

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

*In the matter of an Application for Leave to
Appeal in terms of Section 62 of the Muslim
Marriage and Divorce Act.*

Court of Appeal

Case No: LTA 14/2024

Board of Quazis

Case No: 64/24/R/CMB

Quazi Court of Panadura

Case No: 2490/FD/2024/PND

Gnei Wazeela Ramdeen,
No. 45/28, Kuda Edanda Road,
Wattala.

Applicant

Vs.

Mass Milhan Sadar,
No. 161/11/1, Babanoor Garden,
Padiliyathuduwa Road,
Hunupitiya,
Wattala.

Respondent

AND BETWEEN

Mass Milhan Sadar,
No. 161/11/1, Babanoor Garden,
Padiliyathuduwa Road,
Hunupitiya,
Wattala.

Respondent-Petitioner

Vs.

Gnei Wazeela Ramdeen,

No. 45/28, Kuda Edanda Road,
Wattala.

Applicant-Respondent

AND NOW BETWEEN

Gnei Wazeela Ramdeen,
No. 393, Gnanarama Road,
Alubomulla,
Panadura.

Applicant-Respondent-Petitioner

Vs.

Mass Milhan Sadar,
No. 161/11/1, Babanoor Garden,
Padiliyathuduwa Road,
Hunupitiya,
Wattala.

Respondent-Petitioner-Respondent

Before: Hon. Justice K.P. Fernando

Hon. Justice Dr. D. F. H. Gunawardhana

Counsel:

M.D.M. Dilham with Sifan Muttalif for the Applicant-Respondent-Petitioner.

M.Y. Nasar with M.N.M. Israth and Dimuthu Jayawardhana instructed by Eksith Madawela for the Respondent-Petitioner-Respondent.

Argued on: 18.02.2026

Delivered on: 25.02.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

In this appeal, the Applicant-Respondent-Petitioner (hereinafter referred to as the “Appellant”) is married to the Respondent-Petitioner-Respondent (hereinafter referred to as the “Respondent”). They had four children. Subsequently, it is alleged that the Respondent contracted another marriage without the consent of the Appellant. Thereafter, the differences on the home front started culminating in the complete breakdown of the marriage. As such, the Appellant filed an application seeking a *Faskh* divorce before the Quazi Court of Panadura.

After the Respondent was noticed, he appeared before the Quazi and raised a preliminary objection before the said Quazi as to the jurisdiction of the Quazi on two grounds:

- i. The Appellant had commenced her residence in the local jurisdiction of the Quazi of Panadura.
- ii. The Appellant had already instituted an application for a *Faskh* divorce before the Quazi of Gampaha and, after inquiry, the application for the *Faskh* divorce was refused.

Therefore, the learned Quazi of Panadura does not have the jurisdiction to entertain the application for *Faskh* divorce. However, the learned Quazi of Panadura overruled the said preliminary objection and assumed jurisdiction by the order dated 10.08.2024. Being aggrieved by the said order, the Respondent went before the Board of Quazi and obtained an *ex parte* order from the Board of Quazi, staying the proceedings of the Quazi of Panadura on 03.08.2024. Being aggrieved by the said stay order, the Appellant, having obtained leave to appeal, appealed to this Court. This was argued before us on 26.09.2025, and the following contentions were advanced by the respective counsel.

Arguments

Mr. Dilhan, the Counsel for the Appellant, contended that in view of Sections 43 and 44 of the Muslim Marriage and Divorce Act (hereinafter referred to as the “MMDA”), the Board of Quazi cannot issue a stay order *ex parte* to stay the proceedings before the Quazi of Panadura. Further, elucidating the said contention, Mr. Dilhan argued that unlike the procedure provided for in the Court of Appeal Rules, where an *ex parte* stay order can be obtained in terms of Rule 2, the Rules contained in the 5th Schedule of the MMDA state that no party is entitled to obtain an *ex parte* stay order without giving notice to the other party before the Board of Quazi. Therefore, the Board of Quazi cannot issue a stay order, and it is violative of the said rules read with Sections 43 and 44 of the MMDA.

However, on the other hand, Mr. Nazar, the counsel for the Respondent, argued that the Board of Quazi is justified in issuing the said stay order for the purpose of maintaining the status quo. Elaborating on the same contention, he further contended that since the Appellant was unsuccessful in obtaining a *Faskh* divorce from the Quazi of Gampaha, she, having changed her address a few days prior to the institution of the application for a *Faskh* divorce before the Quazi of Panadura, made a similar application against the Respondent, and when the preliminary objection was raised as to the jurisdiction of the Quazi of Panadura, the said Quazi overruled the objection without considering the merits of the case or the earlier unsuccessful application for *Faskh* divorce. Accordingly, the Respondent had no option but to obtain an order *ex parte* from the Board of Quazi.

However, immediately after the issuance of the stay order, the secretary to the Board of Quazi notified the Respondent as well as the Quazi of Panadura. Therefore, proper notice was given.

However, further answering a question posed by the Court, Mr. Nazar conceded that Sections 43 and 44, read with the Rules contained in Schedule 5 of the MMDA, relating to the appeal procedure before the Board of Quazi, do not allow an *ex parte* order. He further conceded that the Court of Appeal Rules relating to the appellate procedure and the *ex parte* stay order are not applicable to the Board of Quazi.

Undisputed facts

The only question to be decided in this appeal is whether the Board Quazi was justified in issuing the *ex parte* stay order, thereby staying the proceedings before the Quazi of Panadura, who had overruled a preliminary objection raised by the Respondent. For that purpose, I will have to refer to the procedure stipulated in the MMDA, as well as the rules contained in Schedule 5 and the relevant provisions of Sections 43 and 44, which read as follows:

“43. The Board of Quazis may call for and examine the record of any proceedings before a Quazi under this Act in respect of any matter (whether such matter has been tried or inquired into or is pending trial or inquiry) for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings.

44. (1) The Board of Quazis may, in respect of any proceedings before a Quazi the record of which has been called for, in its discretion exercise any of the powers conferred upon it for the purposes of its appellate jurisdiction.

(2) No order under this section shall be made by the Board of Quazis to the prejudice of any person unless he has had an opportunity of being heard either in person or by his representative.

(3) Every order made by the Board of Quazis under this section shall have the same effect as an order made on appeal from an order made by a Quazi.”

In this case, it transpired from the document marked as **E1**¹, which is the proceedings before the Board of Quazi on 03.08.2024 where the Board of Quazi has made the impugned order. The document marked as **E1** was made in the presence of the Petitioner (Respondent to this Application) and his representative, but neither the Appellant nor her representative was present before the Board of Quazi, and the record indicates this. In addition, **E1** further indicates that since the Appellant was not present before the Board of Quazi, the Secretary to the Board of Quazi was directed to issue notice of the said order to the Respondent (namely, the Appellant in this case) and also to the Quazi of Panadura to refrain from carrying out any order and to maintain the status quo by staying the proceedings before the Quazi to whom the Appellant had applied seeking a Fasha divorce from the Quazi of Panadura.

It must also be noted that the preliminary objections raised by the Respondent before the Quazi have been overruled by the learned Quazi of Panadura, who decided to proceed with the inquiry made in terms of Section 28(1) of the Muslim Marriages and Divorce Act (MMDA) for a Fasha divorce (Application made by the Appellant). However, due to the said decision of the learned Quazi of Panadura, which was impugned before the Board of Quazi, it appears that no prejudice was caused to the Respondent in this appeal, as even in the course of the inquiry, he can still bring to the notice of the Panadura Quazi that the Petitioner had already filed an unsuccessful application before the Quazi of Gampaha, and that after changing the address to invoke the jurisdiction of

¹ The document marked as **P4** in the document marked and annexed to the Petition as **F**.

Panadura, the Appellant made the said application before the Board of Quazi. Even in the course of the inquiry, the Quazi can look into this matter as well.

However, the very issue before us is not that impugned order, and I have mentioned that no prejudice was caused to the Respondent in this appeal by the said impugned order. Nevertheless, the Respondent, having rushed to the Board of Quazi, obtained the impugned order *ex parte*, and the Board of Quazi made the decision in violation of Section 44(2) of the MMDA. Therefore, as conceded by Mr. Nazar during questioning in the course of the arguments, the Board of Quazi cannot make an order staying the proceedings of the Quazi *ex parte* without hearing the other party, therefore, **E1** is palpably erroneous. As such, it is liable to be set aside. Accordingly, we set aside the same, and in support of my view, I rely on the following quotation from Justice Mohammed Laffar in the case of *Gnei Wazeela Ramdeen v. Mass Milhan Sadar* [2024]²;

“In this application, it is apparent from the case record and the oral submissions made by the Counsel, even though the notice of the impugned order was dispatched to the Petitioner under registered post on 15-08-2024 the registered post notice was not served on the Petitioner and he returned back to the Board of Quazis and collected the notice of the Order. In these circumstances, it appears to this court that the notice of the Order has been given to the Petitioner on 25-09-2024. Since the application has been filed on 04-10-2024 the application is not time barred. In this scenario, this Court is of the view that the foregoing preliminary objections raised by the learned Counsel for the Respondent are devoid of merits.

² [LTA/0014/2024] CA Minutes 28.11.2024

Under Section 44(2) of the said Act that Board of Quazis cannot make orders ex parte before hearing the opposite party, which reads thus

‘44(2). No order under this section shall be made by the board of Quazis to the prejudice of any person unless he has had an opportunity of being heard either in person or by his representative’

As such it is the view of this Court that the impugned interim order issued by the Board of Quazis is ex facie contrary to the aforesaid provision of law.”

Accordingly, this appeal is allowed since there was strong resistance from the Respondent, and as the cause of this appeal arose from the Respondent obtaining an order from the Board of Quazi *ex parte* without giving notice to the Appellant, I venture to order Rs. 105,000/- (One Hundred and Five Thousand Rupees) as the cost of this appeal in favour of the Appellant and against the Respondent.

JUDGE OF THE COURT OF APPEAL

K.P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL