

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

**CA case No: CA (PHC) 182/2020**

Monaragala High Court Revision  
Application No. 39/2019 (Rev)

Wellawaya Magistrate Court Case  
No. 21197

In the matter of the Appeal in terms of  
Section 323(6) of the Code of Criminal  
Procedure Act of 1979 and Section 5 of  
the Provincial High Courts (Special  
Provisions) Act No. 19 of 1990 read with  
Article 154P(2)(a) of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

Badhurdeen Mohammed Rasheed,  
Muslim Village,  
Buttala.

**1<sup>st</sup> Party-Petitioner**

**Vs.**

1. Herath Mudiyanseelage Lalani Piyasena,  
100 Acres,  
Mahagoddayaya, Buttala.

**2<sup>nd</sup> Party-Respondent**

2. Officer-In-Charge,  
Police Station,  
Buttala.

**Plaintiff-Respondent**

3. Hon. Attorney General  
Attorney General's Department  
Colombo.

**Respondent- Respondent**

**AND NOW BETWEEN**

Badhurdeen Mohammed Rasheed,  
Via Shanika Maduwanthi,

No. 41/3, Thanamalwila Road,  
Sellakatharagama.

**1<sup>st</sup> Party-Petitioner-Appellant**

**Vs.**

1. Herath Mudiyanseelage Lalani Piyasena,  
100 Acres,  
Mahagodayaya, Buttala.

**2<sup>nd</sup> Party-Respondent-Respondent**

2. Officer-In-Charge,  
Police Station,  
Buttala.

**Plaintiff-Respondent-Respondent**

3. Hon. Attorney General,  
Attorney General's Department,  
Colombo.

**Respondent- Respondent**

Before: Damith Thotawatte, J.  
K.M.S. Dissanayake, J.

Counsels: Lakshan Dias with Selvaraja Asvinijaa instructed by  
Dayani Panditharatne for the 01<sup>st</sup> Party-Petitioner-  
Appellant.

Dulani Peiris instructed by Piyumi Samarasinghe for the  
02<sup>nd</sup> Party-Respondent-Respondent.

Maheshika Silva, D.S.G. for the 02<sup>nd</sup> and 03<sup>rd</sup>  
Respondents.

Written submissions 24-02-2025 by 02<sup>nd</sup> Party Respondent-Respondent.  
tendered on: 21-11-2024 by 01<sup>st</sup> Party Petitioner-Appellant.

Judgement  
Delivered on: 13-01-2026

**Thotawatte, J.**

This appeal is against the order dated 27 November 2020 pronounced in favour of the 02<sup>nd</sup> Party Respondent-Respondent (hereinafter sometimes referred to as the “Respondent”) by the learned High Court Judge of the Provincial High Court of Uva holden at Monaragala, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the said court affirmed the order dated 25 November 2019 delivered by the learned Magistrate of the Magistrate’s Court of Wellawaya acting as the Primary Court Judge under the provisions of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter sometimes referred to as the “PCP Act”).

The proceedings in the Magistrate Court of Wellawaya was initiated by the filing of information dated 27 March 2019 under the PCP Act by the, Officer-In-Charge of the Police Station of Buttala regarding a dispute between the 01<sup>st</sup> Party-Petitioner-Appellant (hereinafter sometimes referred to as the “Appellant”) and the Respondent over the possession of a land forming a part of an extent of state land (hereinafter sometimes referred to as the “subject land”) commonly referred to as “100 Acres,” situated at Mahagodayaya in Buttala.

The Appellant claims that the subject land was initially possessed, without a formal state permit, by the Respondent and her husband, who allegedly transferred possession for consideration to a person named Charu Vimukthi in 2013. Thereafter, by an agreement dated 04-01-2018, the Appellant claims to have purchased the land for Rs. 4.5 million and entered into possession. The Appellant further claims that thereafter the Respondent had forcibly entered the land and started building a house on the subject land, prompting him to make a complaint to the police.

