

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

Chandra Perera
Samupakara Mawatha,
Bandaragama.

CA 1267/98 (F)

DC Horana Case No: 6165/Damages

Plaintiff-Respondent

Vs.

David Gayasinghe
Ex-Officer in-charge,
Presently,
Police Hospital,
Narahenpita.

Defendant-Respondent

C.A. 1267/98 (F)

D.C. Horana Case No: 6165/Damages.

BEFORE : Anil Gooneratne, J.

COUNSEL : Chandrasiri Wanigapura for the Appellant.
SSA Aluwihare for the 3rd and 4th Defendant-
Respondent.

DECIDED ON : 03.10.2012

Anil Gooneratne, J.

Counsel for the Appellant informs Court that although he took steps to file the necessary substitution papers in view of the fact that the Plaintiff-Appellant expired, the heirs of the Plaintiff-Appellant have not tendered the necessary documents to enable the Counsel to prepare the necessary substitution papers. Learned Counsel also informs Court that he has not been able to get further instructions from the heirs of the deceased Plaintiff-Appellant. In the circumstances learned Counsel informs Court that he is unable to proceed as regards the preparation of necessary substitution papers and informs Court that he has no instructions from the heirs of the deceased Plaintiff-Appellant. Having heard Counsel on either side this Court finds that on perusal of the docket at least on three previous occasions application were made to file necessary substitution papers. In view of the submissions

of the learned Counsel before this Court today, it appears that the persons concerned are no longer interested in this case and to take necessary steps to prosecute this appeal. It appears also to this Court that the persons concerned who need to be substituted in this appeal has failed to exercise due diligence to prosecute this appeal. In the above circumstances this Court has no alternative, but to reject this appeal and accordingly this appeal is abated. In the event an application for re listing is made within one year by the parties concerned this Court will consider such application.

Appeal abated.

JUDGE OF THE COURT OF APPEAL

NR/-