

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

In the matter of an appeal under and in terms of Section 15 (11) of the National Gem and Jewellery Authority Act No. 50 of 1993.

W.M. Nawarathna Bandara,
"Rathnamahal", Marapana, Rathnapura.

**LICENSEE – RESPONDENT – APPELLANT –
APPELLANT**

S.C. Miscellaneous No. 02/2011

Vs.

1. Chamila Widyalkara,
No. 119, Marapana, Rathnapura.
2. G.J.R.N. Wimalananda,
No. 191, "Sevana", Marapana, Rathnapura.
3. T.S.D.V. Karunarathne,
No. 191, "Sevana", Marapana, Rathnapura.
4. A.G. Prabath Amerathunga,
Galaudawatte, Marapana, Rathnapura
5. D. Upali Jayaweera,
"Raveen", Marapana South, Marapana.

PETITIONER – RESPONDENT – RESPONDENTS

6. National Gem and Jewellery Authority,
No. 25, Galle Face Terrace, Colombo 03.
7. Mr. Rohan De S. Daluwatta – The Chairman,
National Gem and Jewellery Authority,
No. 25, Galle Face Terrace, Colombo 03.

8. Dr. R. H. S. Samarathunga – The Secretary,
Ministry of Environment,
“Sampathpaya”, No. 82, Rajamalwatte
Road, Battaramulla.

RESPONDENTS

- 7D. Mr. Pradeep Gunawardane – The Chairman,
National Gem & Jewellery Authority, No. 25,
Galle Face Terrace, Colombo 03.

- 8C. Mr. Anura Dissanayake – The Secretary,
Ministry of Mahaweli Development &
Environment,
“Sobadama Piyasa”, 416/C/1,
Robert Gunawardana Mw, Battaramulla.

ADDED RESPONDENT - RESPONDENTS

BEFORE : **Hon. S. Thurairaja, P.C., J.**
Hon. Janak De Silva, J.
Hon. Sampath K. B. Wijeratne, J.

COUNSEL : Ruwantha Cooray for the Licensee-Respondent-
Appellant-Appellant
Vijith Singh for the 1st Petitioner-Respondent-
Respondent
Rajitha Perera DSG for 6th to 8th and 7D and 8C
Respondents

WRITTEN SUBMISSIONS : 07.09.2023 by the Licensee-Respondent-Appellant-
Appellant
17.09.2020 by the 1st Petitioner – Respondent –
Respondent

ARGUED ON : 04.03.2025

DECIDED ON : 20.02.2026

Janak De Silva, J.

This is an appeal by the Licensee-Respondent-Appellant-Appellant (Appellant) under and in terms of Section 15(11) of the National Gem and Jewellery Authority (NGJA) Act No. 50 of 1993 (Act).

The Appellant was issued a gem mining license (P9) under and in terms of the Act for “Horakanda Kumbura”. This license was issued on 17.03.2010 and was to expire on 01.02.2011 or earlier in the event of termination by the Chairman of the NGJA or duly authorised representative.

In or about 23.03.2010, the Appellant was notified that the license issued to him has been temporarily suspended until a decision is taken in relation to objections received against it. The objections had been raised by the 1st to 5th Petitioner-Respondent-Respondents (Respondents) on the basis that they are co-owners of the corpus.

The Appellant objected to the jurisdiction of the 7th Respondent since the circumstances did not warrant any such revocation or suspension of the license issued to him. Nevertheless, the 7th Respondent conducted an inquiry into the objections and decided to revoke the license (P10). The stated reason was that it was not possible for the NGJA to determine the ownership of the corpus. Parties were instructed to resolve this issue through Court.

The Appellant preferred an appeal to the 8th Respondent under and in terms of Section 15(8) of the Act. After inquiry, the 8th Respondent rejected the appeal (P15). It was held that upon considering the deeds submitted by both parties, it is not clear whether they pertain to one and the same corpus.

This appeal is against the said decision made under and in terms of Section 15(11) of the Act.

Journal entry dated 20.03.2013 indicates that the learned counsel appearing for the 1st Petitioner-Respondent-Respondent (1st Respondent) has at the very inception notified Court as well as the Appellant of his intention to raise two preliminary objections against the appeal based on the alleged failure to file the appeal within time and the failure to comply with Rule 28 of the Supreme Court Rules 1990 (Rules).

At the hearing, learned counsel for the 1st Respondent expounded his preliminary objections as follows:

- (1) The Appellant has failed to comply with Rule 28(3) of the Supreme Court Rules 1990 (Rules).
- (2) The Appellant failed to appeal to the 8th Respondent within 30 days of the order made by the 7th Respondent.

Rule 28(3)

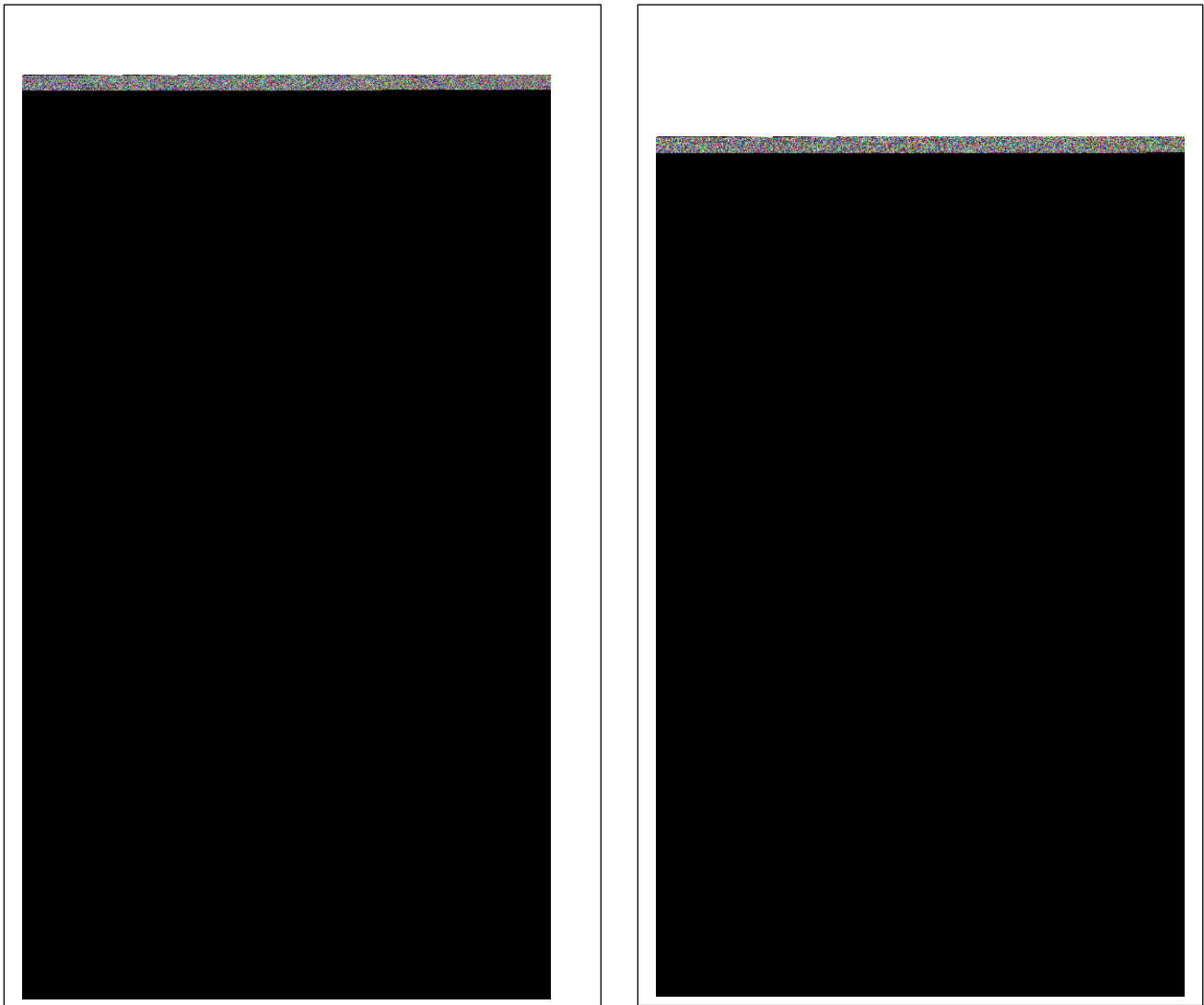
Section 15(12) of the Act states that the relevant provisions of the Supreme Court Rules shall apply to an appeal preferred under subsection (11).

