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

In the matter of an Application in terms of Section 4(1)(c) read with Section 2(1) of the Maintenance Act No.27 of 1999.

Thilaka Wadasinghe Liyanarathnage

37, Somaweera Chandrasiripura,

Mampe, Piliyandala.

Applicant

Vs.

Hudson Samarasinghe,

255/B/11, Torrington Garden,

Torrington Mawatha,

Colombo 07

Respondent

S.C. Appeal No.22/2020

SC/SPL/LA No. 101/2018

C.A. No. CA(PHC) APN 86/09

H.C. Colombo Case No. HCRA/29/07

M.C. Colombo No. 3828/03/04

And

In the matter of an application in terms of Article 154/P of the Constitution read with the High Court of the Provinces (Special) Provisions) Act,

Hudson Samarasinghe,

255/B/11, Torrington Garden,

Torrington Mawatha,

Colombo 07

Respondent-Petitioner

Vs.

Thilaka Wadasinghe Liyanarathnage

37, Somaweera Chandrasiripura,

Mampe, Piliyandala.

Applicant-Respondent

And Between

In the matter of an application in terms of Article 138(1) of the Constitution and section 11(1) of the High Court of the Provinces (Special) Provisions) Act, No.19 of 1990.

Hudson Samarasinghe,

255/B/11, Torrington Garden,

Torrington Mawatha,

Colombo 07

Respondent-Petitioner-Petitioner

Vs.

Thilaka Wadasinghe Liyanarathnage

37, Somaweera Chandrasiripura,

Mampe, Piliyandala.

Applicant-Respondent-Respondent

And Now Between

In the matter of an Appeal in terms of Article 128(1) of the Constitution

Hudson Samarasinghe,

255/B/11, Torrington Garden,

Torrington Mawatha,

Colombo 07

Respondent-Petitioner-Petitioner-Appellant

Vs.

Thilaka Wadasinghe Liyanarathnage

37, Somaweera Chandrasiripura,

Mampe, Piliyandala.

Applicant-Respondent-Respondent-Repondent

BEFORE	:	**E.A.G.R. AMARASEKARA, J.** **ACHALA WENGAPPULI, J.** **MAHINDA SAMAYAWARDHENA, J.**
COUNSEL	:	Kuwera de Zoysa P.C. with Sumedha Mahawanniarachchi & Nishan Balasooriya for the Respondent-Petitioner-Petitioner-Appellant Sandamal Rajapakse with Sachintha Rodrigo for the Applicant-Respondent-Respondent - Respondent
ARGUED ON	:	08th June, 2022
DECIDED ON	:	28th May, 2025

ACHALA WENGAPPULI, J.

This is an appeal arising out of an order made by the Magistrate's Court, by overruling a preliminary objection raised by the Respondent-Petitioner-Petitioner-Appellant (hereinafter referred to as the "Appellant") in relation to a maintenance application made by the Applicant-Respondent-Respondent-Respondent (hereinafter referred to as the "Respondent") against him under the Maintenance Act No. 37 of 1999.

Since the pronouncement of the said order by the Magistrate's Court and after a long an arduous journey through a multitude of litigation processes, finally the question of legality of the said ruling made by the Magistrate's Court and the refusal of the Provincial High Court as well as the Court of Appeal to set it aside by exercising revisionary jurisdiction, had reached this Court for determination.

Since the litigation history between the parties had resulted in an heavily entangled web of Court proceedings commencing from the original Court and thereupon traversing through all the way up to the apex Court, for the purpose of avoiding any impression of inconsistency that might arise in the mind of the reader due to repetitive references made to these multiple processes of litigation at different stages in the course of this judgment, I shall endeavour to make a presentation, *albeit* brief, of the important factual events in relation to the instant appeal and the corresponding step in the relevant legal proceedings and to arrange them in chronological order, in an attempt to ensure a cohesive judgment. In my view this is an essential step that should be taken, even before I consider

the several questions of law on which the Counsel were heard, during the hearing of this appeal.

The Appellant entered into a contract of marriage with the Respondent on 17.06.1985, after complying with the statutory provisions contained in the Marriage Registration Ordinance.

The Appellant was charged by the Magistrate's Court in case No. 56041/01/93 for committing the offence of bigamy, by contracting a "*null and void* marriage" with the Respondent while his wife to the previous marriage is still among the living, and thereby committing an offence punishable under Section 362B of the Penal Code. After trial, he was found guilty to the said charge by the Magistrate's Court on 18.12.1997.

Being aggrieved, the Appellant preferred an appeal to the Provincial High Court against the said conviction, challenging its legal validity, in appeal No. HCMCA 815/98, and the said appellate Court, by its judgment dated 04.12.1998, allowed the appeal of the Appellant, by setting aside his conviction for bigamy.

On an unspecified date in 2004, the Respondent filed an application before the Magistrate's Court of *Colombo* (case No. 3822/03/04), seeking an order of Court for a maintenance allowance in favour of her and also on behalf of her son, fathered by the Appellant.

The Appellant, whilst denying paternity of the child, raised a preliminary objection to the maintainability of the said application on 29.10.2004, by pointing out that no supporting affidavit was filed along

with the application. The Respondent, conceding to the said objection, withdrew her application, reserving her right to file it afresh.

On 03.11.2004, the Respondent filed her second application for maintenance in Case No. 3828/03/04 and the Appellant once more raised a preliminary objection to the maintainability of the said application on the basis that the male child, on behalf of whom the Respondent sought maintenance is in fact an adult offspring. The Magistrate's Court overruled the objection on 14.12.2004 and ordered an interim allowance.

The Appellant moved the Provincial High Court in revision of the said order in Case No. HCRA 717/04. The appellate Court by its order dated 29.05.2006, set aside the impugned order and directed that only the Respondent is entitled to continue with the application.

On 28.08.2006, the Appellant raised another preliminary objection in the said case No. 3828/03/04 before the Magistrate's Court but this time on the premise that the Respondent could not be considered as his "*spouse*", in terms of the Maintenance Act, as he was charged and convicted to have committed the offence of bigamy and therefore his '*marriage*' contracted with the Respondent is a *nullity.*

The Magistrate's Court, by its order dated 12.02.2007, overruled the said preliminary objection and proceeded to grant an interim allowance of maintenance in favour of the Respondent.

The Appellant thereupon invoked revisionary jurisdiction of the Provincial High Court against that order in Case No. HCRA 29/2007. After

an inquiry, the Provincial High Court, by its order dated 10.06.2009, dismissed the Appellant's application.

The Appellant, sought special leave to appeal from this Court against the said order of the Provincial High Court in SC/Spl./LA/134/2009. This application too was dismissed by this Court on 27.07.2009.

Thereafter, the Appellant had filed a revision application before the Court of Appeal in case No. CA(PHC) APN 86/2009), by which he sought to revise the order made by the Provincial High Court in case No. HCRA/29/2007 dated 10.06.2009.

At the support stage of the said revision application, the Respondent raised several a preliminary objection to its maintainability. One such objection was that there were no exceptional circumstances that were pleaded and urged by the Appellant, when he moved in revision against the order made by the Provincial High Court.

The Court of Appeal, by its order dated 27.05.2016, overruled the preliminary objections and proceeded to hold an inquiry into the merits of the application of the Appellant.

After hearing the parties, the Court of Appeal, by its final order dated 15.03.2018, dismissed the Appellant's application.

The Appellant, thereupon moved this Court in application No. SC/Spl./LA/101/2018 and after hearing Counsel for and against the said

application on 18.02.2020, it had decided to grant leave on the following questions of law:

Has the Court of Appeal erred in Law by overruling its own decision whereby the Court previously refused to dismiss the petition on a preliminary objection taken up by the Respondent, which decision was not set aside by the Supreme Court?

a. As Section 14(1) of the Maintenance Act No. 37 of 1999, provides a right of appeal only in respect of orders made under Section2 or 11, did their Lordships of the Court of Appeal and the learned High Court Judge err in Law by holding that there should have been exceptional circumstances to invoke the revisionary jurisdiction of the High Court against the impugned order, which was not made under either of the aforesaid Sections ?

b. Are the judgments of the Court of Appeal and the High Court contrary to the decision of your Lordships Court dated 03.11.2006 made in the case of ***Somawathie v Wimalaratna*** (2008) 1 Sri L.R. 384?

c. In view of the previous marriage between the Respondent, does the Appellant falls within the definition of spouse as referred to in Section 2(1) of the Maintenance Act No. 37 of 1999?

With the conclusion of the hearing of the instant appeal on 08.06.2022, on these questions of law, this Court directed the parties to tender further written submissions on the question of law it had

formulated "*whether there should be a declaration or order from a competent Court with regard to the nullity of the 2nd marriage?* ". Only the Appellant had thought it fit to assist Court.

In view of the scope of each question of law, it is prudent that each of the questions are considered separately for the purpose of ensuring clarity of this judgment.

The question of law contained in paragraph 17(a) of the petition of the Appellant is as follows:

> Has the Court of Appeal erred in Law by overruling its own decision whereby the Court previously refused to dismiss the petition on a preliminary objection taken up by the Respondent, which decision was not set aside by the Supreme Court?

After the Appellant supported his application for Special Leave to Appeal in SC/Spl./LA/134/2009 , this Court upon being persuaded by the reasoning contained in the decisions of ***Wickramasekera v Officer in-Charge, Police Station Ampara*** (2004) 1 Sri L.R. 257 and ***Abeywardene v Ajith De Silva*** (1998) 1 Sri L.R. 134, dismissed that application on 27.07.2009. Thereafter the Appellant had taken steps to file an application before the Court of Appeal (Court of Appeal case No. CA(PHC)APN 86/2009) by which he sought to revise the order made by the Provincial High Court in case No. HCRA/29/2007 dated 10.06.2009. In order to avoid any confusion that might arise in making references to the Appellant and the Respondent before us, but were referred to in the order of the Court of Appeal as the 'petitioner' and the 'respondent', I shall retain their

respective status before this Court, throughout this judgment in terms of reference, for the sake of maintaining consistency.

In his petition dated 07.08.2009 filed before the Court of Appeal, the Appellant states (in relation to the question of law on which this appeal was heard by this Court), that Section 14(1) of the Maintenance Act only provides for right to appeal for orders made under Sections 2 and 11, and since the impugned order was not made under any of those two Sections, the Provincial High Court was in error when it held that there should have been exceptional grounds urged to invoke revisionary jurisdiction of that Court. He also states that the impugned order of the High Court is contrary to the decision of this Court made in ***Somawathie v Wimalarathna*** in [2006] *B.L.R*. Vol XII, 110 and that it had misdirected itself by holding that the acquittal of the Appellant by the Provincial High Court in an appeal preferred against his conviction in the bigamy charge by the Magistrate's Court (HCMCA/815/98), which made his 'marriage' to the Respondent a valid marriage.

The Respondent, in her capacity as the 'respondent' named in the said application before the Court of Appeal, by filing a Statement of Objections on 17.02.2010, resisted the Appellant's application for revision by seeking its dismissal. She also raised three preliminary objections in that challenging the maintainability of the Appellant's application. As her first objection, she claimed that the Appellant failed to comply with the provisions of Section 14(2) of the Maintenance Act, which states an appeal against a judgment of the Provincial High Court could be lodged at the Supreme Court only after obtaining leave from the relevant High Court.

She secondly claimed that the invocation of the revisionary jurisdiction of the Provincial High Court is bad in law since the Appellant failed to comply with the provisions of Section 14(1) of the Maintenance Act. The third objection which the Respondent relied on was that the Appellant had failed to adduce any exceptional circumstances in invoking the revisionary jurisdiction conferred on the Provincial High Court as well as on the Court of Appeal.

The parties have proceeded with the inquiry into the said preliminary objections and the Court of Appeal, in delivering its order on 27.05.2016, overruled those objections and proceeded to determine the Appellant's application on merits. Thereupon, the Court of Appeal, by its order dated 15.03.2018, dismissed the Appellant's application to revise the order of the Provincial High Court, delivered on 10.06.2009, which affirmed the order of the Magistrate's Court made on 12.02.2007.

In view of the question of law raised over the two orders made by the Court of Appeal in respect of the Appellant's revision application No. CA(PHC) APN 86/2009, and to avoid any confusion in the reference to those two orders in this judgment, it is proposed to refer to the order of the Court of Appeal dated 27.05.2016 as the "*1st order*" and the order dated 15.03.2018, as the "*2nd order*" for the convenience of reference.

The Court of Appeal, decided to overrule the preliminary objections raised by the Respondent after identifying those objections were raised "*… as to the maintainability of the Petitioner's application as this Court has no jurisdiction to maintain the same.*" The Court had proceeded to describe the objections raised by the Respondent that the Appellant, without moving in

revision against the impugned order of the Provincial High Court, should have preferred an appeal in terms of Section 14(1) of the Maintenance Act, as a remedy he failed to seek. In respect of this objection, the Court of Appeal was of the view that " … *it is seen from the said impugned orders relate only to the issue whether the Respondent is entitled to maintain her application for maintenance despite the fact that the Petitioner's first marriage has not been dissolved, …".* Therefore, the Court concluded that "… *the learned Magistrate's order is an incidental one which does not fall within the purview of Section 14(1) …".* The Court had accepted the Appellant's position that in the said application he only challenged the order of the Magistrate in so far "*as to the maintainability of the Respondent's claim for maintenance and not to revise any order of maintenance*".

With regard to the objection of the Respondent that there are no exceptional circumstances disclosed in the Appellant's application, the Court of Appeal, in its 1st order, held that " … *the Petitioner's first marriage has not been dissolved, at the time the marriage with the Petitioner took place*. *As a result, the Petitioner was charged in the said Magistrate's Court and convicted*". It appears from that statement the Court of Appeal had acted on the obvious inference it could draw, in view of the conviction entered against the Appellant for committing the offence of bigamy, and therefore considered the determination of the legal validity of the Appellant's subsequent marriage to the Respondent, as an exceptional ground in order to overrule the preliminary objection raised on that point.

In the 2nd order of the Court of Appeal, after making a reference to the fact that the Respondent's main contention against the revision

application was that the Appellant had failed to adduce any exceptional circumstances in the invocation of its jurisdiction, the appellate Court accepted that position and held that "*[I]n the instant case, the Petitioner has failed to adduce necessary exceptional circumstances to invoke revisionary jurisdiction of this Court*". It also held that it was for the Appellant to "*… establish that there had been no marriage between the [P]etitioner and the [R]espondent and that the Petitioner has failed to adduce any evidence to that effect*" and in the absence of any proof of dissolution of the marriage of the Appellant contracted with the Respondent, that second "*marriage has to be considered as a valid marriage*."

The Appellant, in raising the question of law that "*[H]as the Court of Appeal erred in Law by overruling its own decision whereby the Court previously refused to dismiss the petition on a preliminary objection taken up by the Respondent, which decision was not set aside by the Supreme Court ?*", has obviously relied on the apparent inconsistency that exists between the 1st order and the 2nd order over the issue whether there was any exceptional circumstances. It was highlighted above that, in delivering the 1st order, the Court of Appeal had apparently taken the fact of his conviction for the offence of bigamy, together with his subsequent marriage to the Respondent, coupled with the fact that she had placed reliance on the validity of that 'marriage', in support of her own claim for maintenance as a *prima facie* exceptional circumstance which it could inquire into, as no such definitive finding was made on the consideration of merits of the application by that Court. This determination contained in the 1st order was made by the Court of Appeal at the threshold stage of the said application being supported by the Appellant. Therefore, the said

pronouncement made by the Court of Appeal in its 1st order should be viewed against its proper standing. The Respondent's preliminary objections were perceived by that Court as an objection to the invocation of its jurisdiction and the Court was mindful of the fact that, at that stage of the proceedings, it should only consider whether its jurisdiction was properly invoked by the Appellant by his application and not whether it should exercise its revisionary powers over the impugned order on that application.

By the time the Court of Appeal pronounced its 2nd order, the Provincial High Court had allowed the appeal preferred by the Appellant against his conviction for bigamy. The fact that there was an appeal pending against the conviction for bigamy was not referred to in the 1st order by the Court of Appeal. In delivering the 2nd order, the Court of Appeal, having noted that the Appellant " … *had been acquitted for lack or mens rea since he states that he had heard no news from his 1st wife for 15 years*" and inserted a quotation from the judgment of the Provincial High Court where it was stated that " *[I] see nothing wrong in the eyes of the law in contracting the second marriage*", and accepted the pronouncement made by the High Court that the second marriage was valid in law. This was the basis on which the application of the Appellant survived the preliminary objection.

A significant difference that exists between the 1st order and the 2nd order is that, when the 1st order was made, there was already a conviction entered against the Appellant by the Magistrate's Court for committing the offence of bigamy by marrying the Respondent, whilst his 1st wife was

living and without dissolving that marriage. But when the 2nd order was pronounced this position has changed as the Appellant had invited the attention of Court to the fact that he was acquitted by the Provincial High Court after allowing his appeal preferred against the said conviction. Apparently in making the 1st order, the Court of Appeal was not privy to the outcome of the appeal preferred by the Appellant against the said conviction.

Hence, it is clear that there is no pronouncement made by the Court of Appeal contained in its 1st order that is in conflict with the 2nd order it made, in respect of existence of exceptional circumstances and therefore that question of law ought to be answered in the negative.

The question of law contained in paragraph 17(b) of the petition of the Appellant is as follows:-

> As Section 14(1) of the Maintenance Act No. 37 of 1999 provides a right of appeal only in respect of orders made under Section 2 or 11, did their Lordships of the Court of Appeal and the learned High Court Judge err in Law by holding that there should have been exceptional circumstances to invoke the revisionary jurisdiction of the High Court against the impugned order, which was not made under either of the aforesaid Sections?

The underlying argument that was relied on in framing the second question of law seems to be that where a particular statute does not provide for a right of appeal in respect of an order or judgment, and in order to invoke its revisionary jurisdiction of the appellate Court, there

need not be a necessity to satisfy the existence of any exceptional circumstances. The statute in question in this instance is the Maintenance Act and, particularly Section 14(1), which confines the right of appeal conferred on a person who is dissatisfied with an order made by the Magistrate, only to an order made either under Section 2 or Section 11 of that Act.

The Appellant's contention on this point is since Section 14(1) of the Maintenance Act restricts the right to appeal against "*final orders*" made under Sections 2 and 11 as it speaks of a "*final order pronounced by Magistrate's Court in a criminal case or matter*" no other order made by that Court, as in the instant appeal, could be appealed against. Therefore, the order made by the Magistrate sought to be impugned by the said revision application, becomes an order which could not be appealed against and, unless moved in revision, the said provision left the Appellant without a remedy. Hence, in view of the fact that only available remedy to the Appellant was by way of revision, it was his contention that there need not be any exceptional circumstances established either before the Provincial High Court or before the Court of Appeal, in invoking the exercise of revisionary jurisdiction conferred on those Courts.

Learned President's Counsel for the Appellant, in support of that contention, relied on the judgment of ***Rustom v Hapangama and Company*** (1978-79-80) 1 Sri L.R. 352, where it stated that (at p. 360), " … *where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged, necessitating the indulgence of this*

Court to exercise its powers in revision" and this laid emphasis on the phrase "*if there is an alternative remedy available"* to advance the contention that where there is none, there is no need to adduce such circumstances.

It is correct to state that Section 14(1) indeed imposes such a restriction on a party to a maintenance application by limiting the right of appeal conferred by that Section only to orders made under either Section 2 or 11. Section 14(1) further provided certain restrictions on the Provincial High Court too in relation to such orders, in the first of the two provisos provided to that sub-Section. Relevant part of Section to the question of law on this point is as follows:

> *"[A]ny person who shall be dissatisfied with any order made by a Magistrate tinder section 2 or section 11 may prefer an appeal to the relevant High Court established by Article 154P of the Constitution in like manner as if the order was a final order pronounced by Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, mutatis mutandis, apply to such appeal; …"*

The Appellant's contention is clearly based on a phrase contained in that Section, which in his interpretation, would read as if he were to prefer an appeal against the order dated 12.02.2007, such an order should bear the characteristics of a '*final order*' and since the order impugned by his revision application, being an interlocutory order which was made overruling his objections on the issue of whether the Respondent could be

considered as his wife, such an order could not be qualified to be considered as a '*final order*" in terms of that Section.

However, in advancing the said contention, the Appellant conveniently ignores the full extent of the said order, and narrows it down its scope as if the ruling made by that original Court concerns only his objection. Perusal of the said order revels that the learned Magistrate has made three determinations, which are referred to at the conclusion of the said order. First, he determined that the Respondent is the wife of the Appellant. Second, he decided to continue with the application of the Respondent. Third, an order is made acting under the proviso to Section 11, to award an interim payment of maintenance in favour of the Respondent and her son, until the application for an order for maintenance is finally decided.

The order made by the learned Magistrate is specifically refereed to the proviso to Section 11, which enabled him to make "*an interim order for the payment of a monthly allowance which shall remain operative until and order on the application is made*" in favour of the Respondent and her son. Thus, there cannot be a doubt that the order dated 12.02.2007, is an order made under Section 11 and therefore it qualifies to be included in the term "*any order*" in Section 14(1), against which an appeal could be preferred. However, the Legislature in its own wisdom has provided some protection to the recipient of such an interim allowance by the inclusion of the words to the first proviso of Section 14(1), by imposing a restriction that "… *such an order shall not be stayed by reason of such appeal, unless the High Court directs otherwise for reasons to be recorded.*" Thus, the impugned order of the

Court of Appeal which held that the Appellant needed to establish exceptional circumstances in his revision application was correctly made in view of the availability of an alternative remedy.

Even if one were to accept the Appellant's contention that he is left with no other remedy other than the revision against the interlocutory order made by the Magistrate's Court, in the Court of Appeal judgment of ***Rasheed Ali v Mohamed Ali*** (1981) 2 Sri L.R. 29, after undertaking a consideration of a series of judicial precedents on this point concluded (at p. 33); *"[I]t is well established that the powers of revision conferred on this Court are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal where it lies has been taken or not. But this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the Court"*. It is important to note the expression "*whether an appeal lies or not*" in the context of the question of law that must be decided by this Court. This pronouncement was cited with approval by this Court in ***Union Culling Knit Garments (Pvt) Ltd., and Others v Habib Bank*** (2004) 3 Sri L.R 128, at p. 133.

This principle was once more expressed by this Court in clearer terms with its judgment in ***Bengamuwa Dhammaloka Thero v Dr. Cyril Balasuriya*** (2010) 1 Sri L.R. 193. After making a reference to the preliminary objection raised on the basis in the case of ***Rustom v Hapangama*** (*supra)* to the effect that the plaintiff petitioner cannot invoke the revisionary powers of the Court of Appeal as he had the right of appeal against the said order of the Learned District Judge, and acting upon the

reasoning adopted by this Court in that instance, it was held that (at p. 204):

> *"… the powers by way of revision conferred on the Appellate Court are very wide and can be exercised, whether an appeal has been taken against an order of the original Court or not. It was also stated that such revisionary powers could be exercised only in exceptional circumstances and the types of such exceptional circumstances would depend on the facts of each case".*

Thus, irrespective of the fact "*whether an appeal lies or not*" the judicial precedents referred to above indicate that an applicant must establish exceptional circumstances, when he moves an appellate Court to act in revision. In view of the collective wisdom contained in these pronouncements made by this Court, it must be stated that the Court of Appeal has rightly expected the Appellant to adduce exceptional circumstances in support of his application. Accordingly, the said question of law too must be answered in the negative.

The question of law contained in paragraph 17(c) of the petition of the Appellant is as follows:

> Are the judgments of the Court of Appeal and the High Court contrary to the decision of your Lordships Court dated 03.11.2006 made in the case of ***Somawathie v Wimalaratna*** (2008) 1 Sri L.R. 384?

In the context of the reference in Section 2 of the Maintenance Act, to a "*spouse*" it is noted that the Legislature, in its wisdom thought it fit not to

provide a definition to the said term in the interpretation Section 22 of that Act. The Appellant, in support of his submissions on the point that the Respondent could not be considered as a "*spouse*" in terms of Section 2 of the Maintenance Act, relied on the statement of *Amaratunga* J in the judgment of ***Somawathie v Wimalaratna*** (2008) 1 Sri L.R. 384 , that " *[N]either the Ordinance not the Maintenance Act of 1999 contemplates the payment of maintenance to a person who stands in a relationship other than that of a wife or spouse*" and therefore quotes *H.R. Hahlo* from his book on ***The South African Law of Husband and wife*** (4th Ed, at p. 488) where the learned author stated " *[A] void marriage does not entail any of the legal consequences of a marriage. There is no reciprocal rights and duties of support arising out of such a marriage. The nullity of a marriage is absolute and it may be relied on by either party or by any interested third party even after the death of one or both parties.*"

The factual position presented before Court in ***Somawathie v Wimalaratna*** (*ibid*) is fundamentally different to the position placed by the Appellant and the Respondent in the instant appeal. In ***Somawathie v Wimalaratna***, the factual narrative indicates that the applicant and respondent have only "*admitted*" their marriage before the Magistrate's Court. There was no marriage certificate that was produced before Court in confirmation of the marriage between the parties. The material available also disclosed that the applicant was earlier married to a person, who disappeared during the 1988-89 period, and, having married the respondent before a Registrar, she had lived with him as husband and wife. The applicant, at a subsequent point of time, found out that her 'husband' the respondent, had already married another woman under a

different name. The respondent, in his evidence admitted that the said woman also filed an application for maintenance and he was convicted for bigamy in respect of that marriage. During the inquiry, his marriage certificate to the other woman was marked as evidence.

It is upon consideration of these set of circumstances that this Court was of the view (at p. 387) that "*[T]he existence of a prior marriage is an absolute impediment to a second valid monogamous marriage contemplated by the General Marriages Ordinance. There was no evidence before the Magistrate- or even at least a suggestion- that at the time of the respondent's marriage to the appellant [applicant] his first wife Anulawathie was dead or that the first marriage had been dissolved by the decree of a competent Court*" (emphasis added).

Therefore, the factual narrative that has been acted upon by this Court in making the said pronouncement in the judgment of ***Somawathie v Wimalaratna,*** which was relied strongly by the Appellant in support of his contention, could easily be distinguished from the factual narrative of the instant appeal. The most striking distinguishing factor is the nature of the proof that was presented before the Magistrate's Court to establish the marriage between the applicant and the respondent in that instance. In the absence of any reference to tendering the Marriage Certificate of the appellant with the respondent, and the marital relationship was sought to be established only through an 'admission' made by the parties, it clearly distinguishes the instant appeal from the facts of ***Somawathie v Wimalaratna.*** This Court, in that instance, proceeded on the basis that (at p. 388) "*[S]ince the bigamous marriage which was void ab initio did not create*

any legal result, a Court was not entitled to rely on an admission made by the respondent to invest the respondent's second marriage with any validity it did not and could not have in law." This pronouncement is based on the premise that the learned Counsel for the applicant did not " … *contend or seek to argue that the respondent's marriage to the appellant [applicant] is valid*", but instead sought to rely on the common law concept of putative marriage to "*salvage*" the case for his client. The fact that the respondent in ***Somawathie v Wimalaratna*** had a conviction against him for commission of the offence of bigamy, whereas either "the Appellant" or the Respondent in the instant matter has no such impediment.

Learned President's Counsel for the Appellant, nonetheless, had strongly relied on certain pronouncements made in the said judgment in support of his contention that the marriage of the Appellant to the Respondent is *ab initio* void, and therefore a Court cannot rely on a subsequent marriage that has been contracted, when one of the parties to the previous marriage is still living, and as such, in order to have an order of maintenance issued against the Appellant, the Respondent could not be considered as the "*spouse*" in terms of the Section 2 of the Maintenance Act. It appears that the Appellant's said contention is premised on the finding made by this Court (at p. 388), "*[T]hus, the legal position apparent from the evidence before the Magistrate was that the respondent's marriage to the appellant [applicant] was void ab initio*". But this Court made no pronouncement as to the legal status of the 'marriage' between the applicant and the respondent

but only made an observation that it is "*apparent*" to Court that the marriage was void *ab initio,* based on the material presented before Courts.

In the said judgement, their Lordships have further held (at p. 389) that the "*… appeal has to be decided according to provisions of the repealed Maintenance Ordinance and as such the interpretation of Section 2 of the Maintenance Act No. 37 of 1999 and the word "spouse" appearing in Section 2 thereof has no relevance to this appeal."*

Having examined the impugned order of the Court of Appeal and the orders of the Provincial High Court as well as of the Magistrate's Court, carefully and in the light of these pronouncements made in the said instance by this Court, I am unable to find that any of the Courts below have acted in any manner contrary to the principles that were enunciated in the judgment of ***Somawathie v Wimalaratna*** (*ibid*) and accordingly the question of law raised in that regard must also be answered in the negative.

The question of law formulated by this Court during the hearing of this appeal is as follows;

In view of the previous marriage between the Appellant and the Respondent, does the Respondent falls within the definition of '*spouse*' as referred to in Section 2(1) of the Maintenance Act No. 37 of 1999?

In my opinion, the core issue this Court must decide, in respect of the instant appeal, is encapsulated in this fifth question of law, which was formulated by the Court during the hearing stage of the instant appeal and to which the parties were afforded an opportunity to address Court.

The position of the Appellant presented before this Court in this regard could be reduced to a simple statement. What he says is that he cannot validly marry the Respondent, while his first marriage remains a valid one and that too by operation of law. He uses a catchy phrase to drive in this point by stating that a *Sinhalese* man cannot have two valid marriages at the same time. In fact, that is his consistent position throughout the long and complex process of litigation, since which commenced with the filing of the Respondent's application in the Magistrate's Court. In his petition dated 24.04.2018, the Appellant proposed a question of law which reads " *[I]s the judgment of the Court of Appeal contrary to Section 18 of the Marriage Registration Ordinance, which specifies that 'No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void' ?*"

In response to the application filed by the Respondent for an order of maintenance, the Appellant, in his Statement of Objections dated 28.08.2006, averred *inter alia* that he was charged before the same Magistrate's Court in case No. 56041/01/93, for committing the offence of bigamy, punishable under Section 362B of the Penal Code as amended. The Magistrate's Court, after a trial and by its judgment pronounced on 18.12.1997, entered a conviction against the Appellant. The Charge of

bigamy on which the Appellant was convicted, in itself, contained the allegation that the marriage between him and the Respondent was contracted during the life time of his first wife *Meemanage Pathmini Perera.* Placing reliance on that accusation, the Appellant further averred that owing for that very reason, his marriage to the Respondent became a *nullity* and therefore she has no legal status as his *spouse,* which made her entitled to claim maintenance.

The Appellant further states in his said Statement of Objections that after hearing of the appeal preferred by him against the said conviction, the Provincial High Court, by its judgment dated 04.12.1988 (a copy of which was annexed to the Statement of Objections), proceeded to set aside his conviction. He further stated that he was acquitted by the Provincial High Court not on the basis of *nullity* of his second marriage, but on the basis that at the time of entering into his second marriage, the first wife was continually absent from him for a period of seven years and that she shall not have been heard by him as being alive within that time. The Court also noted that the Appellant (being the respondent before that Court) had declared that factual position to the Respondent in the instant appeal, at the time of contracting the second marriage. (" එසේ තීරණය කරන ලද්දේ දෙවන විවාහය අවලංගු නොවනවාය යන පදනම මත නොව දෙවන විවාහයට එළඹීමේදී පෙර විවාහයේ භාර්යාව සමග අවුරුදු හතක කාලයක් සම්බන්ධයක් නොතිබීමේ හා ඇය ජීවත්ව සිටිනවාද යන්න පිලිබඳව එම කාලය තුල වගඋත්තරකරු නොදැන සිටීමේ පදනම සහ ඒ බව මා (වගඋත්තරකරු) දෙවන විවාහයට එළඹුනු කාන්තාව දැනුවත් කර තිබීමේ හේතුව නිසා **362**A ව්‍යතිරේඛය යටතට වැටෙන හෙයින් බව...").

In view of the position taken up by the Appellant, a consideration of the status of the Appellant in terms of the applicable legal principles,

particularly at the time he contracted his second marriage to the Respondent, becomes an absolute necessity.

Learned Counsel for the Respondent relied on the copy of the extract of the Register of Marriage, confirming the marriage of the Appellant and the Respondent, that was tendered to the Magistrate's Court by the Respondent as an annexture to her application for maintenance, marked "**පෙ2**". He invited our attention to the status of the Respondent, described therein as "*unmarried*", while the status of the Appellant is described as the husband of *Padmini Perera*, whose whereabouts were unknown for seven years ("**හත් වසරකින් ආගිය අතක් නොදත් පද්මිනී පෙරේරාගේ විවහක පුරුෂයා**").

Section 52 of the Marriage Registration Ordinance states that such a copy issued under section 35A "… *shall be received as prima facie evidence of the matter to which it relates, without any further or other proof of such entry*". The same Ordinance, by its Sections 18, declares that "*[N]o marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void*". Moreover, Section 19(1), too states that; *[N]o marriage shall be dissolved during the lifetime of the parties except by judgment of divorce a vinculo matrimonii pronounced in some competent court."*

It is undisputed that the marriage between the Appellant and *Padmini Perera* was not dissolved by a judgment of divorce, pronounced by a competent Court. There is no averment or of the existence of any official acknowledgement of the death of *Padmini Perera* in the Statement of Objections tendered to the Magistrate's Court either. The Marriage Certificate "**පෙ2**", merely describes *Padmini Perera* as a person whose

whereabouts were unknown for seven years. Therefore, status of the Appellant, at the time of contracting the marriage to the Respondent, described as being the husband of *Padmini Perera*, ought to be considered as a party to a marriage "*… which shall not have been legally dissolved or declared void*".

Then a question would arise as to how the District Registrar, acting on powers conferred to him in terms of the statutory provisions contained in the same Ordinance, had taken steps to register the marriage between the Appellant and the Respondent as a valid marriage, knowing very well of the status of the Appellant as the husband of *Padmini Perera*, and thereby acting contrary to the express provisions that declare of the status of such a marriage as *void*?

The answer to this question lies in Sections 107 and 108 of the Evidence Ordinance, as emended, since the applicable principles of evidence contained therein are described as the *Presumptions as to Life* and *to Death*.

Section 107 reads thus: *"[W]hen the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it. Coomaraswamy*, in his treatise on the ***Law of Evidence*** has classified both these Sections of the Evidence Ordinance under the heading "*Special presumptions which the Court shall draw*" (at Vol II, Book 1, p. 428), and describes the *Presumption as to life* in terms of Section 107 as (*ibid,* at p. 429) *"[I]n the absence of any ground for inferring the contrary, the life of a person, proved to have been alive and well on a*

particular day, will be presumed to continue at any rate for some short time afterwards."

Learned author thereupon proceeds to describe the *Presumption as to Life,* as (*ibid*) *"[I]n the absence of any ground for interfering the contrary, the life of a person, proved to have been alive and well on a particular day, will be presumed to continue at any rate for some short time afterwards"* and adds that "(at p. 428) " … *in all cases contemplated by those Sections, as the law directs on whom the burden of proof is to lie, no option is given to the Judge as to whether he will presume the fact or not. He is bound in every case to presume the contrary or opposite of what is stated therein against the party on whom the burden of proof is directed to lie and in favour of the other party."*

If the *Presumption as to Life,* in respect of the wife of the Appellant to his first marriage in terms of Section 107 of the Evidence Ordinance, could be rebutted, the Appellant is freed from the shackles of the said statutory requirement, imposed by Section 19(1) of the Marriage Registration Ordinance, which states that no marriage shall be dissolved during the lifetime of the parties, except by judgment of divorce a *vinculo matrimonii,* pronounced by a competent Court. Learned Counsel for the Respondent relied on the case of ***Welgama v Wijesundera and another*** (2006) 1 Sri L.R. 110, where *Sarath Silva* CJ observed that (at p.122) *"[T]he presumption of life continues to apply since the person has been alive within thirty years and a party not being possessed of evidence to prove the fact of death, adduces evidence short of that by proving that the person has not been heard for seven years (prior to the amendment) by those who would naturally have heard of him if he had been alive, then the presumption shifts and it is presumed that the person is dead. In such*

circumstances the party who alleges that the person is alive has to prove that fact on a balance of probability. The presumption of life is no longer operative".

Since the strength of this presumption always depends on the age of the person, his health and other circumstances of his life, the Deputy Registrar, before proceeding to solemnise the 2nd marriage between the Appellant and the Respondent, would have satisfied himself of the justification to act on the inference that the *Presumption as to Life* with regard to the wife of the Appellant in their first marriage was sufficiently rebutted. Hence, the second marriage solemnised by him is not contrary to the statutory provisions contained in Sections 18 and 19(1) of the Marriage Registration Ordinance.

In 1988, Section 108 of the Evidence Ordinance was amended by Act No. 10 of 1988 in order to reduce the seven-year period that required for the rebuttal of the said presumption to a period of one year. Despite the said amendment, the Deputy Registrar had acted on the seven-year period requirement, perhaps in view of provisions contained in Section 608(2)(b) of the Civil Procedure Code as well as the provisions contained in the *Exception* to Section 362A of the Penal Code.

The prosecution that was subsequently instituted against the Appellant, upon the solemnisation of his second marriage to the Respondent, proceeded on the premise that his wife to the first marriage, *Padmini Perera,* was living when he contracted his second marriage and therefore, he committed the offence of bigamy since his second marriage has taken place during the life of his "*former wife*". During the trial, the prosecution led the evidence of *Padmini Perera* in support of its allegation

against the Appellant. However, the conviction entered against the Appellant by the Magistrate's Court was set aside by the Provincial High Court by allowing his appeal on the basis that he is entitled to the benefit of the *Exception* to the Section 362B, since that former wife was "… *continually absent from such person for the space of seven years and shall have not been heard of by such person as being alive within that time.*"

It is clear that the Appellant, by advancing the contention that has been referred to earlier on in this judgment, and after having successfully rebutted the *Presumption as to Life* in relation to *Padmini Perera,* now seeks to rely on the fact that she is very much alive, and thus he is incapable in law to contract a second, legally valid marriage, a fact which makes the Respondent entitled to claim maintenance from him.

Learned Magistrate, in his order dated 12.02.2007, rejected the objection of the Appellant that the Respondent is not entitled to claim maintenance from him on the basis there is no legally valid marriage exists between them. It is important to closely examine the process of reasoning adopted by that Court in arriving at that finding.

The Magistrate's Court, having taken note of the fact that the Appellant was acquitted by the Provincial High Court from the charge of bigamy, noted that nonetheless there is no order of Court up to that point in time annulling his marriage to the Respondent. The Court also noted that since there is a finding that the Appellant did not commit the offence of bigamy, the admitted and proved marriage between the Appellant and the Respondent could not be taken as a *null* and *void* marriage. Therefore, the inquiring Court had accepted the position presented by the

Respondent before it that the Appellant had failed to establish before the said Court that the marriage between him and the Respondent is *null* and *void.*

When the Appellant moved the Provincial High Court against the said order by invoking its revisionary jurisdiction, the appellate Court also accepted the validity of that reasoning and added that it was for him to establish that the marriage on which the claim of maintenance founded is a *nullity* in law. It further noted that the Magistrate's Court did not inquire into the question which of the two marriages is valid. Thereupon, the Provincial High Court held that, if the material indicates that there is a valid marriage between the parties and the requisites of Section 2 or 11 of the Maintenance Act are satisfied, it was the Magistrate's responsibility to make an order for an allowance of maintenance. The appellate Court also noted that the marriage referred in the marriage certificate presented before the Magistrate's Court is accepted by both the parties.

The Appellant thereupon moved the Court of Appeal, against the order of the Provincial High Court in dismissing his application made in terms of Article 138(1) of the Constitution, seeking to set it aside. The paragraph 13 of the petition dated 07.08.2009, contains some of the grounds averred by the Appellant in invoking the jurisdiction of the Court of Appeal, which includes;

i. there is no right of appeal to the impugned order of the Magistrate's Court and therefor insisting on exceptional circumstances by the Provincial High Court is erroneous,

ii. the order of the Provincial High Court is contrary to the decision in ***Somawathie v Wimalaratne*** [2006] *B.L.J.* Vol. XII, p. 110,

iii. the Provincial High Court held that the acquittal of the Appellant from the charge of bigamy was due to absence of *mens rea* and his second marriage also stands valid,

iv. the Provincial High Court erred in its failure to consider that the Magistrate's Court, in two different orders, held in one that the marriage of the Appellant to the Respondent is valid, whilst in the other held that the said subsequent marriage is a *nullity,* in view of the fact that it was never dissolved by a competent Court.

In resisting the said application, the Respondent in her Statement of Objections to the Court of Appeal dated 17.02.2010, has averred that the Appellant failed to adduce any exceptional circumstances, the 2nd marriage had not been held to void by a civil Court, the duty of the Magistrate is to determine the validity of the Marriage Certificate and nothing more and that he admitted the marriage between them.

The Court of Appeal, by its order dated 15.03.2018, held that the Appellant is liable to pay maintenance to his wife before proceeding to dismiss his application. That Court considered the provisions of Section 108 of the Evidence Ordinance in the light of the judgment of ***Welgama v Wijesundera*** (1990) 1 Sri L.R. 59, and in support of its conclusion that " … *the burden is on the petitioner to establish that there had been no marriage*

between the petitioner and respondent and the petitioner has failed to adduce any evidence to that effect."

It is to be noted in this context, that the application of the Respondent for an order of maintenance against the Appellant did not proceed for inquiry beyond the point of the pronouncement of the interlocutory order as the complex process of litigation that ensued had commenced immediately thereafter. Thus, the only material available before the original Court, at that particular point in time, was that the application of the Respondent supported by the Marriage Certificate, the Statement of Objections of the Appellant, and the judgement of the Provincial High Court on the appeal against his conviction for bigamy, which was tendered annexed to it.

Even if the inquiry did proceed on into the claim of maintenance of the Respondent, the Magistrate's Court had no jurisdiction to declare any of the two marriages contracted by the Appellant as a *nullity*. That jurisdiction is conferred only the Family Court by Section 24(1) of the Judicature Act No.2 of 1978, as amended, as that Section states it "… *shall have sole original jurisdiction in respect of matrimonial disputes, actions for divorce, nullity and separation*, …". The words "*sole original jurisdiction"* that appear in that Section needs no further clarification as to what it meant.

The Civil Procedure Code, in Chapter XLII, sets out the applicable procedure in relation to all matrimonial actions. Section 596 refers to three such matrimonial actions which it had broadly classified into. They are the "*actions for divorce a vinculo matrimonii"*, actions "*for separation a mensa et thoro"*, and also actions for "*declaration of nullity of marriage,…*".

Importantly, the Section 607 of that Code carries a marginal note " *Actions of nullity of marriage*", and states that in its subsection (1) that "*[A]ny husband or wife may present a plaint to the Family Court within the local limits of the jurisdiction of which he or she (as the case may be) resides, praying that his or her marriage may be declared null and void*" whereas in subsection (2) states that "*[S]uch decree may be made on any ground which renders the marriage contract between the parties void by the law applicable to Sri Lanka*."

Contention of the Appellant that his marriage to the Respondent is *void ab initio* and, therefore he could not be ordered to pay maintenance, was founded on the proposition that by mere operation of law, the second marriage becomes nullified on account of his first wife being alive at the time of contracting the second marriage and there is no necessity for him to obtain a declaration to that effect made by a competent Court. On that premise, the Appellant expects this Court to determine that the Respondent could not be taken as his "*spouse*", in terms of Section 2 of the Maintenance Act, and that too simply by operation of law.

This very proposition was considered by this Court in the judgment of ***Seneviratne v Premalatha*** (2016) 1 Sri L.R. 82. In that instance, one of the questions of law on which the said appeal was argued was, "*In terms of the provisions of Section 18 of the Marriages (General) Ordinance No. 19 of 1907 as amended, read together with the provisions of Section 607 of the Civil Procedure Code, is it imperative for any husband or wife to present a Plaint praying that his/her marriage may be declared null and void on any of the grounds recognized by the law applicable to Sri Lanka?*"

Gooneratne J, after taking into consideration of the deceitful conduct of the respondent that he contracted the marriage in question by supressing the fact that he was already married twice, answered the said question of law in the affirmative. The line of reasoning adopted by his Lordship in arriving at the said conclusion was influenced by the following quotation, reproduced in that judgment (at p. 90) taken from the ***Text Book on Family Law*** by *Jonathan Herring* (6th Ed, at p.59):

> "*If at the time of the ceremony either party is already married to someone else the 'marriage' will be void. The marriage will remain void even if the first spouse dies during the second 'marriage'. So, if a person is married and wishes to marry someone else, he or she must obtain a decree of divorce or wait until the death of his or her spouse. If the first marriage is void, it is technically not necessary to obtain a Court order to that effect before marrying again, but that is normally sought to avoid any uncertainty. In cases of bigamy, as well as the purported marriage being void, the parties may have committed the crime of bigamy*" (emphasis original).

Thus, the most prudent action that should be taken by a party, if it were to have its marriage nullified, rather than merely pointing out to a provision of law by which such marriages are said to be *null* and *void,* is to must obtain a declaration to that effect by a competent Court. The view adopted by this Court in that instance is not of a recent origin, for in ***Navaratnam v Navaratnam*** (1945) 46 NLR 361, too is an instance where the plaintiff, who was of Sri Lankan *domicil*, sued the defendant, who until her marriage, had been an Indian *domicil*, for a declaration that the

marriage solemnised between them on March 12, 1936, was *null and void* on the ground that the defendant gave birth to a child about three months after the marriage and that the plaintiff was unaware that the defendant was pregnant and that the plaintiff before the marriage never had access to the defendant.

Keuneman SPJ, after rejecting the contention, that Section 597 of the Civil Procedure Code relates only to actions for dissolution on the ground of adultery or other causes which supervenes after the marriage, and that Section does not apply where it is claimed that the marriage was bad *ab initio*, observed (at p.368) that *"[A]t first sight this argument appears convincing, but I do not think upon examination it can be sustained. Section 597 uses very wide language, viz., " any ground for which the marriage .... may be dissolved ". Can this 'action be regarded as an action for the dissolution of the marriage? I think it can"* and held (at p. 368) " … *that this type of action is in substance an action for dissolution, and that the marriage will be regarded as subsisting until a declaration of nullity is entered*."

The judgment of the Court of Appeal in ***Peiris v Peiris*** (78-79) 2 Sri L.R. 55, dealt with an action filed before the District Court under the administration of justice law seeking a declaration of *nullity* of a marriage, and a question arose before the Court of Appeal whether the ground on which such a declaration could be sought is limited to the grounds that are specified in Section 18 of the Marriage Registration Ordinance.

Soza J, in view of the wording of Section 607 of the Civil Procedure Code held that (at p. 57):

> *"[T]he District Court is thus empowered to administer the entire matrimonial law of the land and this includes the Roman Dutch Law relating to nullity of marriage. Although section 626(1) of the Administration of Justice (Amendment) Law makes no procedural provisions in regard to grounds of nullity other than those set out in the Marriage Registration Ordinance, still this will not hamstring the Court from exercising its matrimonial jurisdiction in its fullest amplitude. The law will not fail for want of a procedure. Section 670 of the Administration of Justice (Amendment) Law saves the inherent powers of the Court to make such orders as may be necessary for the ends of justice. We are of the view that the provisions of section 626 (1) of this law do not exclude the Roman Dutch Law relating to nullity of marriage despite the absence of the wide language of Section 607 of the Civil Procedure Code and of specific procedural provisions."*

Section 2(1) of the Maintenance Act, only states that any person having sufficient means " … *neglects or unreasonably refuses to maintain such person's spouse, who is unable to maintain himself or herself*" and upon such an application being made to Court and upon proof of such neglect or unreasonable refusal, it could make an " … *order such person to make a monthly allowance for the maintenance of such spouse*", if the other conditions that are specified in that subsection and in the proviso are satisfied. Hence, the entitlement to a monthly allowance of maintenance is essentially dependent on the status of the applicant, for he or she must qualify to be considered as "*spouse*" of the person against whom the application is

made. In this regard the Certificate of Marriage indeed provides sufficient undisputed proof of that fact.

Since it is the exclusive domain of the Family Court to make declarations in relation to all actions "… *for divorce, nullity and separation*" and in the absence of such a decree made to that effect by a competent Court, it must be concluded that the Magistrate's Court, in order to determine the entitlement of the Respondent to her claim of maintenance against the Appellant, cannot determine the validity or otherwise of a marriage referred to in the Marriage Certificate "එ2", in the guise of determining whether she is the "*spouse*" of the Appellant, in terms of Section 2 of the Maintenance Act. Therefore, the marriage between the Appellant and Respondent, confirmed and supported by the Marriage Certificate "එ2", remains valid in the absence of a declaration by a competent Court to the contrary and accordingly the status of the Respondent, as the "*spouse*" of the Appellant, in terms of Section 2 of the Maintenance Act, which begun with their marriage on that Marriage Certificate should remain unaltered.

In relation to a marriage contracted under the provisions of the Marriage Registration Ordinance, it must be stated that such a marriage comes to an end only with the decree entered into that effect by a competent Court or with the death of one of the parties to the said marriage. To this limited extent I am in agreement with the phrase used by the Appellant, that a *Sinhalese* man cannot have two valid marriages at the same time.

The Court of Appeal as well as the Provincial High Court have affirmed the order of the Magistrate's Court which overruled the preliminary objection raised by the Appellant challenging the Respondent's status as the "*spouse*" on the basis that he failed to establish that their marriage is *null and void*. In view of the reasoning contained in the preceding paragraphs, I am convinced that the said conclusion reached by the Magistrate's Court and its affirmation by the appellate Courts were correctly made, in terms of the applicable laws. I regret of my inability to accept the learned President's Counsel's submission that the Charge Sheet that had been served on the Appellant alleging that the marriage reflected in "මෙ2" as "*void*" and the statement of the Provincial High Court "*[T]his Section stated in simple language enacts that a husband or wife marries again while his or her earlier spouse is living such marriage is no marriage in the eye of the law*" would suffice to fill that void created by him, in relation to his case.

Accordingly, the question of law whether the Appellant, in view of his previous marriage, falls within the definition of "*spouse*" as referred to in Section 2(1) of the Maintenance Act No. 37 of 1999, ought to be answered in the affirmative.

In view of the answers to the several questions of law I am of the opinion that the appeal of the Appellant ought to be dismissed.

It is quite unfortunate that the determination of the instant appeal fails to bring an end to the dispute over the entitlement of a maintenance allowance to the Respondent as the inquiry into her application to that effect was stalled due to the long process of litigation initiated by the

Appellant over an interlocutory order made by that Court. If the intention of the Appellant was to frustrate the Respondent by prolonging the legal process in relation to the determination of maintenance, I must say that he was more than successful in that endeavour. However, in view of the above reasoning and of the answers to the questions of law, I affirm the orders made by the Court of Appeal, the Provincial High Court and the Magistrate's Court, that were considered in detail by this Court.

The appeal of the Appellant is accordingly dismissed. The Respondent is entitled to costs of this Court as well as costs of the Court of Appeal.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT