

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

CA(PHC)65/2003  
PHC/Kalutara/16/02(Rev)  
MC/Kalutara-38745

Aluthhewage Harshani Chandrika and  
another.

2<sup>nd</sup> Party Respondent-Appellant

Vs.

Officer-In-Charge, Police Station,  
Kalutara.

Complainant Respondent-Respondent.

Aluthhewage Swarna Nilanthi.

1<sup>st</sup> Party Respondent-Petitioner-  
Respondent.

Before : A.W.A. Salam, J. &

Sunil Rajapakshe, J.

Counsel : Manohara de Silva PC with Pubudini Wickramasekara for  
the Respondent-Respondent-Appellant and W. Dayaratne PC with  
Nadeeka K. Arachchi for the Respondent.

Argued on : 20.05.2013

Written Submissions tendered on: 30.07.2013

Decided on : 10.09.2013

A W A Salam, J

Order on the preliminary objection.

This is an appeal filed by the 2<sup>nd</sup> party-respondent-appellants (hereinafter referred to as the appellants) against the judgment of the learned High Court judge allowing a revision application by setting aside the determination of the learned Magistrate made under chapter VII of the Primary Court Procedure Act. The learned High Court Judge has entered the said judgment in the exercise of the revisionary power in him under article 154 P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka. It is against the said judgment the appellant has preferred the present appeal.

When the appeal was taken up for argument the learned counsel for the 1<sup>st</sup> party-petitioner-respondent (respondent) raised a preliminary objection as to the maintainability of the appeal, in that he stated that the appellant cannot have and maintain the appeal, as the petition of appeal has not been signed by the attorney-at-law who filed the proxy on behalf of the petitioner in the High Court. In any event he urged, as the attorney-at-law who filed the petition of appeal in this court has not filed any proxy, the appeal is not maintainable.

Mr. Manohara De Silva President's Counsel on behalf of the appellant urged that the appeal is maintainable inasmuch as the Provisions relating to filing of proxy under the Civil Procedure Code does not apply and no Rules have been made rendering the filing of proxy imperative in a revision application, particularly when such an application is filed

against the determination of the Primary Court under Chapter VII of Act No 44 of 1979. He distinguished the office of registered attorney-at-law from an attorney-at-law, as used in the Civil Procedure Code and Rule 4 (1) of the High Court Rules.

We need to approach the issues in question from two angles. First and foremost it has to be ascertained whether a proxy is necessary when filing a revision application in the High Court and upon invoking the appellate jurisdiction of this Court consequent upon the conclusion of such revision application. Secondly, it must be born in mind that any defect arising from a proxy can be cured by the person who grants it and if an attorney at law acts for a client without a proxy, the omission to file such a proxy may be cured by subsequent ratification.

Article 154 P (6) of the Constitution provides that subject to the Provisions of the Constitution and any law, persons aggrieved by a final order, judgment or sentence of any such court, in the exercise of its jurisdiction under paragraph 3 (b) or 3(c) or (4) may appeal therefrom to the Court of Appeal in accordance with article 138.

As far as the judgment of the High Court is concerned it is to be observed that it has been delivered in the exercise of the revisionary powers of the High Court vested under article 154P (6) (b) of the Constitution. As has been contended by the learned President's counsel the court of appeal (procedure for appeals from High Courts) Rules 1988 set down the procedural Rules to be adopted in appeals from a judgment of the High Courts.

Part 1 of the said Rules relates to appeals from orders made by the High Court in the exercise of its jurisdiction under Article 154P (3) (b) of the Constitution.

It is necessary at this stage to reproduce Rule 4 (1) which reads as follows....

Every petition of appeal shall state shortly the ground of appeal and shall be signed by the appellant or his attorney-at-law. Learned President's Counsel has adverted us to the fact that Rule 4(1) requires the appellant or his attorney-at-law to sign the petition of appeal. It does not require the registered attorney-at-law of the appellant to sign the same. Article 154P (6) of the Constitution also permits any person who is aggrieved by any order or judgment to appeal to the Court of Appeal.

The word registered attorney-at-law does not appear either in Rule 4 (1) or in Article 154P (6) of the Constitution. Therefore, one has to assume that there is no requirement in appeals of this nature, namely when an appeal is sought from the judgment of the High Court in its exercise of the revisionary powers, for the registered attorney-at law to sign the petition of appeal.

Learned counsel for the first party respondent relied on the case of Fernando vs. Fernando 1997 3 Sri Lanka law report 1 to buttress his argument that where the petition of appeal has not been signed by the registered attorney such a lapse is fatal and such an appeal ought to be dismissed. Since the decision in Fernando vs. Fernando (supra) has

been made in a civil case and the Supreme Court in its judgment has dealt only with the procedural Rules governing civil proceedings the decision in that case is not applicable to the instant case.

Learned counsel for the 1<sup>st</sup> party-respondent also took up the objection that a proxy has not been filed by the attorney-at-law in this appeal and therefore in any event the appeal is not maintainable. On a careful consideration of article 154 (6) (P) of the Constitution read together with chapter VII of the Primary Court Procedure Act, it is my view that no proxy is required to file an appeal through an attorney-at-law on behalf of a party aggrieved by the decision of the High Court in the exercise of its revisionary powers.

In the case of the Singer Manufacturing Company vs. Paul Perera 11 New Law Report 291 dealing with the necessity to file a proxy along with the petition of appeal, the Supreme Court considered Section 340 (1) of the Criminal Procedure Code that prevailed at that time which directs that every petition of appeal shall be signed by the appellants or his Proctor and overruled the objection to the hearing of the appeal and held that the petition of appeal was in order if it is signed by any proctor and that the appellant was entitled to be heard.

In the case of Podisingo vs. Punchisingo 1901 2 Browns 61 states that it is doubtful of the propriety of requiring a Proctor for the accused appellant to file a proxy. It was held in that case that proctors are entitled to appear in criminal courts on verbal or informal retainers and may sign a petition of appeal and that a proxy is necessary only under the Civil Procedure Code.

The confidence reposed in the legal profession by the bench with regard to the conduct of professional work is amply demonstrated by this above judgment where the His Lordship Wendt, J stated that “If a Proctor appears for an accused in a criminal case, and says he is a Proctor, and signs his name as a Proctor, I am prepared to accept his statement as true having confidence that proctors who have been admitted and sworn to their duty will not mislead the court”.

In the circumstances, I am of the view that the objection raised by the 1<sup>st</sup> party petitioner respondent merits no favourable consideration. As such I overrule the preliminary objection and the appeal is noted down to be fixed for argument on its merits. Preliminary objection overruled.

Judge of the Court of Appeal

Sunil Rajapaksha, J.

I agree

Judge of the Court of Appeal

NR/-