

**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 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA No: LTA/0004/20

Board of Quazis Case No: 65/16/A/CMB
Quazi Court of Colombo West
Case No: 5292/CM

Fathima Fasmin Ahamed
No. 106/1 A, Sri Saranankara Road,
Dehiwala.

Applicant

Vs.

Abdul Wahab Mohamed Najeeb
No. 17, Fonseka Road,
Mt. Lavinia.

Employed as Manager,
Management Reporting,
Gulf Union Foods Company,
P.O. Box 365
Al Kharj Road, 3rd Industrial Area,
Riyadh 11383,
Saudi Arabia

Respondent

AND BETWEEN

Fathima Fasmin Ahamed
No. 106/1 A, Sri Saranankara Road,
Dehiwala.

Applicant - Appellant

Vs.

Abdul Wahab Mohamed Najeeb
No. 17, Fonseka Road,
Mt. Lavinia.

Employed as Manager,
Management Reporting,
Gulf Union Foods Company,
P.O. Box 365
Al Kharj Road, 3rd Industrial Area,
Riyadh 11383,
Saudi Arabia

Respondent- Respondent

AND BETWEEN

Abdul Wahab Mohamed Najeeb
No. 17, Fonseka Road,
Mt. Lavinia.

Employed as Manager,
Management Reporting,
Gulf Union Foods Company,
P.O. Box 365
Al Kharj Road, 3rd Industrial Area,
Riyadh 11383,
Saudi Arabia.

Respondent - Respondent-Petitioner

By his Attorney

Nahoorpitachi Abdul Wahab
No. 17, Fonseka Road,
Mt. Lavinia

Vs.

Fathima Fasmin Ahamed
No. 106/ 1 A, Sri Saranankara Road,
Dehiwala

Applicant – Appellant - Respondent

Before: **M. T. Mohammed Laffar, J. and
S. U. B. Karalliyadde, J.**

Counsel: Javid Yusuf with Saabir Sawaad and Kavima Rafich,
instructed by Diana Weerasinghe for the Respondent -
Respondent- Petitioner.

M.A. Sumanthiran, PC with Ermmiza Tegal, instructed by
Darshika Ariyanayagam, for the Applicant – Appellant -
Respondent.

Supported on: 07.02.2022.

Written Submissions on: Not tendered (by the Petitioner)
Not tendered (by the Respondent)

Decided on: 06.04.2022.

Mohammed Laffar, J.

The Respondent-Respondent-Petitioner (hereinafter referred to as the Petitioner) is seeking leave to appeal from the order of the Board of Quazi dated 20-06-2020. We heard the learned Counsel for the Petitioner in support of this application. We heard the learned President's Counsel for the Applicant-Appellant-Respondent (hereinafter referred to as the Respondent) as well.

Briefly, the Respondent instituted proceedings against the Petitioner before the Quazi Court of Colombo West for child maintenance. The learned Quazi of Colombo West, on 30-07-2016, ordered to pay a sum of Rs. 80,000/- as child maintenance for both the children born out of the marriage between the Petitioner and the Respondent.

Being aggrieved by the said order, the Respondent preferred an appeal to the Board of Quazi seeking a sum of Rs. 200,000/- for the monthly maintenance of the two children.

Having heard the appeal, the Board of Quazi, on 20-06-2020 held that the Respondent is entitled for a sum of Rs. 140,000/- as monthly maintenance for both the children. Being aggrieved by the said order, the instant leave to appeal application has been preferred by the Petitioner.

The contention of the learned Counsel for the Petitioner is that there is no basis for the Board of Quazi to arrive at the afore said determination.

It is settled law that the income of the Petitioner is a vital aspect to be considered by Court when deciding the child maintenance.

In terms of the affidavit filed by the Respondent before the Quazi Court of Colombo West, the monthly income of the Petitioner is approximately Rs. 800,000/-. The Petitioner is a Senior Accountant employed as a Manager in the Union Foods Company in Saudi Arabia. These facts have not been disputed by the Petitioner. The Petitioner is duty bound to submit his particulars of income if he does not agree with the facts stated in the said affidavit. It appears to this Court that the Petitioner totally failed to disclose his monthly income to Court. In the circumstances, there is no option to the Board of Quazi but to accept the facts stated in the said affidavit in the absence of any contradictive evidence before Court. There is no basis to disregard the affidavit tendered by the Respondent with regard to the monthly income of the Petitioner.

The Respondent has submitted a document pertaining to the monthly expenses of the children; accordingly, she claims a sum of Rs. 205, 417. However, having scrutinized the evidence adduced, the Board of Quazi has ordered to pay only a sum of Rs. 140,000/-.

Having considered the totality of the evidence adduced, on the balance of probability, the Board of Quazi has arrived at a commonsensical determination as to the child maintenance.

In the circumstances, it is the view of this Court that there is no basis to interfere with the impugned order of the Board of Quazi dated 20-06-2020.

Thus, I refuse to grant leave to appeal and dismiss the application subject to costs, fixed at Rs. 25,000/-.

The Registrar is directed to dispatch copies of this Order to the Quazi Court of Colombo West and the Board of Quazi.

Application dismissed.

Judge of the Court of Appeal

S. U. B. Karalliyadde, J.

I agree.

Judge of the Court of Appeal