

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

In the matter of a Rule in terms of Section 42(2) of the Judicature Act No. 2 of 1978, against Mr. D. S. Bodhinagoda, Attorney-at-Law of the Supreme Court.

Mr. D. M. A. Jeewananda  
Dissanayake,  
No. 12K Ruben Perera Mawatha,  
Boralessgasmuwa.

**COMPLAINANT**

Vs.

S.C. Rule No. 01/2010

Mr. D.S. Bodhinagoda,  
Attorney-at-Law,  
No. 30/1 Wethara,  
Polgasowita.

**RESPONDENT**

**BEFORE** : Thilakawardane, J  
Imam, J  
Dep, PC, J &

**COUNSEL** : Ms. Viveka Siriwardane De Silva SSC for the  
Hon. Attorney General.  
Rohan Sahabandu for the Bar Association.  
Complainant appears in person.  
Respondent appears in person.

Rule dated 04.11.2010 was issued under the hand of the Registrar of the Supreme Court on the Respondent Attorney-at-Law (herein after referred to as the Respondent) to show cause why he should not be suspended from practice or be removed from office of Attorney-at-Law of the Supreme Court in terms of Section 42(2) of the Judicature Act No. 2 of 1978 for deceit and/or malpractice and thereby conducting himself in a manner unworthy of an Attorney-at-Law.

This Rule is a sequel to two preliminary inquiries conducted by two panels of the Bar Association of Sri Lanka (BASL) against the Respondent. At the conclusion of the said inquiries, the respective panels had unanimously recommended that the Respondent be reported to the Supreme Court for necessary action.

On 17.12.2010, the Rule was read out to the Respondent in open court to which he pleaded not guilty and moved for time to show cause. The matter was thereafter fixed for inquiry.

The Attorney General appeared in support of the Rule. The Bar Association was represented by Mr. Rohan Sahabandu, PC and the Respondent appeared in person.

In ***Daniel v. Chandradeva*** [1994]2 SLR 1 , which explicitly considered the standard of proof in inquiries relating to a Rule under Section 42(2) of the Judicature Act, it was held as follows:

*“Where the conduct of an attorney is in question in disciplinary proceedings, it requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that a just and correct decision has been reached. The importance and gravity of asking an attorney to show cause makes it impossible for the Court to be satisfied of the truth of an allegation without the exercise of caution and unless the proofs survive a careful scrutiny. **Proof beyond reasonable doubt is not necessary, but something more than a balancing of the scales is necessary to enable the Court to have the desired feeling of comfortable satisfaction.** A very high standard of proof is required where there are allegations involving a suggestion of criminality, deceit or moral turpitude.” – per Amerasinghe, J.*

In terms of the charges preferred against the Respondent Attorney on the allegation of professional misconduct, as it involved an element of deceit and moral turpitude this court has examined the evidence on the basis as to whether the charges have been established on a high standard of proof and not on a mere balance of probabilities.

The Rule containing the charges levelled against the Respondent reads as follows:

“TO THE RESPONDENT ABOVE NAMED

Whereas a complaint has been made to His Lordship the Chief Justice by Mr. D.M.A.J. Dissanayake (herein after referred to the “complainant”) of No. 12, Ruben Perera Mawatha, Boralesgamuwa supported by an affidavit dated 04<sup>th</sup> January 2007 alleging deceit and malpractice on your part;

AND WHEREAS, the said complaint made by the said complainant disclose that,

- (a) You were retained to execute a Deed of Transfer by Anura S. Hewawasam.
- (b) The Deed, numbered 975, has thus been executed and attested by you on 5<sup>th</sup> May 2006 whereby, the land morefully described in the Schedule had been transferred to Eranga Lanka Jayasekera.
- (c) You, in the attestation clause had specifically stated that the executant was known to you and further that the witness-Prasanna L. Jayasekera and Vimal Hewapathirana had declared to you that the executant of the said Deed No. 975 was known to them.
- (d) You, had then proceeded to place your official seal in certifying and attesting the said Deed No.975.
- (e) You, were retained to execute a Deed of Transfer by Eranga Lanka Jayasekera.
- (f) The Deed numbered 998, had thus been executed and attested by you on 5<sup>th</sup> July 2006 whereby, the land morefully described in the Schedule had been transferred to Dissanayake Mudiyansele Anura Jeewanda Dissanayake for consideration of Rs. 1,000,000/=.
- (g) You, in the attestation clause had specifically stated that the executant was known to you and further that the witnesses-Senanayake Liyanage Don Kulasiri and Vimal Hewapathirana had declared to you that the executant of the said Deed No. 998 was known to them.
- (h) You, had then proceeded to place your official seal in certifying and attesting the said Deed No. 998.
- (i) You, had prior to executing the aforementioned instrument had informed Dissanayake Mudiyansele Anura Jeewanda Dissanayake that you had searched the Registers in the Land Registry for the purpose of ascertaining the state of the title in regard to the said land and that the title was in order.
- (j) It now transpires that Deeds bearing No. s 975 and 998 had been prepared in a fraudulent manner.

- (k) It now transpires that the lawful owner of the land described in the Schedules of the said Deeds- Anura S. Hewawasam had never sold the said land and upon being informed of it has lodged a complaint to that effect.
- (l) Furthermore, though you had agreed on 8<sup>th</sup> September 2007, at the inquiry held by a panel appointed by the Bar Association of Sri Lanka, to pay Rs. 300,000/= on or before 31<sup>st</sup> December 2007 and the balance amount in monthly instalments, you have failed to act as per the settlement.
- (m) You, as a Notary had failed to act in accordance with the provisions of the Notaries Ordinance, in particular section 31 of the said Ordinance.

AND WHEREAS, the aforesaid complaint made by the said complainant discloses that you have, by reason of the aforesaid acts of misconduct, committed:

- (a) Deceit and or malpractice within the ambit of Section 42(2) of the Judicature Act (read with Rule 79 of the Supreme Court Rules of 1978) which renders you unfit to remain as an Attorney-at-Law.
- (b) By reason of the aforesaid act you have conducted yourself in a manner which would reasonably be regarded as disgraceful or dishonourable of Attorneys-at-Law of good repute and competency and have thus committed a breach of Rule No. 60 of the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka and;
- (c) By reason of the aforesaid acts and conduct, you have conducted yourself in a manner unworthy of an Attorney-at-Law and have thus committed a breach of Rule No. 61 of the said Rules

AND WHEREAS, this Court is of the view that proceeding against you for suspension or removal from the office of Attorney-at-Law should be taken under section 42(2) of the Judicature Act No. 2 of 1978 read with the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

THESE ARE THEREFORE to command you in terms of section 42(3) of the Judicature Act No. 2 of 1978 to appear in person before this court at Hulftsdorp, Colombo 12, Sri Lanka, on this 17<sup>th</sup> Day of December 2010 at 10.00 a.m. in the forenoon and show cause as to why you should not be suspended from practice or be removed from the office of Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka, in terms of Section 42(2) of the Judicature Act and it is ordered that this Rule be served on you through the Fiscal of the District Court of Homagama.”

In terms of Rule 79(5) of the Supreme Court Rules 1978, a list of witnesses and documents was annexed to the Rule issued against the Respondent which was subsequently amended by an amended list of witnesses and documents filed by way of a motion dated 13<sup>th</sup> December 2011 which was served on the Respondent.

The Respondent was entitled to file a list of witnesses and documents in terms of Rule 80(3), if he intended to rely on evidence but the Respondent chose not to do so.

The Respondent did not rely on any evidence on his behalf nor did he give evidence at the inquiry although he informed court at the commencement of the inquiry that he had cause to show.

It is to be noted that the Respondent was afforded an opportunity to provide explanations prior to the issuance of the Rule against him and availing himself of the opportunity so granted to him, the Respondent had tendered explanations by letter dated 03.05.2007 (P21B) and affidavit dated 30.06.2008 (P21C) to the Registrar of the Supreme Court. The Respondent did not deny the attestation of the two fraudulent Deeds bearing Nos. 975 and 998. He had merely denied the charges in the complaint made against him but did not even attempt to justify his conduct. The Respondent states that he has made good the loss suffered by the complainant by transferring a land belonging to his daughter to the Complainant and by payment of monies at various stages to the complainant. The Respondent counter claimed that the complaint against him was fraught with malice.

It is pertinent to note that the said explanations have been duly considered by the Disciplinary Committees of the BASL during the preliminary inquiries prior to taking a decision to report the Respondent to the Supreme Court for necessary action.

Two preliminary inquiries had been conducted by the BASL against the Respondent as described below:

At the first inquiry under Ref No. PPC/1657 (original record marked P20) by the Panel "D" of the BASL comprising:

- (a) Mr. Sarath Jayawardena AAL (Chairman)
- (b) Mr. Owen De Mel, AAL (Member)
- (c) Mr. G.S.J. Widanapathirana, AAL (Member)

This inquiry had been initiated after a complaint had been lodged by the complainant to the BASL at the same time that he lodged an identical complaint with His Lordship the Chief Justice. The BASL has referred the complaint to its panel "D". Both the Complainant and the Respondent had been present at the said inquiry and there had been a settlement on

08.09.2007 where the Respondent had agreed to make a payment of Rs. 10 lakhs to the complainant as follows:

The Respondent had agreed to pay the complainant a sum of Rs. 300,000/- on or before 31.12.2007. Thereafter Rs. 10,000/- per month on or before 25<sup>th</sup> of each month until the full claim of Rs. 10 lakhs is settled. In the event the Respondent defaults in the said payments the matter was to be referred back to the BASL. Both the Complainant and the Respondent had signed the said settlement.

Subsequently the complainant has informed the BASL that the Respondent had not complied with the settlement agreed upon and no monies had been paid to the complainant as per the settlement. The panel "D" having noted that the Respondent has deliberately violated the conditions of the agreement had decided that the Respondent should be reported to the Supreme Court for necessary action.

At the 2<sup>nd</sup> Inquiry was held under Ref No. P/10/2007 (original record marked P21) by a Disciplinary Committee of the BASL comprising:

- (a) Mr. Nihal Fernando, PC (Chairman)
- (b) Mr. T.G. Gooneratne, AAL (Member)
- (c) Mrs. J.M. Coswatte AAL (Member)

This inquiry has been initiated on a direction by His Lordship the Chief Justice for a preliminary inquiry to be held in terms of Section 43(1) of the Judicature Act on a complaint made by the complainant by way of an affidavit dated 04.01.2007 (P 10) containing allegations of misconduct against the Respondent.

Although the Respondent had been noticed to appear before the said committee on 02.10.2008 by the Registrar of the Supreme Court and the said notice had not been returned, the Respondent had been absent and unrepresented and he had not given any reasons for his absence. The Panel having noted that the Respondent had been present at the inquiry on 31.05.2008 and represented by Counsel, and that the Respondent had tendered his observations by way of an affidavit dated 30.06.2008 (P21C) together with documents annexed marked V1-V4, continued with the inquiry in the absence of the Respondent.

The Complainant who was present had brought to the panel's notice the 1<sup>st</sup> inquiry referred to above.

The Disciplinary Committee has noted the following at the inquiry as reflected in the original record (P21):

“The main charge against the Respondent is that the Respondent AAL has acted for the buyer as well as the seller of a certain allotment of land which was purchased by the complainant as the buyer. ....”

Having considered the material before it, the panel had concluded that the Respondent has breached the code of ethics governing the conduct of Attorneys-at-Law and in those circumstances decided to report the Respondent to His Lordship the Chief Justice for appropriate action.

At the trial the complainant D.M.A.J. Dissanayake testified that he had made a complaint to His Lordship the Chief Justice by way of an affidavit dated 04.01.2007 (P 10) against the Respondent. He had responded to an advertisement in the Silumina newspaper dated 05.03.2006 (P 11) about lands being sold in exchange for cars or vans in good condition and made inquiries by telephone on the number given in the advertisement. A land in Boralesgamuwa which is 20.5 perches in extent was shown to the complainant by a person by the name of Eranga Lanka Jayasekera who claimed to be a Doctor and the owner of the said land in question. Since the complainant showed interest in purchasing it and inquired about the title to the said land, Eranga Lanka Jayasekera had informed the complainant that he can verify the title of the said land from a lawyer by the name of D.S. Bodhinagoda (Respondent) who handles legal matters for his family and that the said Eranga Lanka Jayasekera had introduced him to the Respondent. During the course of the complainant's evidence he identified the Respondent as the lawyer who was introduced to him as D.S. Bodhinagoda. The Respondent had confirmed that the land in question belongs to Eranga Lanka Jayasekera and that the latter has clear title to the said land and that all the relevant Deeds are in his custody.

He had believed the Respondent since the Respondent is an Attorney-at-Law and also because the Respondent has been an acting Magistrate of the Kesbewa Magistrate's Court. He had requested the Respondent to carry out a title search in respect of the land in question and that the Respondent had informed him that the Respondent had carried out a title search and he had confirmed that there is clear title for the last 70 years. The complainant and Eranga Lanka Jayasekera, the purported seller had agreed that the said land will be exchanged for two vehicles belonging to the complainant and cash for the balance. The complainant had signed an agreement dated 11.03.2006 (P12) at the Respondent's office agreeing to exchange two vehicles belonging to him and in addition to pay a sum of Rs. 250,000/= and the purported seller also had signed an agreement (P13) at the same time agreeing to exchange his land with the complainant for the said vehicles and the said sum of money. The

Respondent had placed his seal and signed and certified these two agreements (P12 and P13). The Deed of Transfer No. 998 (P 2) in respect of the land in question had been executed at the Respondent's office between Eranga Lanka Jayasekera as the purported seller and the complainant as the buyer and the Respondent has attested the said Deed by signing and placing his seal thereto.

The Respondent had charged a sum of Rs. 58,000/= to execute and attest the Deed of Transfer No. 998 (P2) including the stamp fees in proof of which the Respondent had issued a receipt dated 12.06.2006 (P14). Although the Respondent had undertaken to register the Deed No. 998 he had failed to do so despite constant reminders by the complainant. The Respondent had on one occasion informed the complainant that Eranga Lanka Jayasekera had been taken into custody by the Mt. Lavinia Police for selling lands on forged deeds and upon hearing this complainant had proceeded to the Mt. Lavinia Police Station and found the person whom he knew as Eranga Lanka Jayasekera in the police cell. The complainant had thereafter proceeded directly to the Respondent's office and the Respondent had handed over the original of the Deed No. 998 to the Complainant to get it registered in the Land Registry.

The complainant also handed over the Deed No. 998 to the Land Registry of Mt. Lavinia to register the same, the officials of the Land Registry of Mt. Lavinia had alerted the complainant that there is no prior registration in respect of the land in question although several prior registrations had been incorporated by the Respondent in the Deed No. 998. Upon making inquiries from the residents of the neighbouring lands, it had transpired that the legal owner of the land in question is one Anura S. Hewawasam and not Eranga Lanka Jayasekera.

The complainant had thereupon with great difficulty located the said Anura S. Hewawasam who had confirmed that the land in question was owned by him. When the complainant informed the Respondent that the legal owner of the land in question is not Eranga Lanka Jayasekera but Anura S. Hewawasam, the Respondent had agreed to give a title report to the complainant and accordingly a title report dated 31.10.2006 (P15) prepared and signed by the Respondent depicting that Anura S. Hewawasam had sold the land in question to Eranga Lanka Jayasekera who in turn had sold it to the complainant had been given by the Respondent to the Complainant. The Complainant had also requested from the Respondent a copy of the Title Deed of the previous owner from whom Eranga Lanka Jayasekera had derived title and the Respondent had produced a copy of the Deed No. 975 (P8) which had also been attested by the Respondent just two months prior to the execution of the Deed No. 998 (P2).

The Complainant had thereafter complained to His Lordship the Chief Justice, the Bar Association of Sri Lanka, the Legal Aid Commission, the Land Registry against the Respondent.

The Complainant had also lodged a complaint with the Panadura Branch of the Legal Aid Commission and the Respondent had been summoned to the Commission. At the Commission the Respondent had admitted to executing the two Deeds bearing Nos. 998 and 975 and had promised to pay Rs. 10 lakhs to the complainant which sum of money was the value stated in the Deed No. 998 as paid by the complainant for the purchase of the land in question. The Respondent had signed an agreement dated 29.05.2007 (P16) on a stamp promising to pay Rs. 10 lakhs to the Complainant.

Prior to signing and handing over the agreement P16, the Respondent had also given a promissory note dated 20.05.2007 (P17) promising to pay Rs. 10 lakhs to the Complainant. Despite the agreement to pay the Complainant Rs. 10 lakhs, the Respondent failed and neglected to do so. The Complainant had visited the Respondent and requested for the said sum of money on more than 30 occasions but to no avail. On the complaint lodged with the BASL by the complainant, the BASL had conducted a preliminary inquiry against the Respondent under reference No. PPC/1657. Even at the inquiry conducted by the BASL under the above reference, the Respondent had undertaken to pay a sum of Rs. 10 lakhs to the complainant by paying a sum of Rs. 3 lakhs initially and thereafter the balance in monthly instalments of Rs. 10,000/-.

Since the Respondent did not pay the money as so undertaken the Complainant lodged a second complaint to His Lordship the Chief Justice by way of an affidavit dated 08.04.2008 (P18).

As there was no immediate response a third complaint also had been lodged to His Lordship the Chief Justice by way of an affidavit dated 12.10.2008 (P19). A second preliminary inquiry had been conducted by the BASL Disciplinary Committee headed by Mr. Nihal Fernando PC. Due to the Complainant constantly visiting the Respondent at his office and at his home requesting for the said sum of money promised by the Respondent, the Respondent had got his daughter to transfer 8 perches of land in Siyambalagoda to the Complainant worth approximately 4 lakhs but depicted in the Deed as valuing Rs. 1 Lakh in order to prevent the complainant from pursuing legal action in the courts

The complainant specifically stated that he was motivated to purchase the land in question because of the assurance given by the Respondent that the title of Eranga Lanka Jayasekera the purported seller was good and that he would never have purchased the land in question if not for

the said assurance of the Respondent and that he believed the Respondent and he placed his trust in the Respondent as he was a lawyer and the Respondent has breached the trust he placed in the Respondent by what the Respondent did to him.

On a subsequent date the complainant had purchased 10 perches of the land in question from the legal owner Anura S. Hewawasam paying a sum of Rs.15 lakhs to the legal owner and that he had to re-purchase the land for the second time since Eranga Lanka Jayasekera who originally transferred the land to the complainant did not have lawful title to the land in question. The complainant has suffered a loss of approximately Rs. 33 lakhs altogether as a result of the above.

It was suggested in cross examination that the complainant has received more than Rs. 10 lakhs from time to time from the Respondent including the value of the land in Siyambalagoda, which the complainant vehemently denied. However, in re-examination the complainant clarified that altogether the maximum amount of money which has been received by him is Rs. 5 lakhs and that it was hardly enough to make good the loss he suffered of approximately Rs. 33 lakhs.

Anura S Hewawasam who was the real owner of the land was also called and corroborated the testimony of the complainant on all the material aspects. This witness stated that he was the owner of the land described in the schedule to the Deed No 975 (P8) which is the land in question and he had the title deed to the said land in question. He categorically stated that he never executed a Deed of Transfer of the land in question by the Deed No. 975 and that he never sold the said land to Eranga Lanka Jayasekera and therefore his name has been falsely entered in the said Deed No. 975 as the seller.

That the entry in the said Deed No. 975 that Anura S. Hewawasam has placed his signature on to this and two other instruments of the same tenor on 05.05.2006 at Polgasowita was a false entry. On his evidence it was clear that since the signature appearing on the said Deed No. 975 as that of Anura S. Hewawasam was not his signature, the signature had been forged. He also clarified that the portion of the attestation by the Respondent as the Notary in the said Deed No. 975 to the effect that the Seller Anura S. Hewawasam was known to him who signed illegibly in English in the presence of the aforesaid witnesses on the 5<sup>th</sup> day of May 2006 was a false attestation as he had never been to the office of the Respondent. He further stated that that he got to know from the complainant that the land in question belonging to him had been sold by way of a fraudulent Deed attested by the Respondent and he had been taken to meet the Respondent and had subsequently sold 10 perches of the land in question to the Complainant by a different Deed.

C. S. Dahanayake, Assistant Document Officer, Land Registrar (Mt. Lavinia) was also summoned and he explained the procedure that The Deed No. 998 specifies several prior registrations i.e. M 490/52, was followed in registering deeds in the Land Registry .He explained the steps taken to register Deeds bearing Nos. 998 and 975.Deed No. 998 had been handed over on 14.08.2006 to the Land Registry and Day Book No. 37790 had been assigned to it and the said Deed had been registered on 14.08.2006 in the Land Register in Volume M 2971/54M 259/281, M 307/243, M 462/48 and M 200/106.Therefore the relevant registers depicted as prior registrations had been examined and it had been found that the land described in the schedule to the Deed No. 998 has no relevance to the lands registered under the prior registrations given in the Deed. Therefore Deed No. 998 (P2) had been registered in a fresh volume and fresh folio. He further testified that Deed No. 975 (P8) has been handed over on 12.09.2006 to the Land Registry and Day Book no. 43675 had been assigned to it and the said Deed has been registered on 12.09.2006 in the Land Register in Volume M 2981/161.The prior registrations given in Deed No. 975 also had no relevance to the land described in the schedule to the said Deed and therefore there was an error in the prior registrations specified in both Deeds bearing Nos. 998 and 975. Although Deed No. 975 ought to have been registered prior to Deed No. 998, what has been registered first is Deed No. 998 and Deed No. 975 has been registered later which was improper. Had the Deed No. 975 been registered first as it ought to have been done, the said registration should have been incorporated in Deed No. 998 by the relevant Notary since the buyer in Deed No. 975 is the seller in Deed No. 998. Hence he confirmed that both Deeds bearing Nos 998 and 975 have not been registered by the Respondent Attorney in the proper sequence and that the prior registrations therein were erroneous.

Madurappulige Saleen, Management Assistant, Land Registry (Homagama)

This witness was called to give evidence pertaining to the monthly lists that had to be submitted by the Respondent to the Land Registry Homagama along with the duplicates of the Deeds attested by the Respondent. In his testimony he stated that the Respondent came within the Notarial jurisdiction of the Homagama Land Registry and therefore the Respondent was duty bound to submit monthly lists to the said Registry along with the duplicates of the Deeds attested by him during the course of every month on or before the 15<sup>th</sup> day of the following month. The Respondent's name was registered as a Notary coming within the jurisdiction of the Land Registry Homagama and his office address is given as Wethara, Polgasowita. And that the Respondent has been

registered as a Notary coming within its jurisdiction since 12.06.2003 to date. .As an example it was stated that since the Deed No 998 (P2) which had been attested on 05.07.2006 by the Respondent, its duplicate ought to have been submitted to the Land Registry Homagama on or before 15<sup>th</sup> August 2006. But the Respondent had failed to submit the duplicate of the said Deed on or before the relevant date .He also confirmed that since the Deed No. 975 (P8) which has been attested on 05.05.2006 by the Respondent, its duplicate ought to have been submitted to the Land Registry Homagama on or before 15<sup>th</sup> June 2006. But the Respondent had failed to submit the duplicate of the said Deed on or before the relevant date. .He stated that whether a duplicate has been tendered to the Land Registry can be verified from the Notarial Check Book wherein all the duplicate deeds that have been tendered are entered. Upon perusing the relevant Notarial Check Book, the witness confirmed that the Respondent has not tendered any duplicates of deeds attested by him in the month of July 2006 and August 2006. For the month of June 2006 a monthly list has been submitted by the Respondent incorporating 3 Deeds i.e. 995, 996 and 997 and therefore Deed No. 975 has been left out by the Respondent from the monthly list he submitted in June 2006. Apart from the aforesaid 3 deeds 995, 996 and 997, the Respondent has not tendered any duplicates of Deeds for the year 2006 nor has he submitted nil lists. It was clarified from the witness as to the procedure to be adopted when a notary does not attest any deed for a particular month and the witness stated that even if no deed is attested by a notary in a particular month, he is duty bound to submit a “Nil List” to the Land Registry stating that no deed has been attested by him during the relevant month. The Respondent has not submitted even a nil list for the months of July 2006 and August 2006

D. T. De Silva Lokubogahawatte, Administrative Secretary, BASL was only a formal witness whose evidence was led in order the mark the Original Record (P20) of the preliminary inquiry by the Panel “D” of the BASL under reference No. PPC/1657 against D.S. Bodhinagoda, the Respondent.

It is noteworthy that the Respondent did not lead evidence, but in his written submissions claimed that no monetary loss was suffered. He led no evidence on this matter at the trial. He has baldly denied that any monetary loss was suffered by the complainant by a bald statement in his written submissions. Had this evidence been given he could have been cross examined and the truth or falsity of these statements could be ascertained by the Court. The Respondent instead chose not to call evidence nor give evidence in this case. The Court has considered the

transfer of the land and the mitigating factors regarding the pecuniary loss caused to the complainant. The Judicature Act No. 2 of 1978 sets out the law governing Rules. Section 42(2) of the said Act empowers the Supreme Court to suspend from practice or remove from office every Attorney-at-Law who shall be guilty of any deceit, malpractice, crime or offence after an inquiry.

The Rule issued against the Respondent embodies charges of malpractice and/or deceit , ***In Re Arthenayake, Attorney-at-Law*** [1987] 1 SLR 314, it was held that

*“The question of law is whether the acts which the respondent has committed amount to a malpractice within the ambit of Section 42(2) of the Judicature Act.....*

*.....Without endeavouring to embark on a precise definition of the word malpractice in section 42(2) of the Judicature Act, it is my view that to warrant the exercise of the disciplinary powers of this court on the ground that an attorney is guilty of malpractice the professional misconduct complained of must be of such a character as, in the opinion of this court, could fairly and reasonably be regarded as being improper or deplorable or reprehensible when judged in relation to the accepted standards of professional propriety and competence.” per Athukorale, J.*

The testimony of all the witnesses was clear and cogent and remained unassailed even under cross examination. It is noteworthy that the Respondent did not show cause at this inquiry and no evidence was led on his behalf despite the opportunity granted to him.

Therefore it has been established by evidence that the complaint of the Complainant is well founded and that the Respondent has misled the complainant and deceived him regarding the title to the land in question and proceeded to attest two fraudulent Deeds bearing No.s 998 and 975. Even the title report given to the Complainant by the Respondent is a false title report.

The intention of deceiving the Complaint can be clearly attributed to the Respondent by the facts that the Respondent attested two fraudulent Deeds and handed over a false title report and also by the fact that the Respondent failed to submit the duplicates of the said fraudulent deeds to the Land Registry of Homagama as required in terms of the Notaries Ordinance. The conduct of the Respondent amounts to malpractice and deceit within the meaning of Section 42(2) of the Judicature Act No. 2 of 1978.

The Respondent, after having attested fraudulent deeds and thereby causing grave financial loss to the complainant, has deliberately failed to honour even the settlement he agreed to before the BASL. Therefore it is

abundantly clear that the Respondent has made a promise without intending to honour it which also tantamount to dishonourable conduct unworthy of an Attorney-at-law.

From the evidence adduced particularly the evidence of the Complainant, the representative of the Land Registry of Mt. Lavinia and the representative of the Land Registry Homagama, it is amply clear that the Respondent has failed to observe the Rules to be observed by Notaries as stipulated in Section 31 of the Notaries Ordinance No. 1 of 1907 as amended. The specific Rules that the Respondent has failed to observe which are pertinent to this matter are the Rules pertaining to the search of the Registers in the land registry before executing deeds affecting lands [Subsection (17)(a) and (17)(b)], insertion of correct date of execution of the deed [Subsection 18], attestation (Subsection 20) and transmission of duplicates of deeds to the Registrar of Lands [Subsection 26 (a) and 26(b)]which are reproduced below:

Notaries Ordinance Section 31 subsections:

*17(a)- "Before any deed or instrument (other than a will or codicil) affecting any interest in land or other immovable property is drawn by him, he shall search or cause to be searched the registers in the land registry to ascertain the state of the title in regard to such land and whether any prior deed affecting any interest in such land has been registered."*

*17(b)- "If any such prior deed has been registered, he shall write in ink at the head of the deed the number of the register volume and the page of the folio in which the registration of such prior deed has been entered*

*Provided that if the parties to the transaction authorize the notary in writing to dispense with the search, the search shall not be compulsory, but he shall before the deed or instrument is tendered for registration write at the head thereof the reference to the previous registration, if any."*

*18-"He shall correctly insert in letters in every deed or instrument executed before him the day, month, and year on which and the place where the same is executed, and shall sign the same."*

*20-"He shall without delay duly attest every deed or instrument which shall be executed or acknowledged before him, and shall sign and seal such attestation....."*

*26(a)-" He shall deliver or transmit to the Registrar of Lands of the district in which he resides the following documents, so that they shall reach the registrar on or before the 15<sup>th</sup> day of every month, namely, the duplicate of every deed or instrument(except wills or codicils) executed or acknowledged before or attested by him during the preceding month, together with a list in duplicate (monthly list), signed by him, of all such deeds or instruments...."*

26(b)- *“if no deed or instrument has been executed before any notary in any month, the notary shall, unless he is absent from Sri Lanka, furnish a nil list for that month on or before the 15<sup>th</sup> day of the following month.*

On a consideration of the totality of the evidence and documents produced at this inquiry, the acts of malpractice and deceit by the Respondent have been established by overwhelming evidence. Applying the standard of proof required in inquiries of this nature the Respondent is found guilty of the charges levelled against him in the Rule and hold that the Respondent committed acts which amount to malpractice and/or deceit within the ambit of Section 42(2) of the Judicature Act.

Considering the nature of the malpractice and deceit committed by the Respondent the legal profession has been brought into disrepute. The Respondent's conduct is plainly dishonourable and disgraceful and certainly unworthy of an Attorney-at-Law. Hence the Respondent has breached Rules 60 and 61 of the Supreme Court (Conduct of Etiquette for Attorneys-at-Law) Rules 1988.

In deciding what course of action should be taken against the Respondent the court is mindful of the case of ***In Re Srilal Herath [1987] 1SLR 57*** which held that:

*“The question that the Court has to ask itself is whether a person who has been found guilty of misappropriation of a client's money and has aggravated his offence by his refusal to make good that amount despite repeated requests, can be safely entrusted with the interests of unsuspecting clients who may have recourse to him. There can be no two answers to this question. Hence there is one course open to us, namely to strike off the Respondent from the Roll”- Per Kulatunga J.*

In terms of the above evidence adduced including the documents placed before Court there is proof that the Respondent is guilty of malpractice and deceit within the ambit of Section 42(2) of the Judicature Act (read with Rule 79 of the Supreme Court Rules of 1978) which renders the Respondent unfit to remain as an Attorney-at-Law, and this Court accordingly removes him from the role of Attorney-at-law and the Registrar of the Supreme Court to remove his name from the role of Attorney.

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Justice Thilakawardane  
20-02-2013

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Justice Imam  
20-02-2013

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Justice Dep  
20-02-2013