

Research Article

An Analysis of the Legal and Institutional Framework on Marriage Conciliation Boards in Tanzania

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Abstract

Efforts should be made to ensure that marriage is salvaged. It is in this understanding that the Law of Marriage Act provides for the Marriage Conciliation Boards (MCBs) whose main role is to conciliate spouses of shaking marriages. That is why the law provides that all divorce proceedings should be preceded by conciliation before MCBs. It is only when the MCBs fail to conciliate the parties to the marriages that courts are invited to dissolve such marriages. In view of this requirement, this paper seeks to analyse the legal and institutional framework on MCBs in Tanzania. The study employed a doctrinal research whereby various sources were reviewed and analysed. They included text books, peer-reviewed journals, official reports, statutes, subsidiary legislation and case-law. In the course of analysis, a number of decisions of the High Court and Court of Appeal of Tanzania are cited to show proper interpretation of relevant provisions of the Law of Marriage Act. It is only in instances where the court is satisfied that there are extraordinary circumstances which make reference to the Board impracticable that matrimonial disputes go straight to court seeking for petition for divorce. The study identifies some challenges that affect effective operation of MCBs as envisaged by the law. They include lack of training and adequate skills to members of the boards and married, spouses opting for improper fora, handling of matrimonial cases by petitioners and lawyers, and inadequate skills by judicial officers of lower courts. The paper finds that MCBs are very important in bringing estranged spouses together through conciliation and that it only where a marriage has irretrievably broken down then courts of law are invited to entertain divorce proceedings. Thus, the following recommendations are made with the view to improving operationalisation of MCBs: the need for legal education to members of the public, strengthening legal-institutional capacity of members of MCBs and needed training for magistrates on legal-institutional framework governing matrimonial matters.

Keywords

Marriage, Disputes, Conciliation, Boards, Divorce

1. Introduction

It is well settled that marriage, which is the voluntary union of a man and a woman intended to last for their joint lives, plays a central role in family formation.¹ Family as a

concept or institution is perhaps as old as humans and often denotes individuals related either by blood or brought together by marriage. [1] It is in this understanding that marriage is world-wide regarded as the foundation of human society. The institution of marriage is therefore crucial in the

¹ For the statutory definition of the term “marriage”, see section 9 of the Law of Marriage Act, Cap. 29 [R.E. 2023].

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formation of a family and holds a special place in family law. [1] The family's wellbeing depends to a large extent upon the quality of married life. It needs to be understood that when two individuals get married, they are two personalities having different thoughts, opinions, interests, and goals. In a marriage both agree to compromise to some extent with their differentiation, but with time, these interests, goals, and opinions, may get changed or the priority of the partner may change in married life. At some point of time, the interests, thoughts, opinions and goals of these two individuals no longer align, leading to a sense of repulsion. [2] If this state of affairs deepens further, it may give rise to a matrimonial dispute. And that if the parties are unable to reconcile their conflicts, divorce may become unavoidable. In such a situation, every effort should be made to ensure that marriage is not easily and hastily dissolved. It means that marriage should only be dissolved when there are all indications that it has broken down irreparably. That is to say that the marriage has broken down beyond repair.

The policy behind proof of breakdown of marriage irreparably is to make sure that there is stability in marriages. Hence, ups and downs, which are common to occur in day to day married life should not easily be allowed to shake marriages. There should be some means by which harmony and union, once threatened, could be maintained or restored. Therefore, matrimonial misconducts which can still leave the chance for spouses to reconcile should not attract dissolution of marriage. The law in Tanzania puts a mechanism through which matrimonial disputes are dealt with. The mechanism is aimed at reconciling married parties before they culminate to ending them. It is in this understanding that with the Law of Marriage Act (LMA) in force in 1971, all divorce proceedings are preceded by conciliation before Marriage Conciliation Boards (MCBs). Thus, the importance of bringing estranged spouses together through conciliation cannot be over-stated. If the conciliation fails, divorce can be granted by a court and is based on the irretrievable breakdown. This paper goes into detail on analysing the legal and institutional framework on MCBs in Tanzania.

2. The Concept of Conciliation Vis A Vis Matrimonial Disputes

It has been argued that Marital conflict is one of the most significant relational challenges faced by couples, and its implications extend beyond the dyadic relationship into the psychological well-being of individuals, the emotional security of children, and the overall stability of the family system. [3] Several reasons such as domestic violence, which dominate a matrimonial home. As such the expected love and affection in the home are completely eroded. The violence becomes so tense that welfare and wellbeing of the victim are greatly jeopardised. What type of a home the couple is making when it is turned into a battlefield? Such state of

affairs may as a result affect stability of family life. The fact that successful marriage and the maintenance of the unity of family life are so important that, where husband and wife have become estranged, an attempt should be made wherever possible to bring them together again.² This can be achieved through conciliation. The objective of conciliation is to avoid unnecessary divorces.

According to Parkinson, conciliation means a structured process in which both parties to a dispute meet voluntarily with one or more impartial third parties (conciliators) who help them to explore possibilities of reaching agreement, without having the power to impose a settlement on them or the responsibility to advise either party individually. [4] It is a process of attempting to bring together parties to a matrimonial dispute so that they iron out their differences and where possible come back to their normal married life. It assists the parties to reach a reasonable compromise solution to a dispute to deal with the consequences of the established breakdown of their marriage, whether resulting in a divorce or separation, by reaching agreements.

Conciliation affords a means of seeking reasonable compromise solutions to disputes that could cause dissolution of marriages. The rationale behind is to maintain stability of marriages. Needless to say, the dire consequences of divorce are not felt by the spouses but also to the children and other close relatives. Any available forum, which would look into the fact that marriage relationships are not ended on insufficient grounds should be applied. Therefore, conciliation should be an avenue through which parties to the matrimonial disputes are able to overcome temporary difficulties. It is in this understanding that the law should ensure that parties to marriages are afforded opportunities to reconcile whenever they face matrimonial disputes and that the procedure involved does not inhibit or discourage them to do so. The state should, therefore, establish legal system and institutional framework that provide avenues such as reconciliation through which estranged spouses could be brought together again. The reconciliation should be geared at achieving amicable settlement. This explains why the law provides that courts should dissolve marriages only where it is proved that the said marriages have broken down irreparably.

Thus, marriage conciliation is seen as a means through which matrimonial disputes between the parties could be settled by way of amicably affording parties to the dispute opportunities to speak out their differences and see how possible they should resolve them. Eventually it is expected that at this stage there is a possibility of letting their angers to cool off and avoid unnecessary divorces. In order to facilitate all these, members of the conciliatory bodies should guide the parties. As such, the marriage conciliation process actually achieves the objectives of becoming an administratively convenient method of processing matrimonial disputes in

² Royal Commission on Marriage and Divorce, Report 1951-1955, Presented to Parliament by Command of Her Majesty, March 1956, London, Her Majesty's Stationery Office, 1956, p. 93, para. 327.

early stages. It is expected and hoped at this stage that there is a possibility of avoiding hast and unnecessary divorce. Parties to the marriage are afforded an opportunity to cool off their angers against each other. It is an avenue through which unnecessary divorces can be avoided. This explains why it is procedural requirement that parties to the marriage in Tanzania should first refer their matrimonial dispute to MCB before allowing the court to determine it.³ It is a prerequisite requirement for a party who intends to institute a divorce petition in court to obtain a certificate from the MCB certifying that it had unsuccessfully attempted to reconcile the spouses. The following discussion goes into detail.

3. The Legal and Institutional Framework on Marriage Conciliation Boards in Tanzania

3.1. Lego-historical Backdrop

A brief historical background to the establishment of MCBs in Tanzania goes way back 1969 when the Government came up with proposals on uniform law of marriage. It, however, needs to be understood at this juncture that Tanzania has in a bid to come up with uniform law of marriage adopted the Kenyan model in its bid to overhaul its own family law system. Prior to this move, different systems of family law were operating in the country, including statutory law, English law (common law, principles of general application and principles of equity), customary law and religious law. They were the Marriage Ordinance⁴ and Matrimonial Causes Ordinance⁵ governing Christian and civil marriages; the Judicature and Application of Laws Ordinance⁶ governing Islamic and customary marriages of Africans; and the Marriage, Divorce, and Succession (Non-Christian Asiatics) Ordinance⁷ governing Asian marriages.

Thus, the origin of the LMA, which has provisions on MCBs, owes much from the Kenyan *Report of the Commission on the Law of Marriage and Divorce*.⁸ It was in 1969 when the Tanzanian government came up with proposals on uniform law of marriage, namely *Government's Proposals on Uniform Law of Marriage*, Government Paper No. 1 of

1969⁹, which resulted in the enactment of the Law of Marriage Act¹⁰ in 1971. The proposals incorporated most of the reforms advanced by the Kenyan draft bill and provided the groundwork for Tanzania's Law of Marriage Act, 1971. The aim was to integrate and reform the different laws of marriage and divorce, which were formerly applicable in the country. According to Mnyukwa and Kiwango, the enactment of the Law of Marriage Act in 1971 came as a panacea towards harmonising the regime of matrimonial relations, which in essence prior to the enactment was governed by multiple laws. [5] The concern of the Government was to ensure that divorces are not treated lightly and at the same time parties to the marriage are forced to live together as husband and wife if the marriage has completely broken down.¹¹ It has been stated that:

*"The law will establish Marriage Conciliatory Boards. Such Boards will be established in every ward, village and town throughout Tanganyika. Where any community had, prior to the proposed new legislation, in existence a committee or a board with similar functions, due recognition would be done to such board or committee and it would be designated as the Marriage Conciliation Board. A husband or a wife who wishes to apply for the dissolution of his or her marriage will be required to apply to the Board. The Board will investigate the complaint and will endeavour to reconcile the parties. ..."*¹²

This proposal was incorporated in its entirety in the provisions which made up the LMA in 1971.¹³ The enactment of the LMA is seen as the milestone in reforming the legal framework that regulates family matters in Tanzania. In fact the Act provides comprehensive guidelines on the formation, maintenance, and dissolution of marriages, establishing a robust foundation for managing family relationships and

⁹ The United Republic of Tanzania, *Government's Proposals on Uniform Law of Marriage*, Government Paper No. 1 of 1969, Government Printer, Dar es Salaam, 1969, p. 7, para. 1.

¹⁰ Cap. 29 (R.E. 2023). The Act came into operation on 1st May, 1971. According to its long title, this is an Act to regulate the law relating to marriage, personal and property rights as between husband and wife, separation, divorce and other matrimonial reliefs and other matters connected therewith and incidental thereto.

¹¹ The United Republic of Tanzania, *Government's Proposals on Uniform Law of Marriage*, Government Paper No. 1 of 1969, p. 11, para. 24.

¹² *Ibid.*, para. 25. This proposal owes much from wording of proposals found in the Republic of Kenya, *op cit.*, p. 93, paras 287 and 288, which state that: Paragraph 287:

"Moreover, we do not think anyone should be permitted to petition for divorce unless an attempt to reconcile the parties has been made by some responsible body and has failed. At present, there is no such requirement in the Matrimonial Causes Act, but a regular process of attempted reconciliation is usual before the dissolution of an Islamic or a customary marriage. We think this requirement of attempted reconciliation should be imposed by law, although as we have said, we would give the parties considerable freedom in the choice of a tribunal."

Paragraph 288:

"Where a conciliatory body has failed to settle a matrimonial dispute and one of the parties wishes to petition for divorce, we think he or she should do so within a reasonable time, which we suggest might be six months, from the date when the conciliatory body certifies its failure to settle the dispute, and that if no petition is filed within that time, it should be obligatory for the would-be petitioner to appear again before the conciliatory body before he would-be entitled to present a petition for divorce."

¹³ See sections 101, 102, 103 and 104 of the LMA, Cap. 29 [R.E. 2023].

³ See sections 101 to 104 of the LMA, Cap. 29 [R.E. 2023].

⁴ Cap. 109.

⁵ Cap. 364.

⁶ Cap. 453.

⁷ Cap. 112.

⁸ The Republic of Kenya, *Report of the Commission on the Law of Marriage and Divorce*, The Government Printer, Nairobi, 1968. Just a remark, the Commission published in its Report which contained a draft Marriage Bill embodying its recommendations. When the Bill was tabled before the Parliament, Members of Parliament and others criticised the Bill as being un-African, copied from English law, taking no accounts of African customs and traditions. The Bill was rejected. For detailed discussion, see School of Oriental and African Studies, "The Rejection of the Marriage Bill in Kenya", *Journal of African Law*, Vol. 23, No. 2 Autumn, 1979, pp. 109-114.

disputes. It underscores the importance of safeguarding the family unit and reflects Tanzania's commitment to preserving family relationships. [6] As a matter of fact, the LMA being a family law is seen as a tool for better relationships between spouses over time in respect of family life and family conflicts. [7] Thus, with the LMA coming into force, the process of conciliation as envisaged under sections 101, 102, 103 and 104 is encouraged in addressing matrimonial disputes before parties resort to divorces. The rationale behind is that much as the law allows divorce, it does not encourage it. In fact, divorce is taken as the last option resorted to by a marriage couple in solving marital dispute and should be chosen when there is a necessity for such. [8] This is bearing in mind that divorce has far reaching effects to the life of the spouses and children. Thus, in order to avoid unnecessary divorce, reconciliation process should be taken as an effective method of amicably settling matrimonial disputes. This explains why the new law was to require the establishment of Marriage Conciliation Boards in every ward, village and town throughout the country. Anyone wishing to petition for divorce would do so only after satisfying the court that he or she had tried to seek reconciliation and failed. Provisions for reconciliation were to apply to all people irrespective of their faith, race or ethnic origin. [9] The coming into force of the LMA saw for the first time the establishment of the MCBs under the Marriage Conciliation Boards (Establishment) Order of 1971.¹⁴ The MCBs were in operation up until 1985, when the Ward Tribunal Act revoked the Order.¹⁵ As correctly put by Binamungu, legally speaking nothing filled in that gap until 1996, when sections 102(1) and 103 of the LMA were amended by Act No. 9 of 1996¹⁶. Through the amendment, Ward Tribunals were restructured to handle conciliation of marriages for the purpose of the LMA. [10]

3.2. Requirement of Prior Reference to Marriage Conciliation Board

One of the new aspects that were incorporated in the LMA is the introduction of a marriage conciliatory board whereby all divorce matters have first to be referred to it for reconciliation. Where the board fails to reconcile the concerned parties, it has to issue a certificate of failure to reconcile them and hence, refers the matter to court. Pursuant to section 101 of the LMA, no party to the marriage should petition for divorce unless he or she has first referred the matrimonial difficulty to a marriage Conciliatory Board and the board has certified that it had failed to reconcile the parties. It means that parties to the matrimonial dispute are barred from instituting the matter in court seeking for a decree for divorce before referring the matter to the Marriage Conciliation Board, and that the Board certifies that it had unsuccessfully attempted to reconcile the spouses. The certificate formalises

the conciliation process as a prerequisite before the case is taken to court. As such, this legal provision highlights the Act's commitment to reconciliation as the first step in resolving marital conflicts. [6]. The Court of Appeal explains the above provisions of the LMA (that is section 101) in the case of *Hassan Ally Sandali v. Asha Ally*¹⁷ that:

"However, the granting of the divorce under section 107(3) of the Act was not an end in itself. It was subject to compliance with section 101 of the Act. That section prohibits the institution of a petition for divorce unless a matrimonial dispute has been referred to the Board and such Board certifying that it has failed to reconcile the parties. That means that compliance with section 101 of the Act is mandatory except where there is evidence of existence of extra ordinary circumstances making it impracticable to refer a dispute to the Board as provided for under section 101(f) of the Act."

The provisions of section 101 of the LMA as stipulated above make it a mandatory requirement that parties to the matrimonial disputes should first refer their disputes to the MCB before engaging courts of law. Unless there are existing circumstances that make it practically impossible to appear before the MCB, then the parties shall be relieved from this mandatory legal requirement. Where the Board fails to amicably resolve the disputes, it should issue a certificate to that effect. At this point, it shall be upon parties to the dispute, while accompanied with this certificate from the Board to file their dispute in court seeking for divorce.¹⁸ The effect of contravening the provisions of section 101 of the LMA makes the whole petition in court incompetent. It was held in the case of *Athanas Makungwa v. Daeini Hassani*¹⁹ that where there is no certificate within the meaning of section 101 of the Law of Marriage Act, 1971 from the Conciliation Board indicating its failure to reconcile the spouses a petition for divorce becomes incomplete.

