

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

In the matter of an application for a mandate in the nature of Writs of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Nagananda Kodituwakku
99, Subadrarama Road,
Nugegoda.

Petitioner

CA/Writ/374/2012

Vs.

1. Chulananda Perera
Director General of Customs
- 1A. P. S. M. Charles
Director General of Customs
- 1B. G. V. Ravipriya
Director General of Customs
- 1C. P. B. S. C. Nonis
Director General of Customs

And now

- 1D. Seevali Arukgoda
Director General of Customs
2. Tharaka Mahaulpotha
Deputy Superintendent of Customs

3. Thilak Pragnarathna
Deputy Superintendent of Customs

4. T. U. R. Marambe
Deputy Superintendent of Customs

All at
Customs Department,
40, Main Street,
Colombo 11.

5. The Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Nagananda Kodithuwakku appears in
person.
Manohara Jayasinghe, D.S.G. for the 1st
To 4th and 5th for the Respondents.

Supported on : 03.03.2026

Decided On : 26.03.2026

Dhammika Ganepola, J.

When this matter was taken up for resumption of the arguments on 02.02.2026, the Petitioner was absent and unrepresented. Consequently,

the application of the Petitioner was dismissed. On the same day, the Petitioner made an application to relist the matter. This Order pertains to said application of the Petitioner.

On the said date, 02.02.2026, when this matter was taken up for argument for the first time, the Petitioner was absent and unrepresented. Again, when the matter was taken up for argument at 11.25a.m., the Petitioner had not yet reached. The learned Deputy Solicitor General representing the 1st, 4th, and 5th Respondents moved to dismiss the application. Considering the circumstances and referring to the observations made by this Court in its Order dated 28.11.2024, the Court dismissed the application on the basis that the Petitioner had not exercised due diligence in pursuing the matter.

The Petitioner states that on several previous occasions, the matter was taken up at 13.30 hrs., and he was prepared to attend at that time (13.30 hrs.) on 02.02.2026 as well. The Petitioner further states that he was around (nearby) and immediately attended the Court upon receiving a message from the Counsel for the 2nd and 3rd Respondents that the matter had been taken up and dismissed earlier in the morning. As per the CA. minute dated 14.01.2026, it is evident that the matter was scheduled to be resumed for hearing on 02.02.2026, but not at 13:30 hrs. Further, the learned D.S.G. for the 1st, 4th, and 5th Respondents and the learned Counsel for the 2nd and 3rd Respondents were present in Court. Therefore, the claim that the Petitioner was ready to attend Court at 13.30 hrs. based solely on the Petitioner's own assumption, cannot be considered as a reasonable explanation for his default.

This Court observed that this is not the first occasion on which the Petitioner had defaulted to appear before this Court in the same case. On several other occasions, i.e., on 20.09.2016, 12.09.2019, 20.09.2019, 31.10.2019, 08.02.2023, and 12.02.2024, the Petitioner had been absent. At this juncture, it is pertinent to take note of the contents of the Order dated 28.11.2024 delivered by this Court in the same case in respect of an application made by the Petitioner to relist the case, following the failure of the Petitioner to appear before the Court on a previous occasion.

“However, the Respondents have identified multiple instances of defaults of the Petitioner on 20.09.2016, 12.09.2019, 20.09.2019, 31.10.2019 and 08.02.2023 as the respective journal entries are evident. Upon careful perusal of the docket, it is observed that the Petitioner was neither present in person nor represented by Counsel before the Court on the above dates. However, no dismissal had been ordered on such occasions.

No specific rules have been formulated under the Court of Appeal Rules on how this Court should act in an instance where a party defaults in appearing. However, it is the duty of the Petitioner to prosecute his application with due diligence. It appears that this matter had been partly argued and fixed for the resumption on 02nd February 2024. The Petitioner has accepted the responsibility and the inadvertent error on his part. The application to purge his default has been made by the Petitioner without any undue delay. Further, it is observed that the Petitioner’s default was not followed by incompliance with any specific order of the Court.

Owing to the circumstances of this application and in the best interest of justice, the Court is inclined to allow the application of the Petitioner, subject to a cost of Rs. 10000/- to each Respondent. Accordingly, the application is allowed, and the matter is refixed for argument finally. The Petitioner is directed to prosecute his application with due diligence hereinafter. Any such failure of the Petitioner to prosecute his case with due diligence hereinafter shall not be excused.”

On the foregoing, it is evident that the Petitioner was warned in the strongest terms to act with due diligence in pursuing the application previously as well. It is my view that continuous transgression cannot be permitted to continue repeatedly. Given the Petitioner’s persistent failure to exercise due diligence and his prior absences from proceedings, this Court has already been overly generous in allowing the Petitioner to proceed with the application on numerous occasions. The failure of the Petitioner to appear at the last hearing, despite the Respondents' presence, demonstrates continued disinterest. Given this sustained

pattern of disinterest, this Court is of the view that further indulgence by this Court is wholly unwarranted. Therefore, this Court declines to exercise further leniency, and accordingly, the application for relisting is refused.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal