

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 238 OF 2020

HERBERT KABYEMELA..... APPLICANT

VERSUS

BERNADETA MUKAYIRANGA.....RESPONDENT

(Arising from the decision of the High Court)

(Massabo J.)

Dated 27th April 2020

in

Civil Appeal No. 80 of 2019

RULING

2nd December 2020 & 21st January 2021

AK. Rwizile, J

The applicant had a matrimonial dispute with the respondent. It all started at the Ilala Primary to this Court. He was not satisfied with the decision of this Court.

He has filed this application asking for a certificate on a point of law for determination by the Court of Appeal. Therefore, his application is filed under section 5(2) of the Appellate jurisdiction Act, Rule 45(a) and (b) of the Court of Appeal Rules 2009.

The application is supported by an affidavit sworn by Mr. Wilson Kamugisha Mukebezi who also advocates for the applicant. Mr. Cleoplace James is for the respondent who also by his counter-affidavit opposed this application. The application was argued by written submissions. According to Mr. Mukebezi, this court was at par with the parties that their dispute was referred to the board before they came to court. Further, he went on submitting that, upon so admitting, this court ruled out that the certificate contained serious flaw and so not a valid certificate.

On his second point, it was his argument that the Court of appeal held by its *obiter dicta* that when the board fails to reconcile the marriage dispute, the petition for divorce has to be taken as validly filed before the court upon issuing a certificate to that effect. The learned advocate therefore asked this court to grant this application.

In the view of Mr. Cleoplace for the respondent when opposing the application, the applicant has failed to show a substantial question or a point of law for consideration by the Court of Appeal. He submitted that this court decided basing on the requirement of the law as held in the case of **Hassan Ally Sandali v Asha Ally**, Civil Appeal No. 246 of 2019. Where it was held that a certificate of the board must be issued in form No. 3. As to whether the court correctly interpreted the decision of the Court of Appeal, the learned advocate was of the view that it was in the dictates of the law as held in the cases of **Clement Ngonyani vs Baswita Komba** [2017] TLS law Report 176, **Shillo Mzee vs Fatuma Ahmed** [1984] TLR 112, **Athanas Makungwa vs Darin Hassan**[1983] TLR 132, **Mary Jacob vs Learnad Jacob**, PC Matrimonial Appeal No.1 of 2020(HCT) unreported, **Richard Thomas Manta vs Maria alexanda Temba**, PC Matrimonial Appeal No 2 of 2020 and **Mwasiti Mtanda Magage vs Seleman Khalfani Mlala**, PC Civil Appeal No. 7 of 2019.

On the second point, Mr. Cleoplace was of the submission that the decision in **Hassan Ally Sandali** was properly interpreted by this court. It is the applicant who failed to comprehend the decision. He lastly submitted that the applicant has failed to demonstrate that a question raised is a novel point

of law for the court of appeal to consider, and that there is a prima facie case necessitating intervention of the court of appeal. He also referred the case of **Elias Mosses Msaki vs Yahaya Nguta Matee** [1990] TLR 90 and **Buckay vs Holmes** [1962] ALL ER No.90.

When rejoining, the applicant was of the view that the respondent is misconceiving the law. He submitted that section 101 of the Law of Marriage Act does not say the certificate by the board must be issued in a prescribed form. No. 3. He was also of the view that the case of **Mary Jacob** (supra) as cited is distinguishable since in that case, there was no certificate from the board. Lastly, he submitted that two important things are evident, one that the applicant has demonstrated that there is a substantial question in a point of law and second that it is of general importance that invites the intervention of the Court of Appeal.

Having heard the arguments from both parties, I have to refer to what I have been asked by the applicant to certify as the point of law. In the written submissions and as stated in his affidavit, the applicant wants this court to certify two points of law for determination by the Court of Appeal thus;

- 1. Whether in terms of section 101 of the Law of Marriage Act, certification by the Marriage Conciliation Board in determining a referred marriage dispute must mandatorily be accompanied with the prescribed Form No. 3 stipulated in regulation 9 of the Marriage Conciliation Board (procedures) Regulation No. 240 of 1971.*
- 2. Whether the High Court correctly interpreted the reasoning and holding of the Court of appeal in the case of **Hassan Ally Sandali v Asha Ally**, Civil Appeal No. 246 of 2019.*

It is absolutely clear from the record that the decision of the Court of Appeal in **Hassan Ally Sandali** was reflection and formed the basis of the decision of this court which the applicant wants the court of appeal to impeach. I have gone through the decision of the Court of appeal especially at page 14, it is what this court equally held at page 9 and 10. I am therefore not at par with what the applicant submits and wants me to certify as a point of law for determination by the Court of appeal. I think unless the learned counsel for the applicant meant something else, but what he wants me to certify as point of law is what was decided by the same court in the case of **Hassan Ally Sandali**.

The Court of Appeal in my view is not a place to go for the sake of going. Indeed, there must be a point of law that needs its intervention for causing and furthering ends of justice. It so because it is the highest court of the land.

This Court is not expected to uncritically allow whoever proposes an issue as point of law to clear and forward it to the Court as point of law. What the applicant is proposing as the point of law was clearly determined by the same and it is therefore not proper. This applies in both proposed points of law. This application is therefore dismissed with costs.

**ACK. Rwizile
Judge
21.01.2021**

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

