

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(Kigoma District Registry)**

AT KIGOMA

PC. CIVIL APPEAL NO. 7 OF 2019

*(Arising from Civil Appeal No. 2 of 2019 of Kasulu District Court before
Hon. I.D. Batenzi, Original Civil Case No. 7/2019 of Kasulu Urban Court
before E.B. Ushaki, RM)*

MWASITI S/O MTANDA MAGAGE.....APPELLANT

VERSUS

SELEMAN KHALFAN MLALA.....RESPONDENT

J U D G M E N T

04/03/2020 & 04/03/2020


I.C. MUGETA, J.

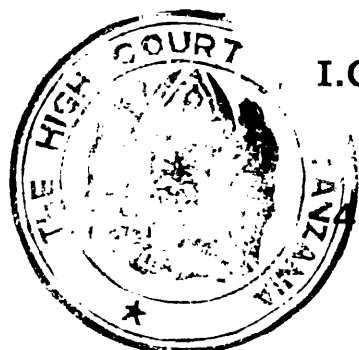
The trial court found that marriage between the parties has irreparably broken down due to cruelty, desertion and willful neglect. Consequently, upon the appellant's petition, it granted the decree of divorce. On appeal, the District Court held that procedure for divorce under Islamic law had not been complied with. The decision of the trial court was, therefore, quashed.

This appeal has been filed to challenge the decision of the District Court. On the hearing date, I asked the parties if they obtained the certificate of the Marriage Conciliation Board in terms of section 101 of the Law of

Marriage Act [Cap. 29 R.E. 2002]. I had to pose this legal issue because it is not one of the grounds of appeal and if answered in the negative, there shall be no need to consider the grounds of appeal. I was compelled to pose the issue because in the file is a document from BAKWATA addressed to the parties declaring that the marriage between them had come to an end. In the case of **Hassan Ally Sandali V. Asha Ally**, Civil Appeal No. 246/2019, Court of Appeal, Mtwara (unreported) the court considered the validity of one of such letters and held it would have been considered to be a valid certificate if its content reflected the fact that the Board had failed to reconcile the parties with finding as close as possible to form No. 3. The letter's content does not even border that of Form No. 3.

Diana Damson and Hamis Kimilomilo, learned counsels for the appellant and respondent, respectively, conceded that there is no valid certificate of the Board of failure to reconcile the parties. It follows, therefore, that the trial commenced despite that fatal and incurable irregularity. This renders the proceedings and judgment of the trial court a nullity. I accordingly nullify those proceedings and quash the subsequent judgment. This renders the judgment in first appeal of no effect too. The parties may wish to file a fresh suit upon obtaining a valid certificate as prescribed in Form No. 3 of the schedule to the Marriage Conciliation Boards (Procedure) Regulation, G.N. No. 240/1971.


I.C. Mugeta
Judge
24/3/2020



Court: Judgment delivered in chambers before the parties in person and their counsels Diana Damson for the appellant and Hamis Kimilomilo for the Respondent.

Sgd: I.C. Mugeta

Judge

4/3/2020

A handwritten signature in black ink, appearing to read 'I.C. Mugeta', is centered on the page below the printed name and date.