

**TRICO FREIGHTERS (PVT) LTD**  
**v.**  
**YANG CIVIL ENGINEERING LANKA (PVT) LTD**

COURT OF APPEAL.  
EDUSSURIYA, J. (P/CA).  
CALA NO. 79/99.  
DC COLOMBO 14582/MR.  
06<sup>TH</sup> JULY, 1999.

*Affidavit - Oaths and Affirmations Ordinance S.5 - Civil Procedure Code - Form 75 - Affirmation - Oath - Religion not stated.*

**Held :**

(i) Under Section 5 of the Oaths and Affirmation Ordinance, it is open to even a Buddhist, Hindu or a Muslim to make an oath because Section 5 sets out that such a person may instead of making oath make an affirmation.

Edussuriya, J.,

“An affirmation is not bad in law merely because the deponent has made an affirmation without stating that he is a Buddhist, Hindu or Muslim.”

(ii) Substitution of an oath for an affirmation (or vice versa) will not invalidate proceedings or shut out evidence. The fundamental objection of a witness or the deponent is to tell the truth and the purpose of an oath or affirmation is to enforce that obligation.

**Case referred to :**

*Sooriya Enterprises (International) Ltd vs Michael White & Co. Ltd.,*  
Sc Spl LA 235/94 - SCM 27. 07. 94

*S. Sivarasa, P.C., with K.M.B. Ahamed and U.M. Mowjood for Petitioner.*  
*Kuwera de Zoysa with M. Weerakkody for the Respondent.*

*Cur. adv. vult.*

July 13, 1999.  
**EDUSSURIYA, J. (P/CA)**

Counsel for the Respondent has raised an objection that a person who makes an affirmation must set out in the

affidavit that he is a Buddhist, Hindu or Muslim or a person who has a conscientious objection to make an oath and as such is entitled to make an affirmation.

Counsel also referred to form 75 of the Civil Procedure Code and drew the attention of Court to the words within brackets, "or if deponent is not a Christian". Those words have been included only to specify that if a deponent is not a Christian that the deponent must make an affirmation as set out therein.

Under Section 5 of the Oaths and Affirmations Ordinance as it stands today it is open to even a Buddhist, Hindu or a Muslim to make an oath because Section 5 sets out that such a person *may* instead of making oath make an affirmation. Therefore it is my view that an affirmation is not bad in law merely because the deponent has made an affirmation without stating that he is a Buddhist, Hindu or Muslim.

In the Supreme Court Judgment of *Sooriya Enterprises (International) Limited vs. Michael White and Company Limited*<sup>(1)</sup>. His Lordship Fernando, J. in the course of his order stated ". . . that the substitution of an oath for an affirmation (or vice versa) will not invalidate proceedings or shut out evidence. The fundamental obligation of a witness or the deponent is to tell the truth and the purpose of an oath or affirmation is to enforce that obligation."

Therefore I hold that the affidavit in question is valid in law.

*Affidavit valid in law.*