IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/Appeal/185/2019

SC /SPL/LA/405/2018

CA/LA/05/2016

Board of Quazis 13/13/R/CMB

Quazi Court of Colombo West 1174/T

Fazal Mahamood Mushin
No. 16/1, Galpotta Road,
Nawala.

APPLICANT

Vs.

Priyanganie Sunimala Anokha Jayawardhana Fathima
No. 9, Crestwood,
Hokandara Road,
Thalawathugoda.

RESPONDENT

AND

Fazal Mahamood Mushin
No. 16/1, Galpotta Road,
Nawala.

APPLICANT- PETITIONER

Vs.

Priyanganie Sunimala Anokha Jayawardhana Fathima
No. 9, Crestwood,
Hokandara Road,
Thalawathugoda.

RESPONDENT- RESPONDENT

AND BETWEEN

Priyanganie Sunimala Anokha Jayawardhana
Fathima
No. 9, Crestwood,
Hokandara Road,
Thalawathugoda.

RESPONDENT- RESPONDENT-PETITIONER

Vs.

Fazal Mahamood Mushin
No. 16/1, Galpotta Road,
Nawala.

APPLICANT- PETITIONER-RESPONDENT

AND NOW BETWEEN

Priyanganie Sunimala Anokha Jayawardhana
Fathima
No. 9, Crestwood,
Hokandara Road,
Thalawathugoda.

RESPONDENT- RESPONDENT-PETITIONER- APPELLANT

Vs.

Fazal Mahamood Mushin
No. 16/1, Galpotta Road,
Nawala.

APPLICANT- PETITIONER-RESPONDENT- RESPONDENT

Before: Kumudini Wickremasinghe J.

Dr. Sobhitha Rajakaruna J.

Sampath B. Abayakoon J.

Counsel: Razik Zarook, PC with Rohana Deshapriya and Chankya Liyanage for the Respondent- Respondent- Petitioner- Appellant.

N. M. Shahied with Hejaz Hisbulla for the Applicant- Petitioner- Respondent- Respondent.

Argued on: 26.03.2025

Decided on: 03.02.2026

Dr. Sobhitha Rajakaruna J.

The Respondent- Respondent- Petitioner- Appellant ('Appellant'), who is the lady at the centre of the marital proceedings in the instant Application, was originally Catholic. She entered into marriage with the Applicant-Petitioner-Respondent-Respondent ('Respondent'), a Muslim, on 06.02.1989. Their union was first registered pursuant to the Muslim Marriage and Divorce Act No. 13 of 1951, with the corresponding marriage certificate appearing on page 127 of the brief. Just five days later, on 11.02.1989, the couple also registered the marriage under the Marriage Registration Ordinance No. 19 of 1907, and the registration certificate from the Registrar/District Registrar is found on page 125 of the brief. That same day, 11.02.1989, the Appellant and Respondent joined in the bonds of holy matrimony at the Archdiocese of Colombo, and the Certificate of Marriage issued by the Parish Priest/Assistant Parish Priest on 23.09.2012 is located on page 123 of the brief.

It is declared that the marriage has resulted in three children, all of whom have now attained the age of majority.

The Respondent, almost 21 years after they registered their marriage as mentioned above, initiated a divorce action in the District Court of Colombo. He withdrew the said action on 09.08.2012 on the basis that such an action cannot be maintained under Section 627 of the Civil Procedure Code as the respective marriage was entered into under the Muslim

Marriage and Divorce Law. However, the Appellant, who was represented in the District Court, denied the fact that she entered into a marriage agreement with the Respondent under the Muslim Law.

Thereafter, the Respondent submitted an application for a *Talaq* divorce in the Quazi Court of Colombo West, which ruled on 16.02.2013, that it lacked jurisdiction to adjudicate the matter. Being aggrieved by the said decision, the Respondent lodged a revision application with the Board of Quazis. On 14.05.2016, the Board held that the Quazi was indeed vested with jurisdiction to consider the Respondent's *Talaq* application and accordingly directed the Quazi to undertake a fresh inquiry into the Respondent's filing and to pronounce the *Talaq* in line with the said Muslim Marriage and Divorce Act. The Appellant then filed a Leave to Appeal[1] application in the Court of Appeal against the said Order of the Board of Quazis. At present, the Appellant is contesting the impugned judgment dated 19.10.2018, whereby the Court of Appeal endorsed the Board of Quazi's order dated 14.05.2016.

This Court granted Leave to Appeal in respect of the below mentioned Questions of Law set out in paragraphs 17(1) to 17(3) and 17(5) of the Petition dated 30.11.2018:

> i. Is the said Judgment erroneous and contrary to law?
>
> ii. Has the learned Court of Appeal Judge erred in law by not considering the documents placed before court that the Petitioner has not embraced the faith of Islam?
>
> iii. Has the learned Court of Appeal Judge erred in law by not considering the legal position that the Petitioner who was a catholic at all times material, cannot contract a valid marriage under the Muslim Marriage and Divorce Act?
>
> v. Has the learned Court of Appeal Judge erred in law by sending the case back to the Board of Quazi to hear and determine the *Talaq* Application of the Respondent?

My primary focus is on the aforementioned third question of law, which queries whether the Appellant, remaining Catholic throughout the relevant period, could validly enter into

[1] Leave to Appeal application in terms of Section 62(1) of the Muslim Marriage and Divorce Act No. 13 of 1951

a marriage pursuant to the said Muslim Marriage and Divorce Act. In the impugned judgment, His Lordship Justice A. H. M. D. Nawaz in the Court of Appeal (as he was then) addressed this matter at length. His Lordship stated that:

> "In view of my holding that conversion is immaterial to the constitution of a valid Muslim marriage between a Muslim male and a Catholic female, the question of conversion or otherwise does not arise before me and I would remind myself that conversion after all cannot be fully tested since, as several authors emphasize, the thought of a man is not triable-see Tayyibji on Muslim law, The personal law of Muslims in India and Pakistan (1968) with references to old English cases at p 7."

The Court of Appeal held that the Appellant was a *Kitabiya* and remained a *Kitabiya* and therefore what she entered into on 06.02.1989 was a valid marriage in the eyes of the Muslim law (*Kitab* means a book, which is, a book of revealed religion. *Kitabi* implies a male who believes in Christianity or Judaism. *Kitabiya* is a female who believes in either of these religions). Within Sri Lanka's intricate legal heritage, the validity of interfaith marriages under Muslim personal law exemplifies the profound integration of religious principles and legislative frameworks. The Court of Appeal, in the impugned Judgement, decided that the Appellant, despite being Catholic, was eligible to marry the Respondent, as Muslim law upholds the legitimacy of unions between Muslim men and Catholic women, without any requirement for her conversion. In reaching this conclusion, the court examined numerous foundational sources of Muslim law in Sri Lanka that substantiate and endorse this stance.

Among many, the primary sources considered by the Court of Appeal, the Holy Quran (*Sura Maida*, permitting Muslim men to wed chaste women from the "People of the Book," including Christians, as *Kitabiya*) and *Hadiths* (traditions of Prophet Muhammad, PBUH) establish this permissibility, as reiterated in ***Fathima Mirza v. Anzar*** **[1971] 75 N.L.R. 295** (Weeramantry, J.). The secondary sources, including *Ijma* (consensus), *Qiyas* (analogy), and juristic commentaries such as *Mulla on Principles of Mahomedan Law* (22nd ed., 2017, p. 345), Fyzee's *Outlines of Muhammadan Law* (5th ed., 2008, p. 75), and Ameer Ali's *Mahommedan Law* (Vol. II, p. 154), corroborate that such unions are fully valid, unlike irregular marriages with non-*Kitabiya* women (e.g., Hindus, curable by conversion per *Sura II:221* and ***Ishan v. Panna Lal*** **[1928], AIR Pat. 19**). The Court referring to legislative enactments, including the Muhammadan Code of 1806 (extended by Ordinance No. 5 of

1852) and the aforesaid Muslim Marriage and Divorce Act (silent on mixed marriages but supplemented by original sources per ***Narayanen v. Saree Umma*** **[1920] 21 N.L.R. 439** and ***King v. Miskin Umma*** **[1926] 26 N.L.R. 330**), observed that those enactments apply via Section 2 to Muslims without mandating dual conversion. Nikah, as a civil contract (***Khurshid Bibi v. Mohd Amin***, **P.L.D. 1967 S.C. 97**), requires only *Ijab* (offer), *Qubul* (acceptance), free consent (via *Wali*), and witnesses; no ceremony or registration is essential for validity. Thus, the court found the marriage to be valid under Muslim Law, rendering the issue of conversion immaterial and untestable.

The religious and statutory framework examined by the Court of Appeal culminates in its judicial determination, deeming conversion not a cornerstone but a superfluous and unprovable factor in such interfaith bonds. As such, the Appellant's contentions furnish no compelling basis for departing from the established legal stance in the impugned judgment. In light of the above, I hold that the learned Quazi has the jurisdiction to entertain and make a suitable decision on the Respondent's application for a *Talaq* divorce.

I now advert to the aforesaid second question of law. Notably, neither the Appellant nor the Respondent has contested the pertinent extract from the Muslim Marriage Register (the Certificate of Marriage under the Muslim Marriage and Divorce Act). Thus, it could be easily assumed that the said document (at page 127 of the Brief) is still valid in law. The Court of Appeal aptly remarked that the Appellant refrains from asserting any post-execution insertion of details by the Muslim Marriage Registrar. Nor does she contend that she endorsed a blank document, given her own admission that she later discovered its nature as a marriage certificate. Moreover, the Court highlighted the absence of any claim of duress or inducement by the Appellant in relation to the signing of the said marriage certificate.

The significance of the instant Case is that the parties entered into the marriage bond and got their marriage registered under the provisions of one Act of Parliament, and consequently, re-registering pursuant to the provisions of a different Act of Parliament. This scenario equates to a second marriage between the same spouses, while their prior union under a different legal framework remained subsisting.

Section 15 of the Special Marriage Act, 1954 in India stipulates that any marriage celebrated, whether before or after the commencement of the said Act, other than a marriage solemnized under the Special Marriage Act, 1872 (No. 3 of 1872), or under the

said Act, may be registered under the relevant Chapter by a Marriage Officer in the territories to which the said Act extends if the conditions laid down there are fulfilled. In contrast, Sri Lankan legislation governing Muslim marriages or those under the Marriage Registration Ordinance lacks comparable registration mechanisms. In any event, the Marriage between the Appellant and the Respondent extended beyond mere ceremonial solemnization, as it was formally registered under two Acts of Parliament, within a brief interval between both registrations.

Pursuant to Section 10 of the Recognition of Customary Marriages Act of 1998 in South Africa, a man and a woman between whom a customary marriage subsists are competent to contract a marriage with each other under the Marriage Act, 1961 (Act 25 of 1961), if neither of them is a spouse in a subsisting customary marriage with any other person. This concept of remarriage is accepted under South African law, if it is only between the same two parties. That law requires both parties to be free of any other subsisting marriage in order to qualify under this provision of law.

I cannot find any statutory mechanism that shifts the marriage's governance from the registration under the Muslim Marriage and Divorce Act to the secular provisions of the Marriage Registration Ordinance. Based on the material available, the intention of the Appellant and the Respondent to enter into a marriage bond is evident, establishing mutual awareness and volition. However, no sufficient reasons have been adduced as to why the second and third registrations were made effective. Neither party has contended that the initial registration was defectively conducted, thereby justifying a subsequent one.

It may be presumed that spouses in an existing marriage can enter into a subsequent union under an alternative legal regime to avail themselves of benefits such as inheritance, maintenance, divorce, and polygamy rights, potentially available under the governing law of that second registration, a practice occasionally sanctioned in certain foreign jurisdictions. Additionally, it is noted that the merger of the personality or property of a Muslim woman is not recognised upon her marriage, and accordingly, her personal civil rights or the property owned by her do not affect. Nonetheless, our law does not provide a mechanism to convert or additionally register a valid marriage under the Marriage Registration Ordinance after the initial registration under the Muslim Marriage and Divorce Act.

The Court of Appeal also, in the impugned judgement, has dealt with the possible consequences when the same parties marry again under a different system of law and also the issue of whether they can change their marital regime so soon after the first marriage. In addressing the aforementioned matter, the Court of Appeal referred to ***Natalie Abeysundere v. Christopher Abeysundere and another*** **(1998) 1 Sri.LR 185**, deeming it the precedent that has conclusively determined this issue in Sri Lanka. The said Supreme Court decision lays down the proposition that if the first marriage is under one system of law, the marriage must first be dissolved under that system of law, and it is only thereafter that parties can contract a second marriage under a different system of law. The said ***Natalie Abeysundere*** case focused on a subsequent marriage between one spouse of the earlier marriage and a third party. There is no doubt that no fresh marriage agreement can be entered into unless the first marriage is dissolved, but our law does not precisely outline any provisions which deal with remarriage or reregistration between the same two parties while the first registration persists.

In this context, the determination in ***Katchi Mohamed v Benedict*** **63 NLR 505** is of paramount importance. The Supreme Court in the said case has dealt with Section 18 of the Marriage Registration Ordinance together with the interpretation given to the phrase 'marriage' in Section 64 of the same Act. Under the said Section 64, "marriage" means any marriage, save and except marriages contracted under and by virtue of the Kandyan Marriage Ordinance, 1870 or the Kandyan Marriage and Divorce Act, and except marriages contracted between persons professing Islam. In the meantime, the said Section 18 reads:

> *'No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void'.*

T. S. Fernando J. (with the concurrence of Basnayake C.J. and Gunasekara J.) in the ***Katchi Mohamed*** case took the view that a marriage in the expression 'a prior marriage' in the same section 18 is not limited to a marriage as defined in section 64, and the context requires that it be given its ordinary and natural meaning and interpreted as denoting any legally recognised marriage. In the impugned judgement, the Court of Appeal, referring to the above ***Katchi Mohamed*** case, decided as follows:

> "Interpreting the expression "a prior marriage" in Section 18 *inpari materia*, E.H.T. Gunasekara, J. too opined that the term must be understood to mean any marriage

and not any marriage except a Kandyan or Muslim marriage. In other words, the expression "a prior marriage" would mean any marriage which includes a Muslim marriage. If this prior marriage is not annulled or terminated, the 2nd marriage would be invalid by virtue of Section 18 of the Marriage Registration Ordinance. I am fortified in this approach by the opinions of the three learned Lordships who decided ***Katchi Mohamed v Benedict*** (*supra*). The prior marriage of the Appellant and the Respondent was contracted under Muslim law. This marriage had to be legally dissolved or declared void before either contracted a 2nd marriage under the General Marriage Ordinance. It makes no difference that the couple who got spliced in the first marriage are the same two persons who purported to marry a second time. The 2nd marriage would be invalid if the first marriage remains intact".

I endorse the construction of Section 18 of the Marriage Registration Ordinance as articulated in the ***Katchi Mohamed*** decision. Accordingly, I concur with the Hon. Judge of the Court of Appeal in the impugned judgement where he has decided the second marriage of the Appellant and Respondent under the Marriage Registration Ordinance would have no impact whatsoever on their first Muslim marriage, as the first Muslim marriage continued to remain valid and *ipso facto* the second marriage was void.

Notwithstanding the above conclusion, I need to elaborate for the interest of justice, whether the Appellant and the Respondent committed an offence in terms of Section 362B of the Penal Code by re-registering their marriage pursuant to the Marriage Registration Ordinance. Upon careful perusal of the provisions of the said section 362B, including its exception clause and the proviso, I am of the opinion that the Penal sanction embodied in the said section 362B will be operative if either spouse contracts a subsequent marriage with a third party. Conversely, Section 362B does not explicitly preclude the re-registration of a marriage between the same spouses while the original registration subsists; however, this provision cannot be viewed in isolation but must be construed within the wider statutory framework. In forming the above view, I was influenced with the statement made in *Law and the Marriage Relationship in Sri Lanka* (by Shirani Ponnambalam, 2nd Revised Edition, 1987, Lakehouse Investments Limited, P78) which states: "*it is a noteworthy feature of our law that not only has it recognised customary marriages, thereby giving rise to a mode of solemnization which exists side by side with the statutory requirement of registration*". For

completeness, I must clarify that the preceding discussion in this judgment does not encompass marriages by habit and repute.

In parliamentary democracies like Sri Lanka, where statutes delineate specific regimes for registration (e.g., marriages, companies, or land titles), a core principle of administrative and civil law precludes re-registering an act or item already validly registered under one Act of Parliament with another Act for the identical purpose or requirement, except where explicitly mandated or allowed by another provision of law. Registration under a specific Act confers conclusive legal status, as intended by Parliament. Re-registration under a parallel statute would undermine this finality, treating the original as provisional or defective. Duplicate entries create conflicting records, complicating verification by courts, registries, or third parties. Moreover, re-registration could ostensibly enable parties to selectively pursue more advantageous legal frameworks, thereby inviting risks of fraud, evasion of obligations or inequality. Notwithstanding the above, it is noted that rare allowances re-registration may be warranted, without contravening any statutory provisions, upon exceptional circumstances such as defective initial registrations (e.g., via rectification), etc., but not for valid ones.

For the reasons given above, I conclude that within our prevailing legal framework, spouses who have registered their marriage pursuant to one statutory regime cannot subsequently re-register it under the provisions of a separate Act of Parliament during the subsistence of the initial registration. The notion of re-registering a marriage under a different Act of Parliament while the initial union remains intact raises profound questions of validity, equity and public policy. This proposition stems from the fundamental principle that a marriage once validly registered under one legal regime cannot be supplanted or duplicated by a subsequent registration under another valid legislation without first dissolving the original bond. This rule, enshrined in statutory provisions and judicial precedents, safeguards against the chaos of dual marital statuses. Even if the parties are identical, the second marriage is invalid if the first marriage is still in effect.

The fourth question of law, inter alia, on which this Court granted Leave to Appeal, queries whether the Court of Appeal erred in law by referring the matter to the Board of Quazi for adjudication and determination of the Respondents' *Talaq* application. At this point, it is essential to assess whether the initial marriage registration between the

Appellant and the Respondent, conducted under the Muslim Marriage and Divorce Act, may be dissolved by any court, tribunal, or institution other than the learned Quazi.

There is no doubt that I have already decided that the second registration of marriage under the Marriage Registration Ordinance is void. However, Section 19 of the said Ordinance stipulates that no marriage shall be dissolved during the lifetime of the parties except by judgement of divorce a *vinculo matrimonii*[2] pronounced in some competent court. This prompts me to have regard to the judgement in ***Liyanage Champika Harendra Silva v W. M. M. B. Weerasekara, Registrar General*** **CA/Writ/266/2021, decided on 01.12.2023**, wherein the Court of Appeal decided that there cannot be any restrictions for a marriage entered into in Sri Lanka under the Marriage Registration Ordinance to be dissolved in a competent court in a foreign country and a valid decree of such dissolution of marriage entered into in a foreign country can be given effect, subject to the guidelines formulated in the said judgement. Meanwhile, the 'Reciprocal Recognition, Registration and Enforcement of Foreign Judgements' Act No. 49 of 2024 provides that, in respect of judgments for the dissolution or annulment of a marriage or the separation of spouses, the provisions of the Act shall apply solely to marriages registered under the said Marriage Registration Ordinance and, subject to its other terms, to judgments from foreign courts specified in an Order issued under Section 2 of the Act.

Pursuant to Section 596 of the Civil Procedure Code, all actions for divorce a *vinculo matrimonii,* or for separation a *mensa et thoro* or for declaration of nullity of marriage can be initiated in an appropriate District Court. Anyhow, Section 627 of the same Code explicitly exempts, unless otherwise provided, the applicability of its provisions to marriages governed by the Kandyan Marriage and Divorce Act (Chapter 113) or the Muslim Marriage and Divorce Act (Chapter 115), including any unions involving persons professing Islam or those subject to the said Kandyan Act. Based on such a legal framework, neither spouse in the instant case possesses the right to seek a divorce a *vinculo matrimonii* from the District Court. Moreover, dissolutions of Muslim marriages under the Muslim Marriage and Divorce Act are exclusively within the jurisdiction of a Quazi duly appointed by the Judicial Service Commission pursuant to that Act. Consequently, even

[2] Upon wide reading it is observed that *vinculo matrimonii* is a concept from Christian (especially ecclesiastical) and English common law marriage. It assumes marriage is a sacramental, indissoluble bond that can only be ended by a special form of divorce from the bond of marriage. Muslim marriage, however, is legally and conceptually different. It appears that there is no mechanism for a Muslim marriage to be dissolved by a special *vinculo* type decree.

should the Appellant and Respondent obtain a divorce decree from a foreign jurisdiction under any applicable valid legal system, enforcement in Sri Lanka may prove unattainable under the aforementioned Act. Thus, I do not consider the impugned decision of the Court of Appeal to remit the matter to the learned Quazi has been made erroneously.

Finally, based on the foregoing considerations, I proceed to answer the aforementioned Questions of Law in the negative. In these circumstances, the Judgement dated 19.10.2018 of the Court of Appeal is affirmed. Accordingly, the instant Appeal is dismissed. I order no costs.

Judge of the Supreme Court

Kumudini Wickremasinghe J.

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon J.

I agree.

Judge of the Supreme Court