

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

In the matter of a Rule issued in terms of Section 42(2) of the Judicature Act, No. 2 of 1978, as amended, on E. A. Vajira Dissanayake, Attorney-at-Law.

SC Rule No: 02/2021

Ashanthi Weerakoon,
No. 262, Kotte Road,
Nugegoda.

COMPLAINANT

Vs.

E. A. Vajira Dissanayake,
No. 181, Kajugahawatta,
Gothatuwa New Town, Angoda

RESPONDENT

Before: Jayantha Jayasuriya, CJ
P. Padman Surasena, J
Arjuna Obeyesekere, J

Counsel: Shiral Lakthilaka for the Respondent

Maheshika Silva, Deputy Solicitor General for the Attorney General

Rohan Sahabandu, PC for the Bar Association of Sri Lanka

Inquiry on: 4th April 2023, 18th January 2024, 29th February 2024, 30th April, 2024, 24th July 2024 and 1st August 2024

Decided on: 26th November 2024

Obeyesekere, J

The Respondent was admitted and enrolled as an Attorney-at-Law of the Supreme Court on 10th July 1993.

By way of a written complaint dated 23rd April 2012, Ashanthi Weerakoon [**the Complainant**] informed the Hon. Chief Justice as follows:

- (a) She had signed as a guarantor to a loan taken by Udaya Nilantha De Silva [**the Borrower**] to purchase a motor vehicle;
- (b) Due to the non-payment of the monthly instalments, the lessor Ceylinco Leasing Corporation Limited had instituted proceedings in the Commercial High Court against the Borrower and the two guarantors, and that she had been named as the 3rd defendant [Case No. CHC (Civil) No. 28/2019MR];
- (c) Although she had not met the Respondent at any time, a proxy said to contain her signature had been filed by the Respondent and answer had been filed on her behalf without her providing any instructions to the Respondent;
- (d) Judgment had been entered against her by the Commercial High Court on 30th March 2012;
- (e) Although she had sought to file a notice of appeal through an Attorney-at-Law of her choice, it had been rejected due to a proxy having already been filed by the Respondent, thus depriving her of the opportunity of filing an appeal against the said judgment;
- (f) She firmly believes that the Respondent had colluded with the Borrower in forging her signature and deprived her the opportunity of presenting her defense in the said case.

Pursuant to an inquiry conducted by the Bar Association of Sri Lanka at the direction of the Hon. Chief Justice, a Rule was issued on the Respondent on 20th January 2022. The Respondent was thereafter afforded an opportunity of showing cause as to why the Rule

should not be made absolute. Accordingly, the Respondent filed an affidavit on 24th June 2022 denying the allegations levelled against him and setting out his position on the matters contained in the said Rule, thus necessitating this Court to proceed to hold an inquiry.

The Rule was read over to the Respondent in Open Court on 6th December 2022. With the Respondent pleading not guilty, the inquiry commenced on 4th April 2023. The learned Deputy Solicitor General led the evidence of three witnesses, including that of the Complainant and the Examiner of Questioned Documents who had examined the signature of the Complainant on the impugned proxy, compared it with specimen signatures of the Complainant and confirmed in his report that the signature on the proxy is not that of the Complainant.

At the request of the learned Counsel for the Respondent, the aforementioned affidavit of the Respondent was considered as his evidence-in-chief. After the conclusion of the cross examination of the Respondent and while under re-examination, the learned Counsel for the Respondent, having obtained instructions from the Respondent, submitted that the Respondent wishes to withdraw his initial plea of not guilty and plead to all charges contained in the Rule. This Court thereafter inquired from the Respondent on the withdrawal of the initial plea and him pleading guilty to the Rule almost at the tail end of the inquiry, and being satisfied that the Respondent is acting voluntarily and fully understands the consequences of such action, permitted the Respondent to withdraw his initial plea and to plead guilty to the Rule. The Rule was thereafter made absolute against the Respondent.

With the only issue left to be decided being whether the Respondent should be suspended from practice or removed from office, this Court afforded all parties an opportunity of making submissions with regard to the action that should be taken by this Court. In arriving at a conclusion, I shall bear in mind the case of **In Re Fernando** [(1959) 63 NLR 233; at page 234] where Chief Justice Basnayake stated that:

“The power to remove or suspend a proctor from his office is one that is meant to be exercised for the protection of the profession and the public and for the purpose of

maintaining a high code of conduct among those whom this court holds out as its officers to whom the public may entrust their affairs with confidence.”

The Rule

The Rule served on the Respondent reads as follows:

“WHEREAS a complaint has been made to His Lordship the Chief Justice by Ms. Ashanthi Weerakoon [hereinafter sometimes referred to as the Complainant] of No. 262, Kotte Road, Nugegoda supported by an affidavit dated 16th May 2012;

AND WHEREAS the said complaint and the order of the Disciplinary Committee of the Bar Association of Sri Lanka following an inquiry held upon a directive of their Lordships of the Supreme Court on this matter disclosed inter alia that:

- (a) The Complainant is one of two guarantors to a Hire-Purchase Agreement bearing Contract No. NCL/MV/HP/0804/2210 between Ceylinco Leasing Corporation Limited and Manpitiya Arachchilage Udaya Nilantha De Silva for the hire of a motor vehicle;*
- (b) Due to the arrears of rental by the borrower, legal action had been instituted in the Commercial High Court by Ceylinco Leasing Corporation Limited against the borrower, the Complainant, and the other guarantor in Case No. CHC (Civil) No. 28/2010 MR;*
- (c) The Complainant had not been served with summons or notices in the said Commercial High Court Case as confirmed by the Fiscal Report owing to the fact that the Complainant’s given address could not be located, the summons could not be served on her;*
- (d) The purported signature on the proxy filed by you on 15th March 2010 on behalf of the Complainant has been denied by the Complainant;*
- (e) The impugned signature on the said proxy has now been confirmed to be a forgery by the Government Analyst;*

- (f) The Complainant denies having retained you to appear on her behalf in the said case, let alone ever having met you;*
- (g) The purported answer filed on behalf of the Complainant had been filed without any knowledge whatsoever of the Complainant;*
- (h) The said case had proceeded unknown to the Complainant and judgment had been entered against all defendants including the Complainant on 30th March 2012;*
- (i) The Complainant had thereby become liable in a sum of Rs. 12,082,280.65 together with interest;*
- (j) Being aggrieved by the said judgment, the Complainant had then filed a notice of appeal in Case No. CHC (Civil) 28/2010 through her Attorney-at-Law, but the same had been rejected on the basis that it had not been filed through you who was the registered attorney on record in the said case that made an adverse order against the Complainant;*
- (k) Subsequently, on this matter being brought to the notice of Her Ladyship the Chief Justice, a disciplinary inquiry [P/59/2012] was conducted by the Bar Association of Sri Lanka on the direction of the Supreme Court in respect of the complaint made by the Complainant;*
- (l) On 21st October 2017, the day appointed for you to testify in defense at the said disciplinary inquiry, you wilfully and knowingly refrained from attending and testifying at the said disciplinary inquiry;*
- (m) The Panel that conducted the said disciplinary inquiry had unanimously found you guilty on 28th November 2018 of professional misconduct in breach of the Supreme Court Rules.*

AND WHEREAS the aforesaid complaint made by the said Ashanthi Weerakoon discloses that:

- (a) *By reason of the aforesaid behaviour you have conducted yourself in a manner which would 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 Rules (Conduct of and Etiquette for Attorneys-at-Law) of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka; and*
- (b) *By reason of the aforesaid acts and conduct, you have conducted yourself in a manner that would render yourself unfit to remain an Attorney-at-Law and have thus committed a breach of Rule 60 of the said Rules;*
- (c) *By reason of the aforesaid acts and conduct, you have conducted yourself in a manner which is inexcusable 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 61 of the said Rules.*

AND WHEREAS *this Court is of the view that proceedings 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 Rules (Conduct of and Etiquette for Attorneys-at-Law) of 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka."*

The Judicature Act

As provided in Section 40(1) of the Judicature Act, as amended [**the Act**], *"The Supreme Court may in accordance with rules for the time being in force admit and enrol as attorneys-at-law persons of good repute and of competent knowledge and ability."* While it is only persons of good repute who shall be admitted as Attorneys-at-Law, the fact that in terms of Section 42(1) of the Act, the *"Supreme Court shall have the power to refuse to admit and enrol any person applying to be so admitted and enrolled as an attorney-at-*

law” confirms that enrolment as an Attorney-at-Law is a privilege that is conferred on a person by the Supreme Court and that it is the responsibility of such person to continue to maintain such reputation and conduct at all times in order to enjoy the privilege of being an Attorney-at-Law. The repercussions of failing to do so are clearly set out in Section 42 (2) of the Act which provides that, “Every person admitted and enrolled as an Attorney-at-Law who shall be guilty of any deceit, malpractice, crime, or offence may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together.”

In **Re H.A. Mahinda Ratnayake** [SC Rule 4/2022; SC Minutes of 10th August 2023], Chief Justice Jayantha Jayasuriya, PC, having referred to Section 40(1) of the Act observed that, *“if a person of good repute after admission as an attorney-at-law engages in any conduct that changes the quality of his character and makes him no longer a person of good repute, such a person is liable to be subjected to disciplinary action as provided under the Judicature Act and the Rules of the Supreme Court.”*

This position was reiterated in **Ven. Wellawe Sri Chandananda Thero v S. Sarath W. De Silva** [SC Rule No. 05/2022; SC Minutes of 03rd September 2024] where Thurairaja, J stated that where a person of *“good repute and of competent knowledge and ability so conducts themselves that the quality of their character as a person of competent knowledge and ability changes, the interests of justice and of the profession demand that such persons be subject to disciplinary action.”*

Therefore, it is paramount that every Attorney-at-Law shall uphold the dignity and high standing of the profession at all times.

Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules, 1988

The Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules, 1988 [**the Rules**] is a code of conduct that must be adhered to by each and every Attorney-at-Law. The fact that the Rules are not exhaustive is confirmed by (a) Rule 60 which provides that, *“An attorney-at-Law must not conduct himself in any manner which would be reasonably regarded as disgraceful or dishonorable by Attorneys-at-Law of good repute and competency or which would render him unfit to remain an Attorney-at-Law or which is inexcusable and such as to be regarded as deplorable by his fellows in the profession“* and

(b) Rule 61 which provides further that *“An Attorney-at-Law shall not conduct himself in any manner unworthy of an Attorney-at-Law.”*

The onerous professional responsibilities conferred on an Attorney-at-Law have been succinctly set out by Justice A. R. B. Amerasinghe in **Professional Ethics and Responsibilities of Lawyers** [1993] as follows:

*“An attorney-at-law should advise and represent his client and render professional assistance conscientiously with **scrupulous care and due diligence** in reasonable time and he should not accept any professional matter unless he can so attend to it.”*
[page 240]

*“The **diligent handling of a particular matter** includes inquiring into and analysis of the factual and legal elements of the problem and the use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. An Attorney should undertake such preparation as is reasonably necessary and practicable in the circumstances. The required attention and preparation are determined in part by what is at stake, and the complexity of the matter; but thoroughness and adequate preparation are necessary in every case.”* [Page 291]

*“An attorney’s practice must be **efficiently and properly administered** and his work must be subject to appropriate systems and controlled by him. Office staff and facilities adequate to his practice must be maintained, so that each matter can be handled adequately and effectively in time, or that early and sufficient notice would be given if professional engagements cannot be fulfilled, and in general, that **a quality of service at least equal to that which competent lawyers would expect in a like situation are rendered**. Otherwise he may be found wanting with regard to his duty of diligence.”* [Page 293]

An Attorney-at-Law must therefore act with due diligence at all times in his engagement with a client. The right to be remunerated for the professional services provided by such Attorney-at-Law is therefore contingent upon providing such client with a quality of service that competent lawyers would render.

Justice Amerasinghe has pointed out further in **Professional Ethics and Responsibilities of Lawyers** [supra] that, *“In general, a lawyer comes into a matter only if he is ‘instructed’ by a client”* [page 304] and *“An attorney should not act in a professional capacity for a party in any matter, whether contentious or otherwise, except at the request of a party or at the request of a registered attorney.”* [page 305] Thus, it is a fundamental requirement that an Attorney-at-Law must obtain instructions from his client in order to represent such client.

An Instructing Attorney, also referred to as the Registered Attorney or the lawyer on record forms the nexus between the litigant and court, and where a counsel has been retained, as the nexus between the litigant and counsel, as well. It is an onerous responsibility and therefore is a responsibility that must not be undertaken lightly but in all seriousness. It would perhaps be relevant to refer to the following passages from **Professional Ethics and Responsibilities of Lawyers** [supra] where Justice Amerasinghe has emphasised the said responsibility as follows:

“There is a heavy duty on a registered attorney to ensure that all things that are expected of him by the law and in terms of the standards of the profession are done diligently, promptly, conscientiously, with reasonable competence. The registered attorney performs the functions previously performed by proctors in employing and instructing counsel, carrying out his advice and organizing the case behind the lines, e.g., in obtaining the evidence which counsel needs, in taking proofs from witnesses, securing their attendance and the like. Where he fails in his duty he may be guilty of being in breach of his contract with his client with regard to the organisation of the case for presentation to the court in terms of his proxy and liable for resulting loss.”
[Page 303]

“The registered attorney must take steps to provide counsel in time with all the necessary documents and information to deal adequately with all material questions and to prepare his case.

*The collaborative nature of the attorney-client effort makes it necessary for the attorney to **keep the client reasonably informed about the status and progress of a matter entrusted to him.*** [Page 306]

Thus, while an Attorney-at-Law must act only on instructions, he/she must act diligently at all times and discharge his/her duties with a high degree of professionalism that is expected of Attorneys-at-Law.

The evidence of the Complainant

I shall now consider the evidence of the Complainant and the evidence of the Respondent since the said evidence demonstrates the professional negligence of the Respondent and would therefore give context to the final decision that this Court would reach with regard to the Respondent.

The Complainant stated that on or around 14th March, 2012, the other guarantor, Manjula had informed her that the Borrower had defaulted in the repayment of the loan instalments to the leasing company and that action had been instituted in the Commercial High Court against her as well as the Borrower and Manjula. The Complainant stated further that she did not receive any summons from the Commercial High Court and that although she has been resident at the address given in the plaint, the fiscal had reported that she was not available at the given address.

The Complainant had thereafter retained the services of an Attorney-at-Law who examined the case record in Case No. CHC (Civil) 28/2010MR, and found that, (a) she had been named as the 3rd defendant, (b) a proxy has been filed on her behalf, and (c) judgment was due to be delivered on 30th March 2012. As she had not provided any instructions to any Attorney-at-Law with regard to the said case, she had obtained a copy of the proxy and observed that a signature similar to her signature had been placed on the proxy on the space where the 2nd defendant was to have placed his signature and that her National Identity Card Number had been written on the proxy.

The Complainant stated further that, (a) she has never met the Respondent as claimed by the Respondent, (b) she did not place her signature on the proxy, (c) she has never visited the Respondent at his office or home, and (d) she has not provided the Respondent with any instructions with regard to the case. The Complainant stated further that she had lodged a complaint with the Special Crimes Investigation Unit, Mirihana on 16th March 2012, which is almost immediately after she found that her signature had been forged.

Acting through another Attorney-at-Law, the Complainant had filed a petition supported by an affidavit in the Commercial High Court on 19th March 2012 setting out the above matters and seeking permission of Court to file a proxy and an answer. The notice of appeal tendered on her behalf by another Attorney-at-Law had been rejected since it had not been filed through the Respondent who was the “registered attorney” on record.

The Complainant stated further that the Fiscal had visited her house in order to seize her property and that it caused her severe mental stress and agony. Her evidence was as follows:

“ ස්වාමිනි මට ඒ දඬුවම් නම් වචනවලින් කියන්න බැහැ. මමත් මගේ දරු දෙන්නාත් ගොඩාක් අසරණ තත්වයට පත්වුනා මේ පෙරකලාසියෙන්. මගේ පිටිතයට වෙච්ච භානිය මට වචනවලින්වත්, කායිකවත්, මානසිකවත් මෙච්චරයි කියලා ඔබතුමන්ලාට කියන්න බැහැ.

ප්‍ර: තමුන්ට යම් ගෙවීමක් සිදු කිරීමට සිද්ධ වුනාද?

උ: මට ගෙවීමක් කරන්න සිද්ධ වුනා, ඒ නඩුවේ තියෙන මුදල මට ගෙවන්න කියලා බලපෑමක් කළා ඒ කම්පෑණි එකෙන්. මගේ සියලුම දේපල උසාවි භාරයට අරගෙන ඒ හැම දෙයක්ම වුනා. ඒ හැම දෙයකටම වඩා මට ඒ වෙලාවේ හිටියේ දරු දෙන්නා පාසැල් වියේ. මම මගේ දරු දෙන්නන් එක්ක බොහෝම අසරණ තත්වයකට පත්වුනා ඒ වෙලාවේ. මට ඒ ගැන මිල කරන්න බැරි තරම් අපරාධයක් වුනා මගේ දරුවන්ගේ මනසට.”

It is therefore clear that the conduct of the Respondent has caused untold hardship and stress to the Complainant.

The conduct of the Respondent

There are three principle allegations that are borne out from the Rule served on the Respondent. The first is that he tendered a proxy to Court knowing that the signature of at least one of the persons on the proxy is not genuine. The second is that he filed such proxy and thereafter an answer on behalf of a person he had never met and from whom he had not received any instructions at all with regard to the case. The third is that by filing the said proxy and answer in Court, the Respondent represented to Court that the said proxy is genuine and that he is acting on the instructions of the relevant party, knowing well that it is not so.

Although the Respondent stated that (a) he maintains a separate file in respect of each case where he is the Registered Attorney and that he enters details of the clients and the instructions he receives in such file, and (b) he maintains a register where he enters all such details, the Respondent did not produce the relevant file or the register. While no explanation was tendered in respect of the failure to produce the register, his explanation that he had handed over the file to the Borrower to enable the Borrower to appeal cannot be accepted as the Respondent was the Registered Attorney-at-Law and his services were required to enable the Borrower to file an appeal.

The Respondent admitted that he met the Borrower for the first time in his life on 15th March 2012 at around 9.15am outside All Saints Church, Hulftsdorp and that the Borrower signed the proxy by keeping it on the bonnet of his vehicle parked on the side of the road. Although the Respondent claimed that he maintained a law office of his own, his evidence clearly demonstrates that a public road is more than sufficient for him to obtain instructions and signatures of litigants. Quite apart from the lack of professionalism on the part of the Respondent and his admission of guilt to the Rule, the claim of the Respondent that the Complainant too met him and signed in his presence is false, for the simple reason that the impugned signature of the Complainant had been placed against the name of the 2nd defendant whereas the Complainant was the 3rd defendant. The version of the Respondent that he examined the National Identity Card of the Complainant also cannot be accepted as any such examination could not have taken place on a busy road where parking is not permitted. Thus, the Respondent tendered to the Commercial High Court a proxy fully aware that at least one of the signatures on the said proxy is not genuine.

Although the Respondent admitted that as an Attorney-at-Law he was required to obtain separate instructions from each party, the Respondent conceded that the Complainant never visited him at his office and that he only received instructions on behalf of the Complainant from the Borrower, who as I have stated earlier, the Respondent had not met prior to being retained for the Commercial High Court case. The resultant position is that the Respondent filed the proxy, retained Counsel, proceeded to file an answer and represented the Complainant without receiving any verbal or written instructions from the Complainant. The legal position of the Borrower could well have been different to that of the guarantor and while being represented by one Attorney-at-Law may have

given rise to a conflict of interest, the need for the Respondent to obtain instructions from each of the defendants cannot be over emphasised. The conduct of the Respondent in appearing for the Complainant without being retained by the Complainant has deprived the Complainant of the opportunity of placing her side of the story by way of an answer and giving evidence thereafter at the Commercial High Court.

The Respondent also admitted in his evidence that on the day the judgment was due to be pronounced in Open Court but prior to the delivery of the judgment, the Hon. Judge of the Commercial High Court had inquired from him whether he is appearing for all three defendants, to which the Respondent had answered in the affirmative. It is only thereafter that the judgment was pronounced. Having taken notice of the judgment, the Respondent did not make any effort to inform the Complainant of the judgment of the Commercial High Court. Although the Complainant found out on her own of the judgment, it was the duty of the Respondent, having filed the impugned proxy although without instructions, to have at least informed the Complainant. The lack of diligence and the unprofessional conduct of the Respondent has thus continued unabated.

Conclusion

I have no doubt in my mind that the Respondent has been guilty of professional misconduct, to which he has now pleaded guilty. Considering the nature of the malpractice committed by the Respondent, I am of the view that the Respondent has brought the legal profession into disrepute. The Respondent's conduct is deplorable to say the least and certainly unworthy of an Attorney-at-Law. Hence the Respondent has breached Rules 60 and 61 of the Supreme Court (Conduct of and Etiquette for Attorney-at-Law) Rules, 1988.

While such conduct of the Respondent certainly warrants a suspension for a long period of time, I have considered very carefully the mitigatory circumstances that were pleaded by the learned Counsel for the Respondent, and especially the medical condition of the Respondent, the fact that he has suffered a stroke and is not able to engage in a normal life and that the Respondent has had no other complaints against him during his 31 years of practice as an Attorney-at-Law.

Taking into consideration the above matters:

- (a) The Respondent, E A Vajira Dissanayake is suspended from engaging in the practice of an Attorney-at-Law for a period of three years from the date hereof;
- (b) The Respondent shall pay a sum of Rs. 250,000 as State costs;
- (c) The Respondent shall pay a sum of Rs. 750,000 to the Complainant.

All monies shall be deposited in the Registry of this Court within 90 days of this judgment.

The Registrar of the Supreme Court is directed to take all necessary steps accordingly.

JUDGE OF THE SUPREME COURT

Jayantha Jayasuriya, PC, CJ

I agree.

CHIEF JUSTICE

P. Padman Surasena, J

I agree.

JUDGE OF THE SUPREME COURT