

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

**SRI LANKA**

In the matter of an Application to relist and or restore Appeal bearing No. CA 1423/1999 (F) and Substitution in the room of Plaintiff-Respondent.

**CA Case No. 1423 / 1999 (F)**

DC Galle Case No. P/6719

**Kodagoda Sirisena Serasundara,**

No.26/2,

Dharmaraja Mawatha, Wackwella Road,

Galle.

**Substituted 2B Defendant - Appellant -  
Petitioner**

**-Vs-**

**Kariyawasam Katukolihe Gamage Dyanesius  
(since deceased),**

No.247/7,

Richmond Hill Road, Kumbalwella,

Galle.

**Plaintiff - Respondent**

- 1. Payagala Gunapala Gunawardana,**  
Wackwella Road, Galle.
- 2. Payagala Gunapala Mestriige Pabilina,**  
No.26/2,  
Dharmaraja Mawatha, Wackwella Road,  
Galle.
- 2a. Thalagaha Henage Ariyawathie,**  
No.26/2,  
Dharmaraja Mawatha, Wackwella Road,  
Galle.
- 2b. Kodagoda Sirisena Serasundara,**  
No.26/2,  
Dharmaraja Mawatha, Wackwella Road,  
Galle.
- 2. Thalgaspe Mestriige Karunawathie,**
- 3. Thalgaspe Mestriige Dayawathie,**
- 4. Thalgaspe Mestriige Dharmadasa,**
- 5. Thalgaspe Mestriige Koranelis Samarasinghe**  
all of No.26/2,  
Dharmaraja Mawatha, Wackwella Road,  
Galle.

**Defendants - Respondents**

**BEFORE** : **A.H.M.D. Nawaz, J.**

**COUNSEL** : **Bimal Rajapakse for the Substituted 2B  
Defendant-Appellant-Petitioner.**

**Buddika Gamage for the Plaintiff-  
Respondents.**

**Written Submissions** : **For 2B Defendant-Appellant on 19.11.2014  
For Plaintiff-Respondent on 18.03.2015  
Further written submission moved for on  
17.11.2015 not tendered.  
Authorities tendered on 01.03.2016**

**Decided on** : **24.06.2016**

**A.H.M.D.NAWAZ J,**

When this matter came up before me for the first time on 31<sup>st</sup> May 2015 both counsel moved that this re-listing application be disposed of on the written submissions that had already been filed before my predecessors.

The re-listing application before this Court raises two issues:

- 1) the question of its maintainability for restatement having regard to the fact that there is no proxy for the Attorney-at-Law who has filed the petition, affidavit of the petitioner, amended petition and the corresponding affidavit and an affidavit of the Attorney-at-Law himself.
- 2) The Attorney-at-Law who has purported to act in this re-listing application without a proxy on behalf of 2B Substituted Defendant-Appellant-Petitioner

(hereinafter referred to as “the Appellant”) is a different Attorney-at-Law from the Attorney-at-Law who took all steps in this matter right up to the time of filing this appeal.

Since both these objections had not been adequately dealt with in the written submissions filed on behalf of the Appellant, the Court granted an opportunity to the Defendant-Appellant on 3<sup>rd</sup> December 2015 to deal with these objections and for this purpose the matter was fixed to be mentioned on 17<sup>th</sup> December 2015 as the Appellant was unrepresented on 3<sup>rd</sup> December 2015. Counsel who appeared on 17<sup>th</sup> December 2015 moved to file written submissions on the specific issues to which the Court drew attention namely absence of a proxy for the Attorney-at-Law who acted on behalf of the Appellant by filing papers before this Court and the legality of a different Attorney-at-Law acting in the re-listing application when there is on record a proxy of a registered Attorney-at-Law.

In fact this Court drew the attention of both Counsel to the SC decision of ***Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos***<sup>1</sup> decided by Eva Wanasundera P.C., J. on 31<sup>st</sup> March 2014 on the propriety of a 2<sup>nd</sup> Attorney-at-Law acting in a re-listing application when there is already on record a registered Attorney-at-Law. When this matter came up finally for written submissions on 1<sup>st</sup> March 2016, authorities inclusive of the decision drawn to the attention of both Counsel ***Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos***<sup>2</sup> were tendered instead of the written submissions and since the application to dispose of this matter based on written submissions has already been made before me as far back as 31<sup>st</sup> August 2015, I proceed to decide this matter singly. Before the two issues are answered, the facts and circumstances of the case repays attention.

### ***Factual Template***

The factual template that has resulted in the above issues surfacing to the fore goes as follows.

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<sup>1</sup> (2015) B.L.R 24

<sup>2</sup> *Ibid*

The Appellant has sought to reinstate this appeal in which an order of abatement was made as far back as 28<sup>th</sup> February 2014. The order of abatement came about in the following way. The Appellant filed this appeal against the judgment of the learned District Judge of Galle who had ordered on 11<sup>th</sup> February 1999 a partition of a land called *Galketiyawatta alias Kanaththawatta*. Being aggrieved and dissatisfied with the judgment, the Appellant preferred this appeal to this court. During the pendency of this appeal, the Plaintiff-Respondent passed away on or about 31<sup>st</sup> May 2006-please see the death certificate attached to the amended petition to re-list this appeal dated 10<sup>th</sup> June 2014. When the demise of the Plaintiff-Respondent was intimated to this court long afterwards namely on 19<sup>th</sup> February 2014, this Court gave to Counsel for the Appellant K<sup>3</sup> on his application, time to take steps for substitution. At this stage suffice it to say that the petition of appeal had been settled by the registered Attorney-at-Law on record namely one Nandani Arumahandhi from Galle.

#### **ORDER OF ABATEMENT ON 28.02.2014**

When the matter was mentioned on 28<sup>th</sup> February 2014 for substitution the Appellant was neither present nor was represented by counsel. This was the date obtained by K to take steps in respect of the death of the Plaintiff-Respondent. Since neither the Appellant nor the counsel was present in Court, this Court caused the appeal to abate on the day in question.

#### **MOTION DATED 09.06.2014**

The Court finds a Journal entry dated 13<sup>th</sup> June 2014 which reads as follows-

*“AAL for the 2(b) Defendant-Appellant-Petitioner files a motion dated 09<sup>th</sup> June 2014 tendering the petition, affidavit and marked documents X1-X4 and moves that Your Lordships’ Court be pleased to accept the same and moves Your Lordships’ Court to list this matter either on 17<sup>th</sup> of June or 20<sup>th</sup> of June or 23rd June to enable counsel to support.” (sic).*

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<sup>3</sup> The Attorney who filed papers on behalf of the Appellant in this re-listing application under his signature will be referred to as K.

The Court fixed the application for support on 23<sup>rd</sup> June 2016 granting the request in the motion.

If one looks at the relevant motion, it is apparent that it has been received in the Court of Appeal on 9<sup>th</sup> June 2014 though it bears the date of 10<sup>th</sup> June 2014 vis-à-vis the signature of K the Attorney-at-Law. This motion does not refer to a proxy and this Court finds no proxy along with the petition, affidavit and accompanying documents. Could K have filed a proxy when Ms. Nandani Arumahandhi Attorney-at-Law practicing in Galle continues to hold the proxy given by the Appellant and the proxy so given remains effectual and unrevoked *in esse*? As I have already alluded to, this is the second issue in the case but the facts surrounding the first issue stare starkly. The motion signed by K the Attorney-at-Law which accompanies the petition, affidavit of the Appellant and marked documents for re-listing, is not sanctioned by a proxy given by the Appellant. If at all, the motion must have been signed by the proxy holder Nandani Arumahandhi Attorney-at-Law who yet remains the registered Attorney-at-Law on record.

Even if it were to be argued on behalf of the Appellant that a re-listing application could be filed by a different Attorney-at-Law, the instrument of authorization (proxy) empowering the different Attorney-at-Law to take steps is conspicuously absent from the documents filed along with the motion which does not make any reference at all to a proxy. Of course this argument would flow provided there is judicial precedent for the proposition that a different Attorney-at-Law could file a proxy on behalf of the Appellant though there is already a registered Attorney-at-Law-see the SC precedent of Jayasinghe J, in *Jeevani Investments (Pvt) Ltd v Wijesena Perera*<sup>4</sup> for this proposition.

As will be adverted to later in this judgment, two divergent judgments of the Supreme Court have gone into the 2<sup>nd</sup> issue in the case viz question of different Attorneys-at-Law other than registered Attorneys-at-Law on record, filing relisting applications namely *Jeevani Investments (Pvt) Ltd v Wijesena Perera*<sup>5</sup> (Nihal

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<sup>4</sup> (2008) 1 Sri.LR 207

<sup>5</sup> *Ibid*

Jayasinghe J, and *Meerasaibo Mohamed Haniffa v Athambawa Mohamed Idroos*<sup>6</sup>  
(Eva Wanasundera P.C., J.).

The absence of a proxy is not peculiar only to the motion referred to above. One finds want of authority every step of the way. The sequential steps from the original petition to the last pleading in the case namely an affidavit in the end all bespeak of an absence of proxy and so those steps by K bear recalling.

### **Support of application for reinstatement-original petition**

When the original petition came up for support on 23<sup>rd</sup> June 2014, counsel was given further time – i.e. one month's time namely 23<sup>rd</sup> July 2014 for support.

### **Amended petition for reinstatement but without a proxy**

Whilst this Court had given the date 23<sup>rd</sup> July 2014 to support the original petition, it has to be noted that another motion dated 16<sup>th</sup> July 2014 was filed to substitute an amended petition and affidavit. No permission of court had been sought previously to file this amended petition and affidavit. As happened in the first motion accompanying the original petition, this motion too was signed by K who had no proxy authorizing him to perform this step on behalf of the Appellant.

Subsequently on 23<sup>rd</sup> July 2014 when the matter came up for support, Senior Counsel moved for time to file **additional documents** and the Court fixed it for mention on 4<sup>th</sup> August 2014.

### **Additional Documents through the motion dated 01.08.2014**

A third motion dated 1<sup>st</sup> August 2014 was used to file the additional documents—namely an affidavit from K along with his diary entries marked X1 to X3. This third motion too does not allude to a proxy from the Appellant authorizing the Attorney-at-Law to act on his behalf.

All three motions demonstrate quite unequivocally that K had been filing papers (an original petition accompanied by an affidavit of the Petitioner, an amended petition along with an affidavit and his own affidavit with entries in his dairy) before this

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<sup>6</sup> (2015) B.L.R 24

Court without any authorization from the Appellant. It is a salient feature of the three affidavits that *they have all been signed by K as the Attorney-at-law of the substituted 2B Defendant-Appellant-Petitioner (the appellant)-(emphasis added)*.

#### **Cause offered for absence from Court and a belated corroboration thereof**

If I may summarize the cause that the Appellant is trying to place before this Court as to why nobody was present in Court on 28<sup>th</sup> February 2014, the pith and substance of that cause is that the Attorney-at-Law K was mistaken about the date and it was accidental and not deliberate. This is the only ground adduced for the purpose of setting aside the order of abatement. In fact K's affidavit is corroborative of the version of the Petitioner. Even here I cannot help noticing that this affidavit was not contemporaneous with that of the Appellant and was filed quite belatedly.

It has to be noted that the Petitioner's amended affidavit wherein he attests to K getting absent from Court on 28<sup>th</sup> February 2014 bears a date in July 2017 namely 12<sup>th</sup> July 2014. If at all one would have expected the Attorney-at-Law to corroborate this fact simultaneously along with the Petitioner. On the contrary the corroborative affidavit of the Attorney-at-Law has been filed one month later namely 1<sup>st</sup> August 2014 giving rise to the inference that the necessity to file a corroborative affidavit was an afterthought. Be that as it may, the Counsel for 1<sup>st</sup> Respondent has objected to restatement of the appeal on the two grounds I have set out above namely 1) there is no proxy for K and 2) in any event he cannot file this relisting application when there is already a registered Attorney-at-Law on record namely Nandani Arumahandi. So much for the facts and the tenability of these objections could now be gone into.

#### **No proxy for all steps taken in respect of reinstatement**

The legislature does not empower a contract of agency between an Attorney-at-Law and a party in a civil litigation to be created orally. It has statutorily laid down a procedure which has to be followed to the letter. An oral contract of agency cannot bring about the initial nexus that is required between a party (the principal) and an Attorney- at-Law (the agent).

In terms of Sections 24 and 25 of the Civil Procedure Code, the proxy authorizing an Attorney-at-Law *to make appearance or act* in a case must either be **signed** by the party in person or by a recognized agent. This statutory requirement prescribes that only a party or a recognized agent can sign a proxy authorizing an Attorney-at-Law to appear and take steps in the action.

Section 27(1) of the Civil Procedure Code lays down the following:

*“The appointment of a registered attorney to **make any appearance or application, or do any act** as aforesaid, shall **be in writing** signed by the client and shall be filed in court; and every such appointment shall contain an address at which service of any process which under provisions of this Chapter (Chapter V) may be served on a registered attorney, instead of the party whom he represents, may be made.*

Section 59(5) of the Civil Procedure Code as amended by Act No. 14 of 1997, states:

*“Where a defendant is represented by a registered attorney, the attorney shall in the proxy tendered on behalf of the defendant, state the number of the National Identity Card or the Passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant. Where a proxy is tendered on behalf of a company or the body corporate it shall be tendered under the seal of such company or the body corporate, as the case may be.”*

A comparable provision which is found in Order 4, Rule 4 of the Indian Civil Procedure Code sets out:

#### **Rule 4**

#### **Appointment of Pleader**

- (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a **document in writing** signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such **appointment**.

- (2) Every such **appointment** shall be filed in court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the court by a writing signed by the client or the pleader, as the case may be, and filed in court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

*Explanation*--For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit--

- (a) an application for the review of decree or order in the suit,
- (b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,
- (c) an appeal from any decree or order in the suit, and
- (d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in court on behalf of such party.

Thus the common denominator between our provision and the Indian counterpart is that before a pleader can act for a party, he must, firstly, have been authorized by him to do so, and secondly, that authorization must be in writing. Our courts have no doubt built around these statutory provisions time honored principles. Where an Attorney-at-Law acts without filing a proxy but there comes about a subsequent ratification of the unauthorized act, the initial act is only an irregularity which is cured by the production of a proxy later on. Subsequent ratification of the initial act by a proxy confers retrospective validity to the initial act. This is brought out in the case of *Shafeer v Dharmapala*,<sup>7</sup> wherein on the summons returnable date, the 2<sup>nd</sup> Defendant was absent but an Attorney-at-Law appeared and moved for a date to file proxy and answer. The Attorney-at-Law for the Plaintiff objected to this

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<sup>7</sup> (1995) 2 Sri L.R. 181

application and moved to fix the case for *ex parte* trial. The District Court allowed the Plaintiff's application to have the case fixed for *ex parte* trial and later the case was heard *ex parte*. Upon appeal against this step by the 2<sup>nd</sup> Defendant, the Court of Appeal held that:

*"Filing of proxy is the only manifestation that could confer authority for the appointment of a person on behalf of another. Where that person is absent that anterior authority has to be there by way of a proxy in order to confer authority. Where there has been no such anterior authority, if the client afterwards rectifies what has been done, one could expect such authority to flow to 'N'. In this instance there is no subsequent proxy given to 'N' that could rectify what had taken place."*

### **Two Attorneys-at-Law holding proxies for a party**

Once a registered Attorney is appointed under Section 27(1) of the Civil Procedure Code, it is that Attorney-at-Law who must take steps in the case and continue to do so until his authority is determined in one of the modes prescribed in Section 27(2) of the Code. This effect resulting from an appointment of a registered Attorney-at-Law is echoed in cases such as *Kandiah v Vairamuttu*,<sup>8</sup> and *Seelawathie v Jayasinghe*.<sup>9</sup>

In *Kandiah v Vairamuttu*,<sup>10</sup> Basnayake C.J. held:

*"Once a proxy is given to a Proctor by a party, the party himself cannot without revoking the proxy perform in person any act in Court."*

*Seelawathie v Jayasinghe*,<sup>11</sup> Seneviratne J. held:

*"It is a recognized principle in court proceedings that when there is an attorney-at-law appointed by a party, such party must take all steps in the case through such attorney-at-law."*

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<sup>8</sup> 60 N.L.R. 1

<sup>9</sup> (1985) 2 Sri L.R. 266

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

See Abdul Salam J, in *Ranjith Perera and Another v Dharmadasa and Others*,<sup>12</sup> for comparable dicta. Accordingly, a party can appoint only one Attorney-at-Law as his registered Attorney by a valid proxy in a suit. Since there should be only one registered Attorney for a party in a case, a registered Attorney cannot instruct another registered Attorney in the same action. There can be only one valid proxy that could be given to a registered attorney to appear on behalf of a party. Expressing this distilled truism in *Silva v Cumaratunga*<sup>13</sup> where the Petition of Appeal was signed by a proctor at a time when another subsisting proxy was on record, Maartensz J, considered the petition of appeal bad in law and summed up as follows:

*"The ratio decidendi in the old cases with which I respectfully agree was that this Court cannot recognize two Proctors appearing for the same party in the same cause. I accordingly hold that the petition of appeal should have been signed by the proctor on the record....."*<sup>14</sup>

So in light of the long established principles it boils down that only Nandani Arumahandhi could have filed motions to take steps on behalf of the Appellant. Mr. K had no authority on the strength of the above authorities to act for the Appellant and all applications thus made by K would become bad in law as they are not authorized by law.

This answers the first issue germane to the case and this would suffice to dispose of the matter before me.

**Can a different Attorney-at-Law other than the registered Attorney-at-Law file a re-listing application?**

The answer to the second issue namely-**Can a different Attorney-at-Law other than the registered Attorney-at-Law file a relisting application?**-presupposes a proposition that the 2<sup>nd</sup> Attorney-at-Law can validly file a proxy when there is on record a properly appointed registered Attorney-at-Law. Ordinarily on the principles

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<sup>12</sup> (2008) 1 Sri.LR 377 at 380

<sup>13</sup> 40 N.L.R 139

<sup>14</sup> *Ibid* at 140.

that I have adumbrated above, the answer to the second issue must be in the negative.

In the context of a re-listing application this question was answered in the negative by Chandra Ekanayake J, (with Ranjith Silva J, concurring) in the Court of Appeal precedent of *Jeevani Investments v Wijesena*<sup>15</sup>.

In *Jeevani Investments (Pvt) Ltd. v Wijesena Perera*,<sup>16</sup> where the proxy on behalf of the Appellant had been filed in the District Court by Attorney 'W', and the appeal was rejected due to non-payment of brief fees, the Attorney on record had been 'W'. The notice of appeal had been filed by Attorney 'W'. The proxy given to 'W' had not been revoked nor had any of the events stipulated in Section 27(2) occurred. But the re-listing application was filed by Attorney 'E'.

It was held that the re-listing application was bad in law as it had not been filed through the Attorney on record – 'W'. The judgment in this case clearly postulates that in the case of re-listing application the application must be filed by the Attorney who filed the petition of appeal.

This judgment was followed by the Court of Appeal in an unreported case of *M.I. Katheesaumma and Others v A.M. Idroos*,<sup>17</sup> where the petition of appeal was filed by the registered attorney who appeared in the lower Court and after the appeal was dismissed on the ground of default of appearance by the Appellants, a re-listing application was filed through another registered Attorney-at-Law, without revoking the proxy of the original Attorney-at-Law on record. Ranjith Silva J, while dismissing the application for re-listing held that, "any application has to be made by the registered Attorney who is on record and such application cannot be made by a different Attorney-at-Law". The reasoning in the case was upheld by Eva Wanasundera P.C., J. when the matter went up in appeal to the Supreme Court.<sup>18</sup>

The above decisions (the two CA decisions of *Jeevani Investments (Pvt) Ltd. v Wijesena Perera* and *M.I. Katheesaumma and others v A.M. Idroos* and the SC

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<sup>15</sup> (2005) 3 Sri.LR 256

<sup>16</sup> *Ibid*

<sup>17</sup> C.A.1099/(F) decided on 23.11.2011

<sup>18</sup> See *Meerasaibo Mohamed Haniffa v Athambawa Mohamed Idroos* (2015) B.L.R 24: Also see fn 5.

decision of **Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos**) are based on the principle that whilst a proxy given to an Attorney-at-Law is in force and not revoked, in terms of Section 27(2) of the Civil Procedure Code, it is wrong for another Attorney to file a fresh proxy in the same case. There cannot be two registered attorneys functioning at the same time for a party in an action. There cannot be two contracts of agency as the Civil Procedure Code limits the agency to one registered Attorney-at-Law. This principle is also traceable to the case of **Silva v Cumaratunga**,<sup>19</sup> to which I have already alluded.

Eva Wanasundera, P.C., J. summed up the position thus in **Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos**<sup>20</sup>

*“Having regard to the case law and reasoning I have set out above, I hold that applications such as Revision in civil cases and Leave to Appeal application could be initiated by any other new Attorney other than the registered Attorney of record in the original Court, on the basis that the said applications originate in the Appellate Courts and they do not have a bearing on the lower Court. I am also of the view that an application for “relisting” has a definite bearing on the original Court as it distinctly relates to the appeal originating from the lower Court unlike a Leave to Appeal application or a Revision application which do not form a step in the proceeding of the original Court.”*

However, the judgment of the Court of Appeal in **Jeevani Investments (Pvt) Ltd. v Wijesena Perera**<sup>21</sup> was reversed by the Supreme Court in the same case, when it went up in appeal.<sup>22</sup>

Jayasinghe J, following the reasoning and judgment of Seneviratne J, in **Saravanapavan v Kandasamydurai**<sup>23</sup> held that;

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<sup>19</sup> See fn 13

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

<sup>22</sup> (2008) 1 Sri LR 207

<sup>23</sup> (1984) 1 Sri LR 268

- (1) In applications commenced in the Court of Appeal such as Re-listing applications, applications for Leave to appeal notwithstanding lapse of time, Leave to appeal applications, Revision applications, a party is entitled to appoint a registered attorney other than the registered attorney in the original court – on record.

Jayasinghe J, held further,

- (2) A final appeal commences with the filing of a notice of appeal and the petition of appeal in the original Court by the registered attorney on record. *Appeal proceedings in the Court of Appeal are a continuation of the proceedings commenced in the original Court.*

It appears therefore, all applications, such as applications for Leave to appeal, applications for Leave to appeal notwithstanding lapse of time and Revision applications are commencing in the Court of Appeal or in the Provincial Civil High Court. In the case of Relisting applications in these applications too, parties may seek remedy when their appeals were dismissed due to some default on their part. *A party in a final appeal, when the appeal is dismissed due to his default, may also file papers for relisting, through a new registered attorney, when he is already represented by a registered attorney on record in the original Court. (emphasis added)*

It has to be noted In terms of the first paragraph of the judgment of **Jeevani** as quoted above; Jayasinghe J, is of the view that re-listing applications filed by a different Attorney-at-Law are permitted.

Nevertheless, according to the second paragraph of the judgment cited above, Jayasinghe J, holds (as does Eva Wanasundera P.C., J. in **Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos**), the final appeal is a continuation of the proceedings and the petition of appeal filed in the original Court.

I cannot but agree that the final appeal is a continuation of the proceedings and the petition of appeal filed in the original court. Upon this view it becomes patently clear that the proxy of a new Attorney-at-Law may not be allowed in a re-listing

application because the proxy of the registered attorney in the original Court is still alive and remains unrevoked-a view quite correctly articulated by Eva Wansundera P.C.,J. in ***Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos.***<sup>24</sup>

Thus whilst the Supreme Court in ***Jeevani Investments (Pvt) Ltd. v Wijesena Perera*** holds that a different Attorney-at-Law other than the registered Attorney-at-Law can file a re-listing application, the Supreme Court in ***Meerasaibo Mohamed Haniffa and Others v Athambawa Mohamed Idroos*** takes a contrary view. If ***Idroo's*** case is to be applied, it is Nandani Arumahandhi whose proxy would have validated the re-listing applications of the Appellant. If ***Jeevani*** is to be followed, the Appellant must have given a proxy to K. Either has not happened in the case and consequently the re-listing application filed by Mr. K without a proxy is bad in law and must necessarily fail.

In the circumstances I proceed to reject the re-listing application filed by the Appellant.

**JUDGE OF THE COURT OF APPEAL**

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<sup>24</sup> (2015) B.L.R 24