

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

Wauwage Nishantha,  
Etambagahahena,  
Palolpitiya,  
Thihagoda.  
2<sup>nd</sup> Party-Petitioner-Appellant

**CASE NO: CA/PHC/29/2015**

**HC MATARA CASE NO: HCRA/92/2013**

**MC MATARA CASE NO: 61110**

Vs.

Wauwage Kamala,  
Etambagahahena,  
Palolpitiya,  
Thihagoda.  
1<sup>st</sup> Party-Respondent-Respondent  
And 2 Other Intervenient Party-  
Respondent-Respondents

Before: A.L. Shiran Gooneratne, J.

Mahinda Samayawardhena, J.

Counsel: Ranil Samarasooriya for the Appellant.

Dharshana Weraduwege for the Respondents.

Argued on: 31.05.2019

Decided on: 14.06.2019

Mahinda Samayawardhena, J.

This is an appeal filed from the Judgment of the High Court. The learned counsel for the respondent took up a preliminary objection to the maintainability of this appeal on the basis that the Petition of Appeal has not been signed by the Attorney on record.

Learned counsel for the appellant concedes that, according to Rule 4(1) of the Court of Appeal (Procedure for Appeals from High Courts established by Article 154P of the Constitution) Rules of 1988, every Petition of Appeal “shall be signed by the appellant or his Attorney-at-Law”. However his contention is that any Attorney-at-Law can sign the Petition of Appeal. I am unable to agree.

It does not say “shall be signed by the appellant or any Attorney-at-Law”. It says “shall be signed by the appellant or his Attorney-at-Law”. Who is the Attorney-at-Law of the appellant? According to the proxy filed by the appellant in the High Court found at page 86 of the Appeal Brief, it is Sunil Basnayake, Attorney-at-Law. That proxy has not been revoked up to now. However, the Petition of Appeal has been signed by D.S. Jayawardena, Attorney-at-Law. If a proxy has been filed, “his Attorney-at-Law” refers to the Attorney-at-Law on record. Until the proxy is revoked, neither the Appellant nor any other Attorney can sign the Petition of Appeal. Vide *Fernando v. Sybil Fernando* [1997] 3 Sri LR 1 (SC).

According to Rule 2(1)(a) of the aforesaid Rules, appeal shall be lodged in the High Court with the Petition of Appeal addressed to the Court of Appeal. Hence the appeal originates in the High

Court and the High Court transmits the case record to the Court of Appeal. Appeal proceedings in the Court of Appeal are a continuation of the proceedings commenced in the High Court. Therefore the Attorney on record shall sign the Petition of Appeal and it cannot be done by any other Attorney. Vide *Jeevani Investments (Pvt) Ltd. v. Wijesena Perera [2008] 1 Sri LR 207 (SC)*.

Preliminary objection is upheld and appeal is dismissed with costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal