

**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
Roshan Davinda Ranaweera, Attorney-at-Law.***

Hon. A. K. M. Patabendige,
High Court Judge,
High Court No. 4, Colombo.

SC Rule No. 08/2023

COMPLAINANT

Vs.

Roshan Davinda Ranaweera,

Attorney-at-Law,
231/1, 1st Lane, Athurugiriya Road,
Homagama.

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**

MAHINDA SAMAYAWARDHENA, J. &

ARJUNA OBEYESEKERE, J

COUNSEL: Saliya Pieris, PC with Suren Gnanaraj and Pasindu Tilakaratne for the
Respondent Attorney-at-Law

Dr. Sunil Coorey for the Bar Association of Sri Lanka.

Udara Karunatilaka, SSC for the Hon. Attorney-General

INQUIRY ON: 21st October 2024

DECIDED ON: 30th October 2024

THURAIRAJA, PC, J.

1. The instant Rule was preferred by the Registrar of this Court pursuant to complaints against Roshan Davinda Ranaweera, the Respondent Attorney-at-Law, dated 12th January 2022 and 20th December 2022, alleging failures on the part of the Respondent to appear before the High Court in a criminal matter where he was appointed as the assigned Counsel. The said complaints were made to His Lordship the Chief Justice by then Judge of High Court No. 4, Hon. A. K. M. Patabendige.
2. The Rule against the Respondent Attorney-at-Law dated 12th January 2024 discloses the allegations against him as follows:

"WHEREAS written complaints dated 12 January 2022 and 20 December 2022 have been made to His Lordship the Chief Justice by the Hon. A. K. M. Patabendige, Judge of High Court No. 4 of Colombo (hereinafter referred to as the said Complainant), alleging the failure by you to be present in Court in a matter in which you have been appointed as the assigned Counsel by the High Court;

AND WHEREAS the said complaint and documents furnished by the said Complainant discloses, inter alia, that;

- a. You were appointed by the High Court as counsel for the 2nd accused in Colombo High Court case No. 2008/2004 on 26.10.2016
- b. That the said case was fixed for trial on 01.12.2021, however you failed to be present in court on the said date and the matter was rescheduled for 08.12.2021,
- c. You were present in Court on 08.12.2021 and upon the evidence of the Court translator being concluded the Prosecution closed their case and the matter was fixed for the Defence to commence their case 11.1.2022.
- d. On 11.1.2022 you once again failed to be present and it was informed by the 2nd Accused that you were appearing before the Court in Homogama [sic].
- e. The case was fixed for further trial on 14.12.2022 and once again on the said date too you failed to be present before Court.
- f. The 2nd Accused was instructed to inform you to be present in Court on 15.12.2022, however that you failed to be present in Court on the said date as well.
- g. You were informed by letter dated 09 January 2023 sent by the Registrar of Supreme Court on the direction of his Lordship the Chief Justice to submit

observations by way of an Affidavit in respect of the aforesaid complaint, however, you failed to respond to the same.

AND WHEREAS, *the aforesaid complaint made by Hon. A. K. M. Patabendige, Judge of the High Court No. 4 discloses that;*

- (a) by reason of the aforesaid conduct you have failed to exercise due diligence in respect of a professional matter and therefore acted in a manner which is contrary to Rule 10 of the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka*
- (b) by reasons of the aforesaid conduct you have acted in a manner which is contrary to Rules 15 and 16 of the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka*
- (c) by reasons of the aforesaid conduct you have acted in a manner which is contrary to Rule 18(a) of the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka*
- (d) by reasons of the aforesaid conduct you have acted in a manner which is contrary to Rule 50 of the Supreme Court (Conduct of and Etiquette of Attorneys-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka*
- (e) by reason of the aforesaid conduct you have acted 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 1988*

made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka, and,

(f) 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, and,

(g) 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,

(h) by reason of the aforesaid acts and conduct, you have committed deceit and/or malpractice within the ambit of Section 42(2) of the Judicature Act, No. 2 of 1978 which renders you unfit to remain as an Attorney-at-Law, and,

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 (Part VII) of 1978 made under Articles 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka..."*

3. When the matter was taken up for inquiry on 21st October 2024, the Respondent Attorney-at-Law pleaded guilty and entered a plea in mitigation supported by Affidavit dated 16th October 2024. As the Respondent has pleaded guilty, I do not see it necessary for this Court to exhaustively address the facts of the matter except insofar as it is relevant for sentencing.
4. The Respondent was admitted to Sri Lanka Law College in 2011 and then admitted to the Bar on 05th August 2015. Since then, he has practised as a junior counsel under two

senior attorneys before venturing to practice independently at the Homagama Bar in 2019.

5. The Respondent submitted that he accepted the appointment as Assigned Counsel on 26th of October 2016 while appearing as a junior counsel before Colombo High Court No. 1. He states that he could not appear on the calling date of 23rd November 2016 due to a personal difficulty, which he does not specify. He had then appeared on 09th December 2016, pursuant to the notice received from the Court. He states that he also appeared and duly represented the 2nd Accused on numerous other dates from early 2017 to 2020. The case was then rescheduled several times during the COVID-19 pandemic and the economic crisis.
6. According to his own admission, he had missed several dates during this time and due to his failure to appear on 01st December 2021—which he claims to have resulted from the Accused’s failure to inform him of the date—the High Court judge has gone so far as to notify the Respondent of the next date via the Bar Association.
7. He states that he appeared before the High Court on 08th December 2021 following the said notification and apologised to the Court for his failure to appear. The prosecution had concluded its case on this date and the High Court had proceeded to call the defence to commence its case on 11th January 2022. He states that he was not able to appear on that date as he was indisposed, which he claims to have duly informed the Accused.
8. What the Accused had informed the High Court is that the Respondent was unable to appear on that day as he was appearing in another matter in Homagama. The Respondent submits that he merely told the Accused that he moved his practice to Homagama which the Accused may have misunderstood to the above effect.
9. Following his failure to appear on the 11th January 2022, the High Court had issued notice to him once again informing him of the next trial date. Accordingly, he had appeared

before the Court on 27th January 2022 and apologised after explaining the reasons for his failure to appear on the previous date.

10. He had thereafter appeared on three trial dates, after which the case was fixed for submission on 08th July 2022. Respondent states that the case was not taken up on the said date due to the fuel crisis at the time and that it was refixed for submissions on 26th October 2022. However, he had once again failed to appear before the Court.
11. Respondent claims that he was unable to appear on 26th October due to his father's health condition. He further states that he informed the Accused of this difficulty, but the Accused had not properly intimated the same to the learned High Court Judge.
12. The learned Judge had postponed the case once again to 14th November 2022, and the Respondent accepts that the Accused informed him of this. On the said date, as the prosecution moved for written submissions the Court had fixed the case on 14th December for submissions on behalf of the Accused.
13. Once more, the Respondent Attorney-at-Law had failed to appear, citing his father's illness, having communicated his reasons to the Accused. The learned Judge had postponed the case once more to the very next day, i.e., 15th December 2022. He states that the Accused informed him of the new date and that he promptly informed the Accused of his inability to appear for the same reasons on the said date as well.
14. And this had been the last straw. Following this failure to appear on the 15th December 2022, the learned High Court Judge had taken steps to appoint a new counsel in the Respondent's stead and complain of the Respondent's conduct to His Lordship the Chief Justice. The Respondent states in his affidavit that the Accused never informed him of the High Court Judge's observation that he would be referred to the Supreme Court if he failed to appear on the last date.

15. Whatever the reasons may be, the sequence of events indicates serious lapses on the part of the Respondent to diligently represent his client during the case. The Respondent has, in fact, failed to appear on the very first court date after he accepted the assignment. What I observe in these circumstances is a chronic pattern of laxity and disregard towards the judicial process.
16. Appearing before the court on trial dates is the simplest of duties, among the many responsibilities an attorney is saddled with. **A.R.B. Amerasinghe, J.** in **Professional Ethics and Responsibilities of Lawyers** has to say the following in this regard:

“To begin with, an attorney engaged to defend an accused must ensure that the accused is never left unrepresented at any stage of the trial. He must not absent himself from a trial unless there are exceptional circumstances he could not have foreseen or he has obtained the consent of the client... If he must be absent at any stage, he should inform the judge and make arrangements for a competent deputy who is well informed about the case and able to deal with any question which might reasonably be expected to arise and to guard the interest of the client. He should any event keep himself informed throughout the progress of the trial and in particular of any development which could affect his client...”¹

17. One cannot be nonchalant and indifferent towards these duties, or any of the duties and responsibilities of an attorney for that matter, on account of being an assigned counsel. Said duties and responsibilities remain unchanged for assigned counsel, as **Amerasinghe, J.** further observes: *“[w]hen an attorney has accepted an assignment to appear for an indigent person he must act with the same scrupulous care and diligence as*

¹ ARB Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (Lake House 1993) 201

he would take in any other matter, adhering to the highest professional standards of effort and competence...”.²

18. An assigned counsel acts within the most fundamental of roles performed by an Attorney-at-Law, to wit, their role as an officer of the court and of justice. He or she is tasked with safeguarding the entitlement of all persons to legal representation at a fair impartial trial and ensuring that such persons are truly afforded equal protection before the law.
19. The judiciary, as with other organs of the State, exercises the judicial power of the people that is bestowed upon it on trust. The power so entrusted to the judiciary, or any organ of the State is conditional upon its best efforts to protect the interests of the Republic and its people.
20. The practice of assigning counsel for persons in need is a manifestation of the judicial commitment to this duty and a firm undertaking that no person should be disadvantaged before it owing to socio-economic conditions. When a counsel is assigned to necessitous persons, the court places its confidence and trust in such counsel that they will assist the court to the best of their ability in carrying out this duty.
21. Any attorney who accepts this responsibility must conscientiously perform their duties and ensure that they act with the utmost diligence. If one cannot so perform their duties, they ought to duly inform the court of their reasons and formally excuse themselves from the proceedings.
22. The Respondent states that he made several applications from time to time to the High Court to be released from the assignment after 2019 as he was now based in Homagama.

² ibid 432

He states that these applications were not allowed, and the High Court Judge wished to conclude the case expeditiously as it was pending for a long time.

23. A person who accepts an assignment cannot excuse themselves for reasons so trivial. In this regard, **Amerasinghe J** notes that "*[w]hen an attorney is assigned by a court or appointed by the Bar Association to undertake the representation he should not seek to be excused from undertaking the representation except for compelling reasons*".³
24. Of course, had the Respondent moved a great distance making it unnecessarily onerous for him to appear in Colombo, it would only be reasonable for the Court to release him of his duties. However, in the instant case, the distance from Homagama to Colombo can hardly be considered so onerous when it is, in fact, the daily work commute for tens of thousands.
25. I am inclined to note that the Respondent had failed to respond to the initial letter dated 09th January 2023 sent by the Registrar of Supreme Court calling for the Respondent's observations. The Respondent in his Affidavit has addressed and apologised for this failure, stating that the said letter was sent to the address given by him at the time of taking oaths and that he has changed his residence since then.
26. While I do not hold this failure against the Respondent, as most Attorneys-at-Law do not update their details given to the Supreme Court at the time of enrolment, I must observe that it is not only preferable but also pertinent if all members of the Bar take necessary steps to promptly inform the Supreme Court of any changes to their addresses and other contact details, so that such mishaps may be avoided.
27. What I do find unacceptable, however, is the manner in which the Respondent has conducted himself once the Rule was duly served through the Fiscal of Homagama District Court. The Respondent had appeared before this Court on 04th October 2023 and

³ ibid 432

was represented by two Counsel. The Counsel representing him moved to defer the reading of the Rule to the next date and the inquiry was accordingly rescheduled. On 12th January 2024, Respondent pleaded not guilty after arraignment. The Rule was then fixed for inquiry on 30th July 2024.

28. However, on the 30th July 2024, reverting back to his habits, the Respondent failed to appear before this Court. It was also observed that he had failed to show cause as directed in the Rule. The Respondent was not contactable by the Registry and the Court has attempted to serve notices even through the Bar Association of Sri Lanka, to no avail. It is due to this default that the Court suspended the Respondent from practice pending the final decision of the inquiry.
29. However, further time was granted to the Respondent to file an affidavit as pleaded by the learned President's Counsel appearing for the Respondent, and he was directed to show cause within four weeks from the said date, which the Respondent failed to do.
30. By motion dated 30th August 2024, the Respondent had sought an extension of one week, i.e., until 06th September 2024, to prepare his affidavit. On 10th September 2024, he requested a further extension of three weeks, until 27th September 2024. Thereafter, on 27th September, he filed another motion seeking an extension of two weeks. The latter request was refused by this Court.
31. Needless to say, such manifest incompetence is absolutely unacceptable in the noble profession. His conduct before this Court indicates that he has not reformed himself even after the issuing of the Rule.
32. In the absence of any mitigatory circumstances, the Respondent's conduct would warrant disbarment. However, the Respondent has invited this Court to consider several circumstances in mitigation.

33. He states that his father lost his eyesight on 26th April 2022 due to a severe diabetic condition. As the only child, and due to his mother's frailty, he had had to tend to all his father's needs. He states that his father regularly fell ill since he lost his vision, and has attached various medical records as proof of the same.
34. While I take full cognisance thereof and sympathise with the circumstances, I must also observe that his father's medical condition does not account for all lapses and failures on his part. The record before us, and even the Respondent's own affidavit, indicate that he had failed to appear before the High Court on many instances prior to his father's condition.
35. Even after his father's condition, he ought to have acted more prudently in dispensing his professional duties. Any attorney who cannot appear before the court must take necessary steps to appoint a competent deputy to appear in their stead. Where that cannot be done, they must take steps to inform the court of the reasons for such failure, as soon as practicable, so as to ensure that their client is not prejudiced by such failure.
36. Moreover, Respondent further submitted that, subsequent to the issuing of this Rule—as he was suspended pending its final decision—he has been making ends meet and taking care of his parents by working odd jobs that are unfit for the station of an Attorney-at-Law.
37. I am inclined to act leniently, on account of the mitigatory circumstances submitted by the Respondent, especially the fact that he pleaded guilty, as well as his age and means of income.
38. Considering the totality of the circumstances adverted to hereinabove the Rule against the Respondent, Roshan Davinda Ranaweera, is made absolute.

39. Accordingly, the Respondent, Roshan Davinda Ranaweera, shall be suspended from practice for a period of five years from the date of this Ruling. The Registrar of the Supreme Court is directed to take all necessary steps accordingly.

Rule Affirmed.

Respondent Suspended for Five Years.

Judge of the Supreme Court

MAHINDA SAMAYAWARDHENA, J.

I agree.

Judge of the Supreme Court

ARJUNA OBEYESEKERE, J.

I agree.

Judge of the Supreme Court