

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

In the matter of an application for Restitutio in integrum in terms of Section 753 of the Civil Procedure Code, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal
No. CA/RII/30/2025**

D.C. Galle Case No. D 9904

IN THE DISTRICT COURT

Murukkuwadura Mihisurani
Shravanadha Mendis,
No.117 B,
Woodward Mawatha,
Galle.

Presently at:

No.380/90, Sarana Mawatha, Colombo 7.

PLAINTIFF

Vs.

Dewa Pakshage Chula Kanishka Ananda
Lal,
No.270,
Yasasiri Pura,
Anuradhapura.

DEFENDANT

**AND NOW BETWEEN IN THE COURT
OF APPEAL in an application for
Restitutio in Intergrum**

Dewa Pakshage Chula Kanishka Ananda
Lal,
No.270,
Yasasiri Pura,
Anuradhapura

Presently at:

No.162002.
Oval View Residencies,
Serpentine Road,
Borella,
Colombo 8.

DEFENDANT-
PETITIONER

Vs.

Murukkuwadura Mihisurani
Shravanadha Mendis,
No.117 B,
Woodward Mawatha,
Galle.

Then at:

No.380/90, Sarana Mawatha, Colombo 7.

Presently at:

205/D/5, Kalapaluwa Road,
Koswatte,
Battaramulla.

PLAINTIFF-RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Shaminda Silva instructed by Neminda Kariyawasam
for the Petitioner.

Geethaka Goonewardene, PC with Rishan Vidanagamage instructed by Medhavini Thilakarathne for the Plaintiff-Respondent.

Written Submissions: By the Defendant-Petitioner filed on 24/06/2026.
By the Plaintiff-Respondent filed on 30/06/2026.

Argued On : 21/05/2026.

Judgement On : 24/07/2026.

Dr. Sumudu Premachandra J.

1] The Defendant Petitioner, Dewa Pakshage Chula Kanishka Ananda Lal, a Consultant Neurosurgeon, has filed the present application before this Court seeking Restitutio in Integrum and/or Revision against the Plaintiff Respondent, Murukkuwadura Mihisurani Shravanadha Mendis, challenging the *ex-parte* judgement and Decree Nisi delivered on 28/03/2022 in Divorce Case No. D 9904 of the District Court of Galle.

2] The Divorce action was instituted by the Plaintiff Respondent on 10/09/2021 on the ground of constructive malicious desertion, following the deterioration of the parties' marital relationship after residing in the United Kingdom during the Petitioner's postgraduate studies.

3] The Petitioner's principal grievance is that the *ex-parte* proceedings resulted from a serious procedural irregularity attributable to the District Court Registry and the trial court.

4] Acting as a litigant in person, without legal representation, the Petitioner diligently responded to the summons and the amended Complaint by forwarding detailed written replies to the Registrar of the District Court of Galle.

5] These communications contained comprehensive paragraph-by-paragraph responses to the allegations, clearly expressed his intention to contest the action, and asserted his rights concerning the custody and access of the parties' minor daughter, Thyashi Ameliya. Although these letters were received by the Registry, confirmed by telephone, and recorded in the court proceedings, the learned District Judge failed to recognize them as constituting a valid answer and erroneously proceeded to hear the matter *ex-parte*.

6] The Petitioner further contends that the trial court committed several fundamental errors of law and procedure. It is alleged that the court failed to recognize the Petitioner's statutory right to appear and conduct his case personally under Sections 24, 55, and 75 of the Civil Procedure Code, failed to notify him of the actual trial date, and disregarded the extraordinary circumstances arising from the COVID-19 pandemic and the prevailing political unrest, which significantly disrupted court operations and communication.

7] The Petitioner also challenges the legality of the Order granting physical custody of the minor child to the Plaintiff Respondent, contending that such relief was never specifically sought in the Complaint, which prayed only for legal custody. Accordingly, the Petitioner seeks the intervention of this Court to exercise its RII/Revisionary Jurisdiction, declare the *ex-parte* proceedings null and void, and stay all further proceedings in the District Court pending the determination of this application.

8] In support of the application, the Petitioner has produced X1, which consists of the certified copy of the complete District Court record in Case No. D 9904, including Journal Entries 1–32 (annexed separately as X2), the original Complaint (P1), the summons issued to the Defendant (P2a–P2c), and the *ex-parte* judgement and Decree Nisi (P4a and P4b). Document X3 contains certified copies of the District Court documents and envelopes omitted from the original certified record, including the Petitioner's formal reply dated 25/01/2022 (P3) and his explanatory letter to the Registrar dated 06/06/2022 (P5). The

Petitioner also relies on Document P6, namely the Order dated 25/04/2024 in Curator and Guardianship Case No. CG 566, which demonstrates that his application to prevent the removal of the child from Sri Lanka was dismissed solely because the unchallenged *ex-parte* judgement in the Divorce proceedings remained in force.

9] In this backdrop, the Defendant Petitioner prays that this Court be pleased to;

- a) Issue Notice of this application of Restitutio in Integrum and/or Revision on the Plaintiff-Respondent;
- b) For Judgement by Your Lordships' Court to exercise the power of Restitutio in Integrum and to declare null and void all the steps taken from 31/01/2022 onwards and make an Order accepting the letters dated 22/10/2021 and 25/01/2022 sent by the Defendant Petitioner as 'Answer' in this Divorce Action D.C. Galle Case No. 9904/D;
- c) Set aside the Order dated 31/01/2022 and the *ex-parte* Judgement dated 28/03/2022, and also set aside the Decree Nisi entered in this action bearing Case No. D.C. Galle 9904/L and to fix this action for pre-trial and/or to proceed from that point onwards;
- d) For Judgement by Your Lordships Court to allow the Defendant Petitioner to contest this action for Divorce;
- e) For costs;
- f) For such other further relief as Your lordships shall seem meet.

10] The learned President Counsel for the Plaintiff Respondent argues the Defendant Petitioner failed to exhaust standard legal remedies, caused undue delays (laches), committed negligence, and suppressed or misrepresented material facts. Furthermore, he maintains that the Defendant Petitioner failed to properly respond to the original court summons, thereby placing him in default, and that granting his application would cause grave, irreparable harm to his client and her new family. He highlights that following the dissolution of the impugned marriage in the District Court of Galle, Case No. DC Galle D 9904, Plaintiff legally remarried, and they have a young son born in April 2024. Plaintiff Respondent said that the Defendant Petitioner had already acknowledged the finality of their Divorce Decree by filing a separate application under Section 622 of the Civil Procedure Code seeking variation/further Orders regarding minor child custody in the Galle District Court, a matter currently pending.

11] Countering the objection, the Petitioner informed that he never intended to accept the Decree Nisi entered against him. He maintains that he acted in accordance with the Civil Procedure Code upon receiving a court summons and clarifies that any delays in filing his application were due to insufficient legal instructions and discouragement from outside parties, rather than negligence or lack of diligence.

12] The Petitioner said that the primary underlying dispute centers heavily on the safety, custody, and legal arrangements for his seven-year-old daughter. Following revelations that the Plaintiff Respondent has entered into a second marriage with a member of parliament and is living with her new husband, the Defendant Petitioner expresses his concerns regarding his daughter's physical safety and well-being. He notes that high-profile individuals, such as members of parliament, frequently visit the residence, creating an environment that prompts him to seek full physical custody and shared legal custody in the District Court.

13] When this court considers the counter-affidavit of the Defendant Petitioner, the Defendant explicitly states that he does not wish to disrupt the legitimacy of the Plaintiff's second son and that his only real concern is obtaining custody of their seven-year-old daughter. This matter is to be decided at the District Court level.

14] The learned President Counsel for the Plaintiff-Respondent said that this Court should not waste judicial time on purely academic problems where no practical relief can be granted. **Don Shelton Hettiarachchi v. Sri Lanka Ports Authority and Others** ([2007] 2 SLR 307).

15] On the perusal of the original case record, it is seen that the Defendant Petitioner was given ample, multiple opportunities to defend himself but chose not to act. The Petitioner, as a Consultant Neurosurgeon, may be doing a yeoman service to the country, yet he should not have slept over his personal rights.

16] Journal entries show that summons was served twice on the Defendant Petitioner, once by registered post with the original Plaint and later through the Fiscal and Director of the National Hospital, Kandy, with the Amended Plaint. The Decree Nisi was also properly served, giving him statutory windows to object, which he neglected.

17] The crux of this case revolves around whether the letter sent by the Defendant on 22/10/2021 can legally be constituted an "Answer" under Section 75 of the Civil Procedure Code. The document was written in English rather than the official language of the court (violating Article 24 of the Constitution), lacked a proper caption, failed to include the Plaintiff's name, requested no specific reliefs, and was not duly stamped. While the Defendant Petitioner relied on **Ratwatte Vs Appuhamy** (3 NLR 270) regarding answer delivery by post, the

Plaintiff Respondent distinguishes it, arguing that the document itself failed the basic legal definitions of a pleading.

18] On the contrary, the Defendant Petitioner states that the learned trial judge's failure to recognise his postal submissions constitutes a grave violation of the Principles of Natural Justice. The Defendant Petitioner contends that he fulfilled the legal obligation by delivering a duly stamped answer in writing to the chief clerk via the postal system. Furthermore, the Defendant maintains that the registry's total disregard for his letters constitutes a severe procedural overreach; thus, the impugned judgement must be overturned.

19] Before departing at this juncture, I must consider **Ratwatte Vs Appuhamy** (supra), which was heavily relied upon by the Petitioner. The record shows that following the institution of divorce proceedings, the Defendant Petitioner twice sent formal written replies via registered post directly to the Registrar of the District Court, explicitly indicating his intention to contest the action and enclosing stamped envelopes as requested in the summons. Despite these communications, the District Court fixed the matter for an *ex-parte* trial and entered judgement against the Defendant Petitioner. The Learned District Judge granted not only the Divorce but also awarded full physical custody of the daughter to the Plaintiff Respondent, a specific relief that had not even been prayed for in the original Plaint. That was the grievance of the Defendant Petitioner.

20] When considering **Ratwatte Vs Appuhamy** et al 3 NLR 270, His Lordship Justice Lawrie held that rejection of the answer sent by post is wrong and set aside the Decree entered. But in that case, the Court (the Commissioner) received, by post, an answer with a proxy to a proctor. The Commissioner filed an answer, a proxy, and a letter in the record, but he recorded that he had rejected it, and, on the same day in Court, held that there had been no appearance and entered judgement by default. The Supreme Court held;

“In my opinion, the application to set aside decree by default must be allowed and the decree set aside; the answer already filed may be taken to be answer of first and second defendants, and the case is remitted for trial”.

21] In that case, the answer was sent along with a proxy and a letter of partial admission of the claim. But in the case at hand, two letters dated 22/10/2021 and 06/06/2022 (vide pages 702 to 710 of the appellate brief) were sent. Further, on 16/01/2023, another letter was sent to inquire whether he was awaiting notification. Though the Petitioner sent 3 letters, there was no proxy. However, under section 24 of the Civil Procedure, a party can appear for himself. Thus, the Petitioner had opted to appear by himself and defend himself, which is similar to how a doctor treats himself for an ailment. But the doctor is treating himself, which is safe, as he is an expert on medical treatment. However, in this case, the Petitioner, being a doctor, chose to perform the lawyer’s task himself. It is permitted by law, but he ran at risk. It is like a lawyer treats his illness by browsing the internet. The danger and complications of treatment by internet sources may be immeasurable and irreparable.

22] Under section 24¹, a party can appear for himself². But he should be taught the law. It should be stressed that ignorance of law is no excuse (*ignorantia juris non excusat*). Our courts follow the adversarial system instead of an inquisitorial system; thus, the party who seeks redress from the Court should prove their case according to the law while the Court plays the role of the adjudicator. Thus, the Defendant cannot seek legal advice from the Court or

¹ “

24. Any appearance, application, or act in or to any court, required or authorized by law to be made or done by a party to an action or appeal in such court, except only such appearances, applications, or acts as by any law for the time being in force only attorneys-at-law a reauthorized to make or do, and except when by any such law otherwise expressly provided, may be made or done by the party in person, or by his recognized agent, or by an attorney-at-law duly appointed by the party or such agent to act on behalf of such party :

² *Fernando v. Sybil Fernando and 2 Others* [1996] 2 SLR 169, the court held: “S.24 of the Civil Procedure Code gives the freedom to a party to make any appearance or application or appear in Court unless the law authorised that he should be expressly represented by an Attorney-at-Law.”

any Court official, as such advice would be prejudicial to the other party. The Court cannot take part in a trial by giving instructions on what to do. The litigant must know what to do next. **In Mohamed Anver Mohamed Akeel and others vs Commissioner General of Land Title Settlement/ Settlement Officer and others**, Court of Appeal Writ Application No: 312-18, Decided on: 17/07/2025, His Lordship Justice Dhammika Ganepola held that ignorance of a gazette cannot be condoned as it is a public document. The court noted;

“The Latin maxim Ignorantia eorum quae quis scire tenetur non excusat provides that Ignorance affords no excuse in reference to those things (Gazettes) which one is bound to know. Since the Gazettes are public and official documents, ignorance of what they ought to know in the impugned Gazette Notifications will not excuse the Petitioners from knowing the effect of the impugned Gazette”

23] Thus, the litigants who appear for themselves must know the substantive law as well as the procedural law, as the latter is not second to none³. It is seen that the impugned Divorce case was filed on 10/09/2021. The learned Counsel for the Petitioner relied on section 809 of the Civil Procedure Code. The section is reproduced below for clarity.

“809.(1) *At the place and on the date specified in the summons the defendant shall be called upon to admit or deny the plaintiff's claim.*

(2) If the defendant shall admit the claim, the court shall enter, such admission on the record in the form No. 135 in the First Schedule, and shall require the defendant to sign the same and enter judgment for the plaintiff;

Provided that it shall be lawful for a defendant, who cannot conveniently attend court, to forward his admission to the Registrar, signed by himself

³ His Lordship Justice Dr. Amarasinghe in the case of **Fernando v Sybil Fernando** [1997] 3 S.L.R page 1, wherein Justice Amarasinghe, signifying the importance of procedural law, stated:

*“There is the substantive law and there is the procedural law. **Procedural law is not secondary**: The two branches are complementary. The maxim ubi ius, ibi remedium reflects the complementary character of civil procedure law. The two branches are also interdependent. Halsbury (ibid.) points out that the interplay between the two branches often conceals what is substantive and what is procedural. **It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives its remedy and effectiveness and brings it into being.**”*

in the presence and under the attestation of an attorney-at-law, known to him, and upon the receipt and entry of such admission, the court shall accordingly enter judgment for the plaintiff.

