AFFIDAVIT

BASL Ref: 01/05/2003

Affidavit-Validity-Erasures and alterations not initialed-Sec.400 of the Civil Procedure Code and Sec.12(3) of the Oaths & Affirmations Ordinance, examined.

Held,
Deficiencies in affidavit cannot be treated as a mere technical objection, as it goes to the root of the question as to whether there is a valid application before Court.

COURT OF APPEAL

Godigamuwa
Vs
Tennekoon & another

CA/674/2001 – DC/Colombo Case No. 17062/L

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 06th May, 2002.

In a Revision Application in the Court of Appeal, the Respondent raised four preliminary objections based on the Affidavit filed by the Petitioner, namely; the purported Affidavit (1) bears two dates, (2) has been affirmed to and signed in Colombo, whereas the purported Commissioner for Oaths whose name appears therein is not a Commissioner for Oaths authorized to administer oaths in Sri Lanka,(3) has words tippexed but, not initialed by the purported Commissioner for Oaths, and (4) has no indication as to the place where the oath had been administered or taken.

Their Lordships taking a serious view of the deficiencies in the purported Affidavit, upheld the preliminary objections of the Respondent, and dismissed the Application with costs.

Application dismissed with costs.

SUPREME COURT RULES

BASL Ref: 02/05/2003

Supreme Court Rules – Necessity to tender requisite documents with applications for leave, stressed – Possibility of amending interlocutory decree, examined.

Held,
The District Court is not entitled to amend its own decree even under Sec.189 of the Civil Procedure Code. Failure to tender requisite documents with the Petition and complying with the Court of Appeal (Appellate Procedure) Rules 1990, warrants dismissal of the Application.

COURT OF APPEAL

Chandra Silva
Vs
Somawathie, *et al*

CA/LA/62/2001 – DC/Kalutara Case No. 5107/P

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 02nd May, 2002.

The Plaintiff in a Partition Action filed in the District Court of Kalutara sought Leave to Appeal in the Court of Appeal in respect of the interlocutory decree entered in the District Court. Prior to this, in a separate Application, the Court of Appeal amended the Judgment of the District Court and, accordingly the District Court entered an amended interlocutory decree and issued a commission to draw up a final scheme of partition. The Petitioner in this Application moved the District Court under Sec.189 of the CPC to amend the said amended decree to correct an arithmetical mistake. It was found that the alleged interlocutory decree had not been filed with the Petition in compliance with the said Rules. Their Lordships upheld the preliminary objections raised in the written submissions filed by the Respondent.

Application dismissed with costs.

BASL Ref: 03/05/2003

Leave to Appeal – Necessity to tender requisite documents with applications for leave, stressed –Stay of proceedings when identical proceedings pending in different jurisdiction, examined.

COURT OF APPEAL

Saumya Wijesundera
Vs
Dr. Rohan Wijesundera

CA/LA/436/2001 – DC/Mt.Lavinia Case No. 2836

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 08th May, 2002.

The Defendant-Petitioner in a divorce suit sought Leave to Appeal in the Court of Appeal on the refusal of the District Court to lay-by the action in view of a matrimonial action alleged to be pending in the United Kingdom. The Application for leave was refused as the Petitioner had failed to file with the Petition a copy of the plaint said to have been filed by her in U.K. Furthermore, their Lordships observed that the alleged action had been filed in U.K. long after proceedings had been initiated in Sri Lanka by the Plaintiff-Respondent.

Application dismissed with costs.

CIVIL PROCEDURE

BASL Ref: 04/05/2003

Civil Procedure Code – Sections 355 & 356 – Writ of possession – Execution of writ outside local jurisdiction – Function of Fiscal whether administrative or judicial, examined.

COURT OF APPEAL

Fernando & another
Vs
Wijesekera & another

CA/187/2000 – DC/Panadura Case No. 1023/L

Decided by **UDALAGAMA, J. & NANAYAKKARA, J.** on 08th May, 2002.

On an *ex-parte* judgment delivered in the District Court of Panadura the Registrar was directed to execute a Deed of Transfer in favour of the Plaintiff. Thereafter, on a writ of possession issued to the Panadura Fiscal the Petitioners were ejected from the premises in suit which was situated in Moratuwa, outside the jurisdiction of Panadura. Their Lordships relying on precedent, in the Revision Application affirmed that the Fiscal's function was essentially administrative, and he had performed only an incorrect administrative function which was not fatal to the action. However, as no exceptional circumstances had been pleaded by the Petitioner, their Lordships restrained their hands in moving in revision.

Application dismissed with costs.

FUNDAMENTAL RIGHTS

BASL Ref: 05/05/2003

Fundamental Rights – Article 12(1) of the Constitution – Failure to award tender – Evaluation of local and foreign tenderers, manufacturers and suppliers to determine lowest bid.

SUPREME COURT

Lakmini Printers (Pvt) Ltd.
Vs
Dharmaratne, *et al*

SC(FR) No.129/2002

Decided by **FERNANDO, J., ISMAIL, J. & Yapa, J.** on 09th December, 2002.

The Petitioner Company complained to the Supreme Court that its fundamental rights had been infringed by reason of the failure to award to it a tender for the supply and delivery of envelopes for the Postal Department. Though on the face of the bid the Petitioner Company's offer seemed to be higher, it was found that the concession given to local tenderers had not been considered when awarding the tender. Their Lordships also observed that tender conditions had been flouted by the successful tenderer, which warranted relief to the Petitioner Company.

Application allowed with compensation and costs.

It was the accepted practice in Babylon 4,000 years ago that for a month after the wedding, the bride's father would supply his son-in-law with all the mead he could drink. Mead is a honey beer, and 'cos their calendar was lunar based, this period was called the honey month, which we know today as "the Honeymoon".