

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(Kigoma District Registry)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**PC. MATRIMONIAL APPEAL CASE NO. 2 OF 2020**

*(Arising from Matrimonial Appeal Case No. 3 of 2020 of Kigoma District Court,  
Before K.V. Mwakitalu – RM, Original Matrimonial Cause Case No. 31 of 2019 of  
Ujiji Primary Court Before H.H. Nkya - RM)*

**RICHARD S/O THOMAS MANTA.....APPELLANT**

**VERSUS**

**MARIA D/O ALEXANDA TEMBA.....RESPONDENT**

**J U D G M E N T**

*08/07/2020 & 14/08/2020*

**I.C. MUGETA, J.**

This is a second appeal pegged on seven grounds of appeal which I shall determine by considering the first ground only which states:-

*"That the trial court and subsequently the District Court on appeal erred in law and in fact in finding that the respondent's matrimonial petition could be intertained by mere production of a letter from the Board without production of a certificate prescribed by Law in terms of section 101 and 104 (5) of the Law of Marriage Act [Cap. 29 R.E. 2019)".*

Ignatus Kagashe, learned counsel for the appellant argued the appeal for the appellant while the respondent appeared in person.



In supporting the above complaint, the learned counsel for the appellant submitted that the cause at the trial Primary Court was commenced by a letter from Mwanga Ward Conciliation Board instead of a certificate in terms of section 101 of Cap. 29 R.E. 2019. He cited the holding in the case of **Hassan Ally Sandali Vs. Asha Ally**, Civil Appeal No. 246/2019, Court of Appeal, Mtwara (unreported) where it was held that the letter which the High Court found to be sufficient for use as such certificate in matrimonial proceedings was not a valid certificate in accordance with the law.

The respondent replied, which is a matter of fact per the record of the trial court, that they attended the reconciliation meeting where the respondent misbehaved to the extent of being sent off the meeting. Therefore, reconciliation failed.

I have read the trial court record, there is abundant evidence that the parties attended the meeting of the Conciliation Board. However, the question is whether the letter of the Board to the trial court instead of a certificate in form No. 3 of the Marriage Conciliation Boards (Procedure) Regulations, G.N. 240/1971 is a valid certificate. The Court of Appeal considered this issue in Sandali's case (*supra*) and found in the negative. In that case, the Court of Appeal seems to suggest that such a letter would be sufficient if it reflects that the reconciliation was attempted. The Court of Appeal held:-

*"In our view, it would have been different had the contents reflected the fact that the Board had failed to reconcile the parties with findings as close as possible to Form 3".*



In this case, the relevant part of the letter from the Board reads:-

*"... Kutokana na Maisha ya ugomvi wanayoishi ya ugomvi, vitisho na kushindwa kuitunza familia hali ambayo imemfanya Bi Maria Alexander Temba kuchoshwa na Maisha yasiyo kuwa na amani wala furaha ameamua kuomba kutalikiana na mume wake Bw. Richard Thomas Manta ambaye ameshindwa kutoa ushirikiano".*

This letter does not reflect that reconciliation was attempted. Despite the fact that the trial court record carries minutes of the Board on reconciliation efforts, the law requires results of such efforts to be reduced into a prescribed form. Failure to comply renders the trial a nullity per the decision of the Court of Appeal in Sandali's case (supra).

In the event, I find merits in the first ground of appeal. Consequently, I nullify the proceedings and judgments of both lower courts. Whoever still interested, should institute a fresh case upon obtaining a proper certificate from the Marriage Conciliation Board.

**Sgd: I.C. Mugeta**

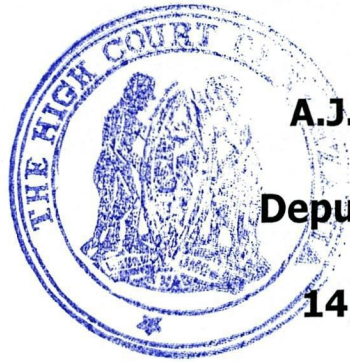
**Judge**

**14/8/2020**

**Court:** Judgment delivered in presence of the appellant and the Respondent. Right to appeal to Court of Appeal explained.









**A.J. Kirekiano**

**Deputy Registrar**

**14/08/2020**

