

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

CA 500/98 (F)

DC Horana 5049/RE

B.Romanis Perera,
Rotarygama,
Bandaragama.

DEFENDANT-APPELLANT

Vs -

K.Karunawathi,
No: 3/29,
Adarshawatta,
Bandaragama.

PLAINTIFF-RESPONDENT

C.A. 500/98 (F)

D.C. Horana Case No: 5049/RE.

BEFORE : Anil Gooneratne, J.

COUNSEL : Appellant is absent and unrepresented.
Lahiru N. Silva for the Plaintiff-Respondent.

DECIDED ON : 25.09.2012

Anil Gooneratne, J.

Learned Counsel Mr. Lahiru N. Silva supports the application for substitution on behalf of the Plaintiff-Respondent who expired and accordingly death certificate marked P1 has been produced in this proceedings namely of the deceased Plaintiff-Respondent Kolambage Karunawathie. She is survived by nine children. However the said Plaintiff-Respondent namely Karunawathie during her life time has nominated kalutantrige Ruban Peiris one of the sons to succeed to her property described in document marked P3 (Land Development Ordinance permit issue to the said Karunawathie according to the details given in document

marked P3). As such property in question need to devolve to the successor namely Kalutantrige Ruban Peiris. This court having perused the documents submitted by Counsel and the submissions made by learned Counsel is satisfied that the said Kalutantrige Ruban Peiris is a fit and proper person to be substituted in the room of the deceased Plaintiff-Respondent. Application for substitution is allowed. Caption to be amended accordingly. It is also brought to the notice of Court that the Appellant has also expired. Vide Journal Entry dated 26.04.2012, a person by the name of B.T.R.Y. Perera appeared before this Court and informed Court that the Appellant his farther had expired and as such court directed him to take necessary steps to substitute the proper heirs to prosecute this appeal. Thereafter, this matter came up before this Court on 21.05.2012. On that date Counsel for Appellant who appeared before this Court move to file necessary substitution papers. Then on 20.06.2012 Appellant was absent and unrepresented. The deceased Appellant's son who was present in this Court on 26.04.2012 is not present today. Nor is he represented by Counsel although Counsel on the last date who appeared for Appellant moved Court to file necessary substitution papers. It has not been done. It appears to this Court that the party who made an application to have himself to substitute is

no longer interested in this application. This Court having granted time for Counsel to file necessary substitution papers but, no steps have been taken. It appears that both Counsel and party concerned has failed to exercise due diligence to prosecute this appeal. This Court has no alternative but to make an order to abate this appeal. However Counsel for the Plaintiff-Respondent is directed to file amended caption within two weeks.

Appeal abated.

JUDGE OF THE COURT OF APPEAL

NR/-