The establishment of conciliation mechanism is regarded as one of the most significant contributions in putting in place legal-institutional framework on resolving family disputes. The LMA makes a key element in marital conflict resolution and ensuring disputes are addressed in a manner that fosters reconciliation. [6] The main concern is to see as to what extent MCBs are effective in accomplishing this assignment.

3.2.1. The Rationale Behind Referring Matrimonial Disputes to the Marriage Conciliation Board

With the LMA in force, nobody can petition for divorce

¹⁷ (Civil Appeal No. 246 of 2019) [2019] TZCA 14 (24 February 2020).

¹⁸ For illustration, see cases of *Mwanahawa Kulomba v. Rashidi Kulomba* [1999] T.L.R. 21 and *Ismail Omari Kasomo v. Fatuma Kassim Mdoe*, (Civil Appeal No. 9 of 2020) - [2022] TZHC 12536 (4 March 2022). See also the case of *Suzana Charles v. Juma Kabelele*, (PC Civil Appeal 117 of 2020) at the High Court Mwanza Registry, with citation [2023] TZHC 16699 (17 April 2023), where Mnyukwa, J. states that the law as it is, makes the mandatory requirement for parties to refer their marriage dispute to the board established by the Minister under section 102(1) of the Law of Marriage Act, Cap. 29 [R.E. 2023].

¹⁹ [1983] T.L.R. 132.

¹⁴ G.N. No. 245 of 1971.

¹⁵ Section 30 of the Act.

¹⁶ The Laws Revision (Miscellaneous Amendments) Act No. 9 of 1996.

without satisfying the court that he or she has attempted reconciliation by referring the matrimonial difficulty to a Marriage Conciliation Board which has failed to settle the dispute.²⁰ The court may only dispense with reference to a Marriage Conciliatory Board if it is satisfied that there are exceptional instances in place as enumerated under the Act. The essence of bringing in the aspect of reconciliation in solving matrimonial difficulties lies with the fact that marriage as an essentially private institution should be safeguarded in order to maintain its stability of the marriage. Otherwise marriages could be easily dissolved. The rationale behind establishment of marriage conciliatory boards under the LMA is to create an avenue through which spouses to a marriage, which suffers from matrimonial difficulties could salvage it. The Board serves as a machinery through which parties of a marriage can be reconciled in case matrimonial misunderstandings arise. After all, as Onyiuoke, J. states in the case of *Zinat Khan v. Abdullah Khan*²¹ that:

“A person is not normally the best judge in his own cause and least of all, parties to marriage when confronted with the stresses and strains of married life, they may be carried away by the passions and emotions of the moment and may rashly conclude that the marriage has broken down. Unless some restriction was imposed the courts are likely to be inundated by ill-conceived petitions alleging the breakdown of marriage and praying for divorce. There is therefore need for a cooling period and for some attempt at mediation and reconciliation by an impartial body which can engender confidence in the warring parties and is in a position to make an objective assessment of the circumstances followed by an attempt at reconciliation.”

Justice Onyiuoke stresses on the importance of the Marriage Conciliatory Board and warns that nobody should attempt to suppress it. He argues that:

*“From the foregoing, it becomes very clear that the Board is a very important institution in the scheme of things under the Marriage Act and that nothing should be done to undermine its importance. Mediation in a matrimonial dispute and an attempt at reconciliation of the parties thereto is essential under the Act but this is primarily the function of the Board and not of the Court.”*²²

This explains the objective of the LMA to put a requirement of referring the matrimonial matter to the Board before petitioning for divorce. Moreover, the fact that parties to the Islamic marriage, which suffers from matrimonial dispute, have been reconciled by the Board but all in vain makes the court to find that the marriage has broken down irreparably whereupon it proceeds to dissolve the marriage.

In view of the above, courts are required to observe the rules relating to reconciliation in dissolving the marriages. [11] The idea of the establishing conciliatory boards is to make them informal and operating procedure to be as flexi-

ble as possible as well as to give them minimal connection with the court. [12] In fact, couples usually seek informal conciliation before divorce where family councils, relatives and religious officials are at least as important as state officials. [9] If all these attempts to settle the dispute fail, either party can institute divorce proceedings. That means compliance with section 101 of the Act is mandatory except where the above-mentioned exceptional instances are in place. As such, the granting of the divorce under section 107(3) is subject to compliance with section 101 of the Act, which prohibits the institution of a petition for divorce unless a matrimonial dispute has been referred to the Board and such Board certifying that it has failed to reconcile the parties.²³

3.2.2. The Role of a Marriage Conciliation Board

It is apparent from the foregoing that Marriage Conciliation Board has a primary role of reconciling parties to the matrimonial dispute so that they salvage their existing marital relationship. Thus, the Board tries its best to let the spouses to resolve the dispute through agreeing to end their differences and maintain normal married life. This role emanates from the legal requirement by the LMA that no petition for divorce should be filed in court unless parties to the marriage have referred their matrimonial dispute to the Marriage Conciliation Board for reconciliation before filing the petition for divorce.²⁴ It is only where the Board fails to reconcile the parties where it issues a certificate signifying this failure. The compulsory nature of this referral to MCBs underscores the Act's emphasis on conciliation as an essential element of family law.[6] Parties shall then be at liberty while accompanied by a certificate of the Board to file the petition for divorce in court. The certificate should not be issued more than six months before the filing of the petition.²⁵

This legal provision signifies the point that where successfully undertaken, reconciliation forms the initial stage of resolving matrimonial disputes. The MCB enables parties in a matrimonial dispute engage in good faith efforts to resolve their issues amicably. It plays the role of maintaining marriage stability through reconciling parties to the marital conflicts. This is because reconciliation as an effective method for resolving marital disputes promotes family welfare and stability. As a result, spouses are able to renew their friendlier relations, which have been at hostility, hate and differences. They forgive each other over the enmity situation that ever existed before reconciliation.

These efforts undertaken by MCBs to salvage shaking marriages are in full realisation that marriage is the basic institution of social life. As Kamana, J. states in the case of *Innocent Yusuph Bikele v. Monica Elias Daud*²⁶, marriage

²⁰ The LMA, Cap. 29 [R.E. 2023], s.101.

²¹ (1973) LRT n.57.

²² *Ibid.*

²³ *Hassani Ally Sandali v. Asha Ally*, (Civil Appeal No. 246 of 2019) [2019] TZCA 14 (24 February 2020).

²⁴ See section 101 of the LMA.

²⁵ Section 106(2) of the LMA.

²⁶ [2023] TZHC 287 (17 February 2023).

serves as the foundation of any society since families are established and raised in this institution and that its break is not a concern of the parties only but also the society at large.

Thus, the requirements that petition for divorce must be filed after failure of conciliation is meant to give the society through Marriage Conciliation Board an opportunity to conciliate the parties. This opportunity should not be understood as a way of forcing parties to continue with marital relationship. Conciliation is essentially a means of resolving matrimonial disputes amicably. It should therefore be defended by any possible means, including conciliation. Therefore, divorce should not be taken as a simple matter but regarded as a last resort.

3.3. Establishment of Marriage Conciliation Boards

The LMA establishes MCBs and makes it mandatory that the MCB should certify that the marriage has irreparably broken down before parties bring the matrimonial dispute to court for divorce. Section 102 of the LMA states that:

"102. Conciliatory Boards:

The Minister shall establish in every ward a Board to be known as a Marriage Conciliation Board and may, if he considers it desirable so to do, establish two or more such Boards in any ward.

Where the Minister is satisfied that any community in Tanzania has established for itself a committee or a body of persons to perform the functions of a Marriage Conciliation Board and that it is desirable that such committee or body of persons be designated to be the Board having jurisdiction over the members of that community, the Minister may so designate such committee or body of persons."

The Minister responsible for legal affairs is empowered to designate committees or body of persons established for any community in Tanzania as Marriage Conciliation Boards and the Board so designated is referred to as a Communal Board. [10] The Minister exercises his powers when satisfied that the community has established for itself a Committee or a body of persons to perform the functions of Marriage Conciliation Boards and that it is desirable for such committee or body of persons to be designated as the Board with jurisdiction over the members of that community. [13] According to the Marriage Conciliation Boards (Procedure) Regulations, G.N. No. 240 of 1971, a marriage conciliation board designated for a particular community properly designated by the Minister under section 102 (2) of the LMA, is also known as a communal board. Regulation 2 of, G.N. No. 240 of 1971 states that:

"Communal Board" means a Marriage Conciliation Board designated under the provisions of subsection (2) of section 102 of the Act as a Board of the community for which it is so designated."

In view of the above, MCBs are established in every ward by the Minister responsible for legal affairs. The Minister

does so through issuing an order designating the Ward Tribunals the status of marriage conciliatory boards. As such, every ward tribunal established under the Ward Tribunal Act²⁷ is mandated to handle conciliation of marriages for the purposes of the LMA. More so, the Minister is also empowered to designate a committee or body of persons so established by any community to handle reconciliation of spouses who have matrimonial disputes. A pre-condition for the Minister to do so is when he is satisfied that "a community in Tanzania has established for itself a committee or body of persons to perform the functions of a Marriage Conciliatory Board" and he considers it desirable that such a body be designated as a Board for that community. The communities envisaged by the law include religious bodies. That means therefore, the ward tribunals and community bodies designated by the Minister responsible for legal affairs are the only organs responsible for handling matrimonial disputes for the purposes of section 102 of the LMA. This legal position was reiterated by the Court of Appeal in the case of *Jackline Hamson Ghikas v. Mlatie Richie Assey*²⁸ by stating that:

"Pursuant to sections 102 and 103 of the LMA, the parties' matrimonial dispute could therefore be handled by either the Ward Tribunal of the area the parties resided or by a designated community or body of persons, if any, to whom they belonged. The record bears out that the Ward Tribunal was not the respondent's choice."

According to Regulation 2 of the Marriage Conciliation Boards (Procedure) Regulations, GN No. 240 of 1971, such bodies are known as Communal Boards. These boards are communal due to the fact that they revolve around the communities within which they operate. Alphonse and Binamungu [12] argue that the term "communal" comes from the word "community" and that a communal society is formed on the basis of common character, shared interests and values and it may serve religious, social, political or economic reasons while placing emphasis on the needs of the community as opposed to those of an individual. It is therefore, argued that the fact that a committee or body of persons so established by any community to handle reconciliation of spouses who have matrimonial disputes is duly recognised by the law as an MCB for a particular community is an indication that the LMA takes on-board the customary and religious systems on settling matrimonial disputes. Thus, MCBs are institutionalised bodies which are legally established under the LMA to resolve matrimonial disputes in a simple and informal manner. As such, the LMA institutionalised conciliation practice and made it a pre-condition for instituting divorce proceedings.

²⁷ See section 3 of the Ward Tribunals Act, Cap.206. [R.E. 2023].

²⁸ (Civil Appeal No. 567 of 2022) [2024] TZCA 366 (16 May 2024).

3.4. Composition and Jurisdiction of MCBs

According to the LMA, every Board is composed of a Chairman and not less than two and not more than five other members.²⁹ It means that the minimum number of members of the Board is three and the maximum is six. This is the necessary quorum for the Board to competently discharge its mandated duty of conciliating parties to the matrimonial dispute. Short of this, the Board shall be considered incompetent for lack of quorum.

The LMA provides for jurisdiction of the MCBs. According to the Act, the board has jurisdiction for the ward within which it is established and where the husband or intended husband resides. In case the husband is not resident in Tanzania, the board established for the ward within which the wife resides is the one having jurisdiction to reconcile the parties to the marriage.³⁰ The reason behind the boards having jurisdiction is to enable them to undertake the mandatory requirement of the law for parties to marriages to attempt a reconciliation for settlement for their disputes and approach the court if conciliation fails. Where both parties to the marriage belong to the same community, the Board, if any, designated shall be the Board for that community. It should be noted that the law does not make it mandatory that parties to the matrimonial dispute belonging to a particular community must refer their matrimonial dispute to a communal board relevant to the community to which they, supposedly, belong.

However, the law states that the mere fact that the Board lacks jurisdiction to entertain the matrimonial dispute brought before it does not render the proceedings thereof a nullity.³¹ The case of *Halima Athumani v. Maulidi Hamisi*³² illustrates this legal position by stating that the law does not make it mandatory that parties to the matrimonial dispute belonging to a particular community must refer their matrimonial dispute to a communal board relevant to the community to which they belong. In this case the spouses had contracted an Islamic marriage in 1983. Later their marriage turned sour, and efforts to have the spouses reconciled at the Arbitration Tribunal proved abortive. The dispute was referred to a primary court which dissolved the marriage. The husband appealed to the district court which reversed the decision of the trial court on the grounds that both parties belonged to an Islamic community and their marriage was according to Islamic law, the proper board to reconcile them was a board of the Islamic community. The District Magistrate further held that since the board was not in accordance with section 103(2)(b) of the Law of Marriage Act. No. 5/1971, there was no reconciliation ever made. When the appeal reached the High Court, the decision of the district court was reversed, and it was held that the mere fact that the Board that reconciled the parties was not a Moslem Concilia-

tory Board did not render the reconciliation a nullity. The Court held that the mere fact that the Marriage Conciliatory Board, which heard the matrimonial dispute of Muslim parties was not the Moslem Conciliatory Board that reconciled the parties, does not render the reconciliation a nullity. Accordingly, the Court stated that an ordinary Marriage Conciliatory Board can perform those functions and that would be effectively alright.

In view of the above, it is the legal position that ward marriage conciliation boards could entertain matrimonial disputes which would have otherwise been referred to the communal marriage conciliation boards. As such, reconciliation of a Moslem couple by non-Moslem body is not illegal. Equally true, a Christian couple can as well be reconciled by a non-Christian body.

It is also important to note that the communal marriage conciliatory board, relevant in a particular locality, does not exist automatically just because a particular community also exists in that area. It has to meet conditions stated in section 102(2) of the LMA and regulation 3 of the Marriage Conciliation Boards (Procedure) Regulations, G.N. No. 240 of 1971. The designated communal marriage conciliatory boards were, and are established under Government Notices numbers 96 of 1971, 211 of 1971, and 245 of 1971. Most of these communal marriage conciliatory boards are established by religious communities and the same may continue to be established under items 344 and 345 of the relevant government notices.³³

3.5. Requirement of a Certificate by the Marriage Conciliation Board

The LMA provides a prerequisite requirement to parties of the marriage that before instituting in court a petition for divorce in terms of sections 101 to 104 of the LMA they should first refer their matter to the Marriage Conciliatory Board to reconcile them. It is upon the Board's failure to reconcile them then they obtain a certificate from the Board certifying that it had failed to reconcile the parties. Where there is no such certificate a petition for divorce becomes incomplete.³⁴ It was held in the case of *Shillo Mzee v. Fatuma Ahmed*³⁵ that in the absence of certificate from a conciliatory board and the case not falling under any of the exceptions listed in section 101(a) to (f) of the LMA, a petition for divorce becomes premature and incompetent. Thus, the requirement of prior reference to Marriage Conciliation Board is signified by the Board issuing a certificate that it has failed to reconcile the parties to the matrimonial dispute. A certificate of the Board should set out findings of the Board.³⁶ It is that finding of the Board and reference of parties to the court

²⁹ The Law of Marriage Act, Cap. 29 [R.E. 2023], s.103(1).

³⁰ *Ibid.*, s.103(2)(a).

³¹ *Ibid.*, s.104(7).

³² [1991] T.L.R. 179.

³³ *Agness Samwel Samson/Magdalena Ghati v. Daniel Chaina/Daniel Joseph Makolele*, (Civil Appeal No. 26253 of 2023), [2024] TZHC 289 (19 February 2024).

³⁴ *Athanas Makungwa v. Daerin Hassan* [1983] T.L.R. 132.

³⁵ [1984] T.L.R.112.

³⁶ The LMA, s