

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

**CA 334/1998 (F)**

D.C. Homagama case no. 142/P

Welathanthrige William Bothegu  
No. 122, Kahantota Road, Malabe.

**Plaintiff-Appellant-Petitioner**

**Vs.**

Welathanthrige Pedrik Bothegu  
No. 470, Galawila Road,  
Homagama.

Welathanthrige Adilin Bothegu

Welathanthrige Victor Bothegu

Welathanthrige Ebert Bothegu

Welathanthrige Shelton Bothegu

And Others

**Defendant-Respondents**

Before : **K.T. CHITRASIRI, J.**

Counsel : Asheek Inam for the Plaintiff-Appellant  
Nihal Jayamanne P.C. with Noorani  
Amarasinghe and Chaturi Gallege  
for the 5<sup>th</sup> Defendant-Respondent

Argued &

Decided on : 25.03.2014

**K.T.Chitrasiri, J**

When this matter was taken up for argument on 25.10.2013, it was brought to the notice of this court that the 3<sup>rd</sup> defendant-respondent had passed away. Hence, the Court had to take the matter out from the argument role giving the opportunity for the appellant to substitute the heirs of the deceased 3<sup>rd</sup> defendant-respondent. On that date i e 25.10.2013, it was also recorded that the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and the 8<sup>th</sup> defendant-respondents are the children of the deceased 3<sup>rd</sup> defendant, making it easy for the appellant to file papers for substitution. Accordingly, the appellant was given time to file substitution papers and made order to have this matter mentioned on 21.01.2014 for that purpose.

When this matter was taken up on 21.01.2014 to effect the substitution, Counsel for the appellant moved for further time to file substitution papers and then another date was granted for the appellant to take steps. Learned Counsel for the appellant today informs court that the substitution papers that have been filed on the 26.02.2014 are incomplete as the death certificate of the deceased 3<sup>rd</sup> defendant-respondent is not annexed to the papers filed.

In paragraph 7 of the affidavit filed on 26.02.2014, it is stated that the death of the 3<sup>rd</sup> defendant-respondent had not been registered. It is very strange to submit that a death of a particular person has not been registered unless the body of that person had been disposed of unlawfully. No such material is available in this instance. However, without the death certificate of the deceased 3<sup>rd</sup> defendant-respondent, application to substitute his heirs, made in the papers [no petition is filed with those papers to support the application] tendered on 26.02.2014 cannot be maintained. Accordingly, the said application referred to in the papers filed on 26.02.2014 is rejected.

At this stage, Ms.Amarasinghe brings to the notice of this court that the 3<sup>rd</sup> defendant had died in the year 1985. Then, it is obvious that he had died while this case was pending in the District Court. The appellant, being the Plaintiff to this action should have taken steps to substitute the heirs of the 3<sup>rd</sup> defendant at that point of time, which duty

he has failed to perform for nearly 30 years. He, in the capacity as the appellant too, has failed to take the necessary steps to effect the substitution though several dates have been given for him to file necessary papers. At this stage, it must be noted that the judgment in this case had been delivered in the year 1998. The aforesaid attitude of the appellant has resulted much inconvenience and expenses to the respondents in this case. Accordingly, it is seen that the appellant is not prosecuting this appeal diligently. In the circumstance, court makes an order abating the appeal.

*Appeal abated*

**JUDGE OF THE COURT OF APPEAL**

/mds