

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

Court of Appeal Case No.
CA (PHC) 93/24

High Court case No.
ප්‍රති 47/2021

Kandy Additional (1) Magistrate's
Court Case No. නඩන්තු 5347

In the matter of an appeal in terms of Article
154P (6) against the order of the provincial
High Court of the Central Province situate in
Kandy made in Revision Application No. ප්‍රති
47/2021

Henagama Liyanage Shani Champika
No. 50/3A, Tennekumbura,
Kandy.

Applicant

Vs.

Herath Mudiyanseelage Sanjaya Bandara
Herath,
No. 59, Punchi Bogahapitiya Watta,
Balagolla.

Respondent

AND

Henagama Liyanage Shani Champika
No. 50/3A, Tennekumbura,
Kandy.

Applicant - Petitioner

Vs.

Herath Mudiyanseelage Sanjaya Bandara
Herath
No. 59, Punchi Bogahapitiya Watta,
Balagolla.

Respondent - Respondent

Dassanayaka Mudiyanseelage Janaka Sarath
Bandara Dassanayaka

No. 108, Boyagama, Peradeniya.

**Respondent-Respondent's Power of
Attorney Holder**

AND NOW

Dassanayaka Mudiyanseelage Janaka Sarath
Bandara Dassanayaka
No. 108, Boyagama,
Peradeniya.

**Respondent-Respondent's Power of
Attorney Holder-Appellant**

Vs.

1. Henagama Liyanage Shani Champika
No. 50/3A, Tennekumbura,
Kandy.

Applicant – Petitioner- Respondent

2. Herath Mudiyanseelage Sanjaya Bandara
Herath
No. 59, Punchi Bogahapitiya Watta,
Balagolla.

Respondent – Respondent - Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Aftab Jameel for the Respondent – Appellant.

Thanuka Nandasiri with Himesh Tharuka instructed by Malinda
Bandara Wasala for the 1st Respondent.

Written submissions
tendered on: 29.01.2026 by Applicant–Petitioner–Respondent.

30.05.2025 by Respondent-Respondent's Power of Attorney
Holder-Appellant.

Judgment Delivered: 26.05.2026

Thotawatte, J.

Introduction

This is an appeal filed by the Respondent-Respondent-Respondent's (hereinafter sometimes referred to as the "2nd Respondent") Power of Attorney Holder-Appellant (hereinafter sometimes referred to as the "Appellant") against the order of the learned Judge of the Provincial High Court of the Central Province holden at Kandy (hereinafter sometimes referred to as the "High Court") dated 26 March 2024, made in Revision Application No. 47/2021. By that order, the High Court rejected the Appellant's objection to locus standi and held that he was bound, by virtue of the Power of Attorney, dated 14.10.2016 and registered on 17.10.2016 to be noticed and heard as a party to the revision application.

Background Facts

The Applicant-Petitioner-Respondent (hereinafter referred to as the "1st Respondent") instituted proceedings in the Kandy Additional (1) Magistrate's Court bearing Case No. 5347 on 5 December 2008, seeking a monthly maintenance allowance for herself and the child of their marriage from the 2nd Respondent, her husband. By order dated 28 August 2009, the learned Magistrate directed the 2nd Respondent to pay a sum of Rs. 25,000 per month as permanent maintenance in respect of the said child.

On 9 August 2016, the 1st Respondent filed a further application under Section 8 of the Maintenance Act, No. 37 of 1999, seeking enhancement of the maintenance allowance. The 2nd Respondent, employed as a Marine Engineer and habitually absent from Sri Lanka for extended periods at sea, appointed the Appellant under a Special Power of Attorney (hereinafter referred to as the "POA") dated 14 October 2016 to appear and represent him in the Magistrate's Court in connection with the proceedings in Case No. 5347. The POA was registered with the Registrar General on 17.10.2016. It contained no stated period of validity and was not expressly revoked or cancelled.

The learned Additional Magistrate dismissed the enhancement application on 27th April 2021. The 1st Respondent did not prefer an appeal under Section 14 of the Maintenance Act to the High Court against that order.

The Revision Application

On 17 August 2022, the 1st Respondent filed Revision Application No. ප්‍රති 47/2021 in the High Court of the Central Province in Kandy. Since the 2nd Respondent was overseas and no address for service abroad was available, the High Court issued notice on the Appellant in his capacity as the 2nd Respondent's POA Holder on 10 August 2022.

The Appellant objected to the issuance of notice on 24 January 2023, asserting that he had no locus standi to be a party to or to be served in revision proceedings, and requested that the notice be recalled. The High Court initially recalled the notice on 31 May 2023. However, following further steps taken by the 1st Respondent, notice was re-issued to the Appellant. The Appellant again objected, maintaining his position that the Power of Attorney conferred no authority to represent the 2nd Respondent in revision proceedings and that he could not lawfully be compelled to participate.

By order dated 26 March 2024, the learned High Court Judge rejected the Appellant's objection. The High Court held that since the Appellant had been appointed as POA Holder specifically to represent the 2nd Respondent in Case No. නඩත්තු 5347 before the Magistrate's Court, and since the revision application was a continuation of that case, the Appellant possessed *locus standi* for the purpose of the revision application and therefore could be noticed and heard as a party.

The learned High Court Judge's reasoning for holding that the POA was valid for the Revision Application rested on two main grounds:

1. The Revision Application is a Continuation of the Original Proceedings

The learned High Court Judge held that the Revision Application (No. ප්‍රති 47/21) was not a fresh or independent cause of action, but rather an extension of the original Magistrate's Court proceedings (Case No. නඩත්තු 5347). Since the POA holder (the Appellant) was appointed to represent the 2nd Respondent specifically in those Magistrate's Court proceedings, his authority naturally extended to the Revision Application as it was another step in the same case.

2. The Express Wording of the Power of Attorney

The High Court Judge relied on the Sinhala wording of the POA, which the learned High Court considered to be sufficiently wide, unrestricted and comprehensive for the Appellant to be obligatory to appear on behalf of the 2nd Respondent, in the Revision application before the High Court. Specifically, wording the POA expressly authorized the Appellant to:

- Prosecute appeals
- Institute applications
- Take "*any other steps whatsoever*" in relation to the relevant case

The High Court Judge construed this broad language as granting the POA holder *locus standi* to be noticed and heard in the Revision Application.

The Appeal to the Court of Appeal

Being dissatisfied with the order dated 26 March 2024 made in relation to the preliminary objection with regard to *locus standi*, the Appellant filed this present appeal in this Court challenging the said order *inter alia* on the following grounds:

- a) That the learned High Court Judge erred in holding that a Power of Attorney holder has *locus standi* to be named as a party and appear in maintenance proceedings under the Maintenance Act No. 37 of 1999.
- b) That the learned High Court Judge erred in holding that the Power of Attorney expressly authorized the Appellant to appear in revision proceedings, when no such authority was granted.
- c) That the learned High Court Judge erred in applying the "continuation" theory to the Revision Application, such principle being applicable only to appeals as of right and not to revision proceedings.

Arguments and Determinations

Learned counsel for the 1st Respondent had submitted, that it is settled law in Sri Lanka that revisionary jurisdiction, while extraordinary, is not an independent proceeding but a continuation of the original case. The revision application arises directly out of Case No. 5347 and the Appellant, having been appointed specifically to represent the 2nd Respondent in that case, cannot refuse to participate and represent the 2nd Respondent in the revisionary proceedings that are a direct outgrowth of the same dispute.

The authority relied upon by learned counsel for the Appellant, upon closer scrutiny, supports the Appellant's contention that the principle that an appeal constitutes a continuation of the original proceedings is confined to appellate jurisdiction. In particular, *Walakada Gamage Priyantha v. The Hon. Attorney General*¹ recognizes that an appeal is not a fresh proceeding but a continuation of the original action. However, that authority does not extend such principle to revisionary jurisdiction, nor does it hold, either expressly or by necessary implication, that an application in revision similarly constitutes a continuation of the original proceedings.

In the context of a statutory right of appeal, it would be an unwarranted extension of that principle to apply the same to revisionary jurisdiction, which is a wholly distinct and extraordinary jurisdiction invoked not as of right but only in exceptional circumstances where the interests of justice so demand.

Accordingly, the learned High Court Judge fell into error in extending a principle of law, the limits of which are firmly confined to appellate proceedings, to an application by way of revision, such extension being unsupported by authority and contrary to the established character of revisionary jurisdiction.

The learned High Court Judge appears to have construed the Sinhala text of the Power of Attorney as conferring sufficiently wide and comprehensive authority upon the Appellant to prosecute appeals, institute applications, and take "any other steps whatsoever" in relation to the relevant proceedings, including the participation in revision proceedings before the High Court.

The Appellant contends that the interpretation placed upon the phrase "take any other steps whatsoever" as conferring upon the Appellant an unrestricted authority extending to revision proceedings before the High Court is unsustainable and ought to be rejected.

It is a fundamental principle of the law relating to power of attorneys that the authority conferred upon an attorney must be strictly construed, and that an attorney cannot act beyond the scope of the authority expressly granted. A special power of attorney, by its very nature, confines the attorney to the specific purposes for which it was granted.

The phrase "take any other steps whatsoever" cannot be read in isolation from the specific context and purposes for which the Power of Attorney was granted. It is a well-settled

¹ CA/HCC/261/2014, Decided On: 19.01.2023

principle of construction that general words appearing at the conclusion of a specific grant of authority must be read *ejusdem generis* with the specific powers that precede them, and cannot be construed so as to extend the authority beyond the subject matter to which those specific powers relate. Accordingly, the said phrase must be read as authorizing only such further steps as fall within the same category as the specific powers expressly enumerated.

Furthermore, the Power of Attorney was executed for the specific purpose of enabling the Appellant to represent the 2nd Respondent in the Magistrate's Court proceedings during his absences at sea. To construe the general words therein as extending to revision proceedings before the High Court would be to stretch the instrument far beyond its evident purpose and the reasonable intention of the principal at the time of its execution.

For the aforementioned reasons, it is clear that learned Judge of the High Court misdirected himself as to the nature of the Revision Application and the scope of the Power of Attorney in determining that confer *locus standi* upon the Appellant.

Conclusion

For the reasons set out above, this Appeal is allowed. The order of the learned High Court Judge of the Provincial High Court of the Central Province holden at Kandy dated 26 March 2024 made in Revision Application No. ප්‍රති 47/2021 is hereby set aside. We make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal