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

1. U. A. Rodrigo
2. U. Sugathadasa Rodrigo
3. U. S. N. Rodrigo
4. U. P. J. Rodrigo
5. U. P. Rodrigo
6. U. I. P. Rodrigo
7. U. Somasiri Rodrigo
8. U. J. A. Rodrigo
9. U. S. Rodrigo

All of Achipanagoda, Rosewood Estate Horana.

PLAINTIFFS

Vs.

C.A 671/96 (F)

1. H. R. Mutuweera of
   No. 7, Etabagoda, De Silva Mawatha
   Panadura
2. Estell Phyllis Peiris of
   No. 7, Etabagoda, De Silva Mawatha
   Panadura.
3. Maxie Neelan Peiris of
   No. 195, Weluvana Road, Dematagoda,
   Colombo 9.
4. Darshini Weeraratne
   11/3, School Lane, Kalubowila,
   Dehiwala.
5. C. F. Wickramasuriya
   Panthiyawatte, Elio
6. K. R. Harindra Chandrasekera
   of No.58, Sri Gunaratne Mawatha,
   Mt. Lavinia.
7. Malee Peiris
   No. 49, Swarna Road,
   Wellawatte, Colombo 6.

8. Nilhan Peiris of
No. 48, Swarna Road,
Wellawatte, Colombo 6.
9. Premraj Peiris of
No.48, Swarna Road, Wellawatte
Colombo 6.(deceased & substituted by
9(a)
9(a) D. Anne Peiris alias Chengi of
No. 45, Pokuna Road,
Kawdana Road, Dehiwela
10. K. R. T. Peiris of
Mel Laxapathy, "Laxapathy"
Spathodea Avenue, Nedimala,
Dehiwela.
11. K. Hazel de Mel
Spathodea Avenue, Havelock Town,
Colombo 5.

DEFENDANTS

And between

1. H. R. Mutuweera (deceased)
of No. 7, Etabagoda, De Silva Mawatha
Panadura
2. Estell Phyllis Peiris (deceased)
of No. 7, Etabagoda, De Silva Mawatha
Panadura.
3. Maxie Neelan Peiris (deceased)
of No. 195, Weluvana Road,
Dematagoda,
Colombo 9.
4. Darshini Weeraratne
11/3, School Lane, Kalubowila,
Dehiwala.
5. C. F. Wickramasuriya (deceased)
of No. 7, Etabagoda, De Silva Mawatha
Panadura
6. K. R. Harindra Chandrasekera
(deceased)
of No.58, Sri Gunaratne Mawatha,
Mt. Lavinia.

7. Malee Peiris (deceased)
   No. 48, Swarna Road,
   Wellawatte, Colombo 6.
8. Nilhan Peiris of
   No. 48, Swarna Road,
   Wellawatte, Colombo 6.
9. Premraj Peiris (deceased & substituted by 9(a)
   No.48, Swarna Road, Wellawatte
   Colombo. 6

9(a)D. Anne Peiris alias Chengi of
   No. 45, Pokuna Road,
   Kawdana Road, Dehiwela

10. K. R. T. Peiris of
    Mel Laxapathy, "Laxapathy"
    Spathodea Avenue, Nedimala, Dehiwela.
11. K. Hazel de Mel Laxapathy (deceased)
    Spathodea Avenue, Havelock Town,
    Colombo 5.

DEFENDANTS-APPELLANTS

Vs.

1. U. A. Rodrigo
2. U. Sugathadasa Rodrigo
3. U. S. N. Rodrigo.
4. U. P. J. Rodrigo
5. U. P. Rodrigo
6. U. I. P. Rodrigo
7. U. Somasiri Rodrigo
8. U. J. A. Rodrigo
9. U. S. Rodrigo

All of Achipanagoda, Rosewood Estate
Horana.

PLAINTIFFS-RESPONDENTS

And now between

K. R. T. Peiris of
No. 2B, Greenland Lane,
Anderson Road,
Nedimala, Dehiwela.

Presently at –
129/4, Duwe Road, Beddagana,
Pitakotte

10TH DEFENDANT-APPELLANT-PETITIONER

Vs.

1. H. R. Mutuweera (deceased)
   of No. 7, Etabagoda, De Silva
   Mawatha Panadura
2. Estell Phyllis Peiris (deceased)
   of No. 7, Etabagoda, De Silva
   Mawatha, Panadura.
3. Maxie Neelan Peiris (deceased)
   of No. 195, Weluvana Road,
   Dematagoda,
   Colombo 9.
4. Darshini Weeraratne
   11/3, School Lane, Kalubowila,
   Dehiwala.

   Presently at No. 14, Menerigama
   Place, Mt. Lavinia

5. C. F. Wickramasuriya (deceased)
   of No. 7, Etabagoda, De Silva
   Mawatha
   Panadura

6. K. R. Harindra Chandrasekera
   (deceased)
   of No.58, Sri Gunaratne Mawatha,
   Mt. Lavinia.

7. Malee Peiris (deceased)
   No. 48, Swarna Road,
   Wellawatte, Colombo 6.
8. Nilhan Peiris of
   No. 48, Swarna Road,
   Wellawatte, Colombo 6.
9. Premraj Peiris (deceased &
   substituted by 9(a)
   No.48, Swarna Road, Wellawatte
   Colombo 6.

9(a) D. Anne Peiris alias Chengi of
   No. 45, Pokuna Road,
   Kawdana Road, Dehiwela

10. K. Hazel de Mel Laxapathy
    (deceased)
    Spathodea Avenue, Havelock Town,
    Colombo 5.

DEFENDANTS-APPELLANTS-RESPONDENTS

1. U. A. Rodrigo
2. U. Sugathadasa Rodrigo
3. U. S. N. Rodrigo
4. U. P. J. Rodrigo
5. U. P. Rodrigo
6. U. I. P. Rodrigo
7. U. Somasiri Rodrigo
8. U. J. A. Rodrigo
9. U. S. Rodrigo

All of Achipanagoda, Rosewood Estate
Horana.

PLAINTIFFS-RESPONDENTS-RESPONDENTS

BEFORE: Sisira de Abrew J. &
Anil Gooneratne J.

COUNSEL: M. de Silva P.C with L. de Silva for
10th Defendant-Appellant-Petitioner

H. Soza P.C. with Athula Perera and A. Dharmaratne
For 1st – 4th and 6th – 9th Plaintiff-Respondents

ARGUED ON: 29.11.2010 & 30.11.2010

DECIDED ON: 20.01.2011

GOONERATNE J.

This is an application for re-listing by the 10th Defendant-Appellant-Petitioner. There had been (11) eleven Defendant-Appellants to this case and paragraph 6 of the petition indicates that 1st to the 7th and 11th Defendant-Appellants are dead. As such as at the date of the re-listing application 7 Appellants were dead. To state briefly the background to this application is that judgment was delivered by the Original Court on 19.8.1996, and both parties (Plaintiffs and Defendants) appealed against the said judgment. The appeal of the Defendant-Appellants was numbered 671/96F and that of the Plaintiffs as 670/96 F. Certified copy of the journal pertaining to both appeals are annexed marked X1. The Court of Appeal

Registrar had by letter of 07.02.1997 (P5) requested the registered Attorney Manel Gunatilleke (copied to the deceased 1st Defendant-Appellant, Hilda Roslin Mutuweera) to deposit brief fees before 27.3.1997. Thereafter the matter had been listed on 12.6.1997 and both parties were absent and unrepresented and the appeal was rejected.

However the Appellants in CA 670/96 (F) sought re-listing which was supported on 08.09.1997 and the appeal had been restored to the case list. We are now only concerned with CA 671/96 (F) which re-listing application was considered by this court at an inquiry held on 29th, 30th November and 1st December 2010 for which the Plaintiff-Respondents vehemently objected. The Petition for re-listing is dated 11.2.2010.

The learned President's Counsel for the 10th Defendant-Appellant-Petitioner at the very outset of his submissions stated to court that though the Court of Appeal Registrar's letter of 07.02.1997 (P5) was addressed to the above-named 1st Appellant and the Attorney at Law, M. Gunatilleke there is no proof of delivery of same in the docket. This court whilst the argument was proceeding verified the above fact but it was found to be incorrect and it is recorded in the Journal Entry of 29.11.2010, after court and both counsel perusing the relevant register maintained in the Registry that letter (P5) was duly dispatched by the Registry on 10.02.1997

to both the registered Attorney and the 1st Defendant-Appellant. As such 10th Defendant-Appellant's learned President's Counsel above submission fail. Therefore court may presume that official act of posting and dispatch of letter to the addressee have been regularly performed (Section 114, illustration 'd' of Evidence Ordinance). Courts in our country have applied this presumption in several contexts. As such no doubt exists in our minds, as there is no other evidence to controvert that position of dispatch of letter, other than a bear denial, by the 1st Defendant-Appellant of receiving same.

It is also apparent that though several of the Defendant-Appellants are parties to the appeal, letter informing of deposit of brief fees was addressed by the Court of Appeal Registry to only the Attorney on record and the 1st Defendant-Appellant. This is another point to be kept in mind. I also wish to observe that the registered Attorney who has to take responsibility and plays a major role to look after the interest of her clients has not tendered an affidavit to this court at least to explain delay and other relevant issues.

The Petitioner (10th Defendant-Appellant) pleads that they were unaware of the proceedings that took place on 12.6.1997 rejecting their appeal and re-listing of the other appeal of Plaintiff-Respondents on 08.09.1997. The Appellants in CA 671/96 paid brief fee on 26.9.1997 (vide

X2). The other point stressed by learned President's Counsel for Petitioner was that the 2nd Defendant-Appellant was dead on 10.01.1997 and by that date proxy of the registered Attorney with the death of 2nd Defendant-Appellant will automatically cease.

The learned President's Counsel in support of the above submissions referred to Section 27 of the Civil Procedure Code and invited this court to those provisions to demonstrate that the registered Attorney, with the death of the 2nd Defendant-Appellant on 10.01.1997 (with proof of death certificate and paragraph 6 of petition) did not hold a valid proxy and that such proxy was not in force by 10th January 1997, in terms of the above section of the Civil Procedure Code. It was his contention that it would be improper for the Attorney at Law to take any steps consequent to receipt of letter (P5) by the Registrar in view of above and that it is a valid ground to re-instate the Appeal. C.A 671/96, and order made by the Court of Appeal on 12.6.1997 rejecting the appeal is a nullity or made per incuriam. As such this court need to repair an injury caused to a party, and court has inherent power to reinstate this appeal although delay in making such application to reinstate was apparent.

The question that concerns me is whether the Court of Appeal Registry should have noticed all the Defendant-Appellants in terms of the

rules of court, letter P5 had been dispatched to the registered Attorney and 1st Defendant-Appellant only. I will deal with this aspect later on in this judgment.

It is also pleaded that the case had been called on 12.6.1997 without notice to any of the parties. Petitioner to this application never received any notice. Court cannot dispute this fact. The receipt marked X2 indicates that the Appellants in this case paid brief fees on 26.9.1997. In paragraph 12 of the petition it is pleaded that a copy of the brief was collected by the 6th Appellant on 25.9.2009, who is now deceased.

Mr. Silva, President's Counsel also relied on the following decided cases to support his case more particularly trying his best to blame the Registry of the Court of Appeal on the premise that his client had no notice of the hearing of the appeal

In Sivapathalingam vs. Sivasubramanim 1990(1)SLR 378...

Held:

(1) A Superior Court has jurisdiction in the exercise of its inherent power to direct a Court inferior to it to remedy an injury done by its act.

(2) Therefore when the injunction issued by the Court of Appeal on 26.5.1989 was dissolved it was competent for the Court to direct that the appellant who had obtained possession of the property on the strength of the injunction by displacing the respondent, be in turn displaced and possession handed back to the respondent.

(3) This power, an aspect of the Court's inherent power, could have been exercised on the day on which judgment was delivered on 5th September, 1989 or as was done in this case on 27th October, 1989.

(4) A Court whose act has caused injury to a suitor has an inherent power to make restitution. This power is exercisable by a Court of original jurisdiction as well as by a Superior Court.

Gunasena vs. Bandaratilleke 2000(1) SLR 293...

Held:

The Court of Appeal had inherent power to set aside the judgment dated 25.5.1998 and to repair the injury caused to the plaintiff by its own mistake, notwithstanding the fact that the said judgment had passed the decree of court. This could not have been done otherwise than by writing a fresh judgment.

Per Wijetunga, J.

> "The authorities..... clearly indicate that a court has inherent power to repair an injury caused to a party by its own mistake. Once it is recognized that a court would not allow a party to suffer by reason of its own mistake, it must follow that corrective action should be taken as expeditiously as possible, within the framework of the law, to remedy the injury caused thereby. The modalities are best left to such court, and would depend on the nature of the error.

He also cited another case *John Patrick Kariyawasam vs. Priyadarshini and others CA 205/93(F).*

The above cases are all on inherent powers of court to correct errors resulting in wrongs to a client for which the client has no control, and order made per incurium. If the notice (p5) was not served on the Petitioner Appellant or other Appellants and Attorney there is serious concern to apply

the dicta in the above cases, and not otherwise. On the material placed before this court it is apparent that notice P5 was duly served on the 1st Defendant Appellant and the registered Attorney. In fact the 1st Defendant-Appellant was living at the time of dispatch of letter P5 and addressed to her, and not the 2nd Defendant-Appellant who was dead by that time. The pleadings filed before this court does not suggest non-receipt of the said letter, by either Attorney or client. No attempt made by Attorney at Law M. Gunatilleke to explain by way of an affidavit the circumstances relied upon by her and client. There is an unexplained long delay of about 13 years, from the date of letter marked P5 up to date of re-listing application (11.2.1010). At this point I would refer to the following submissions of learned President's Counsel Mr. H. Soza who resisted application for re-listing, which are relevant and applicable to the facts of the case in hand.

(a) Re-listing application is hopelessly belated.
(b) As such Petitioner guilty of laches
(c) Delay not explained
(d) Brief fees paid as evidenced in X2 (26.9.1997) and payment made on behalf of all Appellants
(e) Why payments could not be made earlier on time for the brief? Why wait for 13 years.
(f) Refer to Section 29 of the Civil Procedure Code. Service on Registered Attorney shall be presumed to be duly communicated and made known to client.
(g) Negligence, carelessness, lapse on the part of registered Attorney does not excuse client.

I would refer to *Section 29 of the Civil Procedure Code* which reads thus:

> Any process served on the proctor of any party or left at the office or ordinary residence of such proctor, relative to an action or appeal, except where the same is for the personal appearance of the party, shall be presumed to be duly communicated and made known to the party whom the proctor represents; and, unless the court otherwise directs, shall be as effectual for all purposes in relation to the action or appeal as if the same had been given to, or served on, the party in person.

A case on point, *Rasiah vs. Ranmany 1978/79(2) SLR 88 ...*

> The Supreme Court (as formerly constituted) made order that a certain sum of money be deposited by the appellant within six weeks. The Registrar of the Court issued notice both on the Appellant and on his Attorney at Law but only the notice on the Attorney at Law was served. The order to deposit the said sum was not complied with and the appeal was accordingly abated. In making an application to have the Appeal reinstated it was submitted on behalf of the Appellant that notice should have been served on the appellant

Held:

> That in terms of section 29 of the Civil Procedure Code a notice served on the Attorney at Law for the appellant was sufficient notice to the appellant and accordingly the appeal was rightly abated.

The dicta in the above case demonstrate and provides an acceptable answer and controvert the position relied upon by the Defendant-Appellants. Above all I would stress the fact that the registered Attorney whose proxy is in force is bound to keep a track of the appeal entrusted to Attorney by client, from the time of filing Notice of Appeal and Petition of Appeal. Therefore duly served notice on Attorney would suffice and the provisions of the said Section 29 prevails above all rules. As such this court has no hesitation to reject the argument suggested by learned President Counsel Mr. M. Silva .

In the context of the case in hand it is important to consider the following decided cases as regards re-hearing/re-listing of cases, where there is either negligence or carelessness of registered Attorney at Law or her client.

Packiyanathan Vs. Singarajah 1991 (2) SLR 205 ...

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 Attorney-at-Law.

The other very important decided case on point is the case of Jinadasa and Another Vs. Sam Silva & others which is the authority on this subject and the judgment runs into several pages. 1994(1) SLR 232. I am compelled to refer to the following excerpts though it is prolix.

Held:

2(a) A Judge must ensure a prompt disposition of cases, emphasizing that dates given by the court, including dates set out in lists published by a court's registry, for hearing or other purposes, must be regarded by the parties and their counsel as definite court appointments. No postponements must be granted, or absence excused, except upon emergencies occurring after the fixing of the date, which could not have been anticipated or avoided with reasonable diligence, and which cannot be otherwise provided for.

(b) in the instant case the matter was listed almost a year after the death of counsel. When it came on for hearing, the Court, finding that the petitioners were absent and unrepresented *suo motu* ordered the matter to be listed in due course. The fact that it was listed again in 13 days is not a legitimate cause for complaint.

3. Since there is no legislation governing the matter, the power to restore the application to re-list is in the exercise of the Court's inherent jurisdiction.

4. The burden of alleging and proving the existence of facts, on the basis of which a court may decide that there is good cause for absence, rests on the absent party who seeks reinstatement. This burden is not displaced by any presumption in his favour. A court will hold that there was sufficient cause if the facts and circumstances established as forming the grounds for absence are not absurd, ridiculous, trifling or irrational but sensible, sane, and without expecting too much, agreeable to reason It cannot hold that, in its judgment, there is sufficient cause to reinstate the matter unless the grounds for coming to that conclusion were reasonable. No distinction can be drawn between "sufficient cause" and "valid reason".

5. Where a party has established that he had acted *bona fide* and done his best, but was prevented by some emergency, which could not have been anticipated or avoided with reasonable diligence from being present at the hearing, his absence may be excused and the matter restored. The Court cannot prevent miscarriages of justice except within the framework of the law; it cannot order the reinstatement of an application it had dismissed, unless sufficient cause for absence is alleged and established. It cannot order reinstatement on compassionate grounds. Inasmuch as it is a serious thing to deny a party his right of hearing, a court may, in evaluating the established facts, be more inclined to generosity rather than being severe, rigorous and unsparing.

6(a) The right to be heard has little or no value unless the party has been given a reasonable opportunity of being heard. He must have due notice. The mere fact that the registered Attorney had failed to give party information of the date is no excuse. The due notice should be of where and when the case will be heard.

(b) "Due notice" for the purpose of the case under consideration, is making information available in the usual way, that is to say, in accordance with the prevailing law, rules, practices and usages of the Court. Where information of the appointed date for hearing is usually set out in a list prepared and published by the court's registry, and information of the hearing has been given that way, that is due notice to the parties and their counsel. The case before court had been listed in the usual way, and there was, in

the circumstance, **due notice**, although the parties may or may not have been actually aware of the date of the hearing. Notice, in the sense of actual knowledge must be distinguished from imputed knowledge of the date of the hearing which "due notice' in the relevant sense implies.

9. Belated reliance by the petitioners on inability to retain Counsel because (a) their movements were restricted (b) they lacked financial means, (c) terrorists might have punished them, is not relevant. Belated reflections on irrelevant side issues and matters which are not of decisive importance should be discouraged in the interests of the expeditious disposal of the work of the appellate courts. Here the excuses themselves were lame excuses.

10(a) Since the petitioner had duly appointed a registered attorney they were obliged to act through their registered attorney and not personally and, in general they were bound by the acts and omissions of their registered attorney. As far as the registered attorney in this case was concerned, the binding effect of his actions was based on the powers conferred by the terms of a standard, printed proxy in terms of Form 7 of the First Schedule to the Civil Procedure Code. It was neither extended expressly or impliedly, as it might have been, nor was it restricted.

(b) If the parties are required by law or by the court to be present, then they must be present. In the case before court they did not have to be present once the registered attorney had been duly appointed. In the circumstances, the petitioners were under no obligation to explain their absence. It was the default of the attorney that had to be considered. If the attorney, without sufficient excuse, was absent on the date appointed for hearing, the court, if it dismissed the application, is entitled to refuse to reinstate the matter. Where no sufficient cause is shown for the absence of the attorney who was under a duty to appear, there are no grounds for an application *ex debtor justitia* of any inherent power to reinstate the matter. As much the petitioners would enjoy the fruits of the success of their attorney's endeavours they must take the consequences of his defaults and failures.

(c) if the attorney entitled to appear for the party had reasonable grounds for his absence, the court would reinstate the matter on the basis that there was sufficient cause for his absence.

(g) In terms of the Civil Procedure Code and the Rules of the Supreme Court made under the powers vested in the Supreme Court by Article 136(1) (g) of the Constitution, it is a registered attorney alone who can appear unless he has instructed counsel.

11. It was the duty, in terms of the proxy, and the right, in terms of the law and usage, of the registered attorney to retain and instruct counsel since he was not going to exercise his right to personally appear. The registered attorney failed to do so. He has not explained why he did not appoint counsel.

At pgs. 254/255 ...

Inasmuch as it is a serious thing to deny a party his right of hearing, a court may, in evaluating the established facts, be more inclined to generosity rather than being severe, rigorous and unsparing. Indeed, some decisions go so far as to suggest that only gross misconduct, or willful default, and not mere negligence or carelessness, should prevent reinstatement. (E.g. see Gopala Row v. Maria Susaya Pillai, Venkobar Royar and Another v. Khadriappa Gounder and Others, Sarfaraz Khan v. Parbatia and Others Arunachala lyer v. Subbaramiah, Thakur Anurudh Singh v. Rupa Kunwar and Others, Mrigendra Nath Bir and Others v. Dibakar Bir and Others, Namperumal Naidu v. Alwar Naidu and Others Ram Shankar v. lqbal Hussain, Lachman v. Murarilal and Others, Shamdasani and Others v. Central Bank of India, Motichana v. Ant Ram, Juggi Lal Pat v. Ram Janki Gupta and Another.

Although a court should be generous in matters of this kind, it should not "in mercy" adopt a course which the law does not countenance" (See the observations of Mitter, J. in Biswanath Dey v. Kisohori M. Pal, on the decision of Chief Justice Rankin in Aktar Hossain v. Husseni Begam, but see Gargial et al v. Somasunderam Chetty (supra). The court cannot prevent miscarriages of justice except within the framework of the law: it cannot order the reinstatement of an application it had dismissed, unless sufficient

cause for absence is alleged ad established. (E.g. see Jayasuriya v. Kotelawela et al (where the absent party was deceived and therefore did not appear, the court held that there was insufficient cause for reinstatement); Daropadi v. Atma Ram and Others where reinstatement was refused although the party was an old woman who was compelled to act through others and although a large amount was at stake. See also Kunashi Muhammad and Others v. Barkat Bibi, Maung Than v. Zainat Bibi, Kanshi Ram and Another v. Diwan Chand and Another, U Aung Gyl v. Government of Burma and Another, Sohambal and Another v. Devchand. I cannot order the reinstatement of the matter on compassionate grounds. The law does not permit it. Indeed, if in fact what was at stake was so important to them because they were poor, the petitioners ought to have been more diligent than if they had been affluent persons to whom the loss might have been less significant.

In SCHARENGUIVEL Vs. ORR 28 NLR 302...

Where a judgment is entered against a party by default, it is not a sufficient excuse for his absence that his Proctor had failed to inform him of the date of trial.

Per LYALL GRANT J. – It has never been held that a Proctor for a plaintiff who had received a proxy and instructions for the preparation of a plaint is entitled to avoid a final judgment against his client merely by stating on the date fixed for trial that he had received no instructions.

When we consider the long line of cases most of which are applicable to the facts of this case, the only conclusion that could be arrived at, is that the Petitioner has not placed sufficient or good cause for absence and proved to this court that in law Appellants are entitled to have reinstatement of the case in question. The Registrar of the Court of Appeal dispatched letter (P5) correctly to the registered Attorney and her client and

as such notice duly served. Petitioner has not explained the very long delay to apply for reinstatement and therefore guilty of lashes (13 years). There is a professional obligation and duty on the part of the registered Attorney to have kept a track of the appeal case from the date of filing proxy.

In the above circumstances application for re-listing by the Defendant-Appellant-Petitioner is refused and rejected, without costs.

Re-listing application dismissed.

JUDGE OF THE COURT OF APPEAL

Sisira de Abrew J.

I agree.

JUDGE OF THE COURT OF APPEAL