

**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 Nagananda  
Kodituwakku, Attorney-at-Law

**SC/Rule/01/2016**

Justice Vijith Malalgoda  
Judge in the Supreme Court

**Complainant**

Nagananda Kodituwakku  
Attorney-at-Law  
99, Subadrarama Road,  
Nugegoda

**Respondent**

Before : Hon. H.N.J. Perera, CJ  
Hon. Sisira J. De Abrew, J  
Hon. Prasanna Jayawardena, PC, J

Counsel : Rohan Sahabandu PC with Chamath Fernando for the BASL.  
Nagananda Kodituwakku, Attorney-at-Law the Respondent is  
present in person.

Dappula de Livera , PC, SG with Ms. Viveka Siriwardena,  
DSG for the Hon. AG.

Argued on : 14.05.2018, 15.05.2018, 06.06.2018, 04.07.2018  
28.11.2018, 13.12.2018, 12.03.2019, 13.03.2019

Decided on : 18.03.2019

**H.N.J. Perera, CJ**

The Rule issued to the Respondent states, *inter alia*, that on, 21<sup>st</sup> May 2015, the Respondent appeared in the Court of Appeal and:

- “(a) by the contemptuous submissions you had made without any basis whatsoever brought the Court into ridicule and caused the erosion of public trust and confidence reposed in the judicial system and the overall damaging effect of your submissions could be considered an instance of contempt of court which makes you ex-facie liable to be dealt with according to the law,
- (b) By reason of the aforesaid conduct which cannot be countenanced 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 for Attorneys-at-Law) Rules 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 which is inexcusable and such as to be regarded as deplorable by your fellows in the profession and have thus committed a breach of Rule 60 of the said rules,
- (d) 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 rule.”.

The respondent initially pleaded not guilty to the Rule issued to him and the matter proceeded to inquiry during the course of which evidence was led. However, at the stage of making oral submissions, the Respondent made the following statement in open Court on 13<sup>th</sup> March 2019:

*“I do hereby tender my regret and unqualified and unreserved apology to the President of the Court of Appeal, to the then President of the Court of Appeal Hon Justice V.K.Malalgoda, PC in open Court and the other Hon. Judges of the Court of Appeal for my statement made and my conduct on 21<sup>st</sup> May 2015.*

*Further, I do hereby state I wish to make the same apology to Hon Justice V.K.Malalgoda, PC in open Court and also in writing to the present President of the Court of Appeal.”.*

Accordingly, this matter was again taken up today and the Respondent stated the aforesaid apology and expression of regret in open Court. At the same time, the Respondent apologised and expressed his regret to Hon. Justice V.K.Malalgoda,PC, who was present in Court today upon being informed that the Respondent wishes to tender an apology. The Respondent also expressly and unconditionally withdrew the allegations he had made against that Honourable Judge and the Court of Appeal.

In our view, the aforesaid apology and expression of regret which the Respondent has voiced in open Court on two separate occasions, amounts to an unqualified admission by the Respondent that he committed the misconduct he is charged with. The fact that the Respondent has withdrawn the allegations he made in the course of committing the said acts of misconduct, establishes that the Respondent admits the said allegations were unfounded and baseless.

In these circumstances, we find the Respondent guilty of committing the breaches of Rules 60 and Rule 61 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka, as set out in the Rule issued to the Respondent.

We are now required to consider the punishment which should be imposed.

We note that the misconduct the Respondent is charged with and has been found guilty of, arise from acting in a manner which is contemptuous of the Court of Appeal. This is a grave offence which calls for appropriate punishment. This Court must keep in mind its duty to protect the dignity of the Courts when determining the appropriate punishment which is to be imposed.

At the same time, we should take into account the fact that the Respondent has made the aforesaid apology, expressed his regret for his misconduct and withdrawn the false allegations which he had made. However, the fact remains that the Respondent did so only at the very end of these proceedings.

Taking these factors into account, we hereby suspend the Respondent from practice in terms of section 42 (2) of the Judicature Act No.2 of 1978, as amended, for a period of 03 years from today.

A copy of this Order is to be forwarded to the Hon. President of the Court of Appeal. Further, the Registrar of this Court is directed to take the required steps for the notification of this Order as required.

Chief Justice

Sisira J. De. Abrew, J

I agree.

Judge of the Supreme Court

Prasanna Jayawardena, PC,J

I agree.

Judge of the Supreme Court