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. 02 of 1978, against Dhammika Ambewela, Attorney-at-Law.

SC Rule No. 04/2024

Madarasinghage Chandradasa,

Mahagalahena,
Walakandakanda,
Wathukanda,
Katuwana.

COMPLAINANT

-Vs-

Dhammika Ambewela,

Attorney-at-Law,
No. 75,
Main Street,
Deniyaya.

RESPONDENT

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

MENAKA WIJESUNDERA, J. &

M. SAMPATH K. B. WIJERATNE, J

COUNSEL: Sandun Senadhipathi with Nuwan Godage instructed by Danuka Lakmal for the Respondent Attorney-at-Law

Chathura Galhena for the Bar Association of Sri Lanka.

Suharshie Herath Jayaweera, DSG for the Hon. Attorney-General

INQUIRY ON: 08th August 2024, 14th March 2025, 07th May 2025, 17th June 2025

DECIDED ON: 24th July 2025

THURAIRAJA, PC, J.

1. The instant Rule was preferred by the Registrar of this Court pursuant to a complaint against the Respondent Attorney-at-Law, Mr. Dhammika Ambewela, made by one Mr. Madarasinghage Chandradasa of Mahagalahena, Walakadakanda, Wathukanda, Katuwana (hereinafter the "Complainant" or the "Virtual Complainant"), initially dated 18th January 2022.[1] Thereafter, the Virtual Complainant has made several accompanying petitions, including an affidavit dated 22nd March 2022, along with supporting documentary evidence.

THE RULE AGAINST THE RESPONDENT

2. Having considered the contents of the said Complaint and supporting documents, this Court deemed it fit to issue a Rule against the Respondent, who has been engaged in the legal practice for well over thirty-seven years.

[1] Marked **"A9"**

3. The Rule issued by the Registrar of the Supreme Court against the Respondent Attorney-at-Law, dated 08th August 2024, is as follows:

> *"**WHEREAS** a Complaint has been made to His Lordship the Chief Justice by Mr. Madarasinghage Chandradasa of Mahagalahena, Walakadakanda, Wathukanda, Katuwana, (hereinafter referred to as the said **complainant**), alleging deceit and malpractice on your part;*
>
> ***AND WHEREAS** the said complaint made against you and the Affidavit and documents furnished by the said complainant discloses, inter alia, that;*
>
> *a. You have acted fraudulently to facilitate the transfer of property in favour of the complainant by entering into an agreement to sell;*
>
> *b. However, you have failed to execute the said agreement to sell in terms of the provisions of the Notaries Ordinance;*
>
> *c. Without executing the agreement to sell in terms of the law you have fraudulently obtained money from the said complainant who bona fide believed that he has entered in to a valid agreement to sell;*
>
> *d. The complainant bona fide believing that there is a valid agreement to sell of the property, has paid you in installments between the period of 2003.02.07 to 2006.02.25.*
>
> *e. After paying the agreed amount in total, including fees for the Deed of transfer the complaint had requested several times for the property to be transferred to him as agreed upon.*
>
> *f. Subsequently the complainant got to know about the alleged transaction, of a Deed of transfer, including the said property to one Kaluhath Thabrew Linton by*

Deed no. 296 dated 13.11.2012, which has been facilitated too by you knowingly that the complainant ha paid in full the agreed claimed amount by 25.02.2006;

AND WHEREAS, *you have thus fraudulently and in abuse of your position as an Attorney at Law and Notary Public acted fraudulently in making the complainant believe that he had entered into a valid Agreement to sell the property in violation of the applicable provisions of law.*

AND WHEREAS, *the aforesaid complaint made by the complainant discloses that;*

(a) by reason of the aforesaid conduct you have acted in a manner which would reasonably be regarded as disgraceful or dishonourable of an Attorneys-at-Law [sic] 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,

(b) 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,

(c) 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,

(d) 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 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 from practice 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 Lank.

***THESE ARE THEREFORE** to command you in terms of Section 42(3) of the Judicature Act No. 2 of 1978 to show cause as to why you should not be suspended from practice or be removed from the office of Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka in terms of Section 42(2) of the Judicature Act."*

4. The Rule was read over and explained to the Respondent Attorney-at-Law on 08th August 2024, and he pleaded not guilty to the charges against him. Moreover, it was observed that he had not provided his observations as he was initially directed by the Supreme Court. Accordingly, the Court granted four weeks to file an affidavit, if he so wishes.

5. On the same date, considering the fact that the Respondent Attorney had not been duly responding to the notices of the Supreme Court and notices had to be sent through the Grama Niladhari and the fiscals of the High Court, this Court took the view that this was a fit and proper instance to act under the proviso to Section 42(3) of the *Judicature Act* and suspended the Respondent from practice until the final determination of this case.

6. When the inquiry was once again called on 14th March 2025, it was observed that the Respondent had failed to comply with the direction given on 08th August 2024 by His Lordship the then Chief Justice to file an affidavit within four weeks. He had instead filed some documents along with an affidavit on 10th February 2025, almost six months after the direction. Owing to this serious delay, the Court was unable to accept the documents so submitted in contravention of the direction given by the then Chief Justice.

7. The Rule was then read out and explained to him in Sinhala, the language he preferred, and, once again, he pleaded not guilty. Accordingly, the learned Deputy Solicitor General

proceeded to lead evidence from the Virtual Complainant and the Respondent Attorney himself testified before the Court thereafter.

THE COMPLAINT

8. The grievance of the Virtual Complainant relates to a series of events involving the Respondent Attorney-at-Law, beginning in or around 2003, with respect to a land in the extent of seven acres, by the name *Poorana Estate,* which was being apportioned and sold.

9. The said Complainant had decided to purchase half an acre out of Lot 95 thereof, as depicted in Plan No. 101/03 dated 06th April 2003 prepared by K.B.M. Kadirage, Licensed Surveyor. They had initially come to an agreement over the purchase of one acre out of this Lot, but had thereafter altered the land extent in the agreement to half an acre.

10. The Respondent had agreed to sell the said plot to the Virtual Complainant for Rs. 62,500/-, and the Complainant had paid the amount as consideration in several instalments to the Respondent, believing the Respondent to be the owner of said *Poorana Estate*. The Virtual Complainant produced the invoices relating to these payments as proof thereof and testified before this Court that the Respondent misrepresented himself as the owner of the land to the Virtual Complainant.[2]

11. All such invoices/documents submitted by the Virtual Complainant relating to instalment payments bear the seal and signature of the Respondent Attorney-at-Law.[3] The invoice marked **"A5"** dated 07th November 2004, in particular, provides clear evidence of the fact that the agreement between the Complainant and the Respondent related to Lot 95.

[2] Proceedings of 07th May 2025, p. 3

[3] Invoices marked **"A1"** to **"A7"**

12. The Virtual Complainant claims that he completed the full payment by 25th February 2006, and at that point, the Respondent Attorney-at-Law had taken Rs. 3,500/- to prepare a deed of transfer. At the time of completing this payment, the Virtual Complainant had already taken possession of and cultivated the plot in question.

13. While he was so in possession, in or around 2018, another party by the name of Linton had come to clear out the adjacent land plot. Sometime later, the said Linton had informed that he also owns the aforementioned Lot 95, which included the portion that the Virtual Complainant purchased from the Respondent, and shown a deed as proof of ownership.

14. This Deed No. 296, dated 13th November 2012, along with the plan appurtenant thereto, has been produced before this Court marked **"A8(1)"**. This Deed, which effects a conveyance of several lots including Lot 95 in favour of said Linton, evinces beyond a shadow of doubt that the same was prepared by the Respondent Attorney-at-Law.

15. Upon informing of the same to the Respondent, he had informed the Complainant that the owner resides abroad, and had asked him not to panic, promising to prepare the deed as soon as the owner comes back. The Complainant claims to have visited and/or inquired from the Respondent numerous times as to the delay in preparing the deed.

16. Thereafter, following persistent inquiries, the Respondent had admitted that there had been a mistake and had undertaken to discuss with Linton and prepare the Complainant's deed as previously promised. The Respondent has failed to stay true to this undertaking to date.

17. The Complainant further testified that said Linton has since resold the land to one Karunadasa, who has been taking steps to evict the Complainant from the land, leaving the Respondent utterly helpless as he has no deed to his name.

THE RESPONDENT'S DEFENCE

18. During the cross-examination of the Virtual Complainant, the Counsel appearing for the Respondent made several suggestions to the witness, essentially alluding that the Virtual Complainant had been somewhat imprudent in the course of his dealings with the Respondent.

19. During the cross-examination of the Virtual Complainant as well as the examination-in-chief of the Respondent Attorney-at-Law, referring to the invoice marked **"A1"**, the Counsel for the Respondent highlighted a condition set out therein empowering the owner of the land to sell it to whomever in the event the full purchase price is not paid. Repeated references were made to the fact that the purchase price was mentioned in the said invoice to be Rs. 125,000/-, despite the Virtual Complainant clearly explaining that the agreement was altered subsequently to purchase half an acre instead of an acre as originally intended. This variation to the original agreement is clearly recorded in writing at the back of said invoice, and the Respondent, too, conceded to this when inquired.[4]

20. The learned Counsel further attempted to suggest that the Virtual Complainant had been imprudent, highlighting his failure to perform due diligence as well as the failure to file civil action vindicating his title and/or for breach of contract against the Respondent. It was suggested that the Complainant did not so vindicate his rights as he was aware of his defective title.

21. It was also highlighted repeatedly that the invoices issued by the Respondent did not mention his name—or any other's name for that matter—as the owner of the land *Poorana Estate*.

[4] Proceedings of 7th May 2025, p. 8

22. The Respondent in his evidence claimed that he operated as a middleman in relation to the sale of apportioned plots from the abovementioned estate and that he acted on behalf of and according to the instructions given by one Gunapala.

23. The Respondent claimed that the monies he received from the Complainant were accepted and deposited into an account on behalf of said Gunapala. Upon being questioned by this Court, the Respondent conceded that monies were deposited into his personal account. When this Court inquired whether he maintained trust accounts for his clients, the Respondent claimed that he never maintained such accounts.

24. Regarding the fees he obtained from the Virtual Complainant for the preparation of a deed of transfer, it was admitted by the Respondent that he neither prepared a deed for the said Complaint nor returned the fees obtained for that purpose.

25. The Respondent further disputed the fact that he ever entered into an agreement to sell Lot 95 to the Virtual Complainant. It was his position that the Virtual Complainant visited his office on a random day and made a payment, which the Complainant claimed to be for Lot 95. Relying on the Complainant's word, without doing any due diligence, the Respondent had noted down Lot 95 in the invoice marked **"A5"**. He claims that there is no fault on his part as he placed full confidence in what the Virtual Complainant said.

26. I am somewhat reluctantly inclined to note the irony of this defence, having earlier attempted to find fault with the Complainant for not doing due diligence with respect to the ownership of the land.

THE JUDICATURE ACT & THE SUPREME COURT RULES

27. The *Judicature Act*, as amended, provides in Section 40(1) that "*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*."

28. It is well accepted that no person is entitled to be enrolled as an attorney and that such enrolment is a privilege conferred upon a person by the Supreme Court. As Obeyesekere J observed in ***Re E.A. Vajira Dissanayake***,[5]

> *"…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…"*

29. Section 42(2) of the *Judicature Act* 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.*"

30. As Jayantha Jayasuriya, PC, CJ observed in ***Re H.A. Mahinda Ratnayake***,[6]

> *"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."*

31. The Rule against the Respondent also mentions of Rules 60 and 61 of the *Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules, 1988*, which is a non-exhaustive

[5] SC Rule No. 02/2021, SC Minutes of 26th November 2024, at p. 6-7

[6] SC Rule 04/2022, SC Minutes of 10th August 2023, at p. 6

code of conduct for Attorneys-at-Law. These rules add to and inform what it means to be an attorney of good repute and competence.

32. Rule 60 therein sets out 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"*

33. Rule 61 provides that "*An Attorney-at-Law shall not conduct himself in any manner unworthy of an Attorney-at-Law*."

34. While the power and discretion of this Court to remove or suspend attorneys by virtue of Section 42(2) of the *Judicature Act* is certainly wide,[7] as Basnayake CJ observed in the case of ***In Re Fernando***,[8] it is a power "*...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*".

ALLEGED MISCONDUCT ON THE PART OF THE RESPONDENT

35. The crux of the Complaint is fairly simple. The allegation is that the Respondent Attorney-at-Law, having promised to sell a portion of land to the Complainant, had sold that same plot to a third party by virtue of a deed he prepared himself. The Respondent is further

[7] See *Attorney-General v. Ellawala* [1926] 29 NLR 13, where similar observations were made in a rule matter instituted under the *Courts Ordinance,* No. 1 of 1889, well before the enactment of the *Judicature Act*; *In the Matter of a Rule against an Attorney-at-*Law [2008] 1 Sri L.R. 275, p. 281, observations of S.N. Silva CJ as to the procedure to be adopted

[8] [1959] 63 NLR 233, at p. 234

alleged to have obtained a fee from the Complaint to prepare a deed of transfer in that regard, which he still has not done, more than two decades later.

36. Before I venture to consider the specific charges set out against the Respondent and the wrongs he is alleged to have committed during the course of his dealings with the Complainant, I wish to consider the standard of proof required in a matter of this nature, for it is an aspect generally misunderstood by most.

37. In this regard, Amerasinghe J, in ***Daniel v. Chandradeva***,[9] observed as follows:

> *"…Where the conduct of an attorney is in question in disciplinary proceedings, it requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that a just and correct decision has been reached. The importance and gravity of asking an attorney to show cause makes it impossible for the Court to be satisfied of the truth of an allegation without the exercise of caution and unless the proofs survive a careful scrutiny. Proof beyond reasonable doubt is not necessary, but something more than a balancing of the scales is necessary to enable the Court to have the desired feeling of comfortable satisfaction. A very high standard of proof is required where there are allegations involving a suggestion of criminality, deceit or moral turpitude…"*

38. As it is amply clear, proof beyond reasonable doubt, as it does in a criminal case, is not required in matters of this nature. It is sufficient if a charge is established to the 'comfortable satisfaction' of the Court, in the words of Amerasinghe J. While that may be so, this standard also demands a higher degree of proof than a preponderance of

[9] [1994] 2 Sri L.R. 1, at p. 17

probability or a balance of probability as understood in a civil matter, owing to the gravity of the matters concerned.[10]

39. Attempts to poke holes in a complainant's story, so to speak, as defence counsel attempt so often in criminal courts, are generally futile if a respondent attorney is still exposed as negligent and/or undutiful at the conclusion of proceedings. The primary concern in proceedings of this nature is not the sanctity of the complaint itself but the suitability of a respondent to remain on the Roll of Attorneys-at-Law.[11]

Deceit & Misrepresentation

40. I must note at the very outset that misconduct such as deceit and misappreciation of funds bears a criminal character. However, when it comes to Rule proceedings under Section 42(2) of the *Judicature Act*, whether or not a Respondent has been charged and/or found guilty with respect to such conduct is immaterial.

41. This is very clearly set out by Amerasinghe J in ***Dhammika Chandratileke v. Susantha Mahes Moonesinghe***,[12] where an attorney was struck off the Roll for deceit, even in the absence of a criminal prosecution. Amerasinghe J observed in this case as follows:

> *"Conviction for an offence is only a prima facie reason why this Court kay act in matters of this kind. An attorney whose misconduct is criminal in character, whether it was done in pursuit of his profession or not, (this Court has wider powers than those affirmed by section 4 of the Penal Code), may be struck off the roll, suspended from practice, reprimanded, admonished or advised, even though he had not been brought by the appropriate legal process before a court of competent criminal*

[10] *Solicitor-General v. Ariyaratne* 1 CLW 400; *In re Dematagodage Don Harry Wilbert* [1989] 2 Sri L.R. 18, at pp. 28-29; *Wickramaratne v. Chandradeva* [1997] 2 Sri L.R. 232, at p. 241

[11] *In re Dematagodage Don Harry Wilbert* [1989] 2 Sri L.R. 18, at p. 28

[12] [1992] 2 Sri LR 303

jurisdiction and convicted; and even though there is nothing to show that a prosecution is pending or contemplated. (See Edgar Edema [(1877) Ramanathan 380], 384; Re Isaac Romey Abeydeera [(1932) 1 CLW 358, 359]; In re a Proctor – [(1933) 36 NLR 9]; In re C.E. de S. Senaratne [(1953) 55 NLR 97, 100]; Re Donald Dissanayake [Rule 3 of 1979 S.C. Minutes of 31.10.1980]; Re P.P.Wickremasinghe [Rule 2 of 1981, S.C. Mins. of 19.7.82]; Re Rasanathan Nadesan [Rule 2 of 1987 S.C. Mins. of 20.5.1988]; Stephens v Hill (supra)[(1842) 10 M & W 28 Vol. 152 ER (1915 Ed.) 368]; Anon (supra); Re Hill (supra) [(1868) LR 3 QB 543, 545, 548]; Re Vallance [(1889) Times 9 April & 29 October.]; Anon (1894) 24 L.Jo 638 But cf. Short v Pratt [(1822) 1 Bing. 102 Vol. 130 (1912 Ed.) ER 42] and Re Knight [(1823) 1 Bing 142]).

I might go further: If Moonesinghe had been charged with the commission of an offence in a competent court and acquitted, he could and ought, nevertheless, to have been dealt with by this Court, as the proctor was in Re Thirugnanasothy [(1973) 77 NLR 236, 239]. See also Re Garbett [(1856) 18 CB 403]; R v. Southerton [(1805) 6 East 126]; Re W.H.B. [(1842) 17 L. Jo. 165]"[13]

42. Following these authorities, this Court, in ***Re Sarath Wijesiri De Silva***,[14] found the respondent attorney guilty of deceit and struck him off the Roll while ordering the respondent to repay Rs. 3 million (which he had charged as professional fees) to the complainant.

43. The Respondent, in his evidence, vehemently denied committing any deceit. He submitted that he did not promise to sell the Complainant Lot 95. However, as I have

[13] ibid at 329. In *Re Thirugnanasothy* [1973] 77 NLR 236 a proctor who was acquitted from a charge of criminal misappropriation for sound but technical reasons was nevertheless struck off the Roll*;* See also *Laurentius Van Kessel, through His Attorney Jayawickrama v. Shobha Samaratunga and Another, Attorneys-at-Law* [2002] 2 Sri L.R. 85

[14] SC Rule No. 05/2022, SC Minutes of 03 September 2024

previously noted, the document marked **"A5"** clearly contains evidence of such an agreement. The Respondent's explanation is that he mentioned 'Lot 95' in the said invoice marked **"A5"** merely because the Complainant said so.

44. What the Respondent Attorney-at-Law has conceived as a defence here, in my view, is worse than the offence. If it is to be believed, he has, as an Attorney-at-Law, written down what was dictated by a client and placed his stamp and signature underneath, without giving a second thought as to the veracity of such dictation.

45. In addition to this, the Complainant very clearly testified that the Respondent presented himself as the owner of the land. But the Respondent vehemently denied ever carrying himself as the owner. It was highlighted throughout his evidence that the documentation provided to the Complainant did not mention the Respondent as the owner of the land. However, it must be observed that said documentation bears no information as to the ownership of the property. Most such documents merely confirm the receipt of certain amounts from the Complainant. The document marked **"A1"**, however, contains evidence of the initial agreement between the Respondent and the Complainant as well as the subsequent variation thereto, whereas **"A5"** makes reference to Lot 95.

46. While it may be true that the Virtual Complainant could have verified the ownership of the land and/or taken civil action, his failure to act diligently does not absolve the Respondent from his duties as an Attorney-at-Law and Notary Public.

47. The evidence on behalf of the Virtual Complainant has been consistent throughout, from the initial Complaint itself to his testimony before this Court. The Respondent, in my view, appeared far from consistent or credible. While the nature of proceedings such as this, being a disciplinary inquiry, is fundamentally different to that of a civil or criminal trial, the test of consistency remains ever so relevant in assessing the veracity of evidence.

48. Having heard and observed the witnesses, and especially considering the consistency of testimonies and available documentary evidence, I am inclined to place more reliance on the evidence submitted by the Virtual Complainant.

49. The agreement between the Respondent and the Complainant for the sale of Lot 95, pursuant to which the Complainant had paid Rs. 62,500/- to the Respondent, is very clearly established by the evidence before this Court. Considering the totality of the evidence, I am also inclined to accept the Complainant's allegation that the Respondent held himself out to be the owner of the land.

50. By the conduct aforementioned, the Respondent Attorney-at-Law has acted fraudulently and deceitfully towards the Virtual Complainant.

Misappropriation of Funds & the Failure to Maintain Trust Accounts

51. It is also clearly established that the Respondent had taken Rs. 62,500/- pursuant to the agreement to sell Lot 95 to the Complainant, which he failed to honour. In addition to this, he has also obtained a sum of Rs. 3,500/- to prepare a deed of transfer, which the Complainant has not received to date, well over two decades later.

52. It is also apparent from Deed No. 296 dated 13th November 2012, marked **"A8"**, prepared by the Respondent himself, that the said Lot 95 has now been transferred to a third party. Furthermore, the Respondent has not taken any steps to return the money he obtained for the above purpose. He provided various excuses as to why he did not attempt to return the money.

53. If the Respondent was acting as an agent of the owner or as a middleman between the Complainant and any agent of the owner, he ought to have transferred the money so obtained to the owner or such agent, for the Respondent would have been holding the same in trust.

54. As Amerasinghe J notes, in **Professional Ethics and Responsibilities of Lawyers**,[15]

> *"An attorney owes a fiduciary duty to his client to ensure that he acts on his client's behalf with utmost good faith without any abuse of the trust and confidence engendered by the relationship of attorney and client.*
>
> *The International Bar Association in Rule 15 states that 'In pecuniary matters lawyers shall be most punctual and diligent.' Receiving monies from or on behalf of a client for a specific purpose and failing without the client's consent to pay them over for that purpose may be an act of dishonourable or questionable conduct that might make the attorney liable to discipline…*
>
> *In general, an attorney should not cause or permit money of a client to be deposited with or lent to any company or organization in respect of which the principal financial benefit or the effective control is vested directly or indirectly in one or more of the following persons:*
>
> *(a) the attorney;*
>
> *(b) any of the attorney's partners;*
>
> *(c) the spouse of the attorney or the attorney's partners;*
>
> *(d) any child of the attorney or any of the attorney's partners."*

55. Regarding how funds must be recorded and kept, Amerasinghe J observes therein as follows:

> *"…If funds are held in the name of the attorney, there should be an indication in the title or designation that they are held on behalf of a client or clients of that attorney. [Cf.CCBE Code 3.8.1.2.] All monies received for or on behalf of a person, unless*

[15] A.R.B. Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (1993 Stamford Lake) at pp. 393-395 (endnotes omitted)

forthwith paid by the attorney to such person or as such person directs (whether generally or in a particular case) should be forthwith paid into a bank to a trust account, designated or evident as such, and should be retained in such account until paid to such person or as such person directs. [Cf. Victoria 40 (1); Canada Ch VIII note 3 (a).] ***Clients' monies must never be mixed with money belonging to the attorney or his firm and entries with regard to them should be separately recorded.*** *There must be no 'commingling'. Commingling of funds takes place when a client's money is intermingled with that of his attorney and its separate identity lost so that it may be used for the attorney's personal expenses or be subjected to the claims of his creditors. Commingling is prohibited to provide against the probability in some cases, the possibility in many cases, and the danger in all case that such commingling will result in the loss of client's money. [Black v. State Bar, 57 Cal. 2d 219, 225-226, 368 Petitioner 2d. 118, 122, 18 Cal. Rptr. 518, 522 (1962); Cf ICE Rule 15; cf also Law Society of New South Wales v Harvey [1967] 2 NSW LR 154; (1975) 49 ALJR 362; Parrick Bede O'Reilly v Law Society of New South Wales, unreported but discussed at length in NSW Sol [4145].]"*[16]

56. When this Court inquired from the Respondent whether the monies obtained from the Complainant were kept in a trust account, the Respondent appeared perplexed by the term 'trust account' itself. Upon being questioned further, he admitted that the monies were deposited into his own account and that he did not keep proper records of them.

57. It is clear that the Respondent has not only committed the error of commingling the Complainant's monies with his own,[17] but he has also failed to keep any records of it.

[16] ibid p. 395

[17] See IBA, *International Code of Ethics* (1988, first adopted in 1956), Rule 15; IBA, *IBA International Principles on Conduct for the Legal Profession* (28 May 2011), Principle 8

58. I must emphasise that keeping proper records of monies and other properties entrusted to an attorney by a client is not a mere nicety or a matter of convenience: It is an absolute bare minimum requirement expected of every attorney, irrespective of how experienced or inexperienced they might be.

59. As Bertram CJ emphasised in ***The Matter of an Application of a Proctor to be Re-admitted and Re-enrolled as a Proctor of the Supreme Court***,[18] *"…[t]here is no principle which it is more important to press upon persons entering the legal profession than a strict regard to the principles of trust accounts…"*

60. The subject of Ethics and Trust Accounts is one often neglected by students, for most consider it a burden rather than an opportunity to learn an essential skill in the practice of law. It is also concerning how most law students today have fallen victim to the outcome-based/results-oriented education culture surrounding such subjects—a sin most commonly perpetuated by the profiteers of so-called 'legal' education. While I see no need to say any more of it, I sincerely hope that this Rule, as well as many other similar proceedings before this Court, serve as a wake-up call to those prudent students of the law, compelling them to concern themselves as much with acquiring essential skills as with the letter grades that may appear on their final transcripts.

61. It is amply clear that the Respondent Attorney-at-Law, having obtained monies from the Complainant for a specific purpose, has failed to carry out that purpose. He has failed in his duties to diligently handle monies entrusted to him by the Complainant and to keep proper records in this regard.

62. Considering the totality of the evidence I have adverted to above, I take the view that sufficient material is available to establish for the comfortable satisfaction of this Court

[18] (1925) 39 NLR 517

that the Respondent Attorney-at-Law is guilty of deceit, malpractice and misappropriation of funds.

AGGRAVATING/MITIGATING CIRCUMSTANCES

63. While the conduct of the Respondent discussed above clearly warrants disciplinary action, in deciding the appropriate sentence to be imposed, this Court must necessarily take into account all mitigatory and/or aggravating circumstances available before it, in order to be fair and reasonable in sentencing.

64. The age[19] and seniority of a respondent,[20] whether he accepts the fault on his part and apologises or repents[21], personal tragedies and pressure or domestic problems,[22] steps he has taken to make amends for those aggrieved[23] as well as whether the respondent

[19] See *Re Siman Appu* (1900) 4 NLR 127; *Re Aiyadurai* (1950) 52 NLR 511; *Solicitor-General v. Chelvatamby* (1938) 13 CLW 80; *Re Sampath Karunathilaka,* SC Rule 15/2023, SC Minutes of 02nd April 2024; *Re Sarath Wijesiri De Silva,* SC Rule 05/2022, SC Minutes of 03rd September 2024, para 42. Cf. *Re H.A. Mahinda Ratnayake*, SC Rule 04/2022, SC Minutes of 10th August 2023, where Jayasuriya, PC, CJ found a mitigatory plea based on the respondent's advanced age unconvincing owing to the fact that said respondent, who committed the misconduct within the first eight years of his admission, was a late entrant to the Bar, having chosen to enter the practice in the brink of his retirement from public service

[20] *Re Siman Appu* (1900) 4 NLR 127; *Re Aiyadurai* (1950) 52 NLR 511; *Re a Proctor* (1933) 36 NLR 9; *Solicitor-General v. Chelvatamby* (1938) 13 CLW 80; *Re de Soysa* (1954) 56 NLR 287. Cf. *Re Fernando* (1959) 63 NLR 233

[21] *Re Arthenayake* [1987] 1 Sri L.R. 314, at pp. 346-349; *Re Nimal Jayasiri Weerasekara,* SC Rule 03/2011, SC Minutes of 28th June 2013, at p. 9; *Re Nagananda Kodituwakku,* SC Rule 01/2016, SC Minutes of 18th March 2019, at p. 3; *Re Nizam Mohammed Shameen,* SC Rule 06/2021, SC Minutes of 24th October 2023, at pp. 5-6; *Re Punnya Kumari Palaketiya,* SC Rule 01/2021, SC Minutes of 31st July 2024

[22] *Re a Proctor* (1938) 40 NLR 367; *Re Dharmalingam* (1968) 76 NLR 94; *Re Roshan Davinda Ranaweera,* SC Rule 08/2023, SC Minutes of 30th October 2024, paras 33-37. Cf. *Re Nadesan,* SC Rule 2/1987, SC Minutes of 20th May 1988

[23] *Re Aiyadurai* (1950) 52 NLR 511. Cf. *Re Fernando* (1959) 63 NLR 233

submitted his observations to this Court in time[24], among other things, can be so taken into account.[25]

65. The Respondent in the instant matter was admitted to the Bar on 31st March 1988. He has over thirty-seven years in the legal practice. Following his failure to provide the services as promised, he has not taken any steps to repay the monies obtained from the Complainant for that purpose. Most importantly, throughout his testimony, the Respondent displayed not an ounce of accountability or remorse.

66. Additionally, he completely disregarded several notices of this Court and completely failed to file his observations in time. If an attorney does not file documentation in time and act diligently with respect to his own disciplinary proceedings before the Supreme Court, one cannot expect him to be prudent when it comes to the affairs of his clients. The nobility of the profession, as well as the best interest of society, demand stern disciplinary action against such persons.

67. The Counsel for the Respondent invited this Court to consider his age and frailty as a mitigatory factor. However, the Respondent has taken the monies from the Complainant between 2003 and 2006—almost over twenty years ago—and the Deed No. 296, marked **"A8(1)"**, is dated 13th November 2012—well over a decade ago. Therefore, I am not inclined to show any leniency based on his advanced age and frailty.

CONCLUSION & DIRECTIONS

68. Considering the totality of the circumstances adverted to hereinabove, I take the view that the Respondent has committed deceit and malpractice, thereby conducting himself in a manner deplorable and absolutely unworthy of an Attorney-at-Law.

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[24] *Re Roshan Davinda Ranaweera,* SC Rule 08/2023, SC Minutes of 30th October 2024, paras 28-31

[25] See generally A.R.B. Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (1993 Stamford Lake) at pp. 161-163

69. Accordingly, the Rule is made absolute. Owing to the gravity of the misconduct as well as the aggravating circumstances set out above, the Respondent Attorney-at-Law shall forthwith be struck off the Roll of Attorneys-at-Law.

70. The Respondent is further barred from the notarial practice permanently. The Registrar General is accordingly directed to take all necessary steps towards cancelling his notarial license and such other actions incidental thereto.

71. In addition, the Respondent is directed to pay Rs. 66,000/- to the Virtual Complainant with legal interest thereon, from 07th March 2003, within 3 months from the date of this Ruling. Precise amount to be calculated by the Registrar of the Supreme Court.

72. The Registrar of the Supreme Court is directed to communicate this Ruling to all necessary parties.

Rule Affirmed.

Respondent struck off the Roll of Attorneys-at-Law.

Judge of the Supreme Court

MENAKA WIJESUNDERA, J.

I agree.

Judge of the Supreme Court

M. SAMPATH K. B. WIJERATNE, J.

I agree.

Judge of the Supreme Court