

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

In the matter of an Appeal canvassing the
Judgment entered in D.C. Kegalle Case No.
1995/L dated 13.07.1999.

C.A. Case No. 642/1999 (F)

D.C. Kegalle Case No. 1995/L

Koswatte Ralalage Punchirala,

Millangoda, Galathara

And Six Others

PLAINTIFFS

-Vs-

K.R.A. Millangoda,

Molagoda, Kegalle.

DEFENDANT

And Now Between

K.R.A. Millangoda,

Molagoda, Kegalle.

DEFENDANT - APPELLANT

-Vs-

Koswatte Ralalage Punchirala,

Millangoda, Galathara

And Six Others

PLAINTIFF - RESPONDENTS

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

COUNSEL : D.M.G. Dissanayake for the Defendant-Appellant.
Ajith Munasinghe for the Plaintiff-Respondents.

Written Submissions on : 21.03.2016 (For the Defendant-Appellant
31.03.2016 (For the Plaintiff-Respondents)

Decided on : 11.01.2017

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

When this appeal was taken up argument, after several dates of postponement, Counsel for the Plaintiff-Respondent (hereinafter referred to as “the Respondent”) raised a preliminary objection for the first time that the proxy filed by the Defendant-Appellant (hereinafter referred to as “the Appellant”) is defective in that while the proxy of the original Attorney-at-Law was in force, another Attorney-at-Law filed a new proxy without having cancelled the first proxy and thus the notice of appeal filed by the second Attorney-at-Law cannot be accepted and therefore the appeal must be rejected.

According to the Journal Entries reflected in the docket, it would appear that this matter was fixed for argument on several dates and it was only on 11.12.2015 that the attention of this Court has been drawn to the defect in the proxy. In any event it is certainly a valid objection and it behoves this Court to ascertain whether the objection could be sustained.

Both parties have since filed their respective written submissions.

According to the appeal brief, it appears that the Defendant-Appellant K.R.A. Millangoda has signed a proxy dated 20.07.1999 in favour of Mr. Shiranjeewa

Udalagama, Attorney-at-Law, who has in filed that proxy together with a notice of appeal dated 21.07.1999 and security bond in the District Court of Kegalle. The Registrar of the District Court has accepted these documents and put the date stamp of the Court dated 22.07.1999. Thereafter on 09.09.1999, the Petition of Appeal dated 08.09.1999 has been filed by the same Attorney-at-Law. It appears therefore that the notice of appeal and the Petition of Appeal in this appeal have been lodged following the normal procedure.

In the written submissions of the Respondent, the attention of this Court has been drawn to J/Es No. 111 and No. 112 and page 312 of the Appeal Brief. According to the J/E 111 dated 26.07.1999, it is recorded- "Mr. Shiranjeewa Udalagama files the defendant's proxy, notice of appeal, security bond and receipt for registered letter". It is recorded that "the revocation of proxy of the Defendant was not filed." But the Court has accepted all the papers filed.

The subsequent J/E No. 112 also dated 26.07.1999 states that Mr. Shiranjeewa Udalagama files defendant's revocation of proxy of Attorney-at-Law Wimal Udalagama. It must be noted that both J/E No. 111 and No. 112 are bearing the same date, that is, 26.07.1999. It appears that although the revocation of proxy of Mr. Wimal Udalagama was not filed with the notice of appeal, yet, it has been filed subsequently on 26.07.1999, i.e. both procedural steps have been within the course of the same day. Therefore the contention that the present Attorney-at-Law has filed the notice of appeal without revoking the previous proxy given to Mr. Wimal Udalagama cannot hold water and must be rejected.

The attention of this Court is also drawn to the revocation of proxy of Mr. Wimal Udalagama which appears at page 312 of the Appeal Brief. This document contains two dates. One is 26.07.1999 and the other is 13. It is quite visible to the naked eye that the date 26th is struck out and the numeral 13 is inserted in its place. This alteration is countersigned by someone who may be the Attorney-at-Law Wimal Udalagama. This document which bears the date stamp as 26.07.1999 has been filed

and accepted by Court. Hence this revocation has to be accepted as dated 13.07.1999. As such, the revocation had been effected well before the notice of appeal was filed.

Although the papers were filed on 22.07.1999, the Registry of the District Court has minuted them on 26.07.1999. In the circumstances it cannot be argued that on 22.07.1999 when the notice of appeal was filed the earlier registered Attorney's proxy had not been revoked and therefore the contention that the appeal must be rejected does not appear to be sustainable. To all intents and purposes the revocation had been effected on 13.07.1999 but was filed on 26.07.1999. Even if it was not filed in Court on 22.07.1999, since the revocation bears the date 13.07.1999-see page 312 of the brief, it is crystal clear Mr. Wimal Udalagama had ceased to be the registered Attorney-at-Law of the Appellant and he had no role to play in the steps that further took place in this appeal. It is very clear that since 13.07.1999, the previous registered Attorney-at-Law had ceased to function as the registered Attorney for the Appellant.

The notice of appeal in this case has been filed along with other papers by the new Attorney-at-Law on 22.07.1999 except the revocation of proxy. But this defect has been cured by filing the same on 26.07.1999. Considering the J/Es of No. 111 and No. 112, both of which had been minuted on the same day, it may therefore be presumed that the revocation of proxy was also filed along with other papers on 26.07.1999, which the Court has accepted without any rejection. I therefore hold that at the time the notice of appeal was filed the Appellant has only one registered Attorney-at-Law, who is the present registered Attorney-at-Law on record. There was no infringement of the principle that there cannot be two Attorney-at-Law for one party at one and the same party as articulated in a slew of cases such as *Silva v. Cumaratunga*,¹ *Meerasaibo Mohamed Haniffa and Others v. Athambawa Mohamed Idroos*,² and *Kodagoda Sirisena Serasundara v. Kariyawasam Katukolihe Gamage Dyanesius, Payagala Gunapala Gunawardana*.³

¹ 40 N.L.R 139

² (2015) B.L.R 24

³ Per A.H.M.D. Nawaz J in CA Case No 1423/1993 (F) decided on 24.06.2016.

Before parting with the judgment I wish to uphold the ground urged by the Appellant in his written submission that this objection has been raised belatedly. On this question -See *Hatton National Bank Ltd. v. Hebthulabhoy*.⁴

For the reasons stated above, I reject the preliminary objection raised on behalf of the Respondent that the proxy of the present registered Attorney for the Appellant has been filed without the proxy of the earlier registered Attorney having been revoked, and the Court makes order that this matter has to be fixed for argument.

JUDGE OF THE COURT OF APPEAL

⁴ 2011 (1) Sri.LR 328.