

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA**  
**AT ARUSHA**  
**CIVIL APPEAL NO. 60 OF 2021**

*(Originating from Matrimonial Cause No. 5 of 2020 at Arusha Resident Magistrates Court at Arusha)*

**ROMAN SILALE CHUWA..... APPELLANT**

**VERSUS**

**MARIA ROMAN CHUWA..... RESPONDENT**

**JUDGMENT**

*Date of last Order : 27-7 2022*

*Date of Judgment :15-9- 2022*

**B.K.PHILLIP, J.**

A brief background to this appeal is that the appellant and respondent celebrated their Christian marriage in 1970. They had a joyful marriage until 1990 when misunderstandings between them cropped up. Consequently, in 1996 they separated. The respondent who was the petitioner at the trial Court alleged that before lodging her petition for divorce she reported their dispute to Kijenge Catholic Church for reconciliation but in vain. Thereafter she filed complaints at Oloirien Ward Marriage Conciliation Board seeking intervention in resolving their disputes whereby a certificate to the effect that the Board failed to reconcile the parties was issued. In the year 2020 the respondent filed the above mentioned matrimonial cause No.5 of 2020 at the Resident Magistrates Court of Arusha in which she prayed for an order

for dissolution of the the marriage and division of matrimonial properties jointly acquired .The respondent listed a number of movable and immovable properties allegedly jointly acquired hence subject to be divided equally.

The petition was heard inter-parties and the trial court was satisfied that the marriage between the parties was broken down beyond repair. She issued an order for divorce and equal division of the immovable properties allegedly to have been jointly acquired by the parties. She declined to issue any order in respect of movable properties on the ground that there was no clear identification of the same. Aggrieved by the judgment and decree of the trial court, the Appellant lodged the instant appeal on the following grounds.

- i) That, the trial magistrate erred in law and fact by failing to evaluate properly the evidence adduced by the parties, hence reaching on erroneous decision.*
- ii) That, the trial magistrate erred in law and fact by determine(sic) petition for divorce which was filed prematurely by the Respondent.*
- iii) That, the trial court erred in law and in fact in determine(sic) the matrimonial cause filed by the Respondent without a certificate from marriage reconciliation board(sic)*
- iv) That, the trial magistrate erred in law and in fact by subjecting distribution of matrimonial properties to a person who has no qualification.*

*v) That, the trial magistrate erred in law and in fact by subjecting to (sic) distribution of matrimonial properties without considering the(sic) contribution of each party to the acquisition of matrimonial properties.*

In this appeal the learned Advocates Emmanuel Laban Kileo and Mr. Said A. Said appeared for the appellant and respondent respectively. The appeal was heard by way of written submissions. I will start dealing with the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal for obvious reason that is, both are concern with matters of law related to the trial Court's jurisdiction, thus they take precedence over other grounds of appeal.

Submitting for the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal Mr. Kileo contended that, the Law of Marriage Act, [Cap. 29 RE 2019] under the provision of Section 101 provides that no petition for matrimonial dispute shall be determined by the Court unless it has first being referred to marriage conciliation Board and the Board has certified that it has failed to reconcile the parties. He went on arguing that, the respondent alleged that she referred the matrimonial dispute to the Oloirien Ward Marriage Conciliation Board but the Board did not issue a certificate certifying that it failed to reconcile the parties, instead it gave out the judgment which is contrary to the requirement of the law. He insisted that the petition for divorce was improperly and prematurely filed in Court for a lack of certification that the marriage between the parties was irreparably broken.

In rebuttal, Mr. Said submitted that matrimonial dispute between the parties was referred to the Oloirien Ward Marriage Conciliation Board. He contended that the issue concerning the certificate supposed to

be issued by the Marriage Conciliation Board has been raised in this appeal as an afterthought because it was not raised at the trial Court. He argued that the concern on lack of the certificate showing that the marriage reconciliation Board failed to reconcile the parties is immaterial and does not change the fact that the matrimonial dispute between the appellant and respondent was referred to the marriage conciliation board and board failed to reconcile the parties.

After going through the submissions of both advocates let me embark on the determination of the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal. For ease of understanding and clarity let me start by reproducing the provisions of Sections 101 and 106 (2) of the Law of Marriage Act hereunder.

*section 101. 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.*

*Section 106(2) Every petition for a decree of divorce shall be accompanied by a certificate by a Board, issued not more than six months before the filing of the petition in accordance with subsection (5) of section 104.*

The two provisions of the law quoted herein above make it mandatory for the parties in a matrimonial dispute before lodging a petition in courts of law to refer their dispute to the Marriage Conciliation Board. If the board fails to reconcile the parties it has to issue a certificate to that effect, thereafter the parties can proceed to file their petition in

Courts of law. However, there are exceptions provided under section 101 (a) –(f) under which the parties can file a petition for divorce without to first referring the matter to the Marriage Conciliation Board.

Deliberating on the interpretation and application of section 101 of the law of Marriage Act, the Court of Appeal in the case of **Yohana Balole versus Benjamin Malongo**, Civil Appeal No. 18 of 2020, said the following;

*"By the use of the word 'shall', the above provision implies that, compliance with section 101 above is mandatory except where there is evidence of existence of extraordinary circumstances making it impracticable for the parties to refer their dispute to the Board".*

In the above cited case [**Yohana Balole**,( supra)] the Court of Appeal of Tanzania ( reaffirmed its previous principle in the case of **Hassani Ally Sandali v. Asha Ally**, Civil Appeal No. 246 of 2019 (unreported) in which it said the following;

*" ...the granting of the divorce...was subject to compliance with section 101 of the Act. That section prohibits the institution of a petition for divorce unless a matrimonial dispute has been referred to the Board and such Board certifying that it has failed to reconcile the parties. That means that compliance with section 101 of the Act is mandatory except where there is evidence of existence o f extraordinary circumstances making it impracticable to refer a dispute to the Board as provided for under section 101 (f) of the Act However, there is no indication of any extra ordinary*

*circumstances in this appeal which could have attracted dispensing with reference of the matrimonial dispute to the Board. "*

Back to the appeal at hand, despite the fact that in paragraph 12 of the petition for divorce filed at the trial Court it is indicated that a copy of the decision of Oloirien Ward Marriage Conciliation Board was annexed thereto as annexure "**Maria-2**", upon perusing the trial Court's record, I noted that no certificate or decision from the Marriage Conciliation Board was annexed to the petition. Also, there is nowhere in the proceedings of the trial Court indicating that the respondent tendered any document as exhibit. It must be noted that, the certificate and or any other document from the Marriage Conciliation Board in order to have legal effect must be reflected in the proceedings of the trial Court by being admitted as exhibits. Otherwise, such certificate or document shall never be considered as an exhibit.

From the foregoing, I find myself in agreement with Mr. Kileo that no any certificate from the Marriage Conciliation Board certifying that it has failed to reconcile the parties was tendered in Court. Therefore, the petition for divorce was improper. It was filed prematurely since there was no certificate from the Marriage Conciliation Board as required under section 101 of the Law of marriage Act. Thus, the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal have merits. Under the circumstances I do not see any plausible reason to proceed with the determination of the remaining grounds of appeal.

Having said the above, I hereby nullify the proceedings of the trial Court and set aside the judgment thereof. The respondent is at liberty to process her petition for divorce afresh in accordance with the law, if she



so wishes. Since this is a matrimonial case, pursuant to the provisions of section 90(1) of the Law of Marriage Act, I make no order as to costs.

Dated this 15<sup>th</sup> day of September 2022



A handwritten signature in dark ink, appearing to read "B.K. Phillip", is written over a horizontal line.

**B.K.PHILLIP**  
**JUDGE**