

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

In the matter of an application for  
mandates in the nature of writ of  
Certiorari and Mandamus in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Nagananda Kodituwakku  
Attorney-at-Law  
99, Subadrarama Road,  
Nugegoda.

**PETITIONER**

CA [Writ] Application No: 315/2018

**Vs.**

1. Director General of Customs  
Customs House,  
Colombo 11.
2. Sudath J de Silva  
Deputy Director of Customs,  
Customs Department,  
Colombo 11.
3. K H P Kumarasiri  
Deputy Director of Customs,  
Customs House,  
Colombo 11.
4. Sena Mills Refineries Pvt Ltd  
40, New Kelani Bridge Road,  
Orugodawatte,

## RESPONDENTS

**Before** : Dhammika Ganepola, J.  
Damith Thotawatta, J.

**Counsel** : Nagananda Kodithuwakku appears in person.  
Suren De Silva for the 4<sup>th</sup> Respondent.  
M. Gunatilleke, P.C., A.S.G. with Chaya Sri Nammuni, D.S.G. for the Respondents.

**Argued On** : 04.10.2024

**Written Submissions** : Petitioner (in Person) : 29.11.2024  
**tendered On** : 4<sup>th</sup> Respondent : 29.11.2024

**Decided On** : 14.02.2025

### **Dhammika Ganepola, J.**

This is an application filed by the Petitioner on the basis of public interest litigation seeking a Writ of Certiorari and Writ of Mandamus against the Respondents. When this matter was taken up for support on 04<sup>th</sup> October 2024, the 4<sup>th</sup> Respondent took up a preliminary objection with respect to the maintainability of the Petitioner's application in view of the determination made by the Supreme Court in SC Rule 03/2017. Both the Petitioner and the 4<sup>th</sup> Respondent agreed to file written submissions on the preliminary objection raised. The learned Additional Solicitor General who appears for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents agreed to abide by any decision delivered by this Court.

The Petitioner in paragraph one of his Petition dated 09 Oct 2018 states that he is a public interest litigation activist, Attorney at Law, and Solicitor (England) and he presents this Petition in the exercise of his fundamental duties as a concerned citizen of the Republic, to uphold and defend the Constitution and the law, which includes the duties to further national and public Interest, to preserve and protect public property, combat misuse and waste of public property, to respect the rights & freedoms of others [Article 28 (a)(b)(d),(e)].

The 4<sup>th</sup> Respondent, by way of the said preliminary objection, has challenged the standing of the Petitioner to maintain this action in view of the determination made by the Supreme Court in the Case bearing no. SC Rule 03/2017. The said Supreme Court determination bearing No. SC Rule 03/2017 was an application where the Petitioner was issued with a rule for the acts and conduct committed by the Petitioner in a manner unworthy of an Attorney-at-Law. In the said application, the Supreme Court has come to a finding that the conduct of the Petitioner was dishonourable and unworthy of an Attorney-at-Law where it determined as follows;

*“Moreover, the evidence and the material produced at the inquiry shows that the conduct of the respondent is not only bad conduct but also amounts to contemptuous behaviour with total disregard of the authority and respect of the Supreme Court. Hence the evidence led at the inquiry proved that the actions taken by the respondent amounts to conduct which is dishonorable and unworthy of an Attorney-at-law.*

*Taking into consideration that this is the second instance that the respondent was found guilty of professional misconduct, and the nature of the grave misconduct of the respondent referred to in the Rule, the aforementioned Rule is affirmed. We hold that the respondent is guilty of malpractice. Hence the respondent is removed from the office of Attorney-at-Law. **Further, the respondent is restrained from filing public interest litigation in his personal capacity as such conduct would nullify the said decision to remove the respondent from the office of Attorney-at-Law**”.[emphasis added]*

Accordingly, the Petitioner was removed from the office of Attorney-at-Law and he was restrained from filing public interest litigation in his personal capacity. In light of the above, the Respondent took up the preliminary objection that the Petitioner has no *locus standi* to maintain this instant application.

It is observed that the Petitioner has averred his intention to appear in person in the instant application and proceeds to sign the Petition in the capacity of the Attorney at Law for the Petitioner.

However, the Petitioner claims that the effect of the above Rule matter on public interest litigations would only affect the matters that would be initiated after the said determination dated 29<sup>th</sup> February 2024. The Petitioner relies on the wording of the Supreme Court determination that;

*“Further, the Respondent is restrained from filing public interest litigation in his personal capacity as such conduct would nullify the said decision to remove the Respondent from the office of Attorney-at-Law”*

The instant application has been instituted on 09<sup>th</sup> October 2018. As per the Petitioner’s submission, the Supreme Court determination would not apply to the applications filed in the capacity of public interest litigant before the above determination.

This Court is bound by the decision and the rationale upheld in the aforesaid case by the Supreme Court. Consequently, it is the duty of this Court to apply the rationale upheld in the aforesaid rule matter. The Supreme Court in the aforesaid matter has specifically determined that the Petitioner *is restrained from filing public interest litigation in his personal capacity as such conduct would nullify the said decision to remove the [Petitioner] from the office of Attorney-at-Law.*

Further, the Supreme Court has come to a conclusion that the filing of public interest litigation in the Petitioner's personal capacity would nullify the decision to remove the Petitioner from the office of Attorney at Law. The reasons given by the Supreme Court depict its intention. I am of the

view that this matter should not be evaluated solely on the technicalities related to the filing dates of the applications, as claimed by the Petitioner. Instead, it has to be taken into account the intentions of the Supreme Court as well.

If this Court rejects the preliminary objection raised by the 4<sup>th</sup> Respondent to the effect that the Petitioner has no standing to maintain the instant application in view of the determination made by the Supreme Court in SC Rule 03/2017, such determination would nullify the decision of the Supreme Court in SC Rule 03/2017. Any contrary decision made by this Court permitting the Petitioner to support or continue with any existing public interest litigation applications filed by the Petitioner in his personal capacity would nullify the determination of the Supreme Court. Therefore, this Court is compelled to act in deference and prohibit the continuance of bad, dishonourable and unworthy conduct of the Petitioner which the Supreme Court has sought to forbid.

The Petitioner also states that he has filed an appeal before the Supreme Court seeking a review against said determination in SC Rule 03/2017. As per the Constitution of the Democratic Socialist Republic of Sri Lanka, no appeal lies to the Supreme Court against a decision of the Supreme Court. As such, I am to consider that the decision of the Supreme Court in matter SC Rule 03/2017 as final.

Hence, giving effect to decision of the Supreme Court and upholding the intention as depicted therein said decision, I uphold the preliminary objection taken up by the 4<sup>th</sup> Respondent and dismiss the Petitioner's application for lack of standing.

*Application is dismissed.*

**Judge of the Court of Appeal**

**Damith Thotawatta, J.**

**I agree.**

**Judge of the Court of Appeal**