

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

In the matter of an Application for Leave to Appeal under and in terms of Section 62(1) of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended).

**Court of Appeal Case Nos.**

**Court of Appeal Case No.**

CA/LTA/0005/2023

**Board of Quazis Case No.**

70/22/R/CMB

**Quazi Court of Colombo East Case No.**

2935/WM/2020/NG/SQ

2936/CM/2020/NG/SQ

2937/CM/2020/NG/SQ

2938/CM/2020/NG/SQ

**Ahamed Jaleel Farmila Begum,**

No.464, Thakkiya Road,

Daluwakotuwa,

Kochchikade.

**Applicant**

**Vs**

**Mohamed Ameen Mohamed Naseem,**

No. 141/3, Mirigama Road,

Negombo.

**Respondent**

AND BETWEEN

**Mohamed Ameen Mohamed Naseem,**

No. 141/3, Mirigama Road,

Negombo.

**Respondent-Petitioner**

**Ahamed Jaleel Farmila Begum,**  
No.464, Thakkiya Road,  
Daluwakotuwa,  
Kochchikade.

**Applicant-Respondent**

AND NOW BETWEEN

**Ahamed Jaleel Farmila Begum,**  
No.464, Thakkiya Road,  
Daluwakotuwa,  
Kochchikade.

**Applicant-Respondent- Petitioner**

VS

**Mohamed Ameen Mohamed Naseem,**  
No. 141/3, Mirigama Road,  
Negombo.

**Respondent-Petitioner- Respondent**

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

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

Argued on: 13.06.2023

Written Submissions on: 17.11.2023 by the Petitioner

Decided on: 18.01.2024

**MOHAMMED LAFFAR, J.**

This is an application filed by the Applicant-Respondent-Petitioner (hereinafter referred to as the Petitioner) seeking leave to appeal from the Order of the Board of Quazis dated 20-05-2023 in case No. 70/22/R/CMB. The leave to appeal was granted on 13-07-2023.

The Petitioner married the Respondent-Petitioner-Respondent (hereinafter referred to as the Respondent) on 23-04-2005 under and in terms of the Muslim Marriage and Divorce Act, No. 13 of 1951 (as amended). There are three children born out of this marriage, namely, Mohamed Ameen Alfa (17 years), Mohamed Ameen Amhar (13 years) and Mohamed Ameen Aaliya (4 years). During the pendency of this marriage, the Respondent (husband) contracted another marriage and neglected to maintain the Petitioner and the said three children. Therefore, the Petitioner made an application on 17-06-2020 before the learned Quazi of Negombo claiming maintenance for herself and the children. Upon the application made by the Respondent, the Judicial Service Commission transferred the said application to the learned Quazi of Colombo East.

After inquiry, the learned Quazi of Colombo East, on 11-06-2022 ordered the Respondent to pay a sum of Rs. 15,000/- to the Petitioner and a total sum of Rs. 45,000/- (20,000+15,000+10,000) per month for the children as maintenance, from the date of application.

Since the Respondent failed to comply with the said Order, the learned Quazi issued an enforcement certificate dated 19-10-2022 to the Magistrate's Court of Negombo to recover a sum of Rs. 1,740,000/- being the accrued arrears of maintenance for the period between 19-06-2020 to 15-10-2022.

Thereupon, the Respondent on 26-10-2022 invoked the revisionary jurisdiction of the Board of Quazis seeking to set aside the said Order of the learned Quazi. Subsequently, the Respondent filed an amended Petition and moved for an interim order to stay all the proceedings both in the Quazi Court of Colombo East and the Magistrate's Court of Negombo. The Board of Quazi, on 20-05-2023, issued an interim Order staying all proceedings in the Quazi Court of Colombo East and Ordered the said Quazi to recall the said certificate of enforcement filed in the

Magistrate's Court of Negombo in case bearing No. 126/22. It is against that Order, the instant appeal was preferred by the Petitioner.

This Court is mindful of the fact that the Respondent has not paid maintenance to the Petitioner and his children from 19-06-2020 up to date. It appears to this Court that the Board of Quazis has not stated the reasons for the said interim Order. It is settled law that satisfactory reasons should be given for the judicial and quasi-judicial decisions. A decision not supported by adequate reasons is liable to be quashed. Giving reasons for a judicial decision is an important feature in today's context, which cannot be lightly disregarded. Moreover, in a situation, where giving reasons have been ignored, such a Court would run the risk of having acted arbitrarily in coming to its conclusion.

The Respondent was in arrears of maintenance in a sum of Rs. 2,160,000/- at the time of issuing the impugned stay order. In such a situation, there is a duty cast upon the Board of Quazis to give strong and cogent reasons to recall the said enforcement certificate, whereas the Board of Quazi has totally failed to do so. In those circumstances, it is the considered view of this Court that the impugned stay order is liable to be quashed on that ground alone. The Board of Quazis has failed to consider the fact that it is the fundamental duty of the Respondent to maintain his spouse and children, he has ignored that duty and contracted another marriage. It is to be noted that the Board of Quazis has made the impugned Order *ex-parte* without hearing the Petitioner and thereby failed to adhere to the principle of *audi alteram partem*.

It is borne out from the proceedings before the learned Quazi, that the inquiry was held *inter-parte* and the Respondent was heard before making his Order. The Respondent has placed his signature on all proceedings. The Respondent was present in Court on the day the maintenance Order was made. Moreover, before issuing the enforcement certificate, the learned Quazi had issued a show cause notice to the Respondent, returnable on 15-10-2022. On 15-10-2022, since the Respondent failed to comply with the Order of the learned Quazi, the enforcement certificate was issued. In those circumstances, it is abundantly clear that the averment contained in paragraph 11 of the amended Petition filed before the Board of Quazis stating that the

learned Quazi has made the Order without the knowledge of the Respondent is erroneous. The Respondent has suppressed the material facts to the Board of Quazis and obtained the impugned stay Order. Furthermore, as the Respondent had not paid the maintenance to the Petitioner and his children right throughout, it is the view of this Court that the Respondent did not come before the Board of Quazis with clean hands, and therefore, he is not entitled to invoke the revisionary jurisdiction of the Board of Quazis.

For the foregoing reasons, the appeal is allowed and the Order of the Board of Quazis dated 20-05-2023 in case No. 70-22-R-CMB is set aside. The Orders of the learned Quazi of Colombo East dated 11-06-2022 in case Nos. 2935/WM/2020/NG/SQ, 2936/CM/2020/NG/SQ, 2937/CM/2020/NG/SQ and 2938/CM/2020/NG/SQ are affirmed. The learned Magistrate of Negombo is Ordered to recover the entire arrears of maintenance from the Respondent as depicted in the enforcement certificate filed of record in case No. 126/22 (maintenance). The Petitioner is entitled to recover a sum of Rs. 50,000/- from the Respondent as costs for this appeal.

The Registrar is directed to communicate this Order to the Board of Quazis, the learned Quazi of Colombo East and the learned Magistrate of Negombo. The Registrar is further directed to dispatch the original case record to the Board of Quazis forthwith.

*Appeal allowed with costs.*

**JUDGE OF THE COURT OF APPEAL**

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

*I agree.*

**JUDGE OF THE COURT OF APPEAL**