

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

In the matter of an Appeal under the Article 151P(3)(A) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the Sections 5 and 6 of the High Court of the Provinces Act No. 19 of 1990.

**Court of Appeal Case No:  
CA(PHC)0054/2019**

**The Officer in Charge**  
Police Station - Medagama

**Case Number of the High  
Court of Monaragala :  
51/2017**

**Complainant**

**Vs.**

**Case Number of the  
Magistrate Court of Bibile:  
33135**

1. **Rathnayaka Mudiyanseelage Gunasekara  
Banda,**  
03rd Mile Post,  
Medagama.

**1<sup>st</sup> Party**

2. **Rajapaksha Waththe Vidanalage Ajith  
Rajapakse,**  
Kotabowa Road, 02nd Mile Post,  
Medagama.

**2<sup>nd</sup> Party**

**AND IN BETWEEN**

**Rajapaksha Waththe Vidanalage Ajith  
Rajapakse,**  
Kotabowa Road, 02nd Mile Post,  
Medagama.

**2<sup>nd</sup> Party-Petitioner**

**Vs**

**Rathnayaka Mudiyanseleage Gunasekara  
Banda,**  
03<sup>rd</sup> Mile Post,  
Medagama.

**1<sup>st</sup> Party-Respondent**

**The Officer in Charge,**  
Police Station-Medagama.

**Complainant-Respondent**

**The Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.

**Respondent**

**AND THEN IN BETWEEN**

**Rajapaksha Waththe Vidanalage Ajith  
Rajapakse,**

Kotabowa Road, 02<sup>nd</sup> Mile Post,  
Medagama.

**2<sup>nd</sup> Party-Petitioner-Appellant-Petitioner**

**Vs.**

1. **Rathnayaka Mudiyanseleage Gunasekara  
Banda,**  
03<sup>rd</sup> Mile Post,  
Medagama.

**1<sup>st</sup> Party-Respondent-Respondent**

2. **The Officer in Charge Police,**  
Station-Medagama.

**Complainant-Respondent-Respondent**

3. **The Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.

**Respondent-Respondent**

**AND NOW IN BETWEEN**

**Rajapaksha Waththe Vidanalage Ajith  
Rajapakse,**  
Kotabowa Road, 02<sup>nd</sup> Mile Post,  
Medagama.

**2<sup>nd</sup> Party-Petitioner-Appellant-Petitioner**

**Vs.**

1. **Rathnayaka Mudiyansele Gunasekara  
Banda,**  
03<sup>rd</sup> Mile Post, Medagama.

**1<sup>st</sup> Party-Respondent-Respondent-Respondent**

2. **The Officer in Charge Police,**  
Station-Medagama.

**Complainant-Respondent-Respondent-Respondent**

3. **The Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.

**Respondent-Respondent-Respondent**

Before : **D. THOTAWATTA, J.**  
**K. M. S. DISSANAYAKE, J.**

Counsel : I. B. S. Harshana with Sarith Wadugedara  
and M. H. E. Sandeepani for the  
Appellant.  
  
Hiranjan Pieris, ASG for the State.

Supported on : 27.10.2025

Written Submissions  
of the 2<sup>nd</sup> Party  
Petitioner  
-Appellant-Petitioner  
tendered on : 08.12.2025

Written Submissions  
of the 1<sup>st</sup> Party  
Respondent-Respondent  
tendered on : Not tendered

Written Submissions  
of the Respondent  
-Respondent  
tendered on : Not tendered

Decided on : 11.02.2026

**K. M. S. DISSANAYAKE, J.**

When this matter came on before this Court on 18.03.2025, the 2<sup>nd</sup> Party-Petitioner-Appellant-Petitioner (Hereinafter called and referred to as ‘the 2<sup>nd</sup> Party-Petitioner’) was absent and unrepresented despite the notices that had been issued on him by this Court and in consequence, this Court had made order dismissing the instant appeal for want of prosecution with due diligence

and the 2<sup>nd</sup> Party-Petitioner had afterwards, made an application dated 15.09.2025, to this Court seeking re-listing of the instant appeal and it was thereafter, supported in Court by the learned Counsel for the 2<sup>nd</sup> Party-Petitioner on 27.10.2025 and written submissions were also tendered to Court by him supporting further his application for re-listing. Today this matter comes on before us for order on the application for re-listing.

It is in this context, I would think it expedient at this juncture to examine the law governing an application for re-listing.

It was laid down by Court in the decision in **Packiyathan V. Singarajah 1991(2) SLR 206** that “Relief will not be granted for default in prosecuting an appeal where;

(a) the default has resulted from the negligence of the client or both the client and his attorney-at-law;

(b) the default has resulted from the negligence of the attorney-at-law in which event the principle is that the negligence of the attorney-at-law is the negligence of the client and the client must suffer for it.

As the applicant's default appeared to be the result of his own negligence as well as the negligence of his attorney-at-law, the conduct of the appellant and his attorney-at-law cannot be excused. The appellant had failed to adduce sufficient cause for a re-hearing of the appeal.

It is necessary to make a distinction between mistake or inadvertence of an attorney-at-law or party and negligence. A mere mistake can generally be excused; but not negligence, especially continuing negligence. The decision will depend on the facts and circumstances of each case. The Court will in granting relief ensure that it's order will not condone or in any manner encourage the neglect of professional duties expected of Attorneys-at-Law.”

In the light of the principle enunciated in the decision in **Packiyathan V. Singarajah** (supra), the sole burden of proof is on the 2<sup>nd</sup> Party-Petitioner to

adduce sufficient cause for re-listing of the instant appeal which had been so rejected by this court by its order dated 18.03.2025.

The sole reason adduced in his application for re-listing by the 2<sup>nd</sup> Party-Petitioner being non-receipt of notices so issued to him by this Court and an affidavit marked 'P' has been tendered by 2<sup>nd</sup> Party-Petitioner to this Court along with a motion dated 22.10.2025 subsequent to the filing of the re-listing application before this Court in support of the reason adduced in his application for re-listing by 2<sup>nd</sup> Party-Petitioner for his default in appearing before this Court on 18.03.2025, namely; he had not received the notices so issued to him by this Court.

Upon a careful perusal of the affidavit of one Karunarathnalage Chandarlatha (P), it appears that the notices issued to the 2<sup>nd</sup> Party-Petitioner had been received by her and due to her absence at home, she could not be able to handover the notices so sent to 2<sup>nd</sup> Party-Petitioner by Court in time so as to enable him to be present in Court on 18.03.2025. it is significant to observe that, neither of the parties to the instant appeal had made even an attempt to controvert and/or refute the affidavit (P) or its contents and therefore, the affidavit (P) and its contents thus, remains uncontroverted or unchallenged.

I would therefore, hold that the 2<sup>nd</sup> Party-Petitioner had shown a valid and sufficient cause for his non-appearance in Court on 18.03.2025.

Hence, I would proceed to allow the application for re-listing.

In the result, I would set aside the order of this Court dated 18.03.2025 dismissing the instant appeal for want of prosecution with due diligence by 2<sup>nd</sup> Party-Petitioner thereby, restoring the instant appeal to the Roll.

I would thus, direct Registrar of this Court to list the instant appeal in due course.

***JUDGE OF THE COURT OF APPEAL***

**D. THOTAWATTA, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***