

TANZANIA / JUDGMENT

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28 February 2025

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA CIVIL APPEAL NO. 6901 OF 2024 (Arising from the District Court of Ilemela in Civil Appeal N0. 32 of 2023 and Ilemela Primary Court in Matrimonial Cause No. 27 of 2023)

FGL.....APPELLANT

DNM.....RESPONDENT

JUDGMENT

21st & 28th February, 2025 KAMANA, J. When I was perusing the records of this appeal, I found that neither of the parties, at the trial, tendered the certificate issued by the Marriage Conciliation Board for Kiseke Ward which attempted to resolve their matrimonial dispute. This means that the certificate was not admitted and hence not part of the records. Given that, I thought it prudent to invite the learned advocates representing the parties to address me on the issue. Mr. Emmanuel John, learned Counsel, representing the appellant, did not mince words as he straightly contended that non-tendering of the certificate is fatal and renders the whole trial a nullity. Likewise, Mr. 1 Duttu Chebwa, learned Counsel for the respondent associated himself with his counterpart's position. The settled law is that in any matrimonial proceedings in which a divorce is craved, a party desiring a divorce bears the burden to prove that before instituting the cause, he or she had engaged in a conciliation process with the other party under the auspices of the marriage conciliation board. In proving that, it is incumbent on that party to tender the certificate issued by the board which is subjected to procedures relating to the admissibility of the evidence. See: Patrick William Magubo v. Lilian Peter Kitali, Civil Appeal No. 41 of 2019- CAT (Unreported) and Mabula Sayi v. Kalekwa Malahya, Civil Appeal No. 195 of 2022-CAT (Unreported). Attaching the certificate to the petition for divorce, as it was done in this matter, is not enough to prove that the parties engaged in conciliation before the marriage conciliation board. This is because, under our laws, attachment to the pleading is not evidence except when the same is tendered and admitted. See: Patrick William Magubo v. Lilian Peter Kitali (Supra). This Court in the case of Innocent Yusuph Bileke v. Monica Elias Daud, PC Civil Appeal No. 98 of 2022-HC (Unreported) discussed 2 the philosophy behind the requirement to tender the certificate as follows: '.....certificate issued by the Board is an instrument which triggers jurisdiction of the court in entertaining petition for divorce. Further, it informs the courts that society through the Marriage Conciliation Board has failed to reconcile the parties. Given that importance of the certificate, there are several rules which govern proceedings of the Marriage

Conciliation Boards with a view to ensuring that conciliation is effectively and efficiently conducted with a view to resolving marriage disputes amicably. These rules relate to matters of jurisdiction, quorum and proceedings. In that case, tendering of such certificate is of utmost importance in ensuring that conciliation process was conducted properly. If the certificate is not tendered, it is impossible for the adverse party to challenge it as to its correctness. Likewise, courts may adjudicate on matrimonial cases of which they do not have jurisdiction on the account of defective certificates.’ 3 Since the certificate issued by the board was not tendered and admitted, the trial was a nullity. Unfortunately, the nullity went undetected by the first appellate court. Given that, I nullify the proceedings of the trial court and quash its judgment and orders emanating thereto. Consequently, the proceedings, judgment and orders of the first appellate court are nullified and quashed. The parties, if they wish, are at liberty to file a fresh petition subject to their compliance with the requirements of the law. No order as to costs. Order accordingly. Right to Appeal Explained. DATED at MWANZA this 28th February, 2025. KS KAMANA JUDGE 4

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/fgl-v-dnm-matrimonialproceedings-tanzlii-2025

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