IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISC. CIVIL APPLICATION NO. 51 OF 2022

HADIJA SEIF..... APPLICANT

VERSUS

AHMED NASSORO ..... RESPONDENT

RULING

7th & 19th Dec, 2022

CHABA, J.

Hadija Seif is, by way of chamber summons, moving this Court under section 101 (1) of the Law of Marriage Act [Cap. 29 R. E, 2019], supported by affidavit deponed by the applicant herself seeking for the following orders: -

(a) That, this honourable court be pleased to declare as between the applicant and the respondent there are extra ordinary circumstances which makes reference to the Marriage Reconciliation Board impracticable

(b) The costs of this application.

(c) Any other reliefs this honourable court may be pleased to grant.

Essentially, the application is not contested, because the respondent did not file any counter affidavit.

At hearing, on the 7th December, 2022, Mr. Jackson Liwewa, learned advocate appeared for the applicant, whereas the respondent was represented by Mr. Alpha Boniphace, also learned advocate.

Submitting in support of the application, Mr. Liwewa averred that they filed the instant application, praying the Court to declare that as between the applicant and the respondent there are extra ordinary circumstances which once the matter will be referred to the Marriage Reconciliation Board, it may not be possible to proceed to the next stage.

He avowed further that, the respondent is nowhere to be seen as he is in Geita Region continuing with other businesses, and has refused to come to Morogoro to reconcile the matter.

On his part, Mr. Boniphace conceded and submitted that; "Mh. Jaji ni vigumu kwa mazingira yaliyopo kukutana na kufanya makubaliano mbele ya Baraza la usuluhishila ndoa"; meaning that, given the present circumstances, it is hard for the two parties to meet and reconcile the matter before the Marriage Conciliation Board. He concluded by praying the Court to grant the prayers sought by the applicant, but after he had consulted his client, herein the respondent.

Having considered the oral submissions advanced by both parties, and upon going through the applicant affidavit, the issue for consideration, determination and decision thereon is, whether the present application has merit.

From the Court record, it is apparent that with the parties' consensus, both agreed that this application be brought in Court without attempting to resolve the matrimonial disputes before the Marriage Conciliation Board as provided for under section 101 (f) of the Marriage Act, [Cap. 29 R. E, 2019]. No wonder that, even the present application, has been brought in Court without annexed and or accompanied with the certificate issued by the Marriage Reconciliation Board to depict that, the Board have failed to reconcile the parties.

I have closely read the provision of section 101 (f) of the Law of Marriage Act [Cap. 29 R. E, 2019] and found that, this 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. It means that adherence to the provision of section section 101 of the Law of Marriage Act (supra) is mandatory except where there is evidence of existence of extra ordinary circumstances making it impracticable to refer a dispute to the Board. For ease of refence, it read: -

*"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: **Provided that, this requirement shall not apply in any case**: -*

(a) NA

(b) NA

(c) NA

(d) NA

(e) NA

*(f) **where the court is satisfied that there are extraordinary circumstances which make reference to the Board impracticable.** [Emphasis is mine].*

Applying the above provision of the law, reference of a matrimonial dispute to the Board prior to petitioning for divorce is a mandatory requirement. The law has used the word **shall** to emphasize that it is mandatory to refer the matrimonial dispute to the Board for reconciliation unless if there are extraordinary circumstances that prevents to fulfil the

requirement of the law. It is trite law under section 53 (2) of the Interpretation of the Laws Act [Cap. 1 R. E, 2019], the law provides that:

> *"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed".*

Having observed the principles of law, the exception that allegedly fits the instant application as submitted by the counsel for the applicant and conceded by the counsel for the respondent is, section 101 (f) of the Law of Marriage Act. In my considered opinion, the words; *"... where the Court is satisfied ....."*, presupposes that the Court has to be properly moved in order for it to be able to determine the said *"extraordinary circumstances"* for petitioning for divorce without the certificate from the Marriage Reconciliation Board.

In the present application, the applicant has not furnished this Court with the strong reasons to move the Court to waive the requirement of a certificate issued by the Marriage Conciliation Board based on extraordinary circumstances. There is no indication of any extra ordinary circumstances as far as the instant application is concerned, which could have attracted dispensing with reference of the matrimonial dispute to the Board.

On scrutiny of the parties' oral submissions and paragraphs 10 to 13 of the applicant's affidavit, to be frank I have failed not only to learn but also to comprehend fully any indication that the matter at hand belongs to extreme case that falls within the ambit of interpretation of extraordinary circumstances making it impracticable to refer the dispute to the board.

In my understanding, the complaints registered by the applicant in her affidavit and the oral submissions advanced by her learned advocate and conceded by the counsel for the respondent, are incidences that are suitable for reference to the Marriage Reconciliation Board so that the same can be enquired into the allegedly allegations and if possible, be certified by the Board signifying that it has failed to reconcile the parties. It should be noted that, in absence of genuine reasons falling under the ambit of extraordinary circumstances, the Board is there to receive and work on matrimonial difficulties.

I am holding so because, the fact that the respondent is currently living in Geita region, working with the capital drilling contracted by the Geita Gold mines, in my view, is not an extraordinary circumstance, and the applicant has failed to show how it was impracticable for the respondent to access the Board in search of a certificate that could pave the way to the next step. Generally speaking, there is no indication of any

extraordinary circumstances in the present application which could have attracted dispensing with reference of the matrimonial dispute to the Board.

The need for requirement of prior reference to the Board before instituting matrimonial proceedings, it was expounded by the CAT in the case of **Hassani Ally Sandali Vs. Asha Ally** (Civil Appeal 246 of 2019) [2020] TZCA 14 (24 February 2020); [tanzlii.org.go], where the Court nullified the proceedings and orders made by the Primary Court, District Court and this Court on the ground that there was no valid certificate of the Board capable of instituting a petition before the trial Court.

That said and done, I find no merit in this application, and proceed to dismiss the application in its entirety with no order as to costs. **It is so ordered.**

DATED at **MOROGORO** this 19th day of December, 2022.

M. J. CHABA

JUDGE

19/12/2022