

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*

CA/ LTA Application No:

CA/LTA/0018/2024

Board of Quazis Case No:

BQ/85/24/R/CMB

**Quazi of Colombo South
Case No:**

7092/CM/2024/CS and

7093/CM/2024/CS

Fathima Sumaiya Naffeel

No. 23/1, Alexandra Place,
Colombo 06.

Applicant

Vs.

Mohammed Fazil Ameen Sadik

No. 36, Elibank Road,
Colombo 05.

Respondent

AND BETWEEN

Mohammed Fazil Ameen Sadik

No. 36, Elibank Road,
Colombo 05.

Respondent- Petitioner

Vs.

Fathima Sumaiya Naffeel

No. 23/1, Alexandra Place,
Colombo 06.

Applicant- Respondent

AND NOW BETWEEN

Fathima Sumaiya Naffeel

No. 23/1, Alexandra Place,
Colombo 06.

Applicant- Respondent- Petitioner

Vs.

Mohammed Fazil Ameen Sadik
No. 36, Elibank Road,
Colombo 05.

Respondent- Petitioner- Respondent-

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO, J.

Counsel: M. D. N. Dilham for the Applicant- Respondent- Petitioners.

Safana Gul Begum for the Respondent.

Supported on: 28. 03. 2025

Decided on: 21. 05. 2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioner (wife) is seeking leave to appeal from the Order of the Board of Quazi dated 23.11.2024 wherein the Board of Quazi refused to vacate the *ex parte* Order made against the Petitioner. On 28.03.2025, we heard the Learned Counsel for the Petitioner in support of this application and we heard the learned Counsel for the Respondent as well.

Both parties consented to dispose the application in respect of granting of leave and the preliminary objection raised by the Respondent (husband) by way of written submissions.

In a nutshell, the Petitioner married the Respondent on 12.07.2010 and there are two male children born out of this marriage. In April 2024 the Petitioner made an application before the learned Quazi of Colombo South claiming a sum

of Rs. 150,000.00 as maintenance for the said two children. On 31.08.2024, the learned Quazi ordered the Respondent to pay a sum of Rs. 40,000.00 as interim maintenance for each child until the final order is made after inquiry. As it is a consent order both parties have signed the case record. Thereafter, the respondent made an application before the board of quazis against the said consent order. On 05.10.2024, the Board of quazi, without issuing notice on the Petitioner, issued a stay order, staying the said interim order of the learned Quazi of Colombo South until the final determination of the application filed before the board of quazis. Subsequently, the Petitioner made an application before the board of Quazis seeking to set aside the said *ex parte* stay order whereas the board of quazis on 23.11.2024 declined to accept the application made by the learned Counsel for the Petitioner, It is against that order the Petitioner is seeking leave to appeal.

The contention of the learned Counsel for the Respondent is that under Section 35(1) of the Muslim Marriage and Divorce Act No.13 of 1951 (as amended) a child or any person on behalf of the child, shall not be entitled to claim maintenance in respect of any period during which the child is living with or supported by the father. The learned counsel for the Respondent having tendered several documents states that the Respondent father is paying the school fees, tuition fees and other expenses of the children and therefore, the learned Quazi is not entitled to make the said interim order.

It is pertinent to note that the learned quazi had made the impugned interim order until the final order is made. In the course of the inquiry, the respondent has every right to substantiate his position by tendering all the documents before learned Quazi. Either the board of quazi or this court is not a proper forum to look into the genuineness of the documents tendered by the Respondent. The quazi court is the appropriate forum to ascertain the evidence adduced by both parties. Due to the *ex parte* interim order issued by the board of quazis the learned quazi of Colombo south is barred from inquiring into the matter independently. In those circumstances material prejudice will be caused to both parties due to the impugned *ex parte* interim order.

It is pertinent to note that the learned Quazi of Colombo south made an interim order when both parties were Before the Quazi court. Both parties had given their consent to that order. It is my view that suspending the consent order of the learned Quazi until the final determination of the application made before the Board of Quazi without hearing the Petitioner is palpably erroneous and misconceived in law. Due to the impugned order of the Board of Quazi both the

minor children those who are in the custody of the Petitioner will have to suffer without maintenance.

Having considered the submissions made, I am of the view that the purported preliminary legal objection raised by the learned counsel for the Respondent is devoid of merits, The petitioner is entitled to maintain this application against the impugned interim Order of the Board of Quazis.

For the foregoing reasons, it is the considered view of this court that the Petitioner is entitled in law to have and maintain the instant leave to appeal application against the impugned order of the board of quazi dated 23.11.2024. this is a fit and proper case to grant leave to appeal. Leave is granted. The impugned orders dated 05.10.2024 and 23.11.2024 of the Board of Quazis are suspended until the final determination of this application. Moreover, the order of the learned Quazi dated 31.08.2024 granting interim maintenance to the children is in force until the final determination of this application. The learned quazi is directed to proceed with the main application. The Registrar is directed to communicate this order to the learned quazis of Colombo South and the Board of Quazis.

Leave Granted.

President of the Court of Appeal (Actg)

K. P. Fernando, J.

I agree.

Judge of the Court of Appeal