*(3) If the defendant shall deny the claim he shall be called upon to plead to the same forthwith, or within such time as the court on cause shown may allow; and he shall either state his defence orally to court, and the court shall cause it to be reduced to writing and obtain the defendant's signature to it, or **he shall deliver to the Registrar an answer in writing**, as provided in section 73 setting out his defence, and any claim in reconvention which he may have against the plaintiff. Such answer shall be signed by the defendant, or his attorney-at-law, and shall be duly stamped and dated, and forthwith filed of record by the Registrar.”*
[Emphasis is added]

24] Section 72 of the Civil Procedure Code enacts the situation where the Defendant admits the claim. It says;

72. If the defendant admits the claim of the plaintiff, the court shall give judgment against the defendant according to the admission so made. Such admission shall be in writing, signed by the defendant and his signature attested by an attorney-at-law.

25] Section 73 considers the situation where the Defendant does not admit the claim. It says;

“73. If the defendant does not admit the plaintiff's claim, he shall himself, or his registered attorney shall on his behalf, deliver to the court a duly stamped written answer”

26] However, such an answer shall be in accordance with the requirements of section 75 of the Civil Procedure Code. The section enacts as follows;

“75. Every such answer shall be distinctly written upon good and suitable paper, shall be duly stamped, shall be subscribed by the defendant or his duly 1977] constituted representative as in the case of a plaint is provided for the plaintiff's subscription, or if he is represented by a registered attorney, by such registered attorney, and shall contain the following particulars:-

(a) the name of the court, the number of the case, and the date of filing the answer;

(b) the name of the plaintiff;

(c) the name, description, and residence of the defendant;

(d) a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint;

(e) when the defendant sets up a claim in reconvention the answer must contain a plain and concise statement of the facts constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim; but it shall not affect the lien upon the amount decreed of any registered attorney in respect of the costs payable to him under the decree.”

27] If such answer is defective, the trial judge acts under section 77 of the Civil Procedure Code. The section enacts;

*“77. If any answer is substantially defective in any of the particulars hereinbefore defined, or is argumentative or prolix, or contains matter irrelevant to the action, **the court may**, by an order to be endorsed thereon, reject the same or return it to the party by whom it was made, for amendment within a period not exceeding one month from the date on which the answer was so returned, and the court may impose such terms as to costs or otherwise as it thinks fit.*

If the answer is rejected or left unamended as ordered, the defendant shall be regarded as having failed to file answer.

The order so endorsed shall specify the ground of the rejection.”

[Emphasis is added]

28] In the instant case, the Petitioner has mentioned the case number and the date, but has not put the court’s name. However, it was sent to the District Court of Galle, where the impugned case was filed. The Defendant has not categorically mentioned the name of the Plaintiff. The Defendant has stated that he is responding to the letter in English; in fact, it is the Plaint in the impugned case bearing No. D 9904, D.C Galle, as he cannot describe comprehensively in Sinhala.

29] The letter dated 22/10/2021, thereafter, flows in paragraphs. But there is no clear correspondent to the averments in the Plaint. For example, paragraphs No. 3 and No. 6 indicated “agreed”. Agreed on which paragraphs are ambiguous.

30] Thus, the real question is whether the said letter creates a valid answer in law and whether the fixing of the case *ex-parte* is in error in law. The journal entry 03, dated 08/11/2021, shows as follows;

“මෙම නඩුවේ විත්තිකරු අධිකරණය විසින් ලි.ප.තැ. මගින් යොමු කරන ලද වි/සිතාසිය ලැබීමෙන් අනතුරුව ඔහුගේ අදහස් සහ නව ලිපිනය සඳහන් කර ලි.ප.තැ . මගින් ලිපියක් ඒවා ඇත.

1. ගොනු කරන්න

(අත්සන)

අ.දී.වි”

31] It is seen that the learned trial judge has not considered this letter as an answer. The lower court, on the motion of the Plaintiff, reissued the summons through the Director of the National Hospital, Kandy, where the Defendant worked at the time as a Neurosurgeon. Journal Entry 06 shows that the Defendant was served through the Director of the National Hospital, Kandy. Journal Entry 07 is shown below;

“විත්තිකරු පෙනී නො සිටියි. එක පර් ව. විභාගයට නියම කරමි.

දි/ප්‍ර මගින් විභාගය 21/02/2022.

අත්සන”

32] Thus, without considering the letter dated 22/01/2021, which was sent by the Defendant, the *ex-parte* trial was fixed, and *ex-parte* judgement was granted in favour of the Plaintiff on 28/03/2022 (journal entry 09). Journal Entry 12 indicates that this was the COVID-19 period, and the case was not called in open Court under the JSC Circular. However, journal entry 13 proves that order Nisi was served to the Defendant on 22/05/2022 and order Nisi was made absolute on 03/10/2022 (journal entry 13).

33] Has the Defendant been duly served? The journal entry 03 clearly shows that the Defendant was duly served with the Plaint and the documents and thus knew that a case was pending against him. This (below) was the summons which was served on him.

[Cap. 101] *CIVIL PROCEDURE CODE*

No. 16A

[Section 55(2).]
[§ 125, 20 of 1977]

MEMORANDUM OF REGISTERED ADDRESS

In the District Court/Magistrate's Court of
case No.
On this day of 19
I, being the defendant in the above action hereby
furnish my postal address for service of the notice under section 80 of this
code and all other legal documents required to be served on me under this
Code. I undertake to inform the Registrar of any change of address.

I also tender stamps to the value of Rs.
to cover cost of service of the notice under section 80 on me by registered
post.

Signature :
Defendant.

Address:
Signature:
Defendant.

35] It is clear that notice by post was given and enacted under section 80 of the Civil Procedure Code. Section 80 denotes the trial date. To fix trial inter parte, there should be a legally valid answer. If ex parte fixed there is no necessity to inform the trial date.

36] In form 15 of the schedule of Civil Procedure, a sample format is given. It is reproduced below for clarity.

No. 15

FORMAL PARTS OF THE ANSWER AND REPLICATION

[Section 75 and 79.]

(Title and number of action, names, descriptions and addressed of parties, as in the plaint.)

The day of 19.....

The answer of the above-named defendant (or defendants, and if the case is so add: appearing by G. H., his proctor) states as follows:

(Here set forth the defence or defences and claim in reconvention, if any separately stating and numbering them; and where defendant prays for a declaration of title to land, conclude) And the defendant prays for judgement for the said premises.

Signature (As in Plaint.)

(For Replication, follow this form as near as may be.)

37] The summons issued to the Defendant was identical to Form 16 of the Civil Procedure Code.

No. 16
FORM OF SUMMONS
(Title.)

[Section 55(1).]

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court for (*state particulars of claim*), you are hereby required to file in court your answer if any, to the plaint herewith annexed on or before the day of 19..... and you are hereby required to take notice that in default of your filing answer on or before the said date the action will be proceeded with and heard *ex parte*. [§ 125, 20 of 1977]

You are further required, if you do not appear by a registered attorney, to file a memorandum stating an address at which all legal notices may be served.

By Order of Court,
.....
Registrar.

Note.— If you desire to receive notice of the date on which the above action will be called in open court, in order to fix the date of trial, you are required by Section 80 to furnish to the Registrar of this Court a registered address and tender stamps to the requisite value to cover postage by registered post.

.....
Sgd.: Registrar.

This day of, 19.....

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17 – Civil Procedure Code

38] The letter which was sent by registered post on 22/10/2021 by the Defendant is not in conformity with the above requirements. Thus, it cannot be treated as a valid answer in the eyes of the law. If no valid answer is received, the learned trial judge has to act under the provisions of section 84 of the Civil Procedure Code. It enacts;

“84. *If the defendant fails to file his answer on or before the day fixed for the filing of the answer, or on or before the day fixed for the subsequent filing of the answer or having filed his answer, if he fails to appear on the day fixed (or the hearing of the action, and if the court is satisfied that the defendant has been*

duly served with summons, or has received due notice of the day fixed for the subsequent filing of the answer, or of the day fixed for the hearing of the action, as the case may be, and if, on the occasion of such default of the defendant, the plaintiff appears, then the court shall proceed to hear the case ex parte forthwith, or on such other day as the court may fix.”

39] The requirements of the answer have been developed by judge-made law. In **FERNANDO vs SAMARASEKERE**, 49NLR 285, His Lordship Justice BASNAYAKE (As he then was, later became the Chief Justice) has articulated;

*“Section 75 (d) of the Civil Procedure Code requires that the answer should contain a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence. If the defendant disputed such an important averment the proper place for him to raise it was in his answer which he was free at any stage of the proceedings to amend with the leave of Court. The provisions of section 75 are imperative and are designed to compel a defendant to admit or deny the several allegations in the plaint so that the questions of fact to be decided between the parties may be ascertained by the Court on the day fixed for the hearing of the action. **A defendant who disregards the imperative requirements of this section cannot be allowed to take advantage of his own disobedience of the statute. To permit such a course of conduct would result in a nullification of the scheme of our Code of Civil Procedure...***

We hold therefore that the appellant cannot vale this objection in appeal. His failure to deny the averment in accordance with the requirements of the statute must be deemed to be an admission by him of that averment.”
[Emphasis is added by me]

40] Thus, as contended by the Learned counsel for the Defendant Petitioner that he (the Defendant) explicitly responded to the specific summons served upon

him, cannot be accepted. It is true that the primary summons issued by the District Court to the Defendant explicitly instructed him to submit a written answer before a specified date rather than demanding a physical appearance in person or through an Attorney-At-Law on that initial date, but it must be in conformity with the requirement of section 75 as much as possible, and it could be sent by registered post. In this case, though a letter was received by the Defendant, there was no prayer to it, and without prayers, no relief could be granted. I hold that there is no valid answer in this regard. Thus, fixing *ex-parte* under section 84 is justifiable in this case. If the matter is fixed *ex-parte*, there is no need to notify the Defendant of the trial date, as it is to be gone *ex-parte*. It is to be further noted that the Defendant relied on section 809 of the Civil Procedure Code; those provisions are related to Small Claim Court, not the District Court, and it was repealed in 2023.

41] Be that as it may, if the said letter has been treated as an answer, in that the Defendant categorically said that “ ***I will agree for the divorce only if the baby’s ownership is equally shared***” (vide: last page 2 item). This is a clear admission of the main relief prayed for by the Plaintiff. However, the Defendant-Petitioner, in this application, showed compassion to the 2nd Child, born by the 2nd marriage of the Plaintiff Respondent.

42] The said letter has clearly shown that the Petitioner is one of the most needed neurosurgeons in Sri Lanka (one from 20) and in line with a Hippocratic oath, he was a true doctor with patient-centered care despite his own family problem. The Hippocratic oath says;

“I swear by Apollo the physician, and Aesculapius, and Health, and All-heal, and all the gods and goddesses, that, according to my ability and judgment, I will keep this Oath and this stipulation—to reckon him who taught me this Art equally dear to me as my parents, to share my substance with him, and relieve his necessities if required; to look upon his offspring in the same footing as my own brothers, and to teach them this Art, if they shall wish to learn it, without fee or stipulation; and that by precept, lecture,

and every other mode of instruction, I will impart a knowledge of the Art to my own sons, and those of my teachers, and to disciples bound by a stipulation and oath according to the law of medicine, but to none others. I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion. With purity and with holiness, I will pass my life and practice my Art. I will not cut persons labouring under the stone, but will leave this to be done by men who are practitioners of this work. Into whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from every voluntary act of mischief and corruption; and, further, from the seduction of females or males, of freemen and slaves. Whatever, in connection with my professional practice or not, in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret. While I continue to keep this Oath unviolated, may it be granted to me to enjoy life and the practice of the art, respected by all men, in all times! But should I trespass and violate this Oath, may the reverse be my lot!”⁴

43] A doctor must be able to tell the antecedents, know the present, and foretell the future of patients; must mediate these things, and have two special objects in view with regard to disease, namely, to do good or to do no harm. It is noteworthy to say the famous quote of French surgeon **René Leriche** in his 1951 book *La philosophie de la chirurgie*. That is;

"Every surgeon carries within himself a small cemetery, where from time to time he goes to pray—a place of bitterness and regret, where he must look for an explanation for his failures."

⁴ <https://www.britannica.com/topic/Hippocratic-oath> (accessed on 17/07/2026)

44] British neurosurgeon **Henry Marsh**, as the opening epigraph in his bestselling memoir, *Do No Harm: Stories of Life, Death, and Brain Surgery*, has mentioned the quote below, which serves as a reminder of the human cost of saving lives and the emotional endurance required by those in the operating room. In his book, he notes;

“If we are ill and in hospital, fearing for our life, awaiting terrifying surgery, we have to trust the doctors treating us- at least, life is very difficult if we don’t. It is not surprising that we invest doctors with superhuman qualities as a way of overcoming our fears. If the operation succeeds, the surgeon is a hero, but if it fails, he is a villain.

*The reality, of course, is entirely different. **Doctors are human, just like the rest of us. Much of what happens in hospitals is a matter of luck, both good and bad; success and failure are often out of the doctor’s control.** Knowing when not to operate is just as important as knowing how to operate, and is more difficult skill to acquire.”*⁵ [Emphasis is added by me]

45] The above notions show the task and difficulty of the life of a neurosurgeon, and they are true healers with golden hands. I reckon that the Defendant Petitioner belongs to a noble profession that justifies the taxpayers’ money, unlike some doctors who migrated. The letter, which jeopardises his family life, shows that he is devoted to his medical profession. The court laments the state of affairs that befell the Defendant; however, we, as judges, must act in accordance with the law. The court noted that if the Defendant had obtained the assistance of an attorney at law in the lower court, this case would not have arisen. Whatever, as held in **Gamage Rankirihami Vs Appuhamy** (CA (RII) Application 54/2023), a litigant who chooses to act without a lawyer, ignores summons, and acts negligently cannot later escape the repercussions of his own folly.

