that has now found its way in the evidence sought to be introduced by the unauthorized affidavit.

This Court only wanted to ascertain the exact date on which the reasons for the decision of the University Appeals Board came to the knowledge of the Appellant, because the Petition of Appeal speaks of 5th April 2019 as the date on which the reasons were pronounced. The Petition of Appeal only speaks of the date of pronouncement of the decision by the University Appeals Board and it is quite silent as to the date on which the University came to know of the reasons. What this Court wanted to find out was the date on which the University received the decision and reasons and in the guise of offering this information an affidavit cannot be introduced, long after arguments had concluded, to explain the delay in filing the appeal. If at all, the reason should have been proffered at the first available opportunity namely the Petition of Appeal.

Section 37 of the University of Vocational Technology Act, No.31 of 2008 -the provision that enables a person to appeal against the decision of the University Appeals Board imposes a time limit of 14 days of the date of the decision, within which the appeal could be preferred, goes as follows:-

“A person aggrieved by the decision of a University Appeals Board in respect of any appeal made under paragraph (a) of subsection (1) of Section 16, may appeal against such decision to the Court of Appeal within fourteen days of the date on which the decision and the reasons therefore were sent to that person by registered post, under Section (4) of Section 36”

The pragmatic view I would take of Section 37 is that the period of 14 days has to be computed from the date on which the Appellant acquired knowledge of the reasons for the decision, notwithstanding the fact that the provision refers to the 14 day period to begin from the date of posting of *the decision and the reasons*. I would hold that though Section 37 speaks of a date on which the decision and reasons were sent, the pivotal question is on which date the Appellant acquired the contents of the decision and the reasons. It has to be noted that the Section does not fix the commencement date of the appealable period from the date of pronouncement of the decision but rather from the date of communication of the decision and reason. No doubt the section speaks of a registered post as the mode but if an equally efficacious method or even a speedier method is available, that method could be employed to communicate the decision and the reason. In this case admittedly a document which is numbered Annex 03 and has been filed on 28th September 2020 conclusively establishes that the decision and reasons were handed over to the Appellant University on 08.04.2019. This was the date of receipt of the decision and reasons and it is axiomatic that the substantive right of appeal is facilitated with the receipt of the decision and reasons on 08.04.2019.

In the circumstances I hold that the 14 day period prescribed in Section 37 would begin from 09.04.2019 because by virtue of section 14 (a) of the Interpretation Ordinance the date 08.04.2019 would have to be excluded. Whether the phraseology used is “within 14 days from” or “within 14 days of”, the appealable period would commence to run after 08.04.2019.

Then Section 8 (1) of the Interpretation Ordinance would come into play since the prescriptive period of 14 days is contained in a written law. Section 8 (1) is to the following effect:

“Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, and the last day of the limited time is a day on which the court or office is closed, then the act or proceeding

shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open.”

I find no provisions for excluding the two intervening Sundays in the period of 14 days which commenced on 09.04.2019. If one computed the appealable period from 09.04.2019, the 14 day period would expire on a Monday namely 22nd April 2019. There is no averment in the Petition of Appeal that was received by the Court of Appeal to the effect that the office of the Court of Appeal was closed on 22nd April 2019. I have observed in an anterior part of this judgment that the Appellant has dated its Petition of Appeal on 23rd April 2019. There is no averment anywhere in the Petition of Appeal that the office of the Registry of the Court of Appeal was closed on 23rd April 2019, which was in fact the 15th day from 09.04.2019. It is apparent from the date stamp on the Petition of Appeal that the Petition of Appeal was not filed even on 23rd April 2019-the 15th day. The date stamp clearly indicates that that the appeal was filed only on the 16th day namely 24th April 2019.

Justice Mark Fernando went to the extent of stating in *The Ceylon Brewery Ltd. vs. Jax Fernando, Proprietor, Maradana Wine Stores* (2001) 1 Sri.LR 270

“It is settled law that provisions which go to jurisdiction must be strictly complied with”.

Section 37 is jurisdictional in that it confers jurisdiction on the Court of Appeal to entertain and hear an appeal provided the jurisdictional requirement of 14 days is satisfied. When an essential step in regard to the exercise of the substantive right of appeal is to be taken, the time limit is mandatory and I would therefore proceed to reject the Petition of Appeal and dismiss the appeal.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna J.

I agree

JUDGE OF THE COURT OF APPEAL