

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

*In the matter of an application for revision
in terms of Article 154P(3)(b) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

Officer-in-Charge,
Police Station,
Colombo Fort.

Complainant

Vs.

Court of Appeal Application
No: **CA/PHC/147/17**

High Court of Colombo
No: **150/14**

Magistrate's Court of
Colombo Fort:
No: **87929**

P. G. Jayantha Ananda,
No 69/11, Ekamuthu Pedesa,
Makilangamuwa,
Ganemulla.

Accused

And between

Jude Kathy de Silva,
No 111/11
Kirula Road,
Narahenpita,
Colombo 05

Petitioner

(Party aggrieved by the order for disposal
of property under Section 425 of the Code
of Criminal Procedure delivered in

relation to this matter by the Magistrate's Court of Colombo Fort in Case No 87929)

Vs.

P. G. Jayantha Ananda,
No 69/11, Ekamuthu Pedesa,
Makilangamuwa,
Ganemulla.

Accused Respondent

And now between

(Now deceased)

P. G. Jayantha Ananda,
No 69/11, Ekamuthu Pedesa,
Makilangamuwa,
Ganemulla.

Accused Respondent-Appellant

Vs.

Jude Kathy de Silva,
No 111/11
Kirula Road,
Narahenpita,
Colombo 05

Petitioner-Respondent

Officer-in-Charge,
Police Station,
Colombo Fort.

Complainant-Respondent-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Mohan Walpita with Kavindu Herath for
the petitioner

Supported on : 26.07.2022

Decided on : 30.08.2022

Iddawala – J

This is an appeal filed on 15.08.2017 against an order of the Provincial High Court of Western Province holden in Colombo dated 28.07.2017 in Case No 150/14 whereby a vehicle bearing No. 54-7563 was disposed under Section 425 of the Criminal Procedure Act, No. 15 of 1979. Aggrieved by the said order of disposal, the accused-respondent-appellant (*hereinafter the appellant*) has filed the instant appeal, seeking the release of the said vehicle in his favour.

Prior to the appeal being fixed for argument, the appellant, namely, P. G. Jayantha Ananda, passed away. Substitution papers were filed informing the Court that one Wahampurage Wijerathne will be substituted in place of the deceased. The said papers include a joint affidavit from the wife and the daughter of the deceased appellant, asserting that they have no objections to the substitution of Wahampurage Wijerathne (*hereinafter the purported substituted party*) as the substituted accused respondent-

appellant of the instant appeal. Vide averment 04 of the substituted party's affidavit, it is submitted that he has given money to the deceased appellant in order to purchase the vehicle bearing No. 54-7563. The application for substitution was supported on 26.07.2022, and this Court reserved its order.

At the outset, the law governing the circumstances of the instant application ought to be examined. Section 358 of the Code of Criminal Procedure Act, No.15 of 1979 (*hereinafter the CPC*) sets out the procedure for abatement as follows:

(1) Every appeal and application for leave to appeal to the Court of Appeal under this Code shall abate on the death of the accused:

Provided that where the appeal or application is against a conviction, a person aggrieved may with the leave of the court hearing the appeal intervene and prosecute the appeal or application only in so far as the finding of guilt is concerned.

(2) The expression "person aggrieved" shall have the same meaning as in section 16 of the Judicature Act.

As per Section 358 of the CPC, with the demise of the appellant, proceedings of the appeal filed by him can be continued by an 'aggrieved party'. The definition of who constitutes an 'aggrieved party' is contained in Section 16 of the Judicature Act, No. 2 of 1978 as amended:

(1) A person aggrieved by a judgment, order or sentence of the High Court in criminal cases may appeal to the Court of Appeal with the leave of such court first had and obtained in all cases in which the Attorney-General has a right of appeal under this Chapter.

(2) In this section "a person aggrieved" shall mean any person whose person or property has been the subject of the alleged offence in respect of which the Attorney-General might have appealed under

*this Chapter and shall, **if such person be dead, include his next of kin namely his surviving spouse, children, parents or further descendants or brothers or sisters.***

(3) *Nothing in this section shall in any way affect the power of the Court of Appeal to act by way of revision in an appropriate case.*

(Emphasis added)

The Legislature has clearly set out that the next of kin of a deceased person, such as the surviving spouse, children, parents or further descendants or brothers or sisters, would qualify as an 'aggrieved party' in the event of abatement. However, the purported substituted party has failed to establish any such kinship between the deceased appellant and himself. His only assertion is that the next of kin of the deceased appellant, namely the wife and daughter of P. G. Jayantha Ananda, has not objected to him being substituted to continue the deceased appellant's appeal. The legislature has not provided for substitution by consent as evinced by a perusal of Section 16 of the Judicature Act. Hence, the purported substituted party does not fall within the ambit of an '*aggrieved party*' as per Section 16(2) of the Judicature Act.

The submission that the purported substituted party has lent money to the deceased appellant to purchase a vehicle and thereby is aggrieved by the disposal of a vehicle allegedly belonging to the deceased cannot be construed to clothe the purported substituted party with *locus standi*. The handing over of money is a separate transaction between the deceased appellant and the purported substituted party, the recovery of which ought to be asserted against the estate of the deceased. Any claim of ownership to the vehicle/ any monies to be recovered from the deceased appellant is entirely independent of Case No 150/14 of the Provincial High Court of Western Province holden in Colombo, which is the subject matter of the instant appeal.

In order to further illustrate the remoteness of the purported substituted party's involvement in the instant appeal, one can refer to the order dated 28.07.2017 delivered by the learned High Court Judge in Case No 150/14 which is sought to be revised by the instant application. Case No 150/14 concerns a revision application filed by the petitioner-respondent of the instant application against an order of the Magistrate of Colombo Fort in Case No 87929 dated 12.09.2014. After the conclusion of Case No 87929, the Magistrate acquitted the appellant from all charges, namely retention of stolen property and dishonest misappropriation of property, and further ordered the vehicle bearing No 64-7463 (subject matter) to be released to the deceased appellant after an inquiry. Aggrieved by the Magistrate's order, the petitioner-respondent filed a revision application in the Provincial High Court of Western Province holden in Colombo in Case No 150/14, whereby on 28.07.2017, the learned High Court Judge set aside the Magistrate's order, releasing the vehicle to the petitioner-respondent. Against such order, the deceased appellant had filed the instant appeal (although the Caption refers to 'revision application', this Court notes that the instant application has been filed under Section 331 of the Criminal Procedure Act No. 15 of 1979) The extent of the purported substituted party's involvement in the above-related proceedings is limited to giving evidence as a witness at the trial before the Magistrate Court. The impugned order dated 28.07.2017 does not refer to the purported substituted party, and neither has his claim to the vehicle bearing No 64-7463 been proven or otherwise established during the Magistrate Court's proceedings. This Court sees no reason to allow the purported substituted party to canvass his grievances in this forum.

Furthermore, besides the provisions provided in the CPC and the Judicature Act, since 2018, circumstances of the instant nature are provided for in Amendments to Court of Appeal (Appellate Procedure) Rules No. 2091/58 of 04.10.2018 (In) – Part VI, which refers to any applications filed under Article 138, 140 and 141 of the Constitution to

the Court of Appeal. The Rule 1 (In Part-VI) contained therein provide for the filing of a memorandum nominating at least one person and not more than three persons in order of preference to be the applicant's legal representative for the prosecution of his application in the event of the applicant's death. It is pertinent to note that Rule 3 (In Part-VI) stipulates the following: "*if the Petitioner does not file such a memorandum the Court may dismiss the application in the event of the death of the Petitioner or the change of status of the Petitioner*". Whilst the said Rule was not in operation at the time the instant application was made, this Court notes its relevance for future references.

It is the considered view of this Court that the purported substituted party has no *locus standi* to maintain the instant revision application as per Section 358 of the CPC read with Section 16 of the Judicature Act.

Hence, application for substitution is rejected.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL