

**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,

Nimal Jayasiri Weerasekara,  
Attorney - at - Law of the Supreme Court

**RESPONDENT**

Secretary,  
Bar Association of Sri Lanka,  
Colombo 12.

**SC RULE 03/2011**

**COMPLAINANT**

**-VS-**

Mr. Nimal Jayasiri Weerasekara,  
Attorney – at – Law,  
No. 21 A, Cooray Mawatha,  
Moragasmulla,  
Rajagiriya.

**RESPONDENT**

**BEFORE** :

S. Marsoof, PC, J  
P.A. Ratnayake, PC, J and  
C. Ekanayake, J

**COUNSEL** :

Rohan Sahabandu, PC, for the Bar Association  
of Sri Lanka  
Ms. M.N.B. Fernando, Deputy Solicitor General  
for the Attorney General  
G.R.D. Obeysekera for the Respondent.

**INQUIRY DATES** : 2.12.2012, 17.2.2012, 24.5.2012, 5.11.2012,  
18.3.2013, 14.5.2013.

**DECIDED ON** : 28.6.2013

**SALEEM MARSOOF J.**

Rule dated 21<sup>st</sup> September 2011 was issued on the Respondent Attorney-at-Law (herein after referred to as the Respondent) to show cause why he should not be suspended from practice or be removed from office of Attorney-at-Law of the Supreme Court in terms of Section 42(2) of the Judicature Act No. 2 of 1978. This was a sequel to the conviction of the Respondent by the High Court of Colombo in case No. 2998/06 on four chargers relating to the preparation of four fraudulent deeds and the forgery of the signatures of Mahavidanalage Munidasa Charles Ferdinando, the then Chairman of the Board of Directors of the National Housing Development Authority (NHDA) and Liyanage Don Raja Gladis Samarasundara, who was at the relevant times a Member of the said Authority, and the imposition by the said Court on the Respondent on 23<sup>rd</sup> May 2008 of a sentence of 2 years rigorous imprisonment suspended for 5 years and a fine of Rs.2,000/-, with a default sentence of 6 months imprisonment, in respect of each of the said charges.

Upon the Director of the Criminal Investigation Department intimating the aforesaid particulars to the Secretary of the Bar Association of Sri Lanka (BASL) by his letter dated 22<sup>nd</sup> August 2008, the Ethics Committee of the Bar Association of Sri Lanka (BASL), recommended to the Executive Committee of the said Association to refer the matter to this Court for appropriate action, and by the letter of the Secretary of the said Association dated 12<sup>th</sup> January 2009 address to the Registrar of this Court, this Court was informed that the Executive Committee of the Bar Association had unanimously approved the said recommendation.

Thereafter, on a direction of His Lordship the Chief Justice, the Registrar of this Court, by a letter dated 17<sup>th</sup> August 2010, called from the Registrar of the High Court of Colombo, the record of the Colombo High Court in the aforesaid case No. 2998/06, and the Registrar of the High Court by his letter dated 29<sup>th</sup> November 2010, informed this Court that the record in the said case cannot be traced in the Record Room of the said Court, and that every effort is being made to trace the same. On 20<sup>th</sup> January 2011, the relevant High Court judge also intimated to the Judicial Service Commission that the record in the case could not be traced after extensive search in the Record Room of the said Court. This resulted in tremendous delay in the drafting and issue of the Rule.

The Rule dated 21<sup>st</sup> September 2011, served on the Respondent, in the exercise of the disciplinary powers conferred on this Court by virtue of Section 42(2) of the Judicature Act, reads as follows:

WHEREAS the Director, Criminal Investigation Department by letter dated 22<sup>nd</sup> August 2008 has notified the Bar Association of Sri Lanka that Nimal Jayasiri Weerasekara Attorney-at-Law of No. 21A, Cooray Mawatha, Moragasmulla, Rajagiriya had been found guilty by the High Court of Colombo in Case No. 2298/06 and had been sentenced;

AND WHEREAS the said letter further discloses, that the charge is in respect of forgery and preparation of fraudulent deeds and that on or about 03<sup>rd</sup> May 2008 you pleaded guilty to all four charges and was sentenced to 2 years Rigorous Imprisonment suspended for 5 years respectively on all the four charges and also fine in a sum of Rs. 2,000/- each on all four charges aggregating to a sum of Rs. 8,000/-, and in default of the payment of the fine, to 6 months imprisonment respectively on all four charges, aggregating to a period of 24 months imprisonment.

AND WHEREAS in view of the serious nature of your conduct as an Attorney-at-Law and the sentence imposed by the High Court of Colombo, the Ethics Committee of the Bar Association recommended to the Executive Committee of the Bar Association, and the said Executive Committee, unanimously approved the recommendation of the Ethics Committee to refer this matter to the Supreme Court to take appropriate necessary action against you;

AND WHEREAS your conduct discloses

- (a) That you being an Attorney-at-Law have conducted yourself in a manner which is reasonably regarded as disgraceful or dishonourable by Attorneys-at-Law of good repute and competency which renders you unfit to remain an Attorney-at-Law;
- (b) That you being an Attorney-at-law has conducted yourself in a manner which is inexcusable and which is regarded as deplorable by your fellows in the profession;
- (c) That you being an Attorney-at-Law has conducted yourself in a manner unworthy of an Attorney-at-Law.

AND WHEREAS, you have by reason of the aforesaid acts and misconduct, committed

- (a) malpractice within the ambit of Section 42(2) of the Judicature Act No. 2 of 1978, which renders you unfit to remain as an Attorney-at-Law;
- (b) deceit within the ambit of Section 42(2) of the Judicature Act No. 2 of 1978, which renders you unfit to remain as an Attorney-at-Law;
- (c) a crime and an offence within the ambit of Section 42(2) of the Judicature Act No. 2 of 1978, which renders you unfit to remain as an Attorney-at-Law;
- (d) acted in breach of Rule 60 and 61 of the Supreme court (Conduct of and Etiquette for Attorney-at-Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka, and thereby conducted yourself in a manner which would be reasonably regarded as disgraceful and dishonourable by Attorneys-at-Law of good repute and competence, and which renders you unfit to remain as an Attorney-at-Law, and also that your conduct is inexcusable and regarded as deplorable by your fellows in the profession and that your conduct is unworthy of an Attorney-at-Law.

Accompanying the Rule was a list of witnesses and documents.

In response to the Rule issued on him, the Respondent appeared in court on 5<sup>th</sup> October 2011, and moved for a date to plead thereto, and the matter was fixed to be mentioned on 2<sup>nd</sup> November 2011. When the case was so mentioned on 2<sup>nd</sup> November 2011, the Respondent appeared in Court, represented by Counsel and pleaded guilty to the Rule. On that occasion, Mr. Obeysekara who appeared for the Respondent moved that the matter be fixed for inquiry to enable Senior Counsel to make submissions in mitigation of sentence. Court accordingly fixed the case for inquiry to 2<sup>nd</sup> December 2012, but in view of the seriousness of the Rule, made order forthwith suspending the Respondent from practicing as an Attorney-at-law and as Notary Public.

When the Rule was taken up for inquiry on 2<sup>nd</sup> December 2012, it transpired that there was a dearth of information in regard to the nature of the offences for which the Respondent had been convicted, and since the material available to Court was insufficient even for the purpose of considering the question of sentence to be imposed on the Respondent, the inquiry was postponed to 17<sup>th</sup> December 2012, to enable the following steps to be taken by the Registrar of this Court:-

1. Notice the Registrar of the High Court of Colombo to produce in this Court the original record in High Court of Colombo case No. 2998/06. If the said record cannot be traced, he should also commence a formal inquiry as to how this record has disappeared or has become untraceable;
2. Notice Director, of the Criminal Investigations Department (CID) to furnish to this Court all material pertaining to the criminal investigations which have been conducted apparently under his file bearing No. 461/00/CM, which led to the Respondent being prosecuted; and
3. Keep in his safe custody the said record and files once they are tendered to him, and make same available on the next date on which this case will be resumed.

The Registrar of the High Court of Colombo appeared in Court on 17<sup>th</sup> December 2011, and he informed Court that a formal inquiry was conducted regarding the loss or misplacement of the record in High Court of Colombo case No. 2998/06, but that he has not been able to trace the record in the said case. He also informed Court that he had to write to the Director of the Criminal Investigation Department (CID), to obtain a copy of the order of the High Court dated 23<sup>rd</sup> May 2008 by which the Respondent was sentenced.

In these circumstances, Court inquired from the learned Counsel for the Respondent as to whether he is in a position to furnish copies of the proceedings in, and orders made by, the High Court in the said case, and he informed Court that he is not in a position to do so, as the copy of the brief was not available with the learned Counsel who appeared for the Respondent in the High Court. He also states that the Respondent has not maintained or kept copies of the proceedings and orders of the High Court in the relevant case. Since the Director CID had not responded to the direction issued by this Court to furnish a report in regard to the investigation that was carried out by the CID that led to the prosecution of the Respondent in the High Court case, the inquiry was re-fixed to be resumed on 24<sup>th</sup> May 2012, and the Director of the CID was directed to furnish a report along with all relevant statements recorded in the course of the investigation and any

copies of the proceedings in the High Court of Colombo in case No. 2998/06. The Director CID was requested to be present in Court on the next date and to furnish all such material directly to court.

On 24<sup>th</sup> May 2012, the case could not be resumed as the Bench was not properly constituted, and the case was re-fixed to be resumed on 5<sup>th</sup> November, 2012. However, even by that date no report had been furnished by the Director, CID, who however had in compliance with the order made by Court on 17<sup>th</sup> December 2011, detailed an Assistant Superintendent of Police attached to the Criminal Investigations Department, Gandra Shani Abeysekara to appear in Court with the original files maintained by his Department pertaining to the matter. The said officer, indicated that the following documents that may be relevant for the determination of this Rule are available in the said files:-

1. First complaint made by the National Housing Authority (NHDA) dated 21<sup>st</sup> July 1999 and the statements made to the CID by the then Chairman NHDA dated 19<sup>th</sup> August 1999;
2. The statement made to the CID by the Respondent dated 18<sup>th</sup> January 2001 by the Respondent;
3. The report of the Examiner of Questioned Documents dated 9<sup>th</sup> September 2003 made in response to an order of the relevant Magistrate in MC Colombo B2550/1/00, with respect to which the Attorney General's reference is CR 1/116/2005.
4. Deed No. 976 dated 7/9/1998.
5. Deed No. 1096 dated 1/2/1999.
6. Deed No. 1093 dated 1/2/1999.
7. Deed No. 1094 dated 1/2/1999 all executed by the Respondent as Notary Public.

Court directed the Director CID to furnish seven certified copies each of the said documents to the Registrar of Court within one month, and also directed him to ensure that the integrity of the file or files maintained by the CID with respect to this case will not be affected in the process of photocopying and that all the said files will be kept in safe custody and produced in Court on the next date of hearing. Court also directed that WIP, Dinesha Eranthi Fernando and ASP, Piyasena Ampawila, who had been responsible for the investigation of this case to be present in Court on the next date of inquiry, ready to testify, if so required by Court.

The Registrar of this Court was directed that upon receipt of the certified copies of the aforesaid documents to have one copy of all documents inserted into the original docket and the other 3 copies included in the respective Judge's Briefs. The Registrar was also directed to retain 3 further sets of copies of the relevant documents which may be handed over to learned Deputy Solicitor General Mrs. M.N.B. Fernando, Mr. Rohan Sahabandu P.C., who appears for the Bar Association of Sri Lanka and Mr. Obeysekara who appears for the Respondent, who will call over at the Registry to receive the same. Learned Counsel for the Respondent did not have any objection to the aforesaid procedure being adopted for the purpose of obtaining the necessary certified copies from the CID, who also indicated that he is instructed that the Respondent has no objection to the admission of certified copies of the aforesaid documents as evidence. The inquiry was thereafter re-fixed to be resumed on 18<sup>th</sup> March 2013.

The inquiry could not be resumed on 18<sup>th</sup> March 2013 as the Bench was not properly constituted, and ASP, Priyasan Ampawila, who was present in Court as previously directed, informed Court that Dinesha Eranthi Fernando, who had conducted the investigations under his supervision, is now overseas, but he was willing to testify, if so required. Learned Counsel for the Respondent stated that he has been furnished by the Registrar of this Court, certified copies of the aforesaid documents. He also stated that he does not have any objections to the reception in evidence of the said documents. The inquiry was re-fixed to be resumed on 14<sup>th</sup> May 2013.

On 14<sup>th</sup> May 2013, when the inquiry was resumed, Court indicated that since the certified copies of documents furnished by the Director CID have been admitted by learned Counsel for the Respondent without objection, it was not necessary to hear any further evidence. Learned Counsel for the Respondent thereafter addressed Court for mitigation of sentence. He stressed the fact that the Respondent had been convicted by the High Court on him pleading guilty, and that even before this Court he has not contested the Rule, but only wished to place certain submissions with respect to the sentence to be imposed by Court. He submitted that the Respondent had been admitted and enrolled as an Attorney at law of the Supreme Court of Sri Lanka on 3<sup>rd</sup> November 1989, and had been in practice as a legal practitioner for little over 23 years. He also submitted that he had been practising as a Notary Public since 11<sup>th</sup> July 1990, and had his notarial office initially at No. 7 Belmont Street, Colombo 12, and since 1992 at No. 34/1/1 of the Lawyers' Offices Complex, St. Sebastian Hill, Colombo 12. Mr. Rohan Sahabandu P.C, who represented the Bar Association of Sri Lanka and learned Deputy Solicitor General were also heard in regard to the sentence.

Before considering the sentence, it is necessary to examine the evidence in regard to the nature of the offences for which the Respondent pleaded guilty in the High Court of Colombo in case No. 2998/06 and was sentenced, since the Rule issued by this Court is primarily based on the said conviction and sentence. Although it is clear that the Respondent had been indicted for offences relating to forgery and the preparation of four fraudulent deeds, certified copies of which have been made available to Court by the Director of the Criminal Investigation Department (CID), since neither the Attorney-General, the Registrar of the High Court of Colombo nor the Director of the CID could furnish to Court a copy of the indictment, it is not clear as to exactly how the four charges for which the Respondent had pleaded guilty, had been formulated. All that we have are the first complaint made by the then Chairman of the National Housing Development Authority, the statement made by the Respondent to the CID, the relevant fraudulent deeds on which the signatures of the Chairman and a Director of the National Housing Development Authority were allegedly forged, and the report of the Examiner of Questioned Documents dated 9<sup>th</sup> September 2003 relating to the genuineness of the questioned signatures on the deeds, which he had compared with certain samples of signatures made available to him.

However, it appears from the said deeds bearing No. 976 dated 7.7.1998 and Nos. 1096, 1093 and 1094 dated 1.2.1999, that they were purportedly executed jointly by the National Housing Development Authority as First Named Vendor, and Dublee Holdings Lanka (Pvt) Ltd., as Second Named Vendor, for the purpose of conveying title to and transferring possession of certain houses constructed by the Second Named Vendor on certain sub-lots of Plan No. 163 dated 4<sup>th</sup> August 1987 and made by D.K.Dayaratne, Licensed Surveyor, belonging to the First Named Vendor and

which formed part of Lot 1 of Preliminary Plan No. CO 6988 situated in Kadiranawatta in Model Farm Road, Mattakkuliya, as contemplated by a Developers Agreement entered between the said two Vendors, to specific vendees named in the said deeds, who had agreed to purchase the same. The Respondent was the Notary Public before whom the aforesaid deeds were purportedly executed, and in the attestation clauses at the end of the said deeds, he has certified *inter alia*, that the Common Seal of the said National Housing Development Authority (NHDA), which was the First Named Vendor, was affixed to the deeds in his presence, and in attestation whereof, the same was signed by the said Mahavidanalage Munidasa Charles Ferdinando (mis-spelt in all the said deeds as “Fernando” in the attestation clauses thereof) and Liyanage Don Raja Gladis Samarasundera, both of whom were not known to him, in the presence of two witnesses both of whom were known to him “in the presence of one another, all being present together at the same time at the National Housing Building, Sir Chittampala A Gardiner Mawatha, Colombo 2 on the dates specified in the said deeds.

It is significant that the Common Seal of the National Housing Authority (NHDA) is conspicuous by its absence in every one of the aforesaid deeds, despite the Respondent’s certification therein that the said Seal was affixed to the deeds in his presence, and was authenticated by the signatures of the then Chairman of NHDA, Mahavidanalage Munidasa Charles Ferdinando and Director of NHDA, Liyanage Don Raja Gladis Samarasundera, in the presence of two other witnesses, Muttetuwege Jothipala Perera and Ervyn Pathiraja both of 34-1/1, Lawyers’ Office Complex, St. Sebastian Hill, Colombo 12, which address is the same as the address of the notarial office of the Respondent. It is material to note that in his first complaint to the Police dated 19<sup>th</sup> August 1999, Ferdinando has categorically denied the execution of the aforesaid deeds, and also contested the genuineness of his purported signatures and those of the other signatory, Samarasundera, and the fact that they have all been forged is established beyond any doubt by the report of the Examiner of Questioned Documents (EQD) C.D. Kalupahana, dated 9<sup>th</sup> September 2003 which reveals that while the purported signatures of the aforesaid signatories on deed No. 976 dated 7<sup>th</sup> July 1998 have been made using tracings and are “mere drawings and not signatures at all”, the purported signatures of the aforesaid signatories on the other three deeds are not of the aforesaid Ferdinando and Samarasundera.

The explanation offered in this regard by the Respondent in his statement dated 18<sup>th</sup> January 2001 is that he had been the notary who had executed more than sixty deeds of a similar nature on the instructions of Dublee Holdings Lanka (Pvt) Ltd., and that the then Chairman of the said company, Anthony Fernando, had taken over the questioned deeds after they were prepared by the Respondent, ostensibly for the purpose of obtaining the signatures of Ferdinando and Samarasundera, whom he claimed to know personally. However, if this was the case, the conduct of the Respondent not only was in total disregard of the professional duties of the Respondent and in violation of the provisions of the Notaries Ordinance No. 1 of 1907, as subsequently amended, particularly the strict requirements of Section 31(12) of the said Ordinance wherein it is essential that the common seal of any statutory body should be placed on the documents, and attested by two officers of the relevant corporate body, in the presence of two other witnesses who should also be present at the same time and place. Furthermore, in his first complaint of the Chairman of NHDA, Mahavidanalage Munidasa Charles Ferdinando dated 19<sup>th</sup> August 1999, it is alleged that on the dates the aforesaid deeds were allegedly executed, certain payments were still

outstanding from the Second Named Signatory thereto, namely Dublee Holdings Lanka (Pvt) Ltd., and that in those circumstances, the National Housing Authority (NHDA) would not have executed those deeds unless those dues were first settled, gave rise to the possibility that the Respondent, by failing to comply with the provisions of the Notaries Ordinance might have facilitated the perpetration of a fraud by the officials of the said company on the National Housing Authority.

While the aforesaid circumstances should be taken into consideration in determining the sentence to be imposed on the Respondent, it is also material to take into consideration the fact that this Court could not obtain from the relevant High Court the necessary documentary evidence relating to his conviction by the High Court of Colombo in case No. 2998/06, which material it was fortunate to obtain from the Director of CID. In fact, it has been reported that the original record of the said case had gone missing and could not be traced, and even the formal inquiry conducted by the Registrar of the High Court on the directions of this Court did not produce any results. Learned Deputy Solicitor General who appeared for the Attorney General in this Rule has submitted to Court that the original file maintain in the Attorney General's Department bearing No. CR 1 116/2005 has also disappeared, and all endeavours made to trace the same have failed. The Respondent has also informed Court that he too does not have any documents pertaining to the aforesaid High Court case, nor is the same available with the Counsel who appeared for him in the High Court. This Court had to enlist the assistance of the Director CID for the purpose of obtaining certified copies of a few of the material documents pertaining to the case.

All this give rise to serious doubts as to whether the Respondent himself had any hand in the disappearance of the High Court record and the original file maintained by the Attorney General's Department. The fact that the Respondent, who was convicted of serious offences and was subjected to a suspended sentence, did not have with him important documents relating to his conviction and sentence, does not portray him as a person who can be trusted with the professional responsibilities and obligations of an Attorney-at-law and Notary Public, or as a person of high integrity. It is unimaginable that the original records and files maintained by the High Court of Colombo and the Attorney General's Department, which are the primary institutions involved in law enforcement, could be made to disappear so easily.

In this connection, it is also significant to note that the Respondent, who had pleaded guilty to serious charges in the High Court, which included allegations of forgery and fraud, had got away with a particularly light sentence. These offences were extremely serious, given that the Respondent was a practicing Attorney-at-Law and Notary Public, but only a suspended sentence of imprisonment was imposed on him, along with a very nominal fine, with respect to the charges of which he was convicted. Further, the High Court had failed to keep the Bar Association of Sri Lanka as well as the Supreme Court informed of the conviction and sentencing of the Respondent for these crimes involving professional misconduct. Although the Respondent ultimately pleaded guilty to the Rule issued on him, it is also necessary to take into consideration the fact that had the Director CID not intimated to the Bar Association of Sri Lanka about the conviction and sentencing of the Respondent, the Rule would never have been issued, and without the positive assistance of the Director CID, the Rule would have become unsustainable. I therefore take this opportunity to thank the Director and other officers of the Criminal Investigation Department in regard to the manner in which they came forward to assist Court in this solemn task.

Taking into consideration all these factors including the fact that the Respondent has, on his own plea, been found guilty of malpractice, deceit and a crime within the ambit of Section 42(2) of the Judicature Act No. 2 of 1978 in the discharge of his professional duties, while breaching Rule 60 and 61 of the Supreme Court (Conduct of and Etiquette for Attorney-at-Law) Rules 1988, and has been acting in clear violation of certain principles enshrined in the Notaries Ordinance No. 1 of 1907, as subsequently amended, particularly Section 30(12) and Section 39 thereof, and also taking into consideration the submissions made by the learned Counsel for the Respondent in mitigation of sentence, in the light of the principles relating to sentencing embodied in the decisions of this Court, most of which have been considered in the decision of this Court in *In Re Arthenayake, Attorney-at-law*, (1987) 1 SLR 314, and more recent decisions of this Court such as *D.M.A. Jeewanananda Dissanayake v. D.S. Bodhinagoda, Attorney-at-law* SC Rule 01/2010 SC Minutes dated 20.2.2013, I make order suspending the Respondent from practicing his profession as an Attorney-at-law for a period of eight years with effect from 2<sup>nd</sup> November, 2011 (date of his first suspension in regard to this complaint). In terms of Section 19(2) of the Notaries Ordinance, as subsequently amended, the Respondent shall be disqualified from practicing as a Notary Public during the said period of suspension.

The Registrar of this Court shall forthwith despatch to the Registrar-General a copy of this order, and the Registrar-General is hereby required to take steps to give effect to the suspension of the Respondent as contemplated by Section 19(2) of the Notaries Ordinance, as subsequently amended.

In all the circumstances of this case, I would not make an order for costs.

**JUDGE OF THE SUPREME COURT**

**P.A. RATNAYAKE, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**C. EKANAYAKE J.**

I agree.

**JUDGE OF THE SUPREME COURT**