

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

In the matter of an application for Leave to Appeal under Section 62(1) of the Muslim Marriage and Divorce Act No. 13 of 1951 from an order of the Board of Quazis dated 10/12/2022.

**Court of Appeal Case No.**

CA/LTA/10/2022

**Board of Quazis Case No.**

BQ/34/18/R/CMB

**Quazi of Negombo Case No.**

0105/T/17/NG

**Mohamed Sulthan Mohamed Malik**

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10

**Applicant.**

**Vs**

**Meera Saahib Siththi Baduriva**

No. 420/6, Shantha Lasaras Road,  
Periyamulla, Negombo.

**Respondent.**

**AND**

**Meera Saahib Siththi Baduriva**

No. 420/6, Shantha Lasaras Road,  
Periyamulla, Negombo.

**Respondent- Petitioner.**

**Vs**

**Mohamed Sulthan Mohamed Malik**

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10  
Presently in

No. 400/2, Sellakanda Road,  
Negombo.

**Applicant- Respondent.**

**AND**

**Mohamed Sulthan Mohamed Malik**

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10  
Presently in

No. 400/2, Sellakanda Road,  
Negombo.

**Applicant- Respondent- Petitioner.**

**Vs**

**Meera Saahib Siththi Baduriva**

No. 420/6, Shantha Lasaras Road,  
Periyamulla, Negombo.

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10

**Respondent- Petitioner- Respondent.**

**AND NOW BETWEEN**

**Mohamed Sulthan Mohamed Malik**

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10  
Presently in

No. 400/2, Sellakanda Road,  
Negombo.

**Applicant- Respondent- Petitioner.**

**Vs**

**Meera Saahib Siththi Baduriva**

No. 420/6, Shantha Lasaras Road,  
Periyamulla, Negombo.

No.211/40, 1/6, CMC Flat,  
Jumma Masjid Road,  
Maligawatta,  
Colombo – 10

**Respondent- Petitioner- Respondent.**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**WICKUM. A. KALUARACHCHI, J.**

Counsel: Safana Gul Begum with M. Dilham and S.A.K. Banu for the  
Applicant – Respondent – Petitioner.

Argued on: 11.08.2023

Decided on: 16.01.2024

**MOHAMMED LAFFAR, J.**

This is an Application filed by the Applicant-Respondent-Petitioner (hereinafter referred to as Petitioner) seeking leave to appeal from the Order of the Board of Quazis dated 10-12-2022. The leave was granted on 30-03-2023.

The Petitioner married the Respondent-Petitioner-Respondent (hereinafter referred to as the Respondent) on 16-06-1991 in terms of the provisions of the Muslim Marriage and Divorce Act, No. 13 of 1951 (as amended). The Petitioner (husband) filed the notice of intention to pronounce Talaq against the Respondent (wife) before the learned Quazi of Negombo to dissolve the marriage on 18-07-2017. The learned Quazi of Negombo had issued notice to the Respondent to her address, bearing assessment No. 420/6, Shantha Lasaras Road, Periyamulla, Negombo requesting her to be present before the Quazi on 19-08-2017. When the matter was mentioned on 19-08-2017, the Respondent informed the learned Quazi that she had filed another Application before the learned Quazi of Colombo and requested the learned Quazi of Negombo to grant a good decision at his best. When the learned Quazi of Negombo was satisfied that he had jurisdiction to entertain the said Application, he issued notices to the Petitioner and the Respondent requesting them to be present on 16-09-2017. Since the Respondent was not present, once again the learned Quazi issued notice on the respondent returnable on 30-09-2017. In these circumstances, the Quazi of Negombo, on 25-11-2017 permitted the Petitioner to pronounce Talaq on the Respondent and ordered the Petitioner to pay the Respondent a sum of Rs. 30,000/- as Idda maintenance. Accordingly, after three months from the date of the pronouncement of Talaq, the pronouncement of Talaq was registered on 26-02-2018.

Being aggrieved by the said Orders of the learned Quazi, the Respondent invoked the revisionary jurisdiction of the Board of Quazis seeking to set aside the said Orders. The Board of Quazi in its Order dated 10-12-2022 set aside the pronouncement of Talaq and revoked the registration of the said Talak on the basis, *inter-alia*, that the learned Quazi of Negombo has

no jurisdiction to hear and determine the Application filed by the Petitioner as the Respondent was a resident of No. 211/40,1/6, CMC Flat, Jumma Masjid Road, Maligawatta, Colombo-10. Being aggrieved by that Order, the Petitioner has filed the instant leave to appeal Application.

The contention of the Respondent was that she has been residing at No. 211/40,1/6, CMC Flat, Jumma Masjid Road, Maligawatta, Colombo-10, and therefore, the learned Quazi of Negombo has no jurisdiction to hear and determine this matter. The learned Quazi of Negombo made his Order on the footing that the Respondent's residence was at No. 420/6, Shantha Lasaras Road, Periyamulla, Negombo.

The Respondent appeared before the learned Quazi of Negombo on 19-08-2017, and did not object to the jurisdiction of the Quazi Court of Negombo. When the Respondent informed the learned Quazi that she had already filed two maintenance Applications before the learned Quazi of Colombo, the learned Quazi of Negombo refixed the matter to verify the jurisdiction.

It is pertinent to note that the Respondent in her statement to the Negombo Police on 17-06-2017 categorically stated that her residence was at No. 420/6, Shantha Lasaras Road, Periyamulla, Negombo (P1-at page 76). Moreover, the Respondent in her statement to the Negombo Police on 14-06-2017 too asserted that her former address was at No. 211/40,1/6, CMC Flat, Jumma Masjid Road, Maligawatta, Colombo-10 and the present address is at No. 420/6, Shantha Lasaras Road, Periyamulla, Negombo (P1 at page 77). The Respondent had submitted an affidavit to the Magistra's Court of Negombo in case No. 44790/L on 15-09-2017, wherein it is stated that her address was No. 420/6, Shantha Lasaras Road, Periyamulla, Negombo (P1 at page 81). The Grama Sevaka of 161C, Sellakanda on 03-07-2017 confirmed that the Respondent resides in Negombo (P1 page 98). In this scenario, it appears to this Court that the learned Quazi of Negombo had adequate evidence to come to the conclusion that the permanent residence of the Respondent was in Negombo at the time of the institution of the Application filed by the Petitioner.

Besides, it is pertinent to note that, the Respondent did not inform the learned Quazi of Negombo that her current address is at No. 211/40,1/6, CMC Flat, Jumma Masjid Road, Maligawatta, Colombo-10, when she appeared before the Quazi on 19-08-2017. Instead, she asserted that two

maintenance Applications had already been filed before the learned Quazi of Colombo.

Moreover, it is to be considered that the notices dispatched by the learned Quazi of Negombo to the Respondent under registered post have not been returned and it was not the contention of the Respondent that she has not received those notices.

In those circumstances, it is evident that at the time of filling an action (intention of talak) by the Petitioner in the Quazi Court of Negombo, the Respondent was a resident in Negombo, and therefore, under the 2<sup>nd</sup> schedule of the Muslim Marriage and Divorce Act, the learned Quazi of Negombo had jurisdiction to hear and determine the matter. As such, the determination of the Board of Quazi is factually incorrect and misconceived in law.

For the foregoing reasons, the Order of the Board of Quazi dated 10-12-2022 is set aside. The Order of the learned Quazi of Negombo dated 25-11-2017 permitting the Petitioner to pronounce Talak on the Respondent and the registration of Talak on 26-02-2018 are affirmed. It is declared that the divorce certificate issued by the learned Quazi of Negombo on 26-02-2018 in case No. 0105/T/17/NG is legally valid. The parties should bear their own costs as to this appeal.

The Registrar is directed to communicate this Order to the Board of Quazi and the learned Quazi of Negombo and to dispatch the original case record to the Board of Quazi.

*Appeal allowed.*

***JUDGE OF THE COURT OF APPEAL***

**WICKUM. A. KALUARACHCHI, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***