The Respondent asserts that the subject land was openly and peacefully possessed and cultivated by her father from about 1981 until 2009, whereupon, following her marriage in 2009, possession devolved to her, and that she has since remained in continuous and uninterrupted physical possession, cultivating the land, residing thereon, and erecting a dwelling house, with such possession being supported by affidavits from neighboring landholders. She further alleges that it was only from around 2018 that the Appellant began to interfere with her peaceful possession, culminating in damage being caused to her house on the night of 24-03-2019, which led her to lodge a police complaint on 25-03-2019.

Learned Magistrate acting as the Primary Court Judge having inquired into the matter, had come to a finding that the Respondent was in actual, physical possession of the land at the time of filing of the information and that the Appellant had failed to establish that he had been dispossessed from the subject land within the two month period immediately prior to the filing of the information, and as such has held that the Respondent should be allowed to remain in possession of the land pending a final determination of rights by a court of competent jurisdiction.

Being aggrieved by the said order dated 25-11-2019, the Appellant invoked the revisionary jurisdiction of the Provincial High Court of the Uva Province holden in Monaragala. By order dated 27-11-2020, the learned High Court Judge declined to interfere with the impugned order of the learned Magistrate, holding that the Appellant had failed to demonstrate the existence of exceptional grounds warranting the exercise of the High Court's revisionary jurisdiction in this matter.

Being dissatisfied with the said order of the learned High Court Judge, the Appellant had preferred this instant appeal to this Court seeking to have the said orders of the learned Magistrate and the learned High Court Judge set aside.

The order of the learned High Court Judge has been challenged *inter alia* on the ground of failure of the Provincial High Court to properly exercise revisionary jurisdiction by dismissing the revision application without adequately addressing apparent errors and misdirection in the Magistrate's order and thereby failing to exercise its supervisory jurisdiction in accordance with law.

It had been submitted by the Appellant that the same Attorney-at-Law who attested the Respondent's affidavit as a Commissioner for Oaths subsequently marked appearance as counsel in the very same proceedings in which that affidavit was tendered, and as such an objection had been advanced on the basis that such conduct contravened the Oaths and Affirmations Ordinance, No. 9 of 1895 (as amended), and this violation renders the affidavit invalid.

The said affidavit has been submitted as evidence in support of the position taken by the Respondent in the primary court (Magistrate Court Wellawaya). It appears that the learned Magistrate acting as the Judge of the Primary Court had relied upon the contents of the affidavit in arriving at a determination, thus having a material impact on the proceedings, favorable to the Respondent.

According to the Learned High Court Judge, the objection was essentially technical in nature and did not warrant intervention. The Judge observed that Section 66 of the PCP Act operates as a summary and preventive jurisdiction, intended to avert breaches of the peace arising from land related disputes. In the High Court Judge's view, the legislative intention is to maintain stability of possession and preserve public order, and should not permit procedural flaws to obstruct that purpose. Therefore, allowing minor technical defects such as irregularities in the attestation of affidavits to hinder the proceedings would contradict the object of the Act and impede its preventive function.

The learned Judge of the High Court has further stated that, in ***Don Asoka Dayarathne v. A.G. Wijerathna and others***<sup>1</sup>, the Supreme Court has disregarded such technical issues as it is wasting time of court and it is purely an attempt to study the law and not to provide any solution to parties.

In ***Don Asoka Dayarathne v. A.G. Wijerathna and others***<sup>2</sup>, the irregularity referred to was an objection that the Notice of Appeal was invalid, as it had not been addressed to the District Court (the original court), but instead appeared to be addressed to the Civil Appellate High Court, and therefore did not comply with Sections 754(3), 754(4) and 755(1) of the Civil Procedure Code.

In allowing the appeal in “Don Asoka Dayarathne”, the Supreme Court proceeded on the basis that the failure to correctly address a Notice of Appeal is a procedural irregularity and not a jurisdictional defect. Where the notice is duly lodged, and the intention to appeal by the party is clear, an appeal should not be defeated by technicalities that do not cause material disadvantage to the Respondent.

Although the learned Judge of the High Court appears to have relied heavily on “Don Asoka Dayarathne”, the instant matter is regarding the violation of Section 12 of the Oaths and Affirmations Ordinance No. 9 of 1895 (as amended) and not with regard to provisions of the Civil Procedure Code.

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<sup>1</sup> SC Appeal No. 07/2012 SCM 15.06.2012

<sup>2</sup> Supra

Section 12 of the Oaths and Affirmations Ordinance is as follows:

- 12 (1) The Minister of Justice may from time to time appoint fit and proper persons to be Commissioners for Oaths.
- (2) A Commissioner for Oaths appointed under this Ordinance may administer any oath or affirmation or take any affidavit for the purpose of any legal proceedings or otherwise in all cases in which a Justice of the Peace is authorized by law so to do, and in all cases in which an oath, affirmation, or affidavit is commonly administered or taken before a Justice of the Peace; and any oath or affirmation or affidavit administered or taken by a Commissioner for Oaths shall in all legal proceedings and for all other purposes have the same effect as an oath, affirmation, or affidavit administered or taken before a Justice of the Peace ; and all enactments relating to oaths, affirmations, and affidavits administered or taken before a Justice of the Peace shall, with the necessary modifications, apply thereto:

**Provided that a Commissioner for Oaths shall not exercise the powers given by this section in any proceeding or matter in which he is attorney-at-law to any of the parties, or in which he is otherwise interested.**

- (3) Every Commissioner before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, shall state truly in the jurat or attestation at what place and on what date the same was administered or taken, and shall initial all alterations, erasures, and interlineations appearing on the face thereof and made before the same was so administered or taken.

**(emphasis is mine)**

Section 12(2) expressly prohibits a Commissioner for Oaths from exercising that function in a proceeding where he or she is:

- i) the attorney-at-law for a party, or
- ii) otherwise interested.

This is a mandatory disqualification provision, and in the instant case, there is no dispute as to the fact that the attorney at law who attested the Respondents affidavit in her capacity as a commissioner for oaths has appeared in the same case as the attorney at law for the same party. This strikes at the integrity of the affidavit and the fairness of the proceeding. In such circumstances, the issue can rise to the level of a substantive illegality, not a trivial procedural defect.

The learned Judge of the High Court appears to have misdirected himself in concluding that the alleged irregularity did not constitute an “exceptional circumstance” capable of invoking the High Court’s revisionary jurisdiction, or that it did not invalidate the affidavit relied upon in the inquiry.

Accordingly, this Court holds that the manner in which the learned High Court Judge dealt with the objection under section 12(2) of the Oaths and Affirmations Ordinance amounts to a material misdirection in law, thereby bringing the trustworthiness of the affidavit into question. The commissioner for oaths, in effect, has become both certifier and advocate. Once statutory disqualification is established, the attestation is a nullity, and an affidavit founded on a nullity cannot constitute lawful evidentiary material. In proceedings under Section 66 of the PCP Act, irregularities affecting the admissibility of the evidentiary foundation are not to be treated as inconsequential where they bear upon the validity of the affidavit material placed before the Primary Court. The reliance placed by the learned Magistrate upon irregular affidavit evidence has undermined the integrity of the adjudicative process and invalidated the resulting order.

The appeal is therefore allowed. The order dated 27-11-2020 of the learned High Court Judge of Monaragala, and the order of the learned Primary Court Judge of Wellawaya dated 25-11-2019, are hereby set aside.

Having regard to the preventive character of Section 66 proceedings, and that the absence of a valid judicial order may create conditions conducive to a

breach of the peace, this Court directs the learned Magistrate of Wellawaya to re-hear the matter afresh upon the filing of valid affidavits by both parties, and to proceed in accordance with law.

**Judge of the Court of Appeal**

**K.M.S. Dissanayake, J.**

I agree

**Judge of the Court of Appeal**