

SUPREME COURT

Undugoda Jinawansa Thero

Vs.

Yatawara Piyaratna Thero

*S. C. Appeal 46/81 – CA /LA Appeal 15/81 – CA Appeal 152/72(F)
D.C. Kegalle No. 91/L(S.C.)*

Buddhist Ecclesiastical Law – Pupillary Succession – Buddhist Temporalities Ordinance Section 41 – Prima facie evidence of declarations to Registrar-General – Rebuttal of prima facie evidence – S. 13 and 32 (7) Evidence Ordinance.

Respondent and Appellant both claimed to be pupillary successors to one Hapugoda Siddhartha Thero.

Respondent relied on declarations made to Registrar General under Section 41 of the Buddhist Temporalities Ordinance and sought a declaration that he was the Vihara Adipathi and also sought ejection of the Appellant and two others.

Appellant led oral and documentary evidence to rebut the documentary evidence of Respondent viz. declarations made under Section 41 of Buddhist Temporalities Ordinance.

Held: that the prima facie evidence of the declarations made under Section 41 of the Buddhist Temporalities Ordinance was rebutted by the oral evidence and documentary evidence;

that section 13 of Evidence Ordinance enabled Appellant to lead in evidence a document in handwriting of the Tutor admitted under section 32(7) of Evidence Ordinance to deny the right claimed by the Respondent.

APPEAL from judgment of Court of Appeal

Before: Sāmarakoon, Q.C., C.J.,
Wimalaratne, J., and
Colin - Thomé, J.

Counsel: H.L.de Silva, Senior Attorney, with
G. Dayasiri and K. Balapatabendi for Appellant.
E. Amerasinghe, Senior Attorney, with
L.C. Seneviratne, M.B. Peramuna and
S.S. Ratnayake for Defendant.

Argued on: 23rd - 25th February, 1982 and on
15th, 16th and 18th March, 1982.

Cur.adv.vult.

Decided on: 5.4.82

SAMARAKOON, C.J.

The Respondent instituted this action in the District Court of Kegalle against the Appellant seeking a declaration that he is the lawful Viharadhipathi of the Wattarama Vihare in the District of Kegalle and for the ejection of the Appellant therefrom. Subsequently he amended the plaint and sought an order of ejection of two other priests named therein. In both pleadings the Respondent described himself as the sole pupil of Hapugoda Siddhartha Thero who died in April, 1966. The Appellant filed answer denying the allegations in the plaint and claimed that he was in possession in his own right as sole pupil of Hapugoda Siddhartha Thero. The Appellant succeeded in his contention that the Respondent was not a pupil of Hapugoda Siddhartha Thero. The Respondent appealed to the Court of Appeal which upheld the contention of the Respondent and allowed the appeal. Hence this appeal to this Court by the Appellant.

The admitted facts are these. Wattarama Vihare has not been exempted under the provisions of section 4 (1) of the Buddhist Temporalities Ordinance No. 19 of 1931 (Chapter 318) and is therefore administered by a Trustee appointed by the Public Trustee. The succession to the Viharadhipathiship is governed by the rule of

Sisiyanu Sisyā Paramparawa and it is traced from Pethiyagoda Vipassi Thero. He died leaving five pupils who in their order of seniority were -

1. Gammulle Sumana Thero,
2. Medagama Gunaratna Thero,
3. Polgahaange Dhammasiddi Thero,
4. Ambanwela Summangala Thero, and
5. Ambuwangala Dhammapala Thero.

Gammulle Sumana Thero abandoned his rights to Wattarama Vihare and Dhammapala Thero disrobed. By Deed No. 9293 dated 12.2.1917 Vipassi Thero appointed the other three priests as joint incumbents but it is stated that the Deed was never acted upon. On the death of Vipassi Thero he was succeeded by Medagama Gunaratna Thero who functioned as Viharadhipathi of Wattarama Vihare till his death in 1949. Hapugoda Siddhartha Thero succeeded him as Viharadhipathi and functioned as such till his death in April 1966. Here onwards there is a divergence of claims. The Respondent and Appellant each claimed to be the successor to Hapugoda Siddhartha Thero to the exclusion of the other. At the commencement of the trial the Respondent claimed as Senior Pupil of Siddhartha Thero and an issue was framed accordingly. The Appellant maintained his claim as the sole pupil of Siddhartha Thero.

The Respondent was robed on the 19th January, 1955, and ordained on the 26th May, 1962. He claimed that Hapugoda Siddhartha was one of his robing tutors and that he also presented him for ordination. The Appellant was robed on the 30th August 1963 by Siddhartha Thero. The burden of proving robing and / or ordination by Siddhartha Thero was on the Respondent. Robing alone would suffice for the Respondent's case but if that fails then ordination by Siddhartha Thero would suffice, if proved. The Respondent based his claim primarily and mainly on two documents. They are :-

1. Declaration (P1) dated 21.10.1955 which is the Samanera Declaration of the Respondent under section 41(2) of the Buddhist Temporalities Ordinance No. 19 of 1931, and
2. Declaration (P2) dated 18.2.63 which is the Upasampada Declaration of the Respondent under section 41(1) of the Buddhist Temporalities Ordinance 19 of 1931

Photo copies of both documents were obtained by the District Judge and are now part of the record. In cage 7 of P1 and P2 the names of the Robing Tutors are stated as "Ambanwela Sumangala Sthavira" and "Hapugoda Siddhartha Sthavira". There are three signatories to P1 at the end thereof. They read as follows:-

"Signatories to the correctness of the above particulars -

1. Signature of Samanera - Yatawara Piyaratne
2. Signature of Robing Tutor - Ambanwela Sumangala
3. Signature of Viharadhipathi of Temple of residence - Hapugoda Siddhartha."

In P2 the Respondent has signed as the Upasampada Bhikku and Ambanwela Sumangala has signed as "Tutor presenting for Ordination." Hapugoda Siddharatha has not signed this document though his name appears in cage 19 as one of the Tutors presenting for ordination along with that of Ambanwela Sumangala. The particulars in P1 (cage 1 - 14) have been written by Karaliadde Seelananda Thero who at that time was resident at Muthiyangana Temple in Badulla. P2 was written by Ambanwela Sumangala who was resident at Talawa Raja Maha Vihare, Marassana. As stated earlier these are photo copies of two documents maintained in a Register kept by the Registrar General in terms of section 41(3) of the Buddhist Temporalities Ordinance. Section 41(6) of the Buddhist Temporalities Ordinance states that "such registers kept by the Registrar General shall for the purposes of this Ordinance be *prima facie* evidence of the facts contained therein in all courts and for all purposes." Counsel for the Appellant argued that this rule is not applicable to P1 and P2 for the following reasons:-

1. Details in P1 have not been entered by the Robing Tutor Ambanwela Sumangala. (Vide section 41(2) (ii) of the Ordinance)
2. Details in P2 have not been entered by the Upasampada Bhikku who was the Respondent himself (Vide section 41(2)(a)(i) of the Ordinance).
3. Both P1 and P2 have not been forwarded to the Registrar General within one month as required by section 41(2)(b) of the Ordinance.

Counsel contended that there must be strict compliance with the letter of the Statute and therefore the robing tutor and the Upasampada Bhikku should have entered P1 and P2 respectively in their own handwriting. In case of failure to do so, he submitted, there is no room for the operation of the rule that the document is *prima facie* evidence of its contents. Such a rigid interpretation of these provisions is both impracticable and unwarranted. It is common knowledge that the particulars required to be entered in each cage could well have been done by some mechanical process such as typewriting. The words "enter therein" occurring in section 41(2)(a)(i) and (ii) are used in reference to the "details" regarding the Upasampada Bhikku or the Samanera as the case may be and do not refer to the mode or the manner of setting out the details in each cage. Furthermore these words do not preclude an agent from entering the details upon the instructions of the Upasampada Bhikku or the Robing Tutor - *Qui facit per alium facit per se*. ("he who acts through another is deemed to act in person" - The Dictionary of English Law by Earl Jowitt). The signatures certifying the correctness of the particulars would then be a ratification of the act of the Agent. The provisions of section 41 of the Buddhist Temporalities Ordinance do not require that the Robing Tutor or the Upasampada Bhikku should enter the particulars in their own hand. There is no doubt that the forms containing the declarations were not sent within a month of the robing or ordination as required by the provisions of section 41(2)(b) of the Ordinance. The declaration in respect of robing was made to the Registrar General on the 6th August 1955 (a period of over 7 months) and the declaration in respect of the ordination was made on the 26th December 1962 (exactly 7 months later). Each constitutes an offence punishable with a fine in terms of the provisions of section 41(7) of the Ordinance. The documents afford *prima facie* evidence of the commission of an offence within the meaning of section 41(6) of the Ordinance. But it must be remembered that this is an offence resulting from a failure to forward a declaration and is strictly confined to the duty imposed by the provisions of section 41 (2)(b) of the Ordinance. The offence has no relevance to the particulars entered in the declarations which have been furnished in compliance with the other provisions of section 41 of the Ordinance. I cannot therefore accede to the argument that the evidentiary value conferred by the provisions of section 41(6) of the Ordinance is not applicable to the declarations of which P1 and P2 are copies.

The Respondent sought to prove the fact that he was robbed by Siddhartha Thero from the fact that his name appears in cage 7 of P1 as Robing Tutor and from the fact that he has signed at the foot of the document. It is argued that when he signed the document he certified the correctness of all particulars in the document. It is a significant fact that he has not signed as Robing Tutor but only as "Viharadhipathi of the Temple of Residence" of the Samanera. By that he is certifying the correctness of the particulars in cage 10 of P1 which requires the "Name of the Viharadhipathi of the Temple of Residence" of the Samanera to be set out. That residence was declared by the Robing Tutor in cage 11 of P1 as the Samanera's "Residence at time of declaration". In this case it was Talawa Raja Maha Vihara of which also Siddhartha Thero was Viharadhipathi. Those are particulars which were within the personal knowledge of Siddhartha Thero and he could therefore certify. The others he may or may not have known. Indeed it is going too far to state that he must have known or be taken to have known the other facts as well. The Respondent stated in evidence that when the declaration was to be entered he was called in by Sumangala Thero to give Seelananda Thero the details of his birth, parentage and lay name, which he gave and they were entered as stated by him. Even Sumangala Thero was unable to give those particulars himself to Seelananda Thero. Therefore the findings of the Court of Appeal that the signature of Siddhartha Thero was an affirmative ratification of all particulars in P1 cannot be upheld. The declaration P2 has not been signed by Siddhartha Thero in any capacity whatsoever.

Nevertheless it is argued that the particulars in Cage 7 of P1 and Cage 7 of P2 are *prima facie* evidence of the fact that Siddhartha Thero was one of the Robing Tutors of the Respondent, and the particulars in Cage 19 of P2 are *prima facie* evidence of the fact that Siddhartha Thero was one of the Tutors presenting the Respondent for ordination. This is correct. The appearance of his name on the face of P1 constitutes evidence that he was the Robing Tutor of the Respondent. "This only means there is ground for proceeding" (Sarkar on Evidence Ed. 10 page 27). It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal. "*Prima facie* evidence means evidence which appears to be sufficient to establish the fact unless rebutted or overcome by other evidence. It is not conclusive." (Sarkar on Evidence Ed. 10 page 27). "*Prima facie* evidence means evidence

which if not balanced or outweighed by other evidence will suffice to establish a particular contention." (Halsbury's Laws of England Ed. 4 Vol. 17 page 22 section 28). If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as *prima facie* evidence is rebutted and is no longer of any value. Drieberg J. stated the proposition succinctly thus:-

"*Prima facie* proof in effect means nothing more than sufficient proof - proof which should be accepted if there is nothing established to the contrary; but it must be what the law recognizes as proof, that is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon - s. 3, Evidence Ordinance." *Velupillai vs. Sidembram* (31 N.L.R. at 99).

Evidence in rebuttal may be either oral or documentary or both. The Register maintained by the Registrar General is not the only evidence. Oral evidence may be given to prove the fact of robing or ordination. *Saranajothi Thero vs. Dhammarāma Thero* (61 N.L.R. 76 at 79). Nor is it conclusive of the fact of robing or ordination. Oral evidence may be led to disprove entries therein.

The Respondent sought to bolster the documents P1 and P2 with the oral evidence of three monks. They are Ambanwela Sumangala Thero, Chandananda Thero, Anunayake of Asgiriya Chapter, and Seelananda Thero of Mutiyangana Vihare in Badulla. The Appellant sought to nullify the evidentiary value of these two documents, firstly, by circumstantial evidence and secondly by oral as well as documentary evidence. I will deal with the latter kind later. Counsel for the Appellant points to the fact that P1 has not been signed by Siddhartha Thero as Robing Tutor. Counsel for the Respondent contends that he was not required to do so as there is provision in the document for only one Tutor to sign. He pointed to the Cage 7 of P1 which provided for the "Names of Robing Tutor or Names of Robing Tutors" whereas the certificate at the foot thereof in item 2 makes provision for only one Robing Tutor to sign. Similarly Cage 19 of P2 provides for "Name or Names of Tutors presenting for ordination" whereas the certificate at the foot thereof in item 2 makes provision for the signature of only one Tutor. This is no doubt correct but it gives the Appellant a clear advantage in that, slight evidence is sufficient

to displace the presumption raised by these particulars. His burden is a very light one. Counsel for the Appellant next pointed to facts concerning the ceremonies of robing and ordination. The ceremony of robing took place on the 19th January at about 5.30 a.m. at Talawa Raja Maha Vihare of which Sumangala Thero was Adhikari. The ceremony was over by 7.00 a.m. Siddhartha Thero who had been informed of the ceremony arrived at Talawa in the evening of the 18th January, but left that same night for Narammala Raja Maha Vihare to attend the funeral of one Gunaratne Thero which according to the evidence took place on the 20th January. Siddhartha Thero was not present at the robing ceremony in the early hours of the 19th January. Robing is a most important and solemn ceremony. It is by robing that a person attains the first step in the priesthood and becomes a Samanera. It constitutes pupillage. *Dhammajoty Unnanse vs. Welligama Somananda Unnanse* (V. S.C.C. 8 at 9) and *Saranankara Unnanse vs. Indajoti Unnanse* (20 N.L.R. 385 at 389). Robing is done by the Robing Tutor himself or he may delegate it to another. (20 N.L.R. 385 at 392). Buddhist ecclesiastical law permits no other method to constitute pupillage by robing. Siddhartha Thero did not take part in this most important ceremony personally. At the time he had no pupils. He could well have left Talawa after the ceremony because the funeral of the dead priest at Narammala was to take place two days later, viz., on the 20th January. Instead he chose to visit the dead. This is in my view a very significant fact in this case. The upasampada ceremony took place at Asgiriya Temple on the 26th May 1962. Sumangala Thero took residence there 2 or 3 months prior to that date. There was the examination of the Respondent by a Sangha Sabawa comprising about 20 Senior Bhikkus that morning. He was presented to this assembly by Sumangala Thero. Siddhartha Thero was not present at this important ceremony. He arrived at about 10.30 a.m. or 11.00 a.m. that day and by that time the examination was over. The ordination ceremony commenced at 10.00 p.m. that night. Siddhartha Thero was not present at this ceremony. He had left Asgiriya that afternoon. The Upasampada Seetuwa (P3) which has reference to the Respondent's ordination contained the names of Ambanwela Sumangala Thero and Siddhartha Thero. This in turn is compiled from the *Satahanpotha* (P3A) that was entered during the examination. This document too has the two names as Tutors but neither is signed by Siddhartha. It is in evidence that Siddhartha Thero was present at Asgiriya on the day of the ordination for the *Dhana* and even thereafter at about 2.00 p.m.

but there is no evidence that the *Satahanpotha* was presented to him for signature. In any event his name had been entered as Tutor on the representation of the Respondent. Sumangala Thero stated to Court that he informed Siddhartha Thero that his name had been so entered but the District Judge quite rightly refrained from acting on this evidence. There was a photograph taken that evening of those present at the ceremony. Siddhartha Thero has not sat for it. The Respondent and Sumangala both stated that the Respondent was initially entrusted to Sumangala and Siddhartha by Venerable Chandananda for instruction and robing but Venerable Chandananda stated that he was entrusted to Siddhartha. He said this in cross-examination. The District Judge refrained from accepting or placing any reliance on this evidence of entrustment. It was probably led to show that Respondent was a pupil by instruction but there was no evidence that he received any instruction from Siddhartha. Sumangala Thero stated that Siddhartha joined him in entering the Respondent to the Maliyadeva Pirivena and that Siddhartha also contributed towards the expenses of such education. It however transpired that only Sumangala had signed the Admission Register of the Pirivena and the evidence of the representative of the Public Trustee showed that the expenses of the Respondent at the Pirivena were borne almost entirely from the income of Talawa Vihare and not out of Wattarama Vihare. Siddhartha had approved this expenditure. After a careful analysis of the evidence of Sumangala Thero, Venerable Chandananda, and Seelananda Thero the District Judge has chosen not to act on their testimony. Sumangala Thero was characterised as an interested witness. He was a partisan witness and was not forthright in most of his answers. Seelananda has made a very bad impression on the District Judge. He was evasive and the District Judge states that at one stage he found him to be "obstinate and a dodger." This comment is not unjustified. Venerable Chandananda's evidence is rejected in respectful terms. The District Judge had the priceless advantage of seeing and hearing these witnesses and of watching their demeanour. After careful analysis and cogent reasoning he has rejected their evidence. I can see no justification for holding that he was wrong.

It now remains to take stock of this evidence in rebuttal. One salient fact comes into focus - Siddhartha Thero has done nothing in respect of the robing and the ordination which a Viharadhipathi would not have done. His fleeting presence at Talawa in the evening

of the day before the robing ceremony, his all too brief stay at Asgiriya on the day of the ordination, and his failure to take part in either of these important ceremonies is not the conduct of a Robing Tutor who owes certain obligations towards his pupil. Rather, it is the attitude of a Viharadhipathi making his appearance in response to custom, or perhaps duty, on the occasion when a resident in his temple is being robed. The effect of this evidence in rebuttal is that Siddhartha Thero was not in fact the Robing Tutor of the Respondent as set out in P1 and P2. That is a reasonable inference which outweighs, or at the least, balances, the evidentiary value of the particulars in P1 and P2.

But this is not all the evidence. There is more consisting of oral and documentary evidence. The oral evidence is that of Mr. Udalagama a retired Crown Proctor of Kegalle, and of one Reggie Bandaranayake a brother of Siddhartha Thero. The documentary evidence is the writing D4.

The Appellant's allegation was that the name of Siddhartha Thero was inserted in cage 7 of P1 after he had signed the documents as Viharadhipathi. The learned District Judge has referred to some discrepancies in the writing and letters in P1, but he came to no conclusion on his findings. The body of the document is in the handwriting of Seelananda Thero and if the insertion of Siddhartha Thero's name was made after he signed the document it must necessarily have been made by Seelananda and no other. This was naked suggestion of fraud. Sumangala Thero stated that when Siddhartha Thero signed P1 he was well aware that his name appeared as one of the Tutors in cage 7 and with that knowledge he signed P1. Sumangala Thero's evidence has not been accepted as worthy of credit. We are then left with the documentary evidence of D4 and the oral evidence of Bandaranayake and Udalagama. Bandaranayake was a brother of Siddhartha Thero and seems to have had close contact with the priest until his death. The District Judge has characterised him as a truthful and intelligent witness. He stated that either late in December 1965 or early in January 1966 he received information to the effect that Siddhartha Thero's name had been entered as a Robing Tutor of the Respondent in the declaration in form B. He conveyed this information to the priest and advised him to obtain a copy of the Respondent's Samanera declaration when he visits Colombo. The copy of that was obtained and it disclosed the

name of Siddhartha Thero in cage 7. He then advised the priest to consult legal opinion and witness Udalagama was consulted. Acting on his advice, states Bandaranayake, Siddhartha Thero sent an application to the Mahanayake of Asgiriya the terms of which were identical with those contained in D4. He identified the writing in D4 as that of Siddhartha Thero. Before I deal with D4 I desire to deal with the evidence of C.H. Udalagama.

Witness Udalagama was for 45 years a practitioner in the Courts of Kegalle. He had known Siddhartha Thero for many years and had represented him in litigation in the Courts. In fact he had filed his proxy for the Defendant (Appellant) in this case but revoked it later when he was required to testify on behalf of his client. In the course of his evidence he stated that he was shown a copy of the Samanera declaration of the Respondent. He then proceeded to state what Siddhartha Thero told him and the advice given by him to Siddhartha. The learned District Judge has acted upon this evidence. This evidence should not have been permitted as it contravened the provisions of section 126 of the Evidence Ordinance. Counsel for the Appellant contended that there was nothing confidential in the communication. I do not agree. At that stage Siddhartha Thero was seeking legal advice on an ecclesiastical matter that only concerned him and the Mahanayake of Asgiriya and advice as to how he should act in the matter. He was seeking advice for his personal guidance. It was not for disclosure to others at that stage and was purely a matter between him and his legal adviser. Therein lies the confidentiality. In any event Siddhartha being dead at the relevant time, such evidence was not admissible under the provisions of section 32(7) of the Evidence Ordinance.

As stated earlier witness Bandaranayake states that Siddhartha Thero acting on the advice of Udalagama, addressed a communication to the Mahanayake in terms set out in D4. He identified the writing on D4 to be the handwriting of Siddhartha Thero. It purports to be an application to have his name expunged from the Samanera Declaration of the Respondent. This conforms to the provisions of section 41(5) of the Ordinance. This writing was found by the Appellant among the papers of Siddhartha Thero after his death. The District Judge compared the handwriting on D4 with the genuine handwriting of Siddhartha on other documents that were produced in evidence and came to the conclusion that the writing on D4 was

that of Siddharatha Thero. He dispensed with the opinion of experts. This, he was entitled to do. He had to form his own opinion on the writing. The opinion of an expert is only a relevant fact and not an indispensable one – *Charles Perera vs. Motha* (65 N.L.R. 294). Counsel for the Appellant sought to justify the production of this Document under the provisions of section 32(7) of the Evidence Ordinance which permits written statements of relevant facts made by a person who is dead. It reads :-

“(7) When the statement is contained in any Deed, Will or other Document which relates to any such transaction as is mentioned in section 13 paragraph (a).”

Counsel for the Respondent contended that this was not a Document as there was nothing to indicate that it was intended to be used within the meaning of section 3 of the Evidence Ordinance. There can be no doubt that it is a document within that definition by whatever name it is called. Next, he referred to section 13(a) and submitted that for the purposes of that sub-section, the statement relating to the transaction must be in the Document which created the right.

Section 13(a) reads thus:-

“13. Where the question is as to the existence of any right or custom the following facts are relevant:-

(a) any transaction by which that right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence:”

The word “transaction” is not defined in the Ordinance. In the ordinary sense of the word “transaction” is some business or dealing which is transacted between two or more persons. In the realm of law it is given a liberal meaning to embrace a wider range of acts and bears the sense of “any act affecting legal rights.” per Rao J. in *Periasami Kachirayar vs. Varadappa Kachirayar* (1950 A.I.R. Madras 486 at 487). “It would thus, it appears, include any series of acts of which it can be said that right is created claimed etc. thereby.” (Sarkar on Evidence Ed. 10 Vol. I page 112). The right claimed in this case is the right of succession to the Viharadhpathship

of Wattarama Vihare. What then is the transaction by which it was created? That was the act of robing at the ceremony held on 19th January, 1955 of which P1 is merely evidence. P1 is not the transaction – it is the record of it. It is the existence of this right of succession that is in question and the transaction by which it was created becomes relevant. D4 relates to this transaction. It is a complete denial of the right alleged to have been created by the transaction. Indeed it is a denial of the very transaction itself which sought to make Siddhartha Thero privy to it. (The relevant portions of D4 are reproduced in Sinhala)

These are relevant statements contained in a writing of the deceased priest. Section 32(7) merely calls in aid the provisions of section 13(a) of the Evidence Ordinance. D4 has the ingredients necessary for the application of section 32(7). It is a written statement (the opening words “written” or “verbal” do not apply to sub-section 7). It is written by a dead person. It relates to a transaction within the meaning of section 13(a) of the Ordinance. It also rebuts the claim that Siddhartha Thero robbed the Respondent on the 19th January, 1955. It is conduct relevant in terms of section 9 of the Evidence Ordinance. I am therefore unable to agree with Perera, J. who held that D4 was inadmissible in evidence. D4 gives the lie to P1 and thereby to P2. The cumulative effect of the findings hereinbefore set out is that the Appellant has not only counter balanced the evidentiary value of P1 and P2, but has also outweighed or overcome that evidence. There were other factors referred to by Counsel for the Appellant such as lack of publicity for the robing, delay in registration of the declaration and other minor points. I do not need to discuss them. I allow the appeal with costs here and in the Court of Appeal.

Wimalaratne, J. – I agree.

Colin-Thomé, J. – I agree.

Appeal allowed