

**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 27.09.2025.*

Mohamed Azwer Fathima Akeela,
No. 42/2, Thelumbugahawatta,
Akurana.

CA Application No. LTA 0013/2025

APPLICANT

Board of Quazis Case No. BQ/27/24/A/CMB

Vs.

Quazi of Akurana Case No. 1387/FD/2023/AK

Mohamed Nisthar Mohamed Niflas,
No. 467/4, Kasawatha, Poojapitiya.

RESPONDENT

AND BETWEEN

Mohamed Nisthar Mohamed Niflas,
No. 467/4, Kasawatha, Poojapitiya.

RESPONDENT-APPELLANT

Vs.

Mohamed Azwer Fathima Akeela,
No. 42/2, Thelumbugahawatta,
Akurana.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Mohamed Azwer Fathima Akeela,
No. 42/2, Thelumbugahawatta,
Akurana.

**APPLICANT-RESPONDENT-
APPELLANT**

Vs.

Mohamed Nisthar Mohamed Niflas,
No. 467/4, Kasawatha, Poojapitiya.

RESPONDENT-APPELLANT-
RESPONDENT

Before: K.P. Fernando, J.

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

Counsel:

Safana Gul Begum for the Applicant-Respondent-Appellant.

Respondent is absent and unrepresented.

Argued on: 03.09.2026

Decided on: 12.10. 2026

Judgement

Introduction

The Applicant-Respondent-Appellant (hereinafter referred to as the “Appellant”) had married the Respondent under the Muslim Marriage and Divorce Act, No. 13 of 1951 (hereinafter referred to as the “MMDA”), and they are having a child who is now two years old. The Appellant has made an application to the Quazi of Akurana for a *Fasah* divorce. After the issuance of notice, the Respondent had also appeared and contested the application for a *Fasah* divorce.

Thereafter, the parties were referred for reconciliation, and since there was no reconciliation, the application was taken up for inquiry by the Quazi of Akurana; after considering the evidence and the assessors’ opinion, granted a *Fasah* divorce in favour of the Appellant.

Thereafter, being aggrieved by the said order the Respondent had appealed to the Board of Quazis, who, after arguments by its order dated 27.09.2025, overturned the *Fasah* divorce granted in favour of the Appellant.

Being aggrieved by the said decision of the Board of Quazis, the Appellant, having obtained leave from this Court, appealed to this Court. Though the Respondent was notified to appear before this Court, he was absent and unrepresented right throughout; therefore, this was taken up for Argument before my brother Justice Fernando and me on 03.09.2026. At the commencement of the hearing, this Court noted that the Respondent was absent and unrepresented; nevertheless, we proceeded to hear the arguments advanced by Ms. Begum, Attorney-at-Law, for and on behalf of the Appellant.

The following arguments were advanced by the counsel; hence, this judgement.

Arguments

The first contention advanced for and on behalf of the Appellant was that the Board of Quazis erred in fact and in law when they held that the assessors were not empanelled in terms of Rule 7 prior to the decision taken by the Quazi. However, having referred to the relevant proceedings before the Board of Quazis at Page 71 of the Brief, it is Ms. Begum's argument that the assessors were properly empanelled.

The second argument of Ms. Begum was that the Board of Quazis erred in holding that the matter had not been referred to reconciliation. Having referred to the relevant proceedings, namely at Page 65 of the Brief, it is Ms. Begum's argument that in terms of Rule 10, the Quazi before proceedings with the inquiry had made all attempts to bring about a reconciliation between the parties, as reflect in Page 64 of the Brief; therefore, Rule 10 of the Third Schedule of the MMDA is properly followed.

The next argument of Ms. Begum is that Rule 12 of the Third Schedule of the MMDA applies only when there is a difference of opinion it has to be recorded; since, as reflected in the proceedings at page 67, there was no difference of opinion between the assessors and the Quazi. Therefore, all having agreed upon the final conclusion, the *Fasah* divorce was granted in favour of the Appellant.

She further referred the Court to the proceedings of the last day, where the parties and witnesses have signed apart from the Quazi and the three assessors.

In addition to that, it was argued by Ms. Begum that the divorce was properly granted in terms of Rule 13 of the Third Schedule of the MMDA, as the order is recorded and was released in writing with the signatures of the Quazi, the assessors, the witnesses who were present, and the parties to the application. Therefore, the Quazi has followed the Rules *in form* as well.

Therefore, Ms. Begum argued that the learned Members of the Board of Quazis have erred in fact and in law when they held that the Quazi had entered a *Fasah* divorce in favour of the Appellant without following Rules 7, 10, 12, and 13, and overturned the decision of the Quazi granting the divorce.

Further elaborating on the matter, it is Ms. Begum's argument that there had been an application by the Respondent for a *Thalaq* divorce; however, later, he has withdrawn it. Reasons attributed to it by Ms. Begum was that according to the authoritative judgements handed down by Superior Courts, a wife is entitled to an order of Mahr, which is similar to alimony given in a divorce under the General Marriage Ordinance, only when there is a *Thalaq* divorce because the Quaran has provided for that.

In addition to that, she argued that in the other three types of divorce, namely *Mubarah*, *Khula*, and *Fasah*, available to a wife came into existence only in Hadith; therefore, the Quaran does not refer to the fact that Mahr is available to a wife in those divorces. However, in the past, the Quazi and Board of Quazis have ordered to grant a Mahr in favour of the wife under divorces other than *Thalaq*.

Now, the matter is pending before the Supreme Court after granting special leave to appeal under consideration. Therefore, husbands who file *Thalaq*, later tend to withdraw the application due to the fact that once the divorce is granted, the wife is entitled to obtain Mahr.

Similarly, in this Application, it is her argument that the Respondent had appeared to have withdrawn the application filed for *Thalaq*. Therefore, Ms. Begum argued that though he resisted the *Fasah* divorce which this Application concerns, the conduct of the Respondent who had gone for a *Thalaq* divorce clearly establishes the fact that he desired to terminate the marriage eternally.

Decision of the Board of Quazis

In this case, the learned Members of the Board of Quazis have set aside the *Fasah* divorce granted to the Appellant, mainly on three grounds;

- (i) Before embarking upon the inquiry into the application made by the Appellant, the learned Quazi had failed to settle the dispute between the parties;
- (ii) The learned Quazi had not empanelled assessors before embarking upon the inquiry;
- (iii) The learned Quazi had failed to consult and obtain the opinion of the assessors prior to granting the divorce.

In addition to that, the learned Members of the Board of Quazis have noted that though it is recorded by the Quazi that the Appellant had consented to the *Fasah* divorce with the condition to return the jewellery which the Respondent had given to the Appellant to be given to their child, they have further expressed their opinion that, having set aside the *Fasah* divorce granted, directed the Quazi by suggesting that the Petitioner go for a *Khula* divorce; therefore, the Appellant challenges the decision of the Board of Quazis on all three grounds, as argued by Ms. Begum before us.

Now I will consider the relevant proceedings to ascertain whether the Quazi has failed to persuade the parties to go for a settlement.

Attempts at Reconciliation

On a perusal of the record, I found that at Page 65 of the Brief, was the proceedings before the learned Quazi, and according to the journal entry dated 14.10.2023, it is recorded that attempts for settlement were taken and the case is postponed to the next date. This itself shows that learned Quazi made all attempts to settle the dispute between the parties. It is further stated therein, that when the case was taken up before the Quazi on 11.11.2023, both parties were

requested to go for counselling and submit a report; thus, it is very clear that the learned Quazi had taken further steps to settle the matter by referring it to a family counsellor.

On a further perusal of the record at Page 67 of the Brief, the journal entry dated 09.03.2026 reads thus;

Upon the wife's persistent application for Fasah divorce, and following the conclusion of the mandatory inquiry as per Third Schedule, the court has duly considered the matter. All efforts directed towards a reconciliation between the parties have been unsuccessful. The Applicant has re-affirmed her demand for dissolution by submitting sworn affidavit. (It is noted that the Respondent husband had previously filed a case for Thalaq No. 1374 of 2023 on 15.09.2023, which he later withdrew on 19.09.2024). Given the complete breakdown of the marriage and the futility of further counselling, the application for Fasah divorce is hereby granted.

This itself also shows that the Quazis has attempted to pursue the parties to a settlement.

Therefore, the learned Members of the Board of Quazis have not observed that fact with reference to the said journal entries, and thus, have erred in fact and in law when they came to the conclusion that the Quazi had failed to persuade the parties to settle the dispute. Therefore, the argument advanced by Ms. Begum should prevail against the said conclusion of the Board of Quazis.

Empanelment and Consultation of the Assessors

With regard to the second matter, on whether the Quazi had not empanelled the assessor, on a further perusal of Page 71 of the Brief, I found that the proceedings of the Quazi on 09.03.2024, was recorded and reads as such;

I, M.B.M. Aboosalih, Quazi for the area of Harispathuwa Poojapitiya, in the presence of three assessors and witnesses, today 9/3/2024, accept the request for the Fasah made by Mohamed Azwer Fathima Akeela of 42/2, Thelumbugahawatha, Akura, and also accept that the statement of the Applicant is fair and hereby cancel the Nikah and marriage contract between the Applicant and the Respondent Mohamed Nisthar Mohamed niflas of 467/4, Kasawatha, Poojapitiya by way of Fasah and grant the said judgement between the Applicant and the Respondent.

The same is signed by the two assessors along with mention of their national identity cards; namely, Mohamed Farook Mohamed Azwer and Abdul Lathif Mohamed Niyas. In addition to that, the same was done in the presence of the parties as their witnesses.

Therefore, it is my view that having appointed the assessors, and after consulting them, the learned Quazi has given thought to the proceedings of the inquiry and the applications made by the parties, in addition to the objections raised by the Respondent, and had finally come to their conclusion since the Respondent had also asked for a *Thalaq* divorce, there was no reconciliation, and since the wife was persistent in asking for a *Fasah* divorce according to the evidence given.

Accordingly, it is my view that the learned Quazi has followed all the relevant rules with regard to the *Fasah* divorce to be followed by the Quazi in a divorce application that proceeded before the learned Quazi. As such, the learned Members of the Board of Quazis have come to an erroneous conclusion that without empanelling the assessors, the Quazi had inquired into the matter, which is in fact incorrect. In addition to that, the reasoning that the Quazi had given its conclusion without consulting the assessor is also incorrect because according to the proceedings, they have been properly consulted and their signatures have been obtained; only thereafter, was the *Fasah* divorce granted.

As such, the pith and substance of the matter is that the learned Quazi has followed the Rules *in form* as well. Accordingly, it is my view that the learned Members of the Board of Quazis have erroneously held that the learned Quazi had failed to observe and follow the Rules 7, 10, 12 and 13 of the Third Schedule, in granting the said divorce from the time the said application was entertained, including the failure to persuade the parties to come to a settlement.

In addition to that, they have gone one step further, which they are not supposed or required to do by the appeal, except for considering the main issue of whether the *Fasah* divorce can be granted or not, they have also given their opinion to go for a *Khula* divorce, which was not sought anywhere in the Respondent's appeal.

Therefore, it is my view that the opinion given by the learned Members of the Board of Quazis is also erroneously made.

It must be noted that what is required in a *Fasah* divorce is that there must be matrimonial fault established on the husband, by the wife with the evidence of at least two witnesses;¹ if there is any objection by the respondent-husband, this too can be taken into account by the assessors. After the evaluating the evidence given, the assessors must then advice the learned Quazi on the most suitable course of action that should take place in granting a *Fasah* divorce.

In this case, the Appellant has established her case that there was a matrimonial fault on the part of her husband, which compelled her to go for a *Fasah* divorce, and she, being the innocent party, has instituted the application in that behalf. Her evidence is corroborated by a witness named Sainul Abdeen Mohamed. Though her husband has resisted the same before the learned Quazi of Akurana, after considering the evidence and having consulted the assessors, has considered the application and was of the opinion that a *Fasah* divorce has to be granted in the circumstance. In fact, the learned Quazi has also taken into consideration that there was a

¹ *Fazil Mohamed Farook v. Fathima Shafka Lahir* CA/LTA/0004/2023 (CA Minutes 30.09.2025).

breakdown of the marriage since the Respondent-husband had already applied for a *Thalaq* divorce, prior to the application made by the wife; nevertheless, he had withdrawn it, probably due to the fact that there is a probability that Mahr could be ordered against him, because a *Thalaq* divorce is initially provided for by the Quaran, while the other types of divorces have been introduced by the Haddith with no such special reference been made to the Mahr; In Sri Lanka, this still remains an issue to be decided.

Therefore, having considered all the circumstances, the learned Quazi had granted the *Fasah* divorce, which is therefore justified. Overturning such an order without any proper basis as I mentioned above, by the learned Members of the Board of Quazis, is not tenable.

Conclusion

As such, this Appeal is allowed without any cost as there is no representation.

JUDGE OF THE COURT OF APPEAL

K.P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL