

**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(1) 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.

C. A. Case No.05/2018
Board of Quazis Case
No.03/18/R/CMB

Rafeeda Banu

No.286/12/12, Megoda Kolonnawa,
Wellampitiya.

APPLICANT

-Vs-

Abdul Azeez Mohamed Ishaq

of Nooraniya Nagar, Pulmoddai 01.

RESPONDENT

AND

Abdul Azeez Mohamed Ishaq

of Nooraniya Nagar, Pulmoddai 01.

RESPONDENT- PETITIONER

-Vs-

Rafeeda Banu

No. 286/12/12, Megoda Kolonnawa, Wellampitiya.

APPLICANT-RESPONDENT

AND PRESENTLY

Abdul Azeez Mohamed Ishaq

of Nooraniya Nagar, Pulmoddai 01.

RESPONDENT-PETITIONER-PETITIONER

-Vs-

Rafeeda Banu

No. 286/12/12, Megoda Kolonnawa,

Wellampitiya.

APPLICANT-RESPONDENT-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Farook Miskin with M.W. Selvarani and Shirin
Miskin for the Respondent-Petitioner-Petitioner
M.S.M. Faris with S.Z. Nazeer for the Applicant-
Respondent-Respondent

Decided on : 27.02.2019

A.H.M.D. Nawaz, J.

By way of this application, the Respondent-Petitioner-Petitioner (hereinafter sometimes referred to as “the Petitioner”) seeks Leave to Appeal from the decision of the Board of *Quazis* dated 28.07.2018 wherein the Board of *Quazis* had issued a notice on the Applicant-Respondent-Respondent (hereinafter sometimes referred to as “the Respondent”) returnable for 15.09.2018. The order of the Board of *Quazis* dated 28.07.2018 has been appended to this application for Leave to Appeal as ‘P8’. The decision of the Board of *Quazis* merely states the following:-

“Mr. Farouk Miskin AAL appears for the Respondent-Petitioner.
Counsel for the Respondent-Petitioner was heard in support.
Issue notice on Applicant-Respondent.
Notice returnable on 15.09.2018.”

It is against the above order that the Respondent-Petitioner-Petitioner seeks Leave to Appeal in terms of Section 62(1) 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. Upon this matter being supported in this Court on 03.09.2018, this Court issued notice of this application on the Respondent and an interim order staying the operation of the order made by Board of *Quazis* was also issued.

Subsequently, this matter was argued before this Court for Leave to be granted and I find that the grounds that have been urged in the application for Leave to Appeal have not been fully argued before the Board of *Quazis*. The Board of *Quazis* has only issued notice on the Respondent and they are yet to hear the merit of the Appeal that has been preferred to them against the order of the learned *Quazi* of Colombo North. In other words, such grounds as the absence of the signature of the Respondent in the application she made to the *Quazi* and the legality or otherwise of the *ex-parte* order made by the *Quazi* are yet to be tested in the Board of *Quazis*.

When the first tier Appellate forum has not yet exercised its jurisdiction, it is an abuse of process to vex this Court with the same grounds of Appeal on which hearing is yet to take place in the Board of *Quazis*.

Section 62(1) of the Muslim Marriage and Divorce Act No.13 of 1951 as amended makes it quite clear that only an order made by the Board of *Quazis* under Section 60 becomes appealable with the leave of the Court of Appeal first had and obtained. If the Board of *Quazis* exercises revisionary jurisdiction under Section 44 of the Muslim Marriage and Divorce Act No.13 of 1951 as amended and makes an order, that order too shall have the same effect as an order made on appeal. In other words, whether it is an order of the Board of *Quazis* made in its appellate jurisdiction under Section 60 or it is an order made

in the revisionary jurisdiction of the Board of *Quazis* under Section 44 of the Muslim Marriage and Divorce Act No.13 of 1951 as amended, either order is appealable to this Court with the leave of this Court first had and obtained.

The precondition to the exercise of the Appellate jurisdiction of this Court with the leave first being granted is that there must be an adjudication on an issue by the Board of *Quazis* and the Petitioner before this Court must be aggrieved by the order of the Board of *Quazis*. The only order that the Board of *Quazis* has so far made is the issuance of a notice on the Respondent after having heard the Petitioner.

This order cannot give rise to an application for Leave to Appeal as this order confirms that the Board of *Quazis* is satisfied with the *prima facie* case made out by the Petitioner. The Petitioner cannot be aggrieved by the issuance of his notice by the Board of *Quazis*, as it is an order in his favor. By issuing notice, the Board of *Quazis* has opened the gateway to the exercise of revisionary jurisdiction under Section 44 of the Muslim Marriage and Divorce Act No.13 of 1951.

The further exercise of the revisionary jurisdiction of the Board of *Quazis* cannot be frustrated by this application, which is premature, futile and vexatious.

The order dated 28.07.2018 does not contain any other order, which is unfavorable to the Petitioner. The Board of *Quazis* should be free to continue to exercise their jurisdiction untrammelled by an application of this nature, which invites this Court to exercise a jurisdiction which it does not have at this stage of this litigation.

In the circumstances, I proceed to affirm the order made by the Board of *Quazis* dated 20.07.2018 and direct them to conclude this matter as expeditiously as expeditious could be.

Therefore, the application for Leave to Appeal is refused.

JUDGE OF THE COURT OF APPEAL