

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 Alwapillai Gangatharan,  
Attorney-at-Law

SC/Rule/03/2021

Edward Megarry  
2<sup>nd</sup> Secretary-Migration  
British High Commission  
389, Bauddhaloka Mawatha  
Colombo 7

**Complainant**

Alwapillai Gangatharan  
No.361, Dam Stroom,  
Colombo -12.

**Respondent**

Before: Buwaneka Aluwihare, PC J  
S. Thurairaja PC J  
E.A.G. R Amarasekara J

Counsel: Anura Gunaratne for the Respondent.

Rohan Sahabandu PC with Chathurika Elvitigala Ms. Sachini Senanayake  
and Ms. Nathasha Fernando for the BASL.

M. Gopallawa, SDSG for the Attorney General

Inquiry on: 02.06.22 and 26.01.2023

Decided on: 23 03. 2023

## ALUWIHARE PC, J

A Rule was issued against the Respondent Attorney-at-Law, Alwapillai Gangatharan, (hereinafter referred to as the Respondent) for the breach of Rule Nos. 60 and 61 of the Supreme Court [Conduct and Etiquette of Attorneys-at-Law] Rules of 1998, alleging that the Respondent, by the said breach, had committed deceit or malpractice in terms of Section 42(2) of the Judicature Act, No. 02 of 1978.

The Rule was read out and a copy of the same was handed over to the Respondent on 23.05.2022, however no plea was recorded on that day and the matter was fixed for the 02-06-2022. On the said date the Rule being read over for the second time, the Respondent, at the first given opportunity, pleaded guilty to the same.

When the matter was taken up for further inquiry on 05-07-2022, the learned counsel for the Respondent made submissions in mitigation on his behalf.

Before considering the matters pleaded in mitigation, we wish to place the facts germane to the Rule.

A written complaint dated 12<sup>th</sup> February 2016 was made to the President of the Bar Association of Sri Lanka by Edward Megarry, Second Secretary (Migration) of the British High Commission in Sri Lanka (hereinafter referred to as the Complainant) alleging deceit and malpractice on the part of the Respondent for furnishing a letter dated 5<sup>th</sup> June 2015 falsely affirming the existence of a case bearing No.28223/5/2008 in the Magistrate's Court of Colombo, along with documents purporting to be Summons to be served and a warrant of arrest issued by the Kotahena Police station against one Machado, in order to mount support for a claim for asylum in the United Kingdom for the said person. Upon receipt of this complaint, the Administrative Secretary of the Bar Association, directed by the Chairman of the Disciplinary Inquiry panel "11" of the Bar Association, by way of letter dated 26<sup>th</sup> November 2016, required the Respondent to forward his observations regarding the complaint, by way of an Affidavit. The Bar Association also informed the Respondent that the inquiry into the matter would be held *in camera.*, requesting his presence along with witnesses (if any). On 6<sup>th</sup> December 2016, the Respondent filed an Affidavit declaring *inter alia*, that he had not sent the fictitious documents so alleged and that he had no knowledge of the 'Kotahena Police Matter'.

Upon conclusion of the inquiry, the Report of the Special Panel of Inquiry of the Bar Association on the matter was communicated to the Registrar of this Court by letter

dated 26<sup>th</sup> September 2018 by the Bar Association. The report detailed the following:

- a. That the Respondent had admitted to issuing the letter dated 5<sup>th</sup> June 2015 regarding one Mr. Machado, who was unknown to him, affirming that Mr. Machado was held at the Kotahena Police Station on suspicion of being involved in the murder of Mr. Lakshman Kadirgamar, that the suspect was produced in court and subsequently provided bail, that the matter was then still under investigation, that there was a warrant of arrest issued on 17<sup>th</sup> October 2008 against the suspect in Case No.28223/5/2008 in the Chief Magistrate's Court of Colombo.
- b. That although the Respondent did not know the suspect, he had known the suspect's uncle, one Joe Fernando, both as a client and as a friend, and claimed to have acted in the trust placed on Joe Fernando and one Raju (a private secretary to former Minister Douglas Devananda) when issuing the said letter.
- c. That a Law Firm, operating under the name and offices of 'Nag law Associates' based in the United Kingdom, operated by one Sakunthala, who was a cousin of the Respondent and her husband one Naguleswaran, Attorney-at-law had requested that he provide such details in a letter.
- d. That an inquiring officer of the British High Commission had recorded a statement from the Respondent on the matter, whereupon he had confirmed that he issued such letter.
- e. That upon inquiry by the officer of the British High Commission, the Respondent had himself inquired into the matter and verified from the Kotahena Police that there was no case registered under the number and no warrant of arrest as mentioned was issued against Machado.
- f. That the Respondent had not sent a letter of apology to the Complainant British High Commission even after realizing that the representations he made on behalf of Machado were false.

The Respondent had also admitted to the violation of the Oath of allegiance to the

Republic of Sri Lanka and the Oath he had undertaken as an Attorney-at-Law and expressed his regret to the panel.

Proceedings were initiated against the Respondent before this court for the suspension from practice or removal from the office of Attorney-at-law under Section 42(2) of the Judicature Act, No. 02 of 1978 read with Supreme Court Rules (part VII) of 1978 made under Article 136 of the Constitution.

The learned counsel for the Respondent, making submissions in mitigation, drew the attention of the court to the following matters:

- a. That the Respondent had not previously been involved in any matter related to discipline or professional misconduct.
- b. That the incident would not have occurred if not for the trust the Respondent placed in the Respondent's cousin and his friends.
- c. That the Respondent is 70 years of age, of good character, and has been in practice since 1985.
- d. That the Respondent now expresses regret and remorse over the matter and offers an unqualified apology to the Court over his conduct.

The learned Deputy Solicitor General in his submissions invited the court to consider, that the present complaint had been by the British High Commission, and had cast a reflection on the legal profession. The learned Deputy Solicitor General also submitted however that the Respondent had, from the onset, accepted responsibility for his actions.

The Court observes that the representations made by the Respondent to the British High Commission are matters of a serious nature and he would have known that the material submitted by him, would in all probability be considered in deciding the application for asylum by Machado and that the Respondent had the full knowledge that the material supplied by him was likely to mislead the officials entrusted with the task of processing the application for asylum referred to.

It is apt to recall the words of Justice Dr. A.R.B. Amerasinghe regarding the non-exhaustive nature of the Supreme Court Rules, found in his book 'Professional Ethics and Responsibilities of Lawyers'

*“The Sri Lankan Rules do not exhaust the legal, moral and ethical considerations that should inform an attorney. No code of ethics is or is meant to be exhaustive. This is*

*generally accepted.*” [Professional Ethics and Responsibilities of Lawyers, 2018, Stamford Lake (Pvt) Ltd., Fifth Edition, p. 7]

Supreme Court Rules 60 and 61 of 1998 do not expressly address the situation relating to the facts of the present case. They do, however, call attention to the severity of the consequences when Attorneys-at-law do not accept personal responsibility for their work or conduct. This court is entitled to examine and finds instructive aid from the Codes of Conduct for Attorneys-at-law in comparative common law jurisdictions. I have found that ‘Rule C20’ of the prescribed Code of Conduct for Barristers in the United Kingdom, as it appears presently in Version 4.6 of the Bar Standards Board Handbook, comprehensively elucidates the parameters of personal responsibility lawyers must exercise over their work. The Bar Standards Board is the regulatory arm of the Bar Council of the United Kingdom, which is the Approved Regulator under the Legal Services Act of 2007 in the United Kingdom. Rule C20 of the Bar Standards Board Handbook states:

*“...you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your client, professional client, employer or any other person.”*

As evident from the facts, the Respondent did not exercise personal responsibility over his conduct and professional work. In fact, even after realising the grave error and falsification he had been party to, he did not promptly notify the High Commission. An Attorney-at-law cannot be excused from his duties and responsibilities upon the mere trust and confidence that *he had chosen to place upon his acquaintances* over *his* professional work, nor can he be excused for negligence in not bringing it the notice of the British High Commission upon discovering subsequently, that the letter he submitted was false in content.

The manner in which the Respondent has conducted himself in the instant case cannot be treated lightly nor condoned. The only saving grace as far as the Respondent is concerned is the fact that at the first given opportunity, he admitted his errant conduct and expressed regret and remorse.

On his plea of guilt, the Rule issued against the Respondent, is affirmed.

Taking the totality of the facts and circumstances referred to above, this court is of the view that the Respondent should be suspended from the practice as an Attorney-at-Law and accordingly the Respondent is suspended from the practice as an Attorney-at-law for a period of six months, commencing from today.

*Rule affirmed in terms of Section 42(2) of the Judicature Act No2 of 1978*

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA PC

I agree

JUDGE OF THE SUPREME COURT

JUSTICE E.A.G.R AMARASEKARA

I agree

JUDGE OF THE SUPREME COURT