

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA  
MATRIMONIAL APPEAL NO.31 OF 2020**

*(Originating from the decision of the Resident Magistrates' Court of Mwanza at Mwanza  
in Matrimonial Cause No. 03 of 2020)*

**ALEX GEORGE TARAZO ..... APPELLANT**

**VERSUS**

**PAULINA DAUDI URASSA ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 19.02.2021*

*Date of Judgment: 26.02.2021*

**A Z. MGEYEKWA, J**

ALEX GEORGE TARAZO, the appellant, and PAULINA DAUDI URASSA, the respondent respectively, were husband and wife. They were formally married 24<sup>th</sup> November, 2014, and were blessed with one child who was born in 2015. It appears their marriage went on well all along until the year

2020 when the relationship started to go sour after it was alleged that the appellant had another life. Feeling that he could not stomach an unfaithful relationship any longer, the respondent decided to file for a petition for divorce before the Resident Magistrate Court of Mwanza.

On 26<sup>th</sup> February, 2020 the matter was before the Resident Magistrate for hearing. Then the trial Magistrate composed a Judgment and ordered the ward tribunal to reconcile the parties within 14 days and then the Magistrate proceed with issuing orders of divorce and custody of the child. The trial magistrate also ordered the child to be under the respondent's custody.

The appellant was not happy with the decision of the trial Magistrate hence decided to file the instant appeal whereas the appeal is predicated on two grounds of grievance namely:

1. *That, the trial court erred in both point of law and facts when directed the parties to go to the marriage conciliation board then if failed to reconcile the court to proceed to determine the matter based on the evidence on record.*
2. *That the trial court erred in law and fact by not striking the petition for divorce for being premature.*

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the applicant enjoyed the legal service of Ms. Beatrice, learned counsel and the respondent had the legal service of Mr. Linus, learned counsel.

It was the appellant who started to kick the ball rolling. She submitted in length but straight to the point. She opted to combine the first and second grounds of appeal and argue them together. The appellant' Advocate argued that the trial court misdirected itself after tendering the certificate of the Marriage Conciliation Board, the trial court realized that the certificate was invalid. The learned counsel went on to submit that section 104 (5) and section 106 (2) of the Law of Marriage Act, Cap. 29 [R.E 2019] requires that every decision of the Board shall be accompanied by a certificate of Marriage Conciliation Board.

She continued to submit that it is a procedural requirement that parties are required to refer their dispute to the Marriage Conciliation Board before allowing the court to determine a matrimonial cause. To fortify her submission she referred this court to section 101 of the Law of Marriage Act, Cap. 29 [R.E 2019].



It was Ms. Beatrice further submission where a dispute between a husband and wife arises the dispute shall be brought before the Marriage Conciliation Board and after failing to reconcile the Board shall issue a certificate. She added that in a situation where the law provides for such requirements parties are obliged to adhere.

The learned counsel for the appellant did not end there, she strongly argued that in absence of the certificate from the Marriage Conciliation Board is equally there is no any certificate at all. Ms. Beatrice was insistent and argued that the trial Magistrate after noting that the certificate (Exh.P3) was invalid for being non-compliance to the law, went on to order the parties to reconcile.

She continued to argue that the trial Magistrate approach was contrary to the law since divorce cannot be granted out of un-procedural law. To bolster her position she cited the case of **Hassan Ally Sandani v Asha Ally**, Civil Appeal No. 249 of 2019 (unreported), the Court of Appeal of Tanzania discussed the validity of a certificate of Marriage Conciliation Board and the Court of Appeal of Tanzania cited with approval the case of **Shird v Fatuma Mohamed** (1984) TLR. She further argued that a petition which is not

accompanied by a certificate is incomplete. She insisted that as long as the trial court proceeded with the hearing thus the proceedings were a nullity.

On the strength of the above argumentation, Ms. Beatrice beckoned upon this court to allow the appeal, quash the trial court decision and issue any other orders.

Resisting the appeal, the learned counsel for the respondent started his onslaught by attacking the appeal. He lamented that the appeal before this court is brought contrary to the law because the matter before the trial court was not determined on merit. He argued that parties were ordered to go back to the Marriage Conciliation Board and later proceed with the matter at the trial court. To support his position he referred this court to section 74 (2) of the Civil Procedure Code Cap.33 [R.E 2019]. He added that section 74 (4) of the Civil Procedure Code Cap. 33 [R.E 2019] aims to reduce the bulk of cases in upper courts whereby if a case was not determined to its finality, the remedy is to strike out such appeal.

Submitting on the grounds of appeal, Mr. Linus argued that Form No. 3 of Marriage Conciliation Board was proper, the court found it was prudent for a party who was not summoned to refer him/her back to the Marriage



Conciliation Board. He insisted that the trial court was correct to refer the parties back to the Marriage Conciliation Board.

On the strength of the above argumentation, Mr. Linus beckoned upon this court to dismiss the appeal with costs.

In reply, Ms. Beatrice urged that the preliminary objection raised by the learned counsel for the respondent is baseless. She went on to argue that section 74 (2) of the Civil Procedure Code Cap.33 [R.E 2019] states that no appeal shall be preferred against an order not against a Judgment. She refuted that the matter was not determined to its finality since parties were heard and they tendered documents and the court reached its final decision without issuing any order. She insisted that the trial court was required to issue an order after realizing that there were some defects and order parties to follow proper procedure. She strongly argues that the preliminary objection is misplaced.

Submitting on the grounds of appeal, Ms. Beatrice argued that the trial Magistrate mentioned the defects that the certificate was not stamped and the names of parties were lacking. It was her view that the certificate was

prepared contrary to Form No. 3. She insisted that they have filed an appeal against the final decision of the trial court.

In conclusion, Ms. Beatrice beckoned upon this court to allow the appeal and quash the trial court decision.

I have dispassionately considered the grounds of appeal in the light of the submissions of learned counsels. As it is the first appeal, I am at liberty to delve into matters of fact as well as law and make my own conclusions in such matters.

Before generally canvassing the grounds of appeal, I have dispassionately considered the so-called preliminary point of objection. With due respect to Mr. Linus, I do not think most of what he terms as a preliminary point of objection has been raised at the right instant. Mr. Linus tried to move this court by raising a point of objection that the appeal is improper before this court because the matter at the trial court was not determined to its finality. With due respect to Mr. Linus, I do not think most of what he terms as a preliminary point of objection has been raised at the right instant.

In my considered view, had it been that Mr. Linus found that he wanted to challenge the appeal by way of a preliminary point of objection then he

was supposed to follow proper procedure. It is worth noting that he cannot raise a preliminary objection during the hearing of an appeal.

For the aforesaid reasons, the respondent's point of law is disregarded. Therefore, I proceed to determine the appeal on merit.

Having stated the above, I am now set to confront the grounds of contention as enumerated above, both grounds are intertwined, and therefore I will determine them together. The learned counsel for the appellant complained that the trial court erred to direct the parties to go back to the marriage Conciliation Board and order the parties to go back to the trial court to continue with determining the matter based on the prior evidence on record.

I have scrutinized the lower court record and found that the trial Magistrate determined the case and in his Judgment, he expressed that the certificate of Marriage Conciliation Board was invalid. In my considered view, having noted that the certificate was invalid the trial Magistrate ought to have struck out the appeal and allow the parties to follow the proper procedure of the law.



The law is clear when it comes to hearing the matrimonial cause, a foundation of hearing such cases is laid down on the certificate of the Matrimonial Conciliation Board. Section 101 of the Law of Marriage Act Cap.29 [R.E 2019] provides that:-

*" No person shall petition for divorce unless he or she has first referred the matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties..."*

No court can proceed with hearing without satisfying itself that the petitioner has filed a valid certificate of the Marriage Conciliation Board. The trial Magistrate was not required to proceed with hearing the case and to stay the proceedings.

In my considered view, the trial Magistrate entered into an error, I am saying so because the certificate is used to institute a matrimonial cause that means the trial Magistrate was required to satisfy himself whether the case was properly filed before him. During hearing specifically on page 8 of the trial court proceedings the respondent (PW1) testified that she attend the mediation at the Ward Tribunal and the appellant refused to attend. On pages 23 and 24 of the trial court proceedings, the appellant (DW1) clearly testified that he did not appear before the Marriage Conciliation Board.

Additionally, the trial Magistrate in his findings he noticed that the respondent was not summoned to appear before the Marriage Conciliation Board and yet he proceeded to analyse the case. The trial Magistrate was aware that the law requires that parties before dissolution of marriage must appear on the Marriage Conciliation Board. Hearing could not proceed without first referring the parties to Marriage Conciliation Board. The Marriage Conciliation Board has a role to reconcile the parties and any outcome should be expected; parties can agree to reconcile and end their differences or institute a petition. Therefore, the trial Magistrate was supposed to know that parties could have agreed to solve their difference and opt not to proceed with the case which was pending before the trial court.

As rightly pointed out by the learned counsel for the appellant that the consequences for an invalid certificate is as good as there was no any certificate from Marriage Conciliation Board. From the first place the trial Magistrate was required to strike out the application without issuing any orders, therefore the whole trial proceedings is a nullity. In the Court of Appeal of Tanzania in the case of **Hassan Ally Sandali v Aaha Ally** (supra) the Court of Appeal of Tanzania nullified the proceedings and orders of the

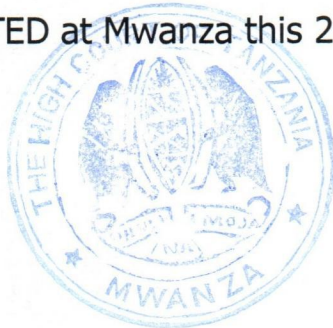


Primary Court and District Court because there was no valid certificate from the Marriage Conciliation Board capable of instituting a petition before the trial court.

In the upshot, I find the petition was prematurely registered before the trial Court. Therefore, I proceed to quash the decision of the Resident Magistrates Court at Mwanza in Matrimonial Cause No. 03 of 2020. The appeal is allowed without costs.

Order accordingly.

DATED at Mwanza this 26<sup>th</sup> February, 2021.



  
A.Z.MGEYEKWA  
**JUDGE**  
26.02.2021

Judgment delivered on 26<sup>th</sup> February, 2021 via audio teleconference whereby Ms. Beatrice, learned counsel, and Mr. Linus, learned counsel for the appellant and respondent respectively were remotely present.

  
A.Z.MGEYEKWA  
**JUDGE**  
26.02.2021

Right to appeal fully explained.