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

In the matter of an application for leave to Appeal under and in terms of Article 128 of the Constitution read with Section 5C (1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006.

SC/Appeal No. 0027/2020
SC HCCA/LA /236/2019
HCCA/Kurunegala
Case No. 120/2016 (F)
D.C. Kurunegala Case No. 7007/L

R.M. Kamal Kumara Gokarella
"Thushara" Galagamuwa, Gokarella.

PLAINTIFF

vs

R.M. Bhadra Kumari Gokarella,
Dambulla Road, Gokarella.

DEFENDANT

AND BETWEEN

R.M. Kamal Kumara Gokarella.
"Thushara" Galagamuwa, Gokarella.

PLAINTIFF – APPELLANT

vs

R.M. Bhadra Kumari Gokarella,
Dambulla Road, Gokarella.

DEFENDANT – RESPONDENT

And Now Between

R.M. Kamal Kumara Gokarella.
"Thushara" Galagamuwa, Gokarella.

(Appearing by his Power of Attoreny holder Gonaduwage Thushitha Jeewani Deepthika of "Thushara" Galagamuwa, Gokarella.)

PLAINTIFF – APPELLANT - PETITIONER

vs

R.M. Bhadra Kumari Gokarella,
Dambulla Road, Gokarella.

DEFENDANT -RESPONDENT- RESPONDENT

BEFORE : Kumudini Wickremasinghe, J.
Menaka Wijesundera, J &
M. Sampath K. B. Wijeratne J.

COUNSEL : Sapumal Bandara with Vishmi Yapa Abeywardene and Ms. Gangulali de Silva for the Plaintiff– Appellant-Appellant.

Lakshman Perera, PC with Shashi Jayasekara for the Defendant – Respondent – Respondent.

ARGUED ON : 14.07.2025

DECIDED ON : 30.10.2025

M. Sampath K. B. Wijeratne J.

Introduction.

The Plaintiff-Appellant-Petitioner-Appellant (hereinafter referred to as the 'Plaintiff–Appellant') instituted an action in the District Court of Kurunegala seeking, *inter alia*, a declaration that Deeds No. 14370 and 14371 are null and void.

The father of both the Plaintiff-Appellant and the Defendant-Respondent, K. B. Gokarella, was the owner of the land more fully described in the First Schedule to the plaint. By Deed of Gift No. 707, attested by Ravi Jayawardena, Notary Public, and executed on February 29, 1992, K. B. Gokarella gifted the said land to the Plaintiff-Appellant. Subsequently, the said deed was revoked by Deed No. 900, and the same land was subdivided into three lots by Plan No. 948 dated December 30, 1994, prepared by H. Wijayathunga, Licensed Surveyor, leaving out the road reservation as Lot No. 2. Lot No. 1, in extent of 33.5 perches, was transferred to the Defendant-Respondent-Respondent-Respondent (hereinafter referred to as the 'Defendant-Respondent'), the Plaintiff's elder sister, by Deed of Transfer No. 901 executed on February 25, 1995, attested by R. M. B. Rathnayake, Notary Public. Lot No. 3, the remaining portion of the same extent, was gifted to the Plaintiff-Appellant by Deed of Gift No. 902, dated February 25, 1995, attested by the same Notary Public, retaining the right to revoke.

According to the Plaintiff-Appellant, Deed No. 902 was purportedly revoked on June 11, 1997, by Deed No. 14370, attested by U. Rathnawathie, Notary Public, and on the same day the identical rights were conveyed to the Defendant-Respondent by the purported Deed of Transfer No. 14371, attested by the same Notary, executed just eight days prior to the death of his father.

The Defendant-Respondent filed her answer dated March 07, 2008, and pleaded that the action instituted by the Plaintiff-Appellant was prescribed. Accordingly, she moved to dismiss the Plaintiff-Appellant's action.

After trial, the learned District Judge, by judgment dated June 1, 2016, held that Deeds No. 14370 and 14371 were valid in law and that the Plaintiff's action was prescribed. Accordingly, the learned District Judge proceeded to dismiss the Plaintiff's action.

The Plaintiff-Appellant thereupon appealed to the Civil Appellate High Court of Kurunegala, which by its judgment dated May 16, 2019, dismissed the appeal.

The Plaintiff-Appellant sought leave to appeal to this Court against the said judgment, and leave was granted on four questions of law, two set out in paragraph 22(a) and (b) of the Petition of Appeal, and two others raised on behalf of the Respondent1.

22.(a) *Did the Honourable Judges of the Provincial High Court exercising Civil Appellate jurisdiction err in identifying that the issue of the Plaintiff is as to the Capacity of the executant of the alleged Deed[s] bearing Nos. 14370 and 14371, namely K.B. Gokeralla as at the date of attesting the same seven days prior to the death that occurred in 19th of June 1997?*

(b) *Did the Honourable Judges of the Provincial High Court exercising the Civil Appellate jurisdiction failed [sic] to identify that the issue of the Plaintiff is neither with regard to [the] placing of the thumb impression other than the English signature nor the falsity of the thumbprint as being in continuous use by the said K. B. Gokeralla on previous occasions; but on the capacity and intention of the said K. B. Gokeralla, to place his mind and thought to contract with the Defendant a sale of the land for a consideration morefully provided in the Deed bearing No. 14371 under the circumstances alighted before the Court during the trial?*

(1) *Has the Plaintiff failed to prove that the deceased Mr. K. B. Gokarella was incapacitated at the time Deed Nos. 14370 and 14371 were executed?*

[1] *Vide* proceedings dated February 2, 2020.

(2) *If the action is prescribed in law, can the Plaintiff have and maintain this action?*

Upon consideration of the aforesaid four questions of law, it is evident that the first three relate to the capacity of the executant, namely K. B. Gokarella, to execute the two deeds in question. The remaining question concerns whether the Plaintiff's action is prescribed in law. Accordingly, the principal issue before this Court is whether K. B. Gokarella possessed the mental and physical capacity to execute the said two deeds.

The Plaintiff-Appellant filed written submissions in this Court, whereas the Defendant-Respondent did not. However, learned Counsel for both parties made oral submissions at the hearing in support of their respective cases. Their submissions were primarily based on the evidence of the parties and their witnesses regarding the mental and physical condition of the deceased executant, as well as the due execution of the aforesaid two deeds.

Proof of execution of deeds.

The learned Counsel for the Plaintiff-Appellant contended that the finding of the learned High Court Judges that *"since the Plaintiff identified the signatures of the witnesses we are of the view that attestation of පැ10, පැ11 or වි3, වි4 were duly proved and no fraud was involved as noted by learned trial judge"* was erroneous.

In terms of Section 68 of the Evidence Ordinance, *"if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution (...)".*

However, in terms of Section 69 of the Evidence Ordinance, "*if no such attesting witness can be found (...) it must be proved that the attestation of one attesting witness at least is in his hand writing, (...).*"

In the instant case, the Plaintiff-Appellant testified that the signature of his late mother, Gangodagedara Mudaliwasam Herath Mudiyanselage Keshakalyani, appears as a witness in Deeds No. 14370 and 14371. 2 Furthermore, the Plaintiff-Appellant admitted that his aunt, Tikirikumarihamy, signed as the other witness in Deed No. 14371 and that she is now deceased. The Plaintiff's sister, Ratnayaka Mudiyanselage Erandithi Gnanalatha Kumari, testifying on behalf of the Plaintiff–Appellant, identified the signature of their mother, Keshakalyani, in Deed No. 14371, as well as the signature of their aunt as the other witness.

The Defendant-Respondent also stated in her evidence that her mother, Keshakalyani, had signed as a witness to both aforesaid deeds, while her aunt, Tikirikumarihamy, was a witness to Deed No. 14371; both witnesses are now deceased. The Notary, U. Rathnawathie, who attested both deeds, is also deceased. Accordingly, the only available witness is the Defendant-Respondent, who signed Deed No. 14370 as a witness. In these circumstances, the only method to prove the two deeds is through identification of the signatures of the witnesses by a person competent to recognize the handwriting, which has been done in the instant case3. Accordingly, this Court is of the view that both the learned District Judge and the High Court Judges rightly admitted the two deeds as evidence.

Moreover, in the present case, it is the Plaintiff-Appellant who asserts that the two deeds are fraudulent on the ground of the executant's incapacity at the time of their execution. Accordingly, the burden of proving this fact lies with the Plaintiff. If the Plaintiff-Appellant succeeds in establishing that the executant was incapacitated, the Court would be obliged to declare the two deeds null and void, and ordinarily the question of proving due execution would not arise.

In the instant case, although the Defendant-Respondent, in her answer, sought only the dismissal of the Plaintiff's action, an issue was raised as to whether the Defendant-

[2]At Page 230,233, 247 and 248.

[3]In terms of Sect 69 of Evidence Ordinance.

Respondent is the lawful owner of the *corpus*[4]. In these circumstances, if the Plaintiff-Appellant fails to establish his claim, the burden shifts to the Defendant-Respondent, who must then prove, in accordance with the law, the due execution of the two deeds in order to have issue No. 17 answered in her favour. This imposes a secondary burden on the Defendant-Respondent. Accordingly, the Plaintiff-Appellant bears the initial burden of establishing that the deceased executant was incapacitated at the time of execution. It is for the Court to determine, on a balance of probabilities, which version is more credible. The next part of this judgment will address the burden of proof required in this specific context.

Required burden of proof for allegation of fraud.

In the instant case, the core allegation of the Plaintiff-Appellant against the Defendant-Respondent is that the latter obtained the signatures of the deceased executant fraudulently, and therefore, the impugned deeds are null and void. Since a fraudulent act carries a “criminal component”, I am of the view that a higher standard of proof, beyond the ordinary civil standard, is required to establish such an allegation.

The standard of proof in relation to fraudulent conduct in civil cases has not remained static but has evolved through judicial interpretation. The earliest view was that the required standard is 'beyond reasonable doubt'. The case of *Lakshmanan Chettiar vs Muttiah Chettiar*[5] (S.C.) stands as one such leading authority. In this connection, Howard C.J. observed as follows:

" Fraud must be established beyond reasonable doubt and a finding of fraud cannot be based on suspicion and conjecture."

Nevertheless, the above strict standard of proof appears to have been relaxed by subsequent judicial precedents, which have adopted a more lenient approach. For instance, in the case of *Francis Samarawickrema vs Hilda Jayasinghe* [6] (S.C.), Sarath

[4]Issue No.17.

[5]50 NLR 337.

[6]2009 1 Sri LR page 293.

N. Silva C. J, took a middle stance without extremely bending towards the criminal standards and observed that,

"It is an accepted rule that such a burden even in a civil proceeding must be discharged to the satisfaction of a Court. For that degree of satisfaction to be reached, the standard of proof that is required is the equivalent of proof beyond reasonable doubt."

However, in Associated Battery Manufacturers (Ceylon) Ltd. vs United Engineering Workers Union at 544, and Caledonian Estate Ltd., vs Hilaman at. 426, it has been observed by this Court that allegations of misconduct in labour tribunal proceedings may be proved on a balance of probabilities. ***It is clear from these decisions that while the civil standard is generally applicable, the more serious the imputation, the stricter is the proof which is required.*** *As explained by Lord Nicholls in re H (Minors) at 5867-*

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that on "the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury." (emphasis added)." [emphasis added]

Accordingly, he determined that the more serious the civil wrong, the stricter the standard of proof required. It appears that he preferred to calibrate the required burden of proof according to the nature and gravity of each wrong, which can be regarded as a more appropriate approach.

[7]In Re H (minors)(1996J-AC 563) at P. 586.

In the subsequent case of *Kumarasinghe vs Dinadasa and Others*[8] (S.C.) Nihal Jayasinghe, J., held that, in a civil action, an allegation of fraud must be proved to a higher degree of probability.

"A Civil Court when considering an allegation of fraud requires a higher degree of probability than that it would require in establishing negligence."

Therefore, in analysing the above precedents, it is clear that the most appropriate standard of proof in this case is a higher standard of proof. The next step is to determine whether the Plaintiff-Appellant established the alleged fraud to this standard.

The mental and physical capacity of the deceased executant.

The Plaintiff-Appellant placed reliance on the mental and physical incapacity of the deceased, K. B. Gokarella, to substantiate the allegation of fraud. Admittedly, K. B. Gokarella, was seriously ill and bedridden prior to his death. He had been admitted to the Co-operative Hospital, Kurunegala, in March 1997 and was nasal-fed. According to the Plaintiff-Appellant and his sister, Erandithi Gnanalatha Kumari, who testified on behalf of the Plaintiff, their father was not fully conscious, unable to recognize others, and incapable of verbal communication. Nasal feeding was continued even after his discharge from the hospital on April 10, 1997. His excretion was managed in bed, with cleaning done by others. According to Erandithi Gnanalatha Kumari, her father's condition gradually deteriorated, and he eventually passed away on June 19, 1997. As per the Plaintiff's version, he had been discharged while in a critical and near-death condition. However, in my view, it is remarkable that a patient in such a state survived for nearly another two months.

Another witness called by the Plaintiff-Appellant, Dr. Keerthi Kularathne Weerakkody, a Medical Officer, testified that he had provided home-visit treatments to the deceased executant. He stated that, at the time he treated the patient, Mr. Gokarella's mobility and ability to communicate were impaired, and that he had been fed liquid food through

[8]2007 2 Sri LR 203.

a nasal tube. In my view, the evidence of Dr. Weerakkody cannot be considered compelling. He testified that he had treated nearly 50,000 patients during his service and did not maintain individual medical records, casting doubt on his ability to accurately recall the condition of the deceased K. B. Gokarella.

Moreover, the Defendant-Respondent, who cared for her father closely, testified that he was never treated by Dr. Weerakkody, but by a different physician, Dr. Wimalarathne, creating a contradiction between her testimony and that of Dr. Weerakkody. She further stated that her father was fed via a nasal tube only for a couple of days, though she admitted that the bed had been cut and opened for the purpose of excretion.

The Defendant-Respondent also completely rejected the testimony of Sarath Chandra Ellapola, a witness for the Plaintiff-Appellant, who claimed to have visited the deceased one month before his death and observed him in a serious state of illness, unable to recognize him. She further testified that, at the time of placing his thumb impressions on Deeds No. 14370 and 14371, the deceased executant was fully conscious and capable of instructing the notary to execute and attest the said deeds.

The witness, Gamini Gokarelle, one of the sons of the deceased, testified on behalf of the Defendant-Respondent that he was aware of his father's illness but was unable to visit the deceased as he was working abroad as a seaman. He further stated that K. B. Gokarella was capable of being moved around in a wheelchair. However, I find that this statement lacks credibility, as the witness was outside the country at the relevant time and did not clearly explain the source of his knowledge.

Nevertheless, Ananda Gokarella, another son of the deceased who was also abroad as a seaman at the time of the deceased executant's death, testified on behalf of the Defendant-Respondent that his mother moved K. B. Gokarella in a wheelchair and even allowed him to converse with the deceased over phone on June 16, 1997, three days before his death. In essence, the majority of the witnesses called on behalf of the Defendant-Respondent testified that the condition of the deceased executant was not as critical as alleged by the Plaintiff.

In my opinion, the learned District Judge rightly analyzed the evidence regarding the mental capacity of the deceased executant, and the learned High Court Judges correctly upheld those findings. As held by His Lordship G. P. S. de Silva, C. J., in *Alwis vs Piyasena Fernando*[9] (S.C.), an appellate court should not lightly interfere with the trial judge's determination of the credibility of witnesses and the trustworthiness of their testimony. In that judgment, His Lordship emphasized that,

"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal. The findings in this case are based largely on credibility of witnesses. I am therefore of the view that there was no reasonable basis upon which the Court of Appeal could have reversed the findings of the trial Judge "

Accordingly, this Court will not interfere with the findings of the District Court and High Court in this regard, as correctly observed by Yasantha Kodagoda, P.C., J., in *Veerasamy Sivathasan vs Honourable Attorney General*[10] (S.C.), *"This Court should not be called upon to perform the functions of the trial Court or that of the Court of Appeal."*

In my view, the Plaintiff-Appellant has not established the physical and mental incapacity of the deceased executant to the higher standard of proof required. Consequently, the Plaintiff-Appellant has failed to prove the allegation of fraud in relation to the execution of the two impugned deeds, Nos. 14370 and 14371. Accordingly, the said deeds must be regarded as valid in law.

Furthermore, as held in *Sangarakkita Thero vs Buddarakkita Thero*[11], there is a presumption that a deed has been properly executed if it appears to be in order on its face. For clarity, I shall set out the words of the judgment as follows:

"There is, of course, a presumption that a deed which on its face appears to be in order has been duly executed, and it seems to me that the mere framing of an issue as

[9][(1993) 1 Sri L. R. 119].

[10]SC/Appeal /208/2012.

[11](1951) 53 NLR 457.

to the due execution of the deed followed in due course by a perfunctory question or two on the general matter of execution, without specifying in detail the omissions or illegalities which are relied upon, is insufficient to rebut that presumption."

As noted above, the evidence produced by the Plaintiff-Appellant is not sufficiently convincing to rebut the said presumption that Deeds No. 14370 and 14371, which appear on their face to be in order, were duly executed.

In addition, I must take into account the arrangement said to have been reached among the heirs of the deceased K. B. Gokarella. Initially, Lot No. 1, the disputed portion of land, belonged to the Plaintiff. At the request of the Plaintiff-Appellant, the late K. B. Gokarella canceled Deed of Gift No. 707 previously given in favor of the Plaintiff-Appellant and divided the property into three lots. Thereafter, Lot No. 1 was transferred to the Defendant-Respondent by Deed No. 901, and Lot No. 3 was gifted to the Plaintiff-Appellant by Deed No. 902 on the same day.

Subsequently, the Defendant-Respondent's late father, after changing his mind, canceled Deed of Gift No. 902, which had been executed in favor of the Plaintiff-Appellant, and transferred Lot No. 3 to the Defendant-Respondent by the impugned Deed No. 14371. The said transfer was effected with the intention of transferring the Defendant-Respondent's half share of the 'Mahagedarawatta' property, including the ancestral house, to the Plaintiff-Appellant, of which half share was already owned by the Defendant-Respondent. As this could not be effected before K. B. Gokarella's death, the Defendant-Respondent voluntarily transferred her half share to the Plaintiff-Appellant in accordance with her late father's wishes and the family arrangement.

Even the witness, Erandithi Gnanalatha Kumari, called on behalf of the Plaintiff-Appellant, admitted this fact. The transfer of the 'Mahagedarawatta' property was said to have been carried out with the consent of all siblings of the Defendant-Respondent. However, the Plaintiff-Appellant later repudiated this arrangement by instituting the present action. In my view, this narrative reflects the manipulative nature of the Plaintiff-Appellant, who had already acquired a considerable share of the family properties.

Prescriptive period.

The next issue to consider is whether the Plaintiff's action is prescribed in law. Under Section 10 of the Prescription Ordinance, a cause of action of this nature is prescribed within three years from the time it accrued. Therefore, the key question is when the Plaintiff-Appellant became aware of the impugned deeds.

The first occasion on which the Plaintiff-Appellant is said to have become aware of the impugned deeds was when he lodged a complaint with the Gokarella Police Station on February 6, 2007, regarding the demolition of a temporary hut on the subject land.

Before making the above complaint, the Plaintiff-Appellant had registered a caveat in Folio No. 743/127 at the Land Registry of Kurunegala on November 4, 1998, and extended the same caveat several times until February 20, 2017. This fact was in issue in both the District Court and the High Court. The learned judges concluded that the Plaintiff-Appellant must have been aware of the alleged fraud or the execution of the impugned deeds prior to February 6, 2007, because he had registered a caveat on the same folio subsequent to the registration of the impugned deeds.

I do not agree with this conclusion. There is no obligation on the part of a caveator to conduct a title search before registering a caveat under Section 32 of the Registration of Documents Ordinance, No. 23 of 1927 (as amended)[12]. The only requirement at the relevant time is to provide the name of the land and the correct folio in which the caveat is to be registered. Therefore, it is unreasonable and illogical to expect the Plaintiff-Appellant to have prior knowledge of deeds registered before the caveat.

Moreover, there is no other evidence to indicate that the Plaintiff-Appellant had knowledge of the two impugned deeds prior to his inquiry at the police station. Consequently, I hold that the action of the Plaintiff–Appellant is not prescribed in law.

Identification of the signature of the executant.

[12]However, Section 32 of the original ordinance was substantially amended by the Registration of Documents (Amendment) Act No 32 of 2022.

I will now address the combined issues raised in Question No. 22(b) of the Petition. As analysed above, the Plaintiff-Appellant instituted this action in the District Court to invalidate the two aforementioned deeds on the ground that the executant, their late father K. B. Gokarella, lacked the mental capacity to comprehend the nature and consequences of his acts and deeds. It is also alleged that he lacked the physical capacity to hold a pen and place his signature in the usual manner, and that the Defendant-Respondent obtained the thumb impression without disclosing that it was for the execution of the deeds in question, or that it was otherwise fraudulently procured.

However, the Plaintiff's assertion that his father was not in a condition to place his signature at the relevant time carries little, if any, weight. The table incorporated in the High Court judgment shows that, out of ten deeds executed between 1983 and 1996, prior to the execution of the two impugned deeds, the late K. B. Gokarella had signed only two deeds, while in all others he had affixed his thumb impression. The two signed deeds were executed in 1983 and 1992, and one deed executed in the interim also bears his thumb impression. Notably, the Plaintiff-Appellant has abandoned this contention in the appeal to this Court by framing Question of Law 22(b).

Although Deed No. 14371 was executed as a deed of transfer, the attestation records that the transferor relinquished the consideration, intending to gift the property to his beloved daughter. Accordingly, while Deed No. 14371 is formally executed as a deed of transfer, in substance it operates as a deed of gift.

The learned High Court judges have correctly identified the issue as "whether the thumb impression of deceased executant was obtained fraudulently to the impugned two deeds and therefore, those are invalid in law."(At page 4 of the Civil Appellate High Court Judgment) Therefore, it cannot be said that the "learned High Court Judges failed to identify the issue of the Plaintiff-Appellant is neither with regard to placing of thumb impression other than the English signature nor the falsity of the thumbprint as being in continuous use by the said K.B. Gokeralla on previous occasions;"

Conclusion.

In light of the reasoning set out above, the Questions of Law raised are answered as follows,

22.(a) Did the Honourable Judges of the Provincial High Court exercising Civil Appellate jurisdiction err in identifying that the issue of the Plaintiff is as to the Capacity of the executant of the alleged Deed[s] bearing Nos. 14370 and 14371, namely K. B. Gokeralla as at the date of attesting the same seven days prior to the death that occurred in 19th of June 1997?

No.

(b) Did the Honourable Judges of the Provincial High Court exercising the Civil Appellate jurisdiction failed [*sic*] to identify that the issue of the Plaintiff is neither with regard to [the] placing of the thumb impression other than the English signature nor the falsity of the thumbprint as being in continuous use by the said K. B. Gokeralla on previous occasions; but on the capacity and intention of the said K. B. Gokeralla, to place his mind and thought to contract with the Defendant for a sale of the land for a consideration more fully provided in the Deed bearing No. 14371 under the circumstances alighted before the Court during the trial?

No.

(1) Has the Plaintiff failed to prove that the deceased Mr. K. B. Gokarella was incapacitated at the time Deed Nos. 14370 and 14371 were executed?

Yes.

(2) If the action is prescribed in law, can the Plaintiff have and maintain this action?

Action is not prescribed, but should fail for the reasons stated in this judgment.

Accordingly, I affirm the judgments of the learned District Judge and the learned High Court Judges, subject to the variation that the Plaintiff's action is not prescribed in law.

The case is remitted to the High Court of Civil Appeal, Kurunegala, with directions to refer it back to the District Court of Kurunegala.

Parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.
I Agree.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.
I Agree.

JUDGE OF THE SUPREME COURT