

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

In the matter of an application for Restitutio  
in Integrum under Article 138(1) of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

CA/RII/09/2023

D. C. Colombo Case No. 02/2021

Abdul Raheem Thameem Safrun  
Nisa,  
No. 145. Kandy road,  
Mallawapitiya,  
Kurunegala,  
Correct Address  
No. 18, 02<sup>nd</sup> Lane,  
Mawilmada, Kandy

Now at  
P. O. Box 4435, MDC Hoppers,  
Crossing VIC 3029

Appearing by his duly appointed  
Power of Attorney Holder  
Mohamadu Juneideen  
Mohamadu Nazeer of No. 185/6,  
Hettiyawatta, Mallawapitiya,  
Kurunegala

**Defendant Petitioner**

**Vs.**

Mohamed Hanifa Hawwa Bibi,  
No. 18, 02<sup>nd</sup> Lane,  
Mawilmada  
Kandy.

**Plaintiff Respondent**

Before: Hon. D.N. Samarakoon, Judge of the Court of Appeal  
Hon. Neil Iddawala, Judge of the Court of Appeal

Counsel: Erusha Kalidasa, appears for the Defendant – Petitioner  
N. M. Shaheid instructed by M. A. Zaid for the plaintiff respondent.

Supported on: 09.08.2023

Date: 29.08.2023

**ORDER**

**D.N. Samarakoon, J.**

In **Silva vs. Cumaratunga (1938) 40 NLR 139**, Maartensz J., said,

“The ratio decidendi in old cases, with which I respectfully agree, was that this Court cannot recognise two proctors appearing for the same party in the same cause”.

A similar situation has arisen in this case.

Mr. Erusha Kalidasa instructed by Ms. Ranjanie Keragala Jayaweera supported this matter on 24.05.2023 for notices on the respondents and for a stay order under paragraph (f) of the petition, which the court granted on a prima facie basis.

On the notice returnable date, which is 06.06.2023, it is recorded that Mr. N. M. Shaheid appears with M. A. Zaid for the plaintiff respondent. What was so recorded was the information provided in the “appearance list” for the day, transcribed by the court stenographer.

The plaintiff respondent is Mohamad Hanifa Hawwa Bibi of No. 18, 2<sup>nd</sup> Lane, Mawilmada, Kandy.

There is a proxy dated 25.06.2023 which is filed of record which is given by Mohamed Haniffa Hawwa Beebee bearing National Identity Card No. 486001160V, by which she has appointed Mr. M. A. Zaid, Attorney at Law as her registered attorney.

It bears both the signatures of Mr. M. A. Zaid and M. H. Hawwa Beebee. She has signed in English as “I. H. Beebi”.

Mr. M. A. Zaid has tendered statement of objections dated 28.06.2023 by a motion dated 05.07.2023.

This was accepted by court on 14.07.2023 and a date has been given for counter objections for 25.07.2023.

On 25.07.2023, Mr. Shaheid brought to the notice of the court that his registered Attorney has received a copy of a motion purporting to revoke the proxy and he moved to notice the plaintiff respondent Mohamed Hanifa Hawwa Beebi to appear in court, which was granted and notice was issued on her by court through registered post. The next date was 09.08.2023.

On 09.08.2023 Mr. Malin Danansooriya purportedly appeared for the plaintiff respondent, instructed by Ms. Lakshani Himashi, Attorney at Law.

As Mr. Shaheid who was present in court took up the position, that, proxy given to his registered Attorney was not properly revoked, the court fixed this matter for order, on the very basis of the above statement or Maartensz J., according to his lordship based on the ratio decidendi of old cases.

There is a motion filed of record dated 14.07.2023 purporting to be a revocation of the earlier proxy which motion is filed by Ms. U. G. Laksahani Himashi, Attorney at Law.

It contains a document dated 13.07.2023 which narrates that Mohamed Hanifa Hawwa Bibi revokes the proxy dated 06.06.2023 given to Mr. M. A. Zaid.

This document bears a thumb impression, purported to be the left thumb impression of the said M. H. Hawwa Bibi and the signature of Ms. Himashi.

The documents says, “having received the leave of the above named court in that behalf”.

No such leave, for the revocation of the earlier proxy, has been granted by this court.

Neither the motion of Ms. Himashi dated 14.07.2023 prays for such leave.

It was said in **FERNANDO et al. v. MATHEW et al., 1911**, by Wood Renton J., that,

“It appears to me that section 27 of the Civil Procedure Code invests the Court with a real discretion as to whether or not the revocation of a proxy should be allowed,...”

In **WANIGARATNA V. DISSANAYAKE, 2001**, Weerasuriya J., said,

“Section 27 (2) stipulates that revocation must be effected with the leave of Court and after notice to the registered Attorney. **In the case of**

**Fernando v. Mathew it was held that section 27 of the Civil Procedure Code invests the Court with a real discretion as to whether or not the revocation of a proxy should be allowed”.**

Section 27(2) of the Civil Procedure Code says,

“

(2) When so 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,...

It was further held in **Fernando et al vs. Mathew et al, 1911**, that,

“The Civil Procedure Code nowhere gives the grounds on which leave to revoke a proxy could be given or withheld; the position of proctor and client is merely that of an agent and principal The proctor cannot insist on acting for the client against the client's will. In re Galland, (1885) 31 Ch. D. 296,300, Saffron Walden Building Society v. Rayner. (1880) 14 Ch. D. 406.”.

“Saffron Walden Building Society v. Rayner is a legal case that was heard in the Court of Appeal of England and Wales in 1880 <sup>1</sup>. The case is also known as Saffron Walden Second Benefit Building Society v Rayner <sup>2</sup>. The case concerned a mortgage taken by the plaintiff, Saffron Walden Building Society, and the defendant, Rayner. The defendant was a solicitor who acted for the trustees and executors of an estate that was mortgaged to the plaintiff. The plaintiff claimed that the defendant had failed to disclose certain information about the estate that would have affected their decision to grant the mortgage. The court held that the defendant had breached his duty to disclose this information and was liable for damages <sup>1</sup>.

The case is significant because it established the principle that a solicitor who acts for both parties in a transaction must disclose any material facts that might

affect their client's decision <sup>3</sup>". [This passage was generated by AI in [www.bing.com](http://www.bing.com)]

In that case James LJ observed at page 409:

“A man has no more a solicitor in that sense than he has an accountant, or a baker, or butcher. A person is a man's accountant, or baker, or butcher, when the man chooses to employ him or deal with him, and the solicitor is his solicitor when he chooses to employ him and in the matter in which he is so employed. Beyond that, the relationship of solicitorship does not extend...”

(cited in STEVE STRAUGHN CLAIMANT AND JENNIFER EDWARDS FIRST DEFENDANT and others, 2015, in THE SUPREME COURT OF JUDICATURE HIGH COURT of Barbados<sup>1</sup>)

In this case, Mohamed Hanifa Hawwa Beebee has chosen to employ Mr. M. A. Zaid. When she did, she signed in English as “I. H. Beebi”. That was on 25.06.2023. Why did she lose her ability to sign by 13.07.2023? She did not come to court on notice. No medical certificate or any other excuse was adduced in writing to court in regard to her absence.

Sometimes there is a practice of obtaining written consent of the first lawyer for revocation. If that were the case it could have been accepted. But the learned counsel instructed by M. A. Zaid says the revocation is not proper. Even then under section 27(2) a proxy could be revoked if notice of revocation has been sent to the first lawyer. But it needs the leave of court. It is well to

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<sup>1</sup> [Steve Straughn v Jennifer Edwards et al | Barbados Judicial System \(barbadoslawcourts.gov.bb\)](http://SteveStraughn.v.JenniferEdwards.et.al|BarbadosJudicialSystem(barbadoslawcourts.gov.bb))

remember that proxies in this country could be revoked only by leave of court. If it is not done, under section 27(2), which says,

“When so filed, **it shall be in force until revoked with the leave of the court...**” the first proxy is in force. The situation in this country is somewhat different to **Saffron Walden Building Society v. Rayner** due to this provision.

The first proxy having been signed in English, whereas the second purported proxy bearing a purported thumb impression and the absence of the plaintiff respondent in court on notice make it impossible for this court to grant leave.

Hence it is hereby ordered that the proxy dated 25.06.2023 given to Mr. M. A. Zaid is valid. The other purported proxy is not valid and rejected.

The Registrar is directed to keep the docket in safe.

Judge of the Court of Appeal

Neil Iddawala J.

I agree.

Judge of the Court of Appeal