

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

In the matter of an Application for Leave to Appeal against the Order of the Board of Quazis dated 07/12/2019 in terms of Section 44(3) of the Muslim Marriage and Divorce Act No. 13 of 1951 as amended read with Rule 4 of the 5th Schedule of the said Act.

Court of Appeal Case No.
CA/LTA/0001/2020
Board of Quazis Case No.
19/15/R/CMB
**Quazi Court of Colombo
West Case No.**
5106/CM

Fathima Hasna,
No.36/1A, Temple Road,
Kalubowila,
Dehiwela.

Applicant

VS

Mohamed Yoosuf Ali Akram,
No. 291 A, Kadawatha Road,
Hill Street,
Dehiwela.

Respondent

AND NOW

Mohamed Yoosuf Ali Akram,
No. 291 A, Kadawatha Road,
Hill Street,
Dehiwela.

Respondent- Petitioner

Fathima Hasna,
No.36/1A, Temple Road,
Kalubowila,
Dehiwela.

Applicant- Respondent

AND PRESENTLY

Mohamed Yoosuf Ali Akram,
No. 291 A, Kadawatha Road,
Hill Street,
Dehiwela.

Respondent- Petitioner-Petitioner

VS

Fathima Hasna,
No.36/1A, Temple Road,
Kalubowila,
Dehiwela.

Applicant- Respondent- Respondent

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

Counsel: R. Habeeb with R. Uwaiz for the Respondent- Petitioner-
Petitioner.

H. Hizbullah, instructed by I. Imran for the Applicant-Respondent- Respondent.

Supported on: 23.10.2023

Decided on: 17.01.2024

MOHAMMED LAFFAR, J.

The Respondent-Petitioner-Petitioner (hereinafter referred to as the Petitioner) is seeking leave to appeal from the Order of the Board of Quazis dated 07-12-2019. We heard the learned Counsel for the Petitioner in support of this application. We heard the learned Counsel for the Applicant-Respondent-Respondent (hereinafter referred to as the Respondent) as well.

The Petitioner (husband) married the Respondent (wife) on 09-07-2010 under and in terms of the Muslim Marriage and Divorce Act, No. 13 of 1951 (as amended) and they have parented two children out of this marriage. On 24-12-2013, the Petitioner filed an application for Talaq against the Respondent, and accordingly obtained Talaq dissolving the said marriage. Thereupon, the Respondent instituted a maintenance application before the Quazi of Colombo West in case No. 5106/CM claiming a sum of Rs. 100,000/- as maintenance for the two children (Rs. 50,000/- for each child per month). The learned Quazi issued notices to the Petitioner repeatedly for the inquiry on 29-11-2014, 24-01-2015 and 21-02-2015 and on his default to appear on the third occasion, the matter was taken up for an *ex-parte* inquiry. Thereafter, the learned Quazi on 21-02-2015 entered a *decree nisi* to pay a sum of Rs. 78,000/- (Rs. 40,000 for the elder child and Rs. 38,000/- for the younger child) per month as maintenance.

Thereupon, the Petitioner appeared before the learned Quazi and objected to the said *decree nisi* being made absolute. Having

considered the objections, the learned Quazi on 28-03-2015 made the *decree nisi* absolute.

Being aggrieved by the said Order, the Petitioner invoked the revisionary jurisdiction of the Board of Quazis. On 07-12-2019, the Board of Quazis dismissed the revision application and affirmed the said Order of the learned Quazi of Colombo West. Being aggrieved by the Order, the instant leave to appeal application is filed by the Petitioner.

It is pertinent to note that the Petitioner has not taken up the position that he has not received notices dispatched by the learned Quazi as to the inquiry. Moreover, the Petitioner has not put forward any reasons not to take part in the inquiry. The Petitioner had submitted an affidavit (P17) before the learned Quazi objecting to the said *decree nisi* being made absolute. The learned Quazi had considered the facts stated in the affidavit before making the *decree nisi* absolute and therefore, the submission made by the Petitioner that he was not heard by the learned Quazi is devoid of merits. This Court is mindful of the fact that in terms of the said Act, the Petitioner who is bound to maintain his two children did not make any application before the learned Quazi to reduce the said amount of maintenance.

The learned counsel for the Petitioner submitted that the Petitioner is a driver of a van transporting school children. However, the Petitioner in his Petition filed before the Board of Quazis stated that he is the owner of the vehicle bearing No. 52-3747. From the evidence adduced by the Respondent, it was well-established before the learned Quazi that the Petitioner is carrying on a rent-a-car business, giving his vehicles on hire. Accordingly, his monthly income was more than Rs. 300,000/-. In these respects, the impugned maintenance Order made by the learned Quazi is justifiable.

Besides, it is pertinent to note that the Petitioner in his Petition has not prayed for a relief to set aside the Order of the learned Quazi. Hence, even if the impugned Order of the Board of Quazis is set aside,

the Order of the learned Quazi will stand. As such, the instant application is futile.

In those circumstances, I see no basis to interfere with the Order of the Board of Quazis dismissing the revision application filed by the Petitioner. Thus, leave is refused and the application is dismissed with costs at Rs. 50,000/-. The registrar is directed to communicate this Order to the learned Quazi of Colombo West and the Board of Quazi forthwith.

Leave refused. Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

WICKUM. A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL