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

Senanayake Arachchilage Chandana Sarath Kumararathna,
No. 302/01, Aluthwela,
Karalliyadda,
Theldeniya.

Plaintiff

SC Appeal No: 90/2021
SC (HCCA) LA No. 385/2020
CP/HCCA/FA/191/2018
DC Kandy Case No. DMR/1641/09

Vs.

Sri Lanka Insurance Corporation,
Rakshana Mandiraya,
No. 21, Vauxhall Street,
Colombo 02.

Defendant

AND BETWEEN

Senanayake Arachchilage Chandana Sarath Kumararathna,
No. 302/01, Aluthwela,
Karalliyadda,
Theldeniya.

Plaintiff-Appellant

Vs.

Sri Lanka Insurance Corporation,
Rakshana Mandiraya,
No. 21, Vauxhall Street,
Colombo 02.

Defendant-Respondent

AND NOW

In the matter of an application for Leave to Appeal in terms of Section 5C of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, against the Judgment of the High Court of the Central Province (Civil Appeal) dated 18/11/2020.

Sri Lanka Insurance Corporation,
Rakshana Mandiraya,
No. 21, Vauxhall Street,
Colombo 02.

Defendant-Respondent-Petitioner

Vs.

Senanayake Arachchilage Chandana Sarath Kumararathna,
No. 302/01, Aluthwela,
Karalliyadda,
Theldeniya.

Plaintiff-Appellant-Respondent

Before: **Justice P. Padman Surasena**
Justice A.L. Shiran Gooneratne
Justice Mahinda Samayawardhena

Counsel: Chandaka Jayasundere, PC with Tharindu Rajakaruna instructed by Manjula Jayathilake for the **Defendant-Respondent-Petitioner.**

Nilshantha Sirimanne with Shalomi Daniel for the **Plaintiff-Appellant-Respondent.**

Argued on: 10/11/2022

Decided on: 05/07/2023

A.L. Shiran Gooneratne J.

By Plaint dated 08/06/2009, the Plaintiff-Appellant-Respondent (hereinafter referred to as the Plaintiff) filed this Action No. DMR/1641/09 in the District Court of Kandy against the Defendant-Respondent-Appellant (hereinafter sometimes referred to as the Defendant or Defendant company) and sought to recover a sum of Rs. 1,151,350/- together with interest based on a contract of insurance relating to Motor Vehicle No. CPGC 4672 against the said Defendant. The Defendant by Answer dated 27/08/2010, denied the said claim based on failure on the part of the Plaintiff to act in utmost good faith and sought a dismissal of the Plaintiffs action.

The said action was mentioned in the District Court on 28/01/2011 and was fixed for trial on 22/06/2011. Thereafter the respective parties filed list of witnesses and documents prior to the said date of trial, according to law.

When the said action was taken up for trial on 22/06/2011, the Defendant company was unrepresented and on default of appearance on the date fixed for trial, the Court made Order to proceed to hear the case *ex-parte* against the Defendant. The Court after hearing some evidence for the Plaintiff on the same day, put off the hearing for 29/11/2011. When the case was taken up on 29/11/2011, the Counsel representing the Defendant company gave no reasons for the default in appearance of a representative of the Defendant company or the Registered Attorney on the first date fixed for trial. However, a verbal application was made to vacate the said Order for *ex-parte* trial on payment of costs, and to permit the Defendant company to defend the said action. The Court refusing to grant the said application proceeded with the evidence already recorded. At the conclusion of the hearing, the learned District Judge by Order dated 05/11/2014 held with the Plaintiff and granted the reliefs as prayed for in the Plaint and an *ex parte* decree was entered accordingly.

Being aggrieved by the said Order, by Petition dated 02/04/2015, the Defendant made an application in terms of Section 86(2) of the Civil Procedure Code seeking to vacate the said *ex-parte* Judgment and the decree entered in favor of the Plaintiff.

The instructing Attorney for the Defendant company, Chandani Wijayaratne filed affidavit dated 02/04/2015 and stated *inter alia*, that due to a bona fide mistake the date of trial was mistakenly taken down as 22/07/2011 as opposed to 22/06/2011. While asserting that the recording of a wrong date and the non-appearance on 22/06/2011 as a genuine mistake, she tendered to Court the following documents marked ‘X1’ to ‘X6’ which are now marked in this application as A9(i) to A9(vi), to vindicate her default. The documents marked are as follows -

A9(i) - Professional diary of Ms. Chandani Wijayarathna for the year 2011

A9(ii) - Entry of Case No. DMR/1641/09 on 22/07/2011

A9(iii) - A letter sent to the Petitioner, by Ms. Chandani Wijayarathna, informing the next trial date as 22/07/2011

A9(iv) - A letter sent to U.I Wijayathilake, Attorney-at-Law, by the Petitioner, to retain Mr. Wijayathilake's professional service as the Counsel and to appear on 22/07/2011

A9(v) - An internal memo from the Legal Department to the Manager of Kandy branch, to represent the Petitioner in Court on 22/07/2011

A9(vi) - Entries of 22/06/2011 in the Professional diary of Ms. Chandani Wijayarathna for the year 2011

Having considered the Petition, affidavits, oral evidence, and the written submissions tendered by the respective parties, the Additional District Judge by Order dated 21/08/2018, *inter alia*, held that -

a) when considering the available evidence, the Court is satisfied that the recording of the trial date as 22/07/2011 was a mistake on the part of the instructing Attorney;
b) with reference to satisfying Court with reasonable grounds in terms of Section 86(2) of the Civil Procedure Code, held that the recording of a wrong date and the failure to examine the case record clearly amounts to an act of negligence on the part of the registered Attorney-at-Law;
c) the Defendant must not suffer due to an act of negligence on the part of the Defendants Attorney-at-Law;

and permitted the Petitioners Application made under Section 86(2) of the Civil Procedure Code to vacate the said *ex-parte* Judgment and decree, subject to payment of costs, and fixed the case for *inter parte* trial.

Being aggrieved by the said Order, the Plaintiff by Petition of Appeal dated 12/10/2018, appealed to the High Court of the Central Province exercising civil appellate jurisdiction holden in Kandy ("the Appellate Court"). The Appellate Court by Judgment dated 18/11/2020, set aside the said Order made by the Additional District Judge dated 21/08/2018 and reinstated the *ex-parte* Judgment and decree against the Defendant on the basis that the Defendant must suffer the consequences of an act of negligence of the Attorney-at-Law.

The Defendant company, by Petition dated 22/12/2020, is before this Court, to set aside the said Judgment dated 21/08/2018, delivered by the Appellate Court.

By Order dated 28/10/2021, this Court granted leave to appeal on the following question of law;

> *"Did the learned Judges of the Civil Appellate High Court of Kandy err in law in failing to hold that the defendant had satisfied court that there are reasonable grounds for such default as provided for in section 86(2)"*

The main position taken by the Plaintiff is that the learned District Judge having made a clear and express finding that there was negligence on the part of the Registered Attorney of the Defendant, erred in law by vacating the *ex-parte* Judgment dated 05/11/2014. In response the Defendant company takes up the position that the error made by the Registered Attorney was a case of mistake and not negligence and further states that the Attorney-at-Law had taken all steps required to be taken in the cause of action, in accordance with the Civil Procedure Code. It is further contended that the

Attorney had reasonable grounds for non-appearance, which was established at the hearing and thus, the Defendant in the circumstances of this case, should not be deprived to proceed with the District Court trial.

In the above context it is important to consider the ratio in the case of ***Kathiresu vs. Sinniah (71 NLR 450)***, where H.N.G. Fernando J (as he then was), held that the absence of both the Proctor and the Petitioner on the given date, arising out of confusion of dates, was taken as a mistake and not due to the negligence of the parties. The Court came to the aforesaid conclusion primarily on the basis that the District Judge had accepted the affidavit and the evidence before Court as correct. The Court also observed that the District Judge *"refused to set aside the decree nisi because he relied on certain decisions in which the failure of a party to appear was due to his own negligence."* The Court cited with approval the case of ***Punchihamy vs. Rambukpotha*** (16 Times of Ceylon Law Reports page 19)

where De Krester J held that;

> *"The whole case indicates very gross carelessness on the part of the Defendant and it is most unfortunate that there should be now, in addition, a mistake on the part of the proctor. The mistake however is there and must be given effect to"*

and noted that in ***Punchihamy vs. Rambukpotha (Supra)*** *"the only reason for non-appearance was a mistake made by the parties' Proctor."*

The Court allowed the Appeal and sent the case back to the District Court.

In the instant case too, the Additional District Judge accepted the affidavit and the documents marked 'X1' to 'X6' led in evidence as correct and held that the inadvertence on the part of the Attorney amounts to a mistake. However, having recognized that the

burden is on the Plaintiff to prove that default was due to a genuine mistake, referred to Section 86(2) of the Civil Procedure Code which requires the Defendant to satisfy court that the Defendant had reasonable grounds for such default. The Court held that the default arising out of recording a wrong entry as the date of trial and not verifying the said date from the registry, amounts to an act of negligence on the part of the instructing Attorney.

Therefore, the facts and circumstances in the case of ***Kathiresu vs. Sinniah (Supra)*** is clearly distinguishable from that which is found in the instant case.

The Court also held that an act of negligence on the part of an instructing Attorney should not be at the peril of the party the Attorney represents.

When deciding that the Defendant company must not suffer due to a mistake of the Defendants Attorney-at-Law, the learned Additional District Judge referred to the Supreme Court decision in ***P.M. Premarathna vs. Sunil Pathirana***, [(inadvertently stated as Sunil Premarathna in the Impugned Order dated 21/08/2018) SC Appeal 49/2012 (SC minutes dated 27/03/2015)] which held as follows;

> *"the litigant who has come before court for relief should not be deprived of his right to seek relief due to a lapse on the part of the lawyers preparing and filing the papers"*

In ***P.M. Premarathna vs. Sunil Pathirana (Supra)***, the Court came to the above conclusion when it considered a lapse on the part of the Attorney where, the High Court dismissed the Appeal upholding the preliminary objections taken by the Plaintiff-Respondent on two grounds, namely,

- That all necessary parties who were before the District Court had not been named as parties to the Appeal, and
- That the notice of Appeal was invalid.

Accordingly, it is clear that the facts and circumstances in the case of ***P.M. Premarathna vs. Sunil Pathirana (Supra)*** can be differentiated from the facts of the instant case and that the learned Additional District Judge has erred in applying, the decision in the case of ***P.M. Premarathna vs. Sunil Pathirana***, which is not applicable in this case.

In its Judgment dated 18/11/2020, the Appellate Court –

a) Upon a comparison of facts, referred to in the Judgment of ***Pakir Mohideen vs. Mohamadu Casim*** **(4 NLR 299),** with those in the instant case**,** applied the legal position –

   "If the Proctor did not do his duty, he is to blame for the absence of the defendant and the defendant must suffer for the fault of his Proctor".

b) Considered that at the inquiry there had been a specific finding by the learned Additional District Judge on negligence on the part of the Registered Attorney

c) The Appellate Court examined the rule laid down in ***Pakir Mohideen vs. Mohamadu Casim,*** and for the reasons mentioned therein held, that the said Order dated 21/08/2018 made by the learned Additional District Judge is erroneous and has to be set aside.

In ***Pakir Mohideen vs. Mohamadu Casim (Supra),*** Bonser C.J. made the said observation, where the Defendant had noted the trial date incorrectly when his proctor's clerk gave it to him, took no steps to get ready for trial and was absent at the trial. His

proctor appeared and stated that he had no instructions and withdrew from the case. After *ex parte* proceedings decree nisi was entered against him. An application to set aside the Judgment on the ground that the Defendant had mistaken the date of trial was refused by the District Judge. The Supreme Court refused to revise that Order observing that the proctor had been forgetful or neglectful of the interests of his client in particular in failing to ask for instructions in the matter.

At the inquiry held to vacate the *ex-parte* Judgment, the Defendants position in brief was that, the default in appearance by the Registered Attorney on 22/06/2011 was due to a mistake in taking down the trial date as 22/07/2011. In her evidence in mitigation of her default in appearance before the learned Additional District Judge, the Registered Attorney produced documents in support of her position that all pre-trial steps akin to this action were taken with due diligence in the best interest of her client in the hope of defending the cause of action filed against the Defendant company.

Conformity with the law relating to pre-trial steps invariably flow from the date a case is first fixed for trial. No doubt it is the responsibility of the Registered Attorney to ensure compliance of the provisions of the Civil Procedure Code to ensure that all pre-trial steps are taken with strict adherence to the laid down procedure.

As mentioned earlier, the instant action was taken up for *ex parte* trial on 22/06/2011 and further trial was resumed on 29/11/2011. On 29/11/2011, the Defendant company was represented by Counsel on instructions of the Registered Attorney. The Counsel submitted that the Registered Attorney is not before Court due to a professional commitment undertaken in the District Court of Nuwaraeliya. The Counsel further stated that he was instructed that this case was a partly heard trial and that he was not aware that the case was proceeding *ex parte*.

It is observed that the Registered Attorney failed to be present in Court or to provide the necessary instructions to the Counsel who appeared on 29/11/2011. At least by the 22/07/2011, the Registered Attorney should have known that the case was fixed for *ex parte* trial and accordingly instructed the Counsel of the next date of hearing. Not only did the Registered Attorney fail to inform the Counsel of the next step of the case but also failed to make a reasonable explanation for the default of non-appearance on the date first fixed for trial, at the first available opportunity. Further, the Registered Attorney in her evidence before the trial court failed to explain the reasons for not having instructed the Counsel who appeared for the Defendant company on 29/11/2011, that the case was fixed for *ex parte trial* or the default in non-appearance on 22/06/2011.

The Registered Attorney, in her affidavit and also in her evidence tendered before the trial court, repeatedly stated that she inadvertently recorded the date as 22/07/2022. The learned Additional District Judge was convinced that, there had been negligence on the part of the Registered Attorney due to her failure in not examining the case record to have the trial date confirmed. In response, the Defendant in the written submissions filed in the Appellate Court dated 10/10/2019, has taken up the position that it is not humanly possible to examine the case record by every Registered Attorney every time a date is appointed by Court ----, if that be a requirement to be followed, Registered Attorneys would be spending more time in record rooms perusing case records than in Court----.

In the Order dated 21/08/2018, the learned Additional District Judge specifically referred to the evidence given by the Plaintiff where he stated that, on the date the case was called to fix for trial ie, 28/01/2011, the Court had announced the trial date twice, once as 2011 June 22 and again as 06.22. This position was never challenged by the Defendant when the Plaintiff was cross examined. The position taken by the Registered

Attorney is that the month June was heard as July and therefore had mistakenly reordered as July as perceived.

It is observed that the Registered Attorney took no remedial steps to file a motion or an affidavit to mitigate her default upon being aware that she had taken down the wrong date as the first date fixed for trial. In most part of her evidence in mitigation of default in non-appearance, the Registered Attorney tried to show that she has taken all necessary pre-trial steps required to be taken in keeping with the trial date as recorded by her ie, 22/07/2011, and that such process was duly conveyed to the Defendant company.

In ***U.W. JANDI vs. D.S. PINIDIYA and 16 others (1971) 74 NLR 433***, (Divisional Bench) H.N.G. Fernando C.J. emphasized the importance of the rule set out in ***Pakir Mohideen vs. Mohamadu Casim[1 (1900) 4 N. L. R. 299.]*** and also cited in ***Scharenguivel vs. Orr [2 (1926) 28 N. L. R. 302.]***, that when there is negligence on the part of a proctor, in consequence of which some necessary step is not taken in an action, the client must suffer for his proctor's negligence, and opined thus;

> *"The obvious ground for this ruling is that because a proctor is the recognized agent of his client, the fault of the agent has to be attributed to the client. The true justification for this principle does not however appear to be well understood by practitioners. It is that under the common law a client has a right of action against his proctor for damages which he may sustain as a result of the negligence of the proctor."*

In the above case, where Weeramantry J. dissented, declared that;

> *"It seems to admit of no argument that the date of any step in a case is the date given by the judge when the case is called before him at the roll. If a proctor*

proceeds on the assumption that the date which had been indicated to him in advance of the roll by an official of the court would be the date eventually accepted by the judge, and he neither attends the roll nor verifies the judge's confirmation of the date, he does so at his peril."

The Defendant company in their written submissions tendered to this Court has cited many cases which signifies the importance of giving a valid excuse for the default by the affected party in order to establish reasonable grounds and has emphasized the need to be reasonable as opposed to a rigid standard of proof as enunciated in ***David Appuhamy vs. Yassassi Thero (1987) 1SLR 235, Mallika vs. Karunaratne BALJ 2012 Vol. XIX Part II p.380, Sanicoch Group of Companies vs. Kala Traders (Pvt) Ltd BALJ 2016 Vol. XXII p. 44.***

In the written submissions tendered to this Court, the Defendant placed much reliance in the case of ***Rohan Ajith Jude Silva vs. Y.B. Aleckman***, [SC. Appeal No. 46/05 (SC minutes dated 18/11/2013)] to differentiate between a mistake and negligence of an Attorney-at-Law. In the above case the Supreme Court distinguished the precedent set out in ***Pakir Mohideen vs. Mohamadu Casim*** (Supra) ie. *"The Plaintiff must suffer for his proctors negligence"* and similarly followed in ***Packiyanathan vs. Singarajah (1991) 2 SLR 205***, and ***Schareguivel vs. Orr 28 NLR 302***, where it was held that, when a Judgment is entered against a party by default, it is not a sufficient excuse for his absence that his proctor had failed to inform him of the date of the trial, as opposed to the *dicta* in ***Kathiresu vs. Sinniah 71 NLR 450***, where *"the absence of both the proctor and the Petitioner on the given date, arising out of confusion of dates, was a mistake and not due to the negligence of the parties".*

In Rohan ***Ajith Jude Silva vs. Y.B. Aleckman (Supra)***, this Court having examined the facts relating to the issue whether the error made by the Registered Attorney was due to negligence or a mistake and drawing a distinction between the two elements, the Court placed importance in ***Packiyanathan vs. Singarajha (Supra)*** where Kulatunga J. noted that;

> *"it is necessary to make a distinction between a mistake or inadvertence of an Attorney -at-Law or party, and negligence. A mere mistake can generally be excused; but not negligence, especially continuing negligence. The decision will depend upon the facts and circumstances of each case."*

The Court also noted that these sentiments are similarly echoed in ***Wimalasiri and another vs. Premasiri [(2003) 3 SLR 330]***, Where, the Supreme Court refused to grant relief on the basis that their conduct was negligent stemming from the fact that measures had not been taken by neither the Attorney-at-Law nor the Appellant until the lapse of 9 months.

Upon a comparison of the facts and the rule referred to in the Judgment in the case of ***Pakir Mohideen vs. Mohamadu Casim***, and the cases which followed the same precedent, Shiranee Tilakawardane, J. having differentiated the facts and circumstances of the case, did not dispel the application of the said *dicta* to the case but alluded to the importance of the Registered Attorney and the Petitioner taking all feasible Measures to remedy the delay upon discovery of it. And appreciated the effort made by them in rectifying the error, which qualified as one arising out of mistake as opposed to negligence.

In the instant case the Registered Attorney has failed to appear or to act in the required manner on the date fixed for trial. In the circumstances of this case this Court is called

upon to decide as to whether such inadvertence/ mistake constitutes sufficient reasonable grounds to purge default. In ***Sanicoch Group of Companies vs. Kala Traders (Pvt) Ltd (Supra)***, the Supreme Court emphasized that when interpreting Section 86(2) the Court must use the yardstick of a subjective test rather than an objective test in determining what is reasonable. The Court also contemplated of a liberal approach in accessing the aspect of reasonableness as opposed to a rigid standard of proof.

Where an *ex parte* decree is entered against a party for default in failure to appear on the date fixed for trial, the burden is on the affected party to establish with reasonable grounds that such default was not due to negligence but due to a genuine mistake. If the Court is satisfied with the reasons offered, the *ex parte* Judgment and decree would be set aside and the defaulter would be permitted to proceed with the defence from the stage of default. If there is no sufficient evidence led before the trial court to determine the reasonableness of such failure to appear on the date fixed for trial, the *ex parte* decree will stand. Therefore, the burden is on the Attorney to prove the existence of reasonable grounds for the default in appearance when seeking relief. *"Unless there is sufficient cause for the absence of the attorney who was entitled to appear, the matter should stand dismissed."* **Jinadasa vs. Sam Silva (1994) 1 SLR 232.**

When deciding this case, it is important to examine whether the attended facts and circumstances of this case establish reasonable grounds considered to be valid in terms of Section 86(2) of the Civil Procedure Code.

In a series of cases this Court has emphasized the importance of conformation of the next date to avoid any negligence on the part of the Attorney. It is the responsibility of an Attorney to be always vigilant of a pending case to take appropriate steps as

warranted, on the given date, to ensure that no undue delay is caused to the detriment of his client or to the larger interest of administration of justice. Therefore, one cannot be complacent to record the next date as self-perceived and to take up a strong position that it is not humanly possible to examine the case record every time a date is appointed by Court. To say irrational, to the said stand at the outset, would be an understatement when a Registered Attorney is mandated to discharge professional duties promptly and with due diligence. If the Attorney is unable to be present at the office of the court in person to verify the next date fixed for trial, an application to obtain a copy of the previous day's proceedings, would certainly suffice for such purpose. *"It is expected of a diligent counsel to verify the previous day's proceedings and if that was not done, such failure could not amount to a mistake." (**The Attorney General vs. Herath and another [(2003) 2 SLR 162].***

In a very recent Judgment delivered by this Court ***(Wimal Weerawansa vs. Ravindra Sandresh Karunanayake,*** [SC/Appeal No. 59A/2006, (SC minutes dated 29/07/2020)], E.A.G.R. Amarasekara, J. with Sisira de Abrew J. and Murdu N.B. Fernando, PC, J agreeing held;

> *"Even if the court thinks that a genuine mistake can be considered to give relief to meet the ends of justice, what could have been avoided by due diligence cannot be considered as a mistake as it falls within the ambit of negligence. A lawyer being a human being, he/she may err in many aspects including what he heard as the next date of inquiry. The registered attorney who was in charge of the Defendant Petitioners brief must foresee such short comings that may take place. He is not a mere intermediatory between his client and the court to file documents and appear in court. He is a professional who can gain access to the case record through the registry and who can get the next date verified through the office of the court. ----*

There was a time gap of more than two months in between. If the inquiry was fixed for the next day or the following day, one may say that there was no sufficient time to get the date verified. I do not think one can say that the registered attorney in the case at hand acted with due diligence, among others, with regard to the date fixed for the inquiry on the amended answer."

There is uncontroverted evidence that the date fixed for trial was announced by the officer of court twice in two different ways. It is also revealed in evidence that for nearly a period of 6 months, the Registered Attorney has failed to examine the case record to verify the next date of trial or to obtain a copy of the previous day's proceedings from the office of court. In her evidence before the learned Additional District Judge, it was admitted that the trial date was not verified by going through the journal entries. The Registered Attorney also admitted that she came to know that the first date fixed for trial was 22/06/2011 when she was in court on 22/07/2011. Thereupon, having known the correct trial date, she failed to take any meaningful action to rectify the error. The Counsel who appeared for the Defendant was unaware that the said action was fixed for *ex parte* trial or the reason for such default by the Registered Attorney, even on 29/11/2011, ie. after 10 months from the date first fixed for trial. Having being aware of the said default, no meaningful action was taken to rectify the error manifests the lack of due diligence and reasonable competence expected from a Registered Attorney in the discharge of his or her professional duties. When negligence is visible in the act of default, it can no longer be excused as a mistake. The conduct of the Attorney clearly resonates an act of negligence on her part.

For the aforesaid reasons, I hold that, the Registered Attorney has failed to show sufficient reasonable grounds to purge default envisaged in terms of Section 86(2) of the Civil Procedure Code.

Therefore, I answer the question of law on which leave to appeal was granted to the Defendant in the negative.

For these reasons, the Appeal of the Defendant is dismissed; the Judgment of the Appellate Court is affirmed. No order for costs.

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court

Samayawardhena, J.

I regret that I am unable to agree with the majority judgment.

In my view, at the inquiry into purging the default held under section 86(2) of the Civil Procedure Code, the defendant's Attorney-at-Law and two officers of the defendant corporation gave sufficient evidence to establish that the Attorney-at-Law made a mistake in noting down the date of trial as 22.07.2011 whereas the actual date of trial was 22.06.2011.

The High Court in the impugned judgment states that the failure to correctly note down the date was a mistake on the part of the defendant's Attorney-at-Law and according to Pakir Mohidin v. Mohamadu Casim (1900) 4 NLR 299 the defendant must suffer for the fault of his Attorney-at-Law. The High Court also makes an oblique reference to negligence on the part of the Attorney-at-Law as found by the District Court.

I take the view that an application under section 86(2) need not be decided on the basis that the defendant must suffer for the fault of his Attorney-at-Law. In terms of section 86(2) of the Civil Procedure Code, if the defendant satisfies the Court that he had reasonable grounds for the default, the Court shall set aside the judgment.

The question of law on which leave was granted in my view should be answered in the affirmative and the appeal should be allowed.

Judge of the Supreme Court