

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

In the matter of an application for substitution  
in the room of Lakmana Gamage Piyasena  
Podimahattaya, the Petitioner now deceased.

**Court of Appeal case No..... CA/PHC/208/05**

**High Court of Kegalla case No..... 1776/Rev**

**Magistrate Court of Ruwanwella case No. 36744**

Lakmana Gamaga Hemantha,  
135/3, Maharagama Road, Mampe, Piliyandala.

**Petitioner**

**Vs.**

Nekath Rallage Luwis Singh alias  
Gunawardhana of Madagalla Noori

**Respondent Petitioner Respondent**

1. N.R.Gunawathi of Madagalla Noori
2. N.R.Rathnasiri of Madagalla Noori
3. N.R.Samanthilaka Wijewardhana of  
Wattegedaragama, Deraniyagala.

**Intervient Respondents**

**Before** : H.C.J.Madawala J.  
: L.T.B. Dehideniya J.

**Counsel** : N.R.M. Daluwatta for the Petitioner

: Mahinda Nanayakkara with Aruna Jayathilake for the  
Respondent Petitioner Respondent

**Written submissions filed on: 28.10.2016**

**Decided on : 28.02.201**

**L.T.B. Dehideniya J.**

The Petitioner Respondent Appellant passed away while this appeal is pending. The learned Counsel for the Appellant moved for permission to substitute the Petitioner on behalf of the deceased to prosecute the appeal and filed the petition and affidavit with supporting documents marked as x1 to x7. The Respondent Petitioner Respondent objected to this application on the basis that the father's name appears in the birth certificates of the children is different from the name of the Appellant appears in the case record.

The appellant died on 20<sup>th</sup> March 2015 and his wife was predeceased. They had four children by the marriage namely Sarath, Vasantha, Sisira and Hemantha. The father's name in the respective birth certificates appear as

Lakmana Gamage Piyasena Podimahattaya,

Lakmana Gamage Piyasena alias Podimahattaya,

Lakmana Gamage Piyasena Podimahattaya, and

Lakmana Gammaddalage Piyasena Podimahattaya.

The said four children have sworn affidavits and stated that the person referred to in different names in the said birth certificates is the one and the same person and is the father of them. The name is only to

identify the person, but what is necessary is whether the Appellant is the father of the persons named in the application for substitution. Even though there are slight differences in the name of the father, the children admit under oath that he is the father.

I overrule the objections.

I substitute the Petitioner Lakmana Gamage Hemantha in place of the deceased Appellant under section 760A of the Civil Procedure Code.

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal