

**IN THE HIGH COURT OF the united republic of TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL APPEAL NO. 54 OF 2020

(Arising from Matrimonial cause No. 2 of 2018 before district court of Rufiji)

**ZAINAB IBRAHIM NANGONGO.....APPELLANT
VERSUS
ABDALLAH RAMADHAN NYALANDO.....RESPONDENT**

RULING

MASABO J.:-

Zainab Ibrahim Nangongo, the appellant herein had her marriage with the respondent dissolved on 15th January 2020 in Matrimonial Cause No. 2 of 2018 before the district court of Rufiji. She is now before this court challenging the orders for division of matrimonial assets which disgruntled her. Her appeal is premised on 10 grounds of appeal. The appeal was scheduled for hearing on 7th December 2020, whereupon, only the appellant entered appearance. Prior to commencement of hearing, I called upon the plaintiff's counsel, Mr. Dominicus Nkwera, to address me on compliance with section 106(2) of the Law of Marriage Act [Cap 29 RE 2019], an issue I had sighted as I was preparing for hearing.

In his address, the learned counsel submitted that the provision of section 106(2) of the Law of Marriage Act was complied with as the parties tried a fruitless reconciliation before BAKWATA and they were given a certificate which was filed and produced in court as exhibit.

Upon examining the document referred to by Mr. Kwera, I entertain no hesitation that the requirement of Section 106 (2) of the Law of Marriage Act which imposes a mandatory requirement for every petition of divorce to be accompanied by a Certificate of the Marriage Conciliatory Board certifying that the Board has failed to reconcile the parties pursuant to section 104(5) of the same Act and The Marriage Conciliatory Board (Procedures) Regulations, 1971, GN No. 240 of 1971 whose Regulation 9(2), was not complied with.

Whereas it is true that there is a document from BAKWATA (Rufiji District Office) the same does not suffice as a certificate. The document is in the form of a letter titled 'TAARIFA YA MADAI YA BARUA YA WITO YA NDUGU ABDULLAH RAMADHANI NYALANDO YA KUMDAI BI. ZAINAB IBRAHIM NANGONGO'. The content of this letter which is addressed to the district court and signed by one Thabit Mbonde, secretary of BAKWATA Rufiji district, demonstrates vividly that it is a reply to a summons to appear before the court. The author of letter registers his dismay as to why he had been summoned to court whereas the parties who once appeared before BAKWATA for reconciliation agreed to resolve their differences amicably at family level.

In all fairness, the said document cannot be regarded as Certificate as its form and contents exhibits huge variation to Form No. 3 provided for under GN No. 240 of 1971. As the deficiency is appalling this appeal cannot be sustained as the proceeding in the trial court was predicated on an

incompetent petition instituted in the absence of a valid certificate from the Conciliatory Board which had the consequence of rendering the proceedings in the trial court a nullity.

Under the premise, I am left with no option that to dismiss the appeal, as I hereby do. This being a matrimonial appeal, costs will be shared.

DATED at DAR ES SALAAM this 15th day of December 2020.



A handwritten signature in blue ink, consisting of a stylized, scribbled name.

J.L. MASABO

JUDGE