

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**CIVIL APPEAL NO. 83 OF 2022**

*(Arising from Civil Appeal No. 08/2022 of the District Court of Kwimba)*

**MABUSHI Sengerema ----- APPELLANT**

**VERSUS**

**PENDO PETRO Manoni ----- RESPONDENT**

**JUDGEMENT**

*Feb. 17<sup>th</sup> & 21<sup>st</sup>, 2023*

**Morris, J**

On 19<sup>th</sup> April 2022, Pendo Paul Manoni filed against Mabushi Sengerema; the appellant herein Matrimonial Cause No. 08 of 2022 at Ngudu Primary Court. She claimed for divorce, division of matrimonial property, and maintenance of issues of marriage. The trial court heard the case on merit and decided that the marriage between the parties had broken down irreparably. Subsequently, the decree of divorce was issued and the court ordered division of matrimonial properties between the parties on 50/50 percentage basis. Further, the appellant was ordered to pay the respondent Tshs. 40,000/= every month as maintenance. In addition, the parties were adjudged to share a half of any education expenses for the children each.

Dissatisfied with the judgement, the appellant appealed to the District Court of Kwimba faulting, *inter alia*, the mandate of the trial court to determine matrimonial dispute without a certificate from Marriage Conciliation Board. The appellate District Court, however, confirmed the trial court's decision and dismissed the appeal. The resolute appellant did not despair. He has now knocked the doors of this Court, still lusty for justice.

Through services of Mr. Majura Jackson Kiboga, learned advocate, the appellant raised five grounds of appeal. The first ground of appeal is challenging the first appellate court's decision that the letter from hamlet sufficed in lieu of the certificate from the marriage conciliation board. During the hearing of this appeal, both parties appeared without legal representation. The first ground being of jurisdiction of the courts below, I decided to take it first. Accordingly, the Court limited the parties' submissions on the said ground because it is capable of disposing off the whole appeal.

It was the submissions of the appellant that the District Court relied on the letter from the hamlet. That, he was summoned before the hamlet chairman. To him, there was no requisite conciliation of their marriage,



hence. the case proceeded prematurely. On her part, the respondent conceded that she summoned the appellant before the hamlet chairperson but there was no resolution therefore the appeal should be dismissed.

I have considered submissions of both parties. I am inclined to deliberate of the role of marriage conciliation board because therefrom crops a very fundamental point of law. Such point is integral to the matter before this Court. The role of the marriage conciliation board, as the name runs, is to conciliate the disputes between spouses not just issuance of certificates. Indeed, the certificate is the product of actual process of conciliation. In my considered view, this is the import of section 104 (5) of LMA. Hence, before certifying that it has failed to conciliate the disputants before it; the board must engage in the real conciliatory activity of having spouses resolve their marital differences.

The above legal requirement is so fundamental. **First**, it goes to the objective of why the marriage conciliation boards were established in the first place. **Secondly**, it is intrinsically a jurisdictional issue because the court, as the general rule, cannot adjudicate on a matrimonial dispute unless such certificate is attached to the petition. Reference is made to section 106 (2) of ***the Law of Marriage Act***, Cap

89 R.E. 2019 (hereinafter, "**the LMA**"). **Thirdly**, it signifies that parties have gone to court as a last resort. **Fourth**, during the trial, the certificate should be tendered in evidence so that it forms the basis for the subsequent court decision [***Patrick William Magubo v Lilian Peter Kitali***, CAT - Mwanza Civil Appeal No. 41 of 2019 (unreported)].

In this instant matter, there was no marriage conciliation board which sat and tried to reconcile the parties herein. From trial court records I find a document purported to be a certificate from marriage conciliation board but the said document was not tendered or admitted as exhibit and it is not from the board properly established by the law but from hamlet of Ngumo from Kwimba ward. Jurisdiction of various statutory bodies is not for cosmetic reasons. It is a well-thought-over mandate enshrined in the relevant statute. You cannot cloth yourself with it. It must be cast upon you by the express provision of the law. Hence, it was improper for the hamlet to had assumed the powers not conferred to it legally.

I am, consequently, not in line with the appellate district court's findings that the said document from hamlet, sufficed to be a competent substitute of the Marriage Conciliation Board's Certificate. According to section 103 (2) (a) of **LMA**, the board with jurisdiction is that established within a ward not hamlet. Further, the law is clear regarding matrimonial

matters which are initiated without attaching or using defective or irregular certificates from the marriage conciliation boards. The proceedings, decisions and orders rendered therefrom are a total nullity. They do not stand the wrath of the law. In the absence of the valid certificate, the trial is integrally incomplete, premature or incompetent.

The foregoing position is well settled in courts' pronouncements. Examples of such cases include ***Shillo Mzee v Fatuma Ahmed*** [1984] TLR 112; and ***Abdallah Hamis Kiba v Ashura Masatu***, CAT - Musoma Civil Appeal No. 465 of 2020 (unreported). In the latter case, the following relevant was pronounced:

*"Given the evidence on record as we have reviewed it earlier, we hold without demur that the impugned certificate is invalid for stating falsely that the Board had attempted to reconcile the patties but failed to settle the dispute when the reconciliation effort dearly did not take its full course. Moreover, we are satisfied that the current dispute does not fall within any of the exceptions (a) to (f) enumerated under the proviso to section 101 of the Act for the certificate requirement to be dispensed with."*

On the basis of what is elucidated above, this appeal succeeds on first ground. Proceedings, judgements, decrees and orders of both

Kwimba District Court and Ngudu Primary Court should be, and are hereby, quashed and set aside. Accordingly, any party who is still interested in the pursuit of this matter, is at liberty to commence the process afresh and in the appropriate mode. Parties to bear own cost.

It is so ordered.

Right of Appeal fully explained to the parties.



**C.K.K. Morris**

**Judge**

**February 21<sup>st</sup>, 2023**

**Judgement** delivered this 21<sup>st</sup> day of February 2023 in the presence of both the appellant and respondent (on line via 0789066685).

**C.K.K. Morris**

**Judge**  
**February 21<sup>st</sup>, 2023**

A handwritten signature in blue ink, consisting of a large, stylized 'S' shape with a small dot and a horizontal line at the end.