Rule 28(1) of the Rules specifies that save as otherwise specifically provided by or under any law passed by Parliament, the provisions of this rule shall apply to all other appeals to the Supreme Court from an order, judgment, decree or sentence of the Court of Appeal or any other court or tribunal.

The Appellant should have complied with Rule 28 as the Secretary of the relevant Ministry in terms of Section 15(11) of the Act will be a one-man tribunal for the purposes of this rule.

Accordingly, the Appellant should have, in compliance with Rule 28(3), tendered with his petition of appeal a Notice of Appeal in Form 4 prescribed in the Rules. However, the Appellant has tendered a form of Notice of Hearing in Form 1 prescribed in the Rules.

The two forms as set out in the Rules are as follows:



There is a clear distinction between the two forms. The Notice of Hearing puts the Respondent on notice that the special leave to appeal will be taken up on the scheduled date and that a caveat must be lodged within 14 days should the Respondent intend to oppose that application.

On the contrary, a Notice of Appeal puts the Respondent on notice that Court has already granted leave and the Registrar has fixed the date specified therein for the parties to attend the Registry for the purposes of fixing the date for the hearing of the appeal.

Accordingly, the notice tendered by the Appellant states that the Appellant has filed an application for Appeal to the Supreme Court and that it will be heard on the date specified. It further states that the Respondents are required to enter appearances and lodge a caveat if they intend to oppose the grant of leave to appeal. It goes on to state that if leave to appeal is granted, the date for hearing of the appeal will be fixed under and in terms of Rule 16 of the Supreme Court Rules.

Factually the notice served on the Respondents in this application is misleading. They are informed to be ready for a leave to appeal application whereas in fact this is a direct appeal and not a leave to appeal application. The question then is whether this is fatal to the maintainability of this appeal.

In ***Fernando v. Sybil Fernando* [(1997) 3 Sri.L.R. 1 at 13]**, Amerasinghe, J. explained the importance of procedural law as follows:

“There is the substantive law and there is the procedural law. Procedural law is not secondary: The two branches are complementary. The maxim ubi ius, ibi remedium reflects the complementary character of civil procedure law. The two branches are also interdependent. Halsbury (ibid.) points out that the interplay between the two branches often conceals what is substantive and what is procedural. It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives its remedy and effectiveness and brings it into being.”

I am in respectful agreement with this statement. Much of the procedural law is based on the rules of natural justice and seeks to ensure that litigants have a fair hearing including adequate notice of the proceedings before Court. To relegate it to a secondary or less

important role is to overlook the seminal role of the rules of natural justice in the due and efficacious administration of justice.

Nevertheless, as Amerasinghe, J. went on to elaborate (supra. at pages 13-14):

“Judges, do not blindly devote themselves to procedures or ruthlessly sacrifice litigants to technicalities, although parties on the road to justice may choose to act recklessly. On the contrary, as the indispensable vehicle for the attainment of justice, civil procedural law has a protective character. In its protective character, civil procedural law represents the orderly, regular and public functioning of the legal machinery and the operation of the due process of law. In this sense, the protective character of procedural law has the effect of safeguarding every person in his life, liberty, reputation, livelihood and property and ensuring that he does not suffer any deprivation except in accordance with the accepted rules of procedure: Halsbury, Ibid.”

The Rules are the procedural laws that regulate the conduct of proceedings before the Supreme Court. Nevertheless, every single Rule in the Rules may not have the same importance in the attainment of the rules of natural justice and the due and efficacious administration of justice. The importance of each Rule and consequences for failure to comply with it must be examined bearing in mind the object and purpose of the Rule and the consequences of the failure to comply with it.

In ***Sudath Rohana and Another v. Zeena and Another* [2011 B.L.R. 277]** it was held as follows:

(a) The purpose of the Rule 8(3) as well as Rule 27(3) of the S.C. Rules 1990 is to ensure that all necessary parties are properly notified on a matter coming up before the Supreme Court, so that all parties could participate at the hearing.

- (b) The same position applies to Rule 28(3) and 27(3) as both Rules contain provisions similar to that of Rule 8 of the Supreme Court Rules 1990.*
- (c) Rules 28(3) and 27(3) quite clearly give specific instructions as to the method in tendering notices to parties. The language used in both Rules clearly shows that the said provisions are mandatory and the notice has to be served through the Registry of the Supreme Court.*
- (d) When there has been non-compliance with a mandatory Rule such as Rule 28(3), there is no doubt that this would lead to serious erosion of well-established Court procedures maintained by our Courts, throughout several decades and therefore the failure to comply with Rule 28(3) of the Supreme Court Rules would necessarily be fatal.*

I am in complete agreement with the statement made on the importance of Rule 28(3). The Notice of Appeal specified therein is the first step by which a party to a case before this Court is informed of the pending proceedings.

In ***Sudath Rohana*** [supra], the notice required in terms of Rule 8(3) was sent but not through the Registry of the Supreme Court. In this appeal, the papers tendered to the Registry contained a Form Notice of Hearing in Form 1 whereas what should have been tendered is Form of Notice of Appeal in Form 4. Learned Counsel for the Appellant submitted that there has been substantial compliance.

I am unable to accept this proposition. Assuming that *substantial* and not *strict* is the test, it cannot be said that the Appellant has passed the substantial test. The Notice of Appeal should at a minimum state the number of the case, that it is in the Supreme Court, names of the parties, details of the instructing Attorney-at-Law for the appellant and the date and time at which parties must attend at the Registry for the purposes of fixing the date for hearing.

However, the notice tendered on 24.10.2011 by the Appellant in this appeal was in Form 1 and stated that the Respondents must within 14 days of the receipt of the notice, enter an appearance and lodge a caveat if they intend to oppose the grant of Leave to Appeal and that should leave to appeal be granted, the hearing of the appeal will be fixed under and in terms of Rule 16 of the Rules.

It is common knowledge that at appellate level, counsel is retained on the basis of a brief fee or alternatively on a day-to-day fee. Either way, the notice tendered by the Appellant left room for the Respondents to incur additional expenses in retaining counsel to oppose leave to appeal when in fact it was not so.

The administration of justice, whilst ensuring that justice is dispensed according to the rule of law, must also avoid litigants having to undergo unnecessary and prejudicial expense.

For the foregoing reasons, I hold that the Appellant has failed to comply with Rule 28(3). This appeal must be dismissed *in limine* on that ground alone.

Time Limit

Section 15(8) of the Act specifies that an applicant or the licensee may before the expiry of a period of thirty days from the date of the refusal or revocation appeal to the Secretary of the Ministry of the refusal or revocation of the licence. The revocation (P10) is dated 29.06.2010. The Appellant appealed to the 8th Respondent on or about 01.07.2010 (P11).

Section 15(11) of the Act allows a licensee, dissatisfied with a decision of the Secretary, to appeal from such decision of the Secretary, to the Supreme Court, within 30 days of the date on which such decision is communicated to him.

The decision of the 8th Respondent on the appeal is dated 23.09.2011 (P15). The Appellant has averred that it was received by him on 27.09.2011. The Respondents have not countered this assertion. This appeal was filed on 24.10.2011.

The Appellant has filed both appeals within the time stipulated in the Act.

Hence, I dismiss the preliminary objection based on time bar.

Merits

Although, I need not proceed to examine the merits of this appeal in view of my finding on the first preliminary objection, I shall do so for the sake of completeness.

The Appellant submits that the revocation of a gem mining license granted under and in terms of the Act can be done in accordance with Section 7 of the Act only where there is default in the payment of any money payable thereunder or on the failure of the licensee to comply with any terms and conditions of the license.

Let me examine this proposition in the scheme of the Act.

In ***Karangoda and Another v. National Gem and Jewellery Authority and Others*** [S.C. Miscellaneous 02/2016, S.C.M. 26.07.2024] I had the occasion to examine one aspect of the procedure relating to the issue and cancellation of gem mining licences under the Act. These licences can be issued in conformity with the State Gem Corporation By-laws, No. 1 of 1971 (“By-law”) which have been kept alive by Section 54 (2)(h) of the Act.

According to By-Law 8 (2), no licence shall be granted to any person unless (a) he himself owns the land or (b) he has obtained the consent of so many of the other owners as to ensure that the applicant and such other consenting owners together own at least two-thirds of the land in respect of which the application has been made.

By-law 2(2) requires every application for a gem mining licence to be substantially in the form set out in the First Schedule thereto. It requires the applicant to provide *inter alia* nature of title or claim to the land, proportion of the land claimed, names and addresses of co-owners or other believed by the applicant to have or claiming to have an interest in the land and whether the land belong to the Crown.

A gem mining licence is issued in the form of the Second Schedule to the By-law. The terms and conditions subject to which it is issued is set out on the reverse of the licence. Clause 17 therein specifies the following Special Condition:

“DECLARATION

“I, hereby declare that all statements and representations made by me and my agents are correct and I further declare that I shall observe all the terms and conditions upon which this licence has been issued. I agree that this licence may be cancelled and that all sums of money deposited by me may be forfeited if either any of the statements and representations made by me or my agents are untrue or, if in the opinion of the General Manager of the State Gem Corporation I have failed to observe any of the terms and conditions upon which the licence has been issued.

Date:

.....

Signature of the Licensee”

Accordingly, one of the special conditions of a gem mining licence is that all the statements and representations made by the applicant and by his agent about the nature of title or claim to the land are correct. Where such statement or representation is incorrect, it amounts to a breach of the conditions of the licence.

Section 15(7) of the Act empowers the 8th Respondent to at any time revoke any licence issued, in the event of any default in the payment of any money payable thereunder or on the failure of the licensee to comply with any terms and conditions of the licence. Hence the gem mining licence issued to the Appellant can be revoked should he have made any incorrect statement or representation on the identity of the corpus or title.

The decision of the 8th Respondent states that there is a discrepancy in the boundaries in the deeds submitted by parties. Moreover, such discrepancy in the boundaries were also detected during a field inspection carried out during the appeal proceedings.

The title to any land can only be determined only once the identity of the land is established. Where an applicant has submitted any incorrect statement on the identity of the corpus it is an incorrect representation which can form the basis of revocation of a license.

The Appellant counters by claiming that in 2006, a panel had concluded that the Appellant had established 7/8 ownership to the corpus and a license issued to the Appellant. The inquiry proceedings conducted in 2011 reflects that it was an erroneous decision. The decision made in 2006 was for the parties to agree on a settlement failing which the dispute should be determined by a Court. Notwithstanding this decision, a license was issued to the Appellant in 2006.

In ***Rootkin v. Kent County Council* [(1981) 1 W.L.R. 1186]** it was held that where a local authority issued a season ticket under a mistake of fact, it was duty bound to reconsider the matter when it was found that a mistake about the distance had been made. This was a fundamental mistake of fact as the eligibility for a season ticket depended on the distance between the school and the house of the applicant.

For all the foregoing reasons, the appeal must fail on the merits as well.

I dismiss the appeal with costs.

JUDGE OF THE SUPREME COURT

S. Thuraiaraja, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K.B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT