

From : Manohara R. de Silva

Proposed amendments to the Court of Appeal (Appellate Procedure) Rules 1990

APPLICATIONS TO WHICH PUBLIC OFFICERS ARE RESPONDENTS.

5. (1) This rule shall apply to all applications made to the supreme court, in which a state officer has been made a respondent in his official capacity, (whether on account of an act or omission in such official capacity, or otherwise).

(2) A state officer may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be *sufficiently* identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name, designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The court may make such order as it thinks fit in the interests of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any omission, defect or irregularity.

(4) (a) In respect of an act or omission done in official capacity by a state officer who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being, in such office, such successor being made a respondent, by reference to his official designation only, in terms of sub-rule (2).

(b) If such an application has been made against a state officer, who has been made a respondent by reference to his official designation (and not by name) , in respect of an act or omission in his official capacity and such public officer ceases to hold such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy, or the issue of any notice, to be necessary in the interests of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of such original respondent.

(c) Where such an application has been made against a state officer, who has been made a respondent by reference to his official designation (and not by name) , and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being, in such office will be bound by and shall comply with such order or direction.

(5) The provisions of sub-rules (4) (b) and (4) (c) shall apply to all applications filed in the supreme court before such date as may be specified by the Chief Justice by direction, against a state

officer, in respect of an act or omission in his official capacity, even if such state officer is described in the caption both by name and by reference to his official designation.

(6) Nothing in this rule shall be constructed as imposing any personal liability upon a public officer in respect of the act or omission of any predecessor in office.

(7) In this rule, "ceases to hold office" means "dies, or retires or resigns from, or in any other manner ceases to hold, office".

(8) for the purposes of this rule "Officer of the State" shall mean, "a person who holds any paid officer under the Republic other than a Judicial Officer and shall include,

- (i) a person holding any office in any public corporation,
- (ii) a Minister of the Government or a Provincial minister of any province,
- (iii) a member of a commission referred to in the schedule to Article 41B of the constitution

1) The following shall be inserted as part vi of the rules immediately after part v.

Part vi

Rule 7-in any motion in respect of an application filed under Art 138, 140 & 141 it shall be sufficient to have a short caption consisting only the name of the First Petitioner and the First Respondent if there are more than one Petitioner or one Respondent

2) Insert a new rule immediately after rule 3 (b),

"it shall be sufficient compliance of this rule if the averments in the Petition are verified on affirmation or Oath that the statements in the Petition are true from own his knowledge and upon perusing the documents available to him."

(5) Every Petitioner to an application in terms of article 128 of the constitution to the Supreme Court shall at the time of filling the application file or cause of to be filed, where the rights claimed by the Petitioner in the application survives the death of the Petitioner, a memorandum as set out in the schedule of these rules nominating at least one person, and not more than three persons in order of preference, to be his legal representative for the purpose of prosecuting the application in the event of the Petitioner's death pending the death of the Petitioner and the person and/or persons so nominated shall be deemed to be the legal representative of the Petitioner for purpose of prosecuting the application

(6) A Petitioner to any application in terms of the 128 of the Constitution to the Supreme Court shall not be obliged to make substitute a respondent in the event of the death or dissolution of a respondent if the respondent has not filed a caveat in opposition and the Petitioner shall be entitled to prosecute the application notwithstanding the death or dissolution of such a respondent and in such an instance the Petitioner shall be entitled to enforce reliefs granted by the Supreme Court notwithstanding the non-substitution

Every Respondent to any application in terms of Article 128 shall file with his caveat nominating at least one person and not more than three persons in order of preference, to be his legal representative for the purpose of prosecuting the application in the event of the Respondent's death.

If the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death of the Petitioner

If the Respondent does not so file a memorandum, the court may proceed to hear and determine the application without substituting a legal representative in the place of the Respondent

Every Petitioner who files any application to the Supreme Court shall file together with such application, memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Applicant's death.

Every Respondent when tendering an appearance shall file a memorandum as set out in the schedule of these rules nominating atleast one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Respondent's death.

If the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death of the Petitioner

If the Respondent does not so file a memorandum, the court may proceed to hear and determine the application without substituting a legal representative in the place of the Respondent