

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

1. Heelbathdeniya Arachchilage  
Weeraratne,  
Ethiriyagala,  
Hettimulla.
2. Heelbathdeniya Arachchilage  
Piyasena,  
Evunugalle,  
Hettimulla.

**Plaintiffs**

C.A. No. 1109 / 2000 F

**Vs.**

D.C. Kegalle No. 25447 / P

Udawela Arachchilage Dingiri  
Mahaththaya,  
Ethiriyagala,  
Hettimulla.

Defendant

**AND NOW BETWEEN**

Heelbathdeniya Arachchilage Piyasena,  
Evunugalle,  
Hettimulla.

2<sup>nd</sup> Plaintiff Appellant

**Vs**

Heelbathdeniya Arachchilage  
Weeraratne,  
Ethiriyagala,  
Hettimulla.

1<sup>st</sup> Plaintiff Respondent

Udawela Arachchilage Dingiri  
Mahaththaya,  
Ethiriyagala,  
Hettimulla.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Rasika Nilantha for the 2<sup>nd</sup> Plaintiff  
Appellant  
S.N. Vijithsingh for the Defendant  
Respondent  
Upul Kumarapperuma with Udumbara  
Dasanayake for the 1<sup>st</sup> Plaintiff Respondent

ARGUED ON : 04.12.2012

DECIDED ON : 22.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the District Court of Kegalle seeking to partition the land described in the schedule to the plaint. After trial the learned District Judge delivered judgment to partition the land. Being aggrieved by the said judgement dated 11.12.2000 the 2<sup>nd</sup> Plaintiff Appellant has preferred the instant appeal to this court.

At the hearing of this Appeal the learned Counsel for the Appellant and the Respondents conceded that the notice appeal has not been signed by the Attorney on record.

I have carefully perused the said notice of appeal. It is clear that the said Notice of Appeal has been signed by the 2<sup>nd</sup> Plaintiff Appellant. The Attorney on record of the said Appellant has not signed the said Notice of Appeal.

The main case record bears the fact that Mr. H. A. Premachandra Attorney At Law has filed a proxy on behalf of the 2<sup>nd</sup> Plaintiff Appellant. The said proxy is still remaining in force. Therefore the said Notice of Appeal should have been signed by said Attorney At Law of the Appellant. It is well settled law that when the Registered Attorney at Law is alive and his proxy remains on a record without being revoked, the Notice of Appeal must be signed by such Attorney and by no one else.

In the case of Fernando Vs Sybil Fernando and 2 others [1996] 2 SLR 169 (CA) held that "Section 24 of the Civil Procedure Code gives the freedom to a party to make any appearance or application or appear in Court unless the law authorized that he should be expressly represented by an Attorney-at-Law. But once an Attorney-at-Law was duly appointed by the party concerned he foregoes his rights to tender and sign the Notice of Appeal when the Registered Attorney at Law is alive and his proxy remains on a record without being revoked."

Supreme Court in Fernando Vs Sybil Fernando and others [1997] 3 SLR 1 held that "A litigant has a statutory right to act for himself unless the law provides otherwise (section 24 CPC). But so long as an instrument of the

appointment (proxy) under section 27(1) CPC of a registered Attorney-at-Law is in force, a litigant who has executed such an instrument must act through his registered attorney until all proceedings in the action are ended and judgment satisfied so far as regards that litigant: while the proxy is in force, he cannot himself perform any act in court relating to the proceedings of the action. When the instrument (proxy) is filed, it shall be in force, unless revoked, or until the client or registered attorney dies or become incapable to act or until all proceedings in the action are ended and judgment satisfied so far as regards the client (section 27(2) CPC). Where therefore there is an attorney on record, the notice and petition of appeal must be signed by such attorney and by no one else; if it is signed by the party himself or by some other attorney, it is not in conformity with the law and must be rejected.

The provision in section 755(1) CPC, that every notice of appeal "shall be signed by the appellant or his registered attorney" must be conferred with reference to the content and other clauses of the Code. Where the notice of appeal is signed by the appellant himself when he had a registered attorney on record, the lapse is fatal and is not curable in terms of section 759(2) CPC."

In the said circumstances I dismiss the instant appeal of the 2nd Plaintiff Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal