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

K. D. G. Gamini Duhulwela  
of "Mahinda Welada Sela"  
20<sup>th</sup> Mile Post, Girithale.

**1<sup>st</sup> Defendant - Appellants**

**C. A. No. 1151/99 (F)**

**D. C. Polonnaruwa 5380/L.**

Vs.

R. G. C. Wijesiri  
Lanka Filling Station  
Girithale, Polonnaruwa.

**Plaintiff - Respondents.**

**C.A.No.1151/99**

**D.C.Polonnaruwa No.5380/L.**

**Before** : M.M.A. Gaffoor, J.

**Counsel** : W.D.Weeraratne for the 1<sup>st</sup>  
defendant-Appellant

S.N.Wijithsing for the Plaintiff-  
Respondent

**Written submission filed on** : Plaintiff Respondent filed on  
27/02/2018

**Decided on** : 29/06/2018

**M. M. A. Gaffoor, J.**

A preliminary objection was raised by the plaintiff - respondent when this matter was taken up for argument. It was submitted that the notice of appeal and the petition of appeal is not signed by the Attorney-at-Law on record for the plaintiff - appellant. Hence the argument was made that the appeal was bad in law and should be dismissed.

According to the brief the notice of appeal has been filed by S. B. Iddawela, Attorney-at-Law who was the Attorney on record for the 1<sup>st</sup> Defendant - Petitioner - Appellant ( Page 105) and the

said S.B. Iddawela Attorney- at - Law has filed a proxy on behalf of the 1<sup>st</sup> Defendant - Petitioner- Appellant on 20/11/1991 and taken all the steps in order to defend the 1<sup>st</sup> defendant - Petitioner - Appellant. But when the District Court matter was concluded the petition of appeal was filed by one Mrs. Dharma Thennakoon, Attorney- at- law. (Accordingly to (page 9) she has filed a petition of appeal on 27/01/2000 without revoking the proxy of this Attorney of the record.)

The plaintiff - respondent took up the preliminary objections on the following basis :-

In terms of Section 775 (1) and 775 (3) of the Civil Procedure Code the notice of appeal and the petition of appeal shall be signed by the Registered Attorney and in the circumstances of this case, the notice of appeal was signed by the Registered Attorney on records but the petition of appeal had been filed by a defendant Attorney without revoking the proxy of the Registered Attorney (Who is not the Registered Attorney.)

Section 775 (1) states that "Every notice of appeal shall be distinctly written on good and suitable paper and shall be signed

by the appellant or his Registered Attorney and shall be duly stamped. Such notice shall also contain following particulars....”

Section 755 (3) read as “*Every appellant shall within 60 days from the date of the judgment or decree appealed against, present to the original Court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by the Section 758, which shall be signed by the appellant or his Registered Attorney. Such petition of appeal shall be exempt from stamp duty. The determination of this objection requires an examination of the procedure rules governing the filing and revocation of proxy. In this context it is important to bear in mind the following pronouncement of **A.R.B. Amarasinghe, J. in Fernando Vs. Cibel Fernando and other 1997 3 SLR page 01.***”

There is a substantive law and there is a procedural law. Procedural law is not secondary. The maximum ubi ius ibi remedium reflects the complimentary character of Civil Procedure Law. The two branches are also interdependent. It is by

procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives it remedy and effectiveness and brings it into action.

Section 24 of the Civil Procedure Code permits a party to an action to make or do certain appearances, and applications or acts in any Court or any person, by his recognized agent or by a Registered Attorney duly appointed by the party.

Section 5 of the Civil Procedure Code defines a Registered Attorney to mean an Attorney-at-Law appointed under chapter 5 by a party or his recognized agent to act on his behalf.

Section 27 (1) of the Civil Procedure Code requires the appointment of Registered Attorney to be made in writing signed by the client. There is no dispute between the parties that Mr. S.B. Iddawela Attorney-at-Law has been appointed by the plaintiff to be his Registered Attorney. According to a page 105 of the brief indicate that the answer was filed along with the proxy of Mr. S.B. Iddawela Attorney-at-Law on behalf of the 1<sup>st</sup> defendant-petitioner-appellant.

The plaintiff-respondent's contention was that Sections 755 (1) and Section 755 (3) of the Civil Procedure Code the notice of appeal and the petition of appeal shall be signed by the Registered Attorney and in the circumstances in this case the notice of appeal was signed by Attorney on record but petition of appeal has been filed by a different Attorney called one Dharma Thennakoon Attorney-at-Law, according to page 9 of the brief but there is no revocation papers filed by the Registered Attorney.

Section 27 (2) of the Civil Procedure Code states that once a proxy is filed, it shall be in force until revoked with the leave of the Court and after notice to the Registered Attorney by a writing signed by the client and filed in Court.

The case of ***Seelawathi Vs. Jayasighe 1986 3 C.L.R at page 133 Hutchison C.J.*** " it is a recognized principle in Court proceedings that when there is an Attorney-at-law appointed by a party such party must take all steps in the case though such Attorney -at-Law.

In the case of ***Tilkaratne Vs. Wijesinghe 1986 3 CLR at page 133 Hutchinson*** held that “Section 27 of the Civil Procedure Code is directly and this view is supported by a ***Kadiragamadase Vs. Suppiah 56 N.L.R 172 and also Jeevani Investment Pvt. Ltd. Vs. Wijesena Perera 2008 SLR page 207*** It was declared that ” A final appeal commences with the filing of notice of appeal and the petition of appeal in the original Court by a Registered Attorney on record, appeal proceedings in the Court of Appeal are continuation of the proceedings commenced in the Original Court” and at page 209 it was held by citing the Section 27 of the Civil Procedure Code that “the proxy shall be in force until revoked it with the leave of Court”.

In the circumstances if this case it has not been revoked and also the ***J.A.N de Silva C.J. in S.P. Gunathilake Vs. S.P.Ekanayake 2010 2 SLR at page 191*** was concerned whether the wording of Section 27 of Civil Procedure Code permitted such a liberal construction.

Section 27 of the Civil Procedure Code clearly specifies the manner in which a proxy it should be filed and revoked. It is the duty of the Court to follow the Provisions of Section 27 (2) of the Civil Procedure Code when revoking a proxy. Unless and until the procedure is adhered to by Court, no proxy could be revoked. Till then the proxy filed earlier proxy will in force.

**Ran-Naid Vs. Wimlasooriya (C.A. 1015/93) (F) C.A. Minutes of 29/4/2014** and also observed in the case of **Silva Vs. Cumarathunga 40NLR page 139** a petition of appeal must be signed by a Procter was proxy on record at the date on which the petition is filed. It is true that the party dissatisfied with his Registered Attorney is liberty to revoke the proxy and appoint another Attorney-at- Law as his Registered Attorney but in revoking the proxy the party has to follow the procedure prescribe in Section 27 (2) of the Civil Procedure Code revocation must be made with the leave of Court and after the notice to the Registered Attorney. **Wamigaratne Vs. Dissanayake 2002 2Sri L.R.** Page 331 the question when is whether the proxy of Mr. S. B. Iddawela Attorney- at - Law was duly revoked. In this case there is no application in writing signed by the plaintiff and filed



in court as required by Section 27 (2) of the Civil Procedure Code. Court did not have granted of leave for the revocation of the proxy. Firstly there was no written application signed by the plaintiff has required by section 27 (2) of the Civil Procedure Code. In the case of **Daniel Vs. Chandradeva 1994 2SLR Page 01** the Supreme Court emphasize the important of the instructing Attorney revoking the proxy only after warning the client and giving him a reasonable time to appoint another Registered Attorney. In fact clear to the Civil Procedure Code Amend Act No. 8 of 2017, the Registered Attorney could not initiate an application for revocation of proxy. It had to be done by the client. The Court must have clear notice of Registered Attorney appointed to look after the interest of a party. The Court is also duty bound to ensure that leave to revoke a proxy is not granted unless the client is fully aware of proposed revocation. Whether an application for revocation of proxy should be allowed or not is a matter of the discretion of Court. **Fernando Vs. Mathewa 15 NLR Page 88** in view the proposed Section 27(2) of the Civil Procedure Code I am of the view the procedure set therein is a mandatory nature.

Therefore, the petition of appeal filed by the Dharma Thennakoon Attorney-at - law who is not the Attorney on record was defective in terms of Section 755 (3) of the Civil Procedure Code and therefore the reasons set out above, I uphold the preliminary objection raised by the plaintiff-respondent and dismiss the appeal. I make no order as to costs.

**JUDGE OF THE COURT OF APPEAL**