⁵ Henry March, Preface of “Do No Harm-Stories of Life, death and Brain Surgery”, Weidenfeld & Nicolson-London, 1st Edition, [2014]

46] Further, the Learned President Counsel of the Plaintiff Respondent has drawn that the letter impugned is contrary to the language of the court. It is seen in section 8 of the Language of the Courts Act No. 3 of 1961. It was enacted for validation of judgements, decrees, orders and directions of any court, of pleadings filed of record and proceedings recorded in English between 01/01/1961, and the date of commencement of the said Act. Section 8 says;

*“ No judgment pronounced by any court and no decree, order or direction made or given, **no pleadings filed of record** and no proceedings recorded in English between the first day of January, 1961, and the date of commencement of this Act **shall be or be deemed to be invalid by reason of the fact that** the said judgment, decree, order or direction of the court has been pronounced, made or given or the pleadings have been filed of record or the proceedings thereof have been recorded **in English in contravention of any other law.**”* [Emphasis is added]

47] The provisions of the said Act should be read in conjunction with the provisions of the Constitution. Article 18 of the Constitution designates Sinhala and Tamil as the official languages of the country. It reads as follows;

“18. The Official Language of Sri Lanka shall be Sinhala.

(2) Tamil shall also be an official language.

(3) English shall be the link language. (4) Parliament shall by law provide for the implementation of the provisions of this Chapter”

48] Article 19 stipulates the National languages as follows;

“19. The National Languages of Sri Lanka shall be Sinhala and Tamil.”

49] Thus, it is clear that the Sinhala and Tamil languages are the official languages, and the English language is only a link language. Article 24(1) stipulates the language of courts as follows;

*“24. (1) **Sinhala and Tamil shall be the languages of the Courts throughout Sri Lanka and Sinhala shall be used as the language of the courts situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the Court.** In the event of an appeal from any court records shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred:*

*(2) Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings and submit to court **pleadings** and other documents and participate in the proceedings in courts, **in either Sinhala or Tamil.***

*(3) Any judge, juror, **party or applicant or any person legally entitled** to represent such party or applicant, **who is not conversant with the language used in a court, shall be entitled** to interpretation and **translation into Sinhala or Tamil provided by the State,** to enable him to understand and participate in the proceedings before such court and shall also be entitled to obtain in such language any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law.” [Emphasis is added]*

50] In **Fernando vs Silva** [2005] 1 SLR 1, His Lordship Justice Amaratunga considered the strict compliance with the forms of the Civil Procedure Code. His Lordship held;

*i) **Substance is more important than the form.** Whatever is the Sinhala word used to convey the meaning similar to the meaning of the word ‘Deny’ if it clearly conveys the idea that the Defendant does not accept the correctness of the averments, there is a valid denial for the purposes of Section 75(d);*

(ii) When pleadings are prepared in Sinhala in accordance with rules laid down in English, Courts must have a realistic approach and shall not tie down the litigants with technical forms, forgetting importance of substance.

The relevant portion of section 75(d) of the Civil Procedure Code is as follows. Every answer shall contain the following particulars - “a statement admitting or denying the several averments in the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence”

51] In this case, when the impugned of the Defendant is read as a whole, it is manifestly clear that the Defendant has not refused the entire case of the Plaintiff-Respondent. He has agreed to the divorce by his letter, but seeks shared custody of his child. This court takes the view that the district judge, as the upper guardian of the child, must act in the best interest of the child where the child resides.

52] It is trite law that to protect the child, the Court acts as an upper guardian. South African judge, Nugent, J in **Godbeer v Godbeer**, 2000 (3) SA 976 (W) at 982D – F. held;

“While this Court is the upper guardian of all minors and may insist in appropriate cases upon limiting the freedom of choice of the custodian, I do not think that should be translated into this Court imposing its own subjective whims upon the children of the parties concerned”

53] Further, in line with section 5(2) of the International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007, the learned District Judge should decide the custody of the child. This section enacts;

*“5(2) In all matters concerning children, whether undertaken by public or private social welfare institutions, **courts**, administrative authorities or legislative bodies, the **best interest of the child shall be of paramount importance**”* [Emphasis is added by me]

54] Further, the section 5 (1) (c) of the ICCPR enacts;

“Every child has the right to—

(c) be protected from maltreatment, neglect, abuse or degradation;”

55] In **ATUKORALA v. ATUKORALE AND OTHERS**, [1987] 1 SLR 388, this court held;

*“In terms of the s.5 of the Judicature Act No. 2 of 1978 as amended by Act No. 71 of 1981 the District Court being deemed to be the Family Court has original and exclusive jurisdiction regarding the custody of minor children... **Under Article 141 of the Constitution the Court of Appeal may, if satisfied that any dispute regarding the custody of minor children may be more properly dealt with in the District Court, direct the parties to make their application to that Court.**”* [Emphasis is added]

56] Moreover, section 622 of the Civil Procedure Code enacts that, after the dissolution of marriage, custody of the child shall be considered from time to time. This should be in line with the best interest of the child. The section is reproduced below for easy reference;

*“622. The court **after a decree absolute for dissolution of marriage** or a decree of nullity of marriage may, **upon application by petition on summary procedure for the purpose**, make from time to time all such orders and provisions, **with respect to the custody, maintenance, and***

education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid".
[Emphasis is added]

57] Thus, though the Decree Nisi has been made absolute under section 622 of the Civil Procedure Code, after dissolution of marriage, the court has the power to make an Order in line with the best interest of the child. The parties should prove with whom the best interest of the child lies. The Jurisdiction of the District Court is clearly set out in section 19 of the Judicature Act, No. 02 of 1978. It says;

*"19(1) Every District Court shall be a court of record and shall within its district have unlimited original jurisdiction in all civil, revenue, trust, **matrimonial**, insolvency and testamentary matters, save and except such of the aforesaid matters as are by or under this Act or by virtue of the provisions of any other enactment exclusively assigned by way of original jurisdiction to any other court of vested in any other authority and In the exercise of such jurisdiction to impose fines, penalties and forfeitures and shall in like manner also have jurisdiction over the persons and estates of persons of unsound mind, **minors** and wards, over the estates of constructive trust and over guardians and trustees and in any other matter in which jurisdiction is given to District Courts by law"* [Emphasis is added]

58] Section 24 of the Judicature Act enacts the Family Court in Sri Lanka, and later the powers of the Family Court were vested in the District Courts of the province by amendment No. 71 of 1981. Thus, there are no existing Family Courts in Sri Lanka. However, the powers of Family Courts were given to District Courts. This section (24 Judicature Act) provides;

"24. (1) Every Family Court shall be a Family Court. court of record and shall have sole original jurisdiction in respect of matrimonial disputes,

*actions for divorce, nullity and separation, damages for adultery, claims for maintenance and alimony, disputes between spouses, parents and children as to matrimonial property, **custody of minor children**, dependents' claims, guardianship and curatorship matters, claims in respect of declaration of legitimacy and illegitimacy and marriage, adoption and applications for amendment of birth registration entries, claims for seduction and breach of promise of marriage and such other matters provided for by any other law :*

Provided that anything in the preceding provisions of this subsection shall not, affect the provisions of the Kandyan Marriage and Divorce Act and the provisions of the Muslim Marriage and Divorce Act.” [Emphasis is added]

59] Under section 19 of the Judicature Act, the “matrimonial” gives a wide interpretation and means anything of or pertaining to matrimony or the estate of marriage. The issues (children) from marriage should be considered as matters pertaining to the marriage. Thus, by way of a separate case or on the motion to the Divorce case, the District Court has Jurisdiction to hear and decide the custody of the child. Page No. 222 of the brief shows an Order dated 25/04/2024 dismissing the custody application No. CG 566 of the District Court of Galle. In that case, the learned District Judge has dismissed the application, as she has no power to hear and determine the custody of the child, since a permanent custody order was given in D9904 of the District Court of Galle. This is totally wrong. It is to be stressed that custody should be decided in a full trial according to the best interest of the child. The judgement of the said D9904 case was based on an affidavit of the Plaintiff Respondent and cannot be lightly decided on the issue of custody. **Thus, the learned District Judge is directed to hold an inquiry under Section 622 of the Code of Civil Procedure and decide the matter.**

60] This is an application for Restitution. His Lordship Nawaz J. in **Edirisinghe Arachchilage Indrani Chandralatha v. Elrick Ratnum**, CA RII Case No.

64/2012, decided on 02/08/2017, laid down the following occasions on which the remedy of Restitution In Integrum can be considered. Those are;

- a. Fraud
- b. False Evidence
- c. Non-disclosure of material facts
- d. Deception
- e. Fresh Evidence
- f. Mistake
- g. Fear
- h. Minority

61] Under item “h”, it is a matter for this Court to consider the best interest of the child. Given that the Plaintiff Respondent has since remarried and had a child from that union, the Defendant Petitioner restricted his primary grievance to rectifying the unjust deprivation of his daughter's physical and legal custody. In fact, by letter dated 22/10/2021, only the custody was disputed by the Defendant Petitioner. The *ex-parte* judgement dated 28/03/2022 has not considered the facts relating to the child and the best interests and has decided on mere assertion. If there is a pending application under Section 622 of the Code of Civil Procedure, **that inquiry should be continued and decided. If not, the learned District Judge is directed to hold an inquiry under section 622 of the Civil Procedure Code on the application of the Defendant Respondent and decide the matter considering reports of medical experts (if need be), probation officer, family counsellor, and other relevant documents and oral testimonies, including the said child’s wish, which are relevant to decide the best interest of the child. In this regard, the Petitioner may file a fresh custody application or motion to the D9904, DC Galle Case. Thus, as ordered by D9904, the temporary custody of the impugned child was given to the Plaintiff Respondent. The Order dated 25/04/2024 dismissing the custody application No. CG 566 of the District**

Court of Galle should not be barred from holding a fresh inquiry regarding child custody.

62] Subject to the above direction, the application for Restitution In integrum is dismissed. The parties will bear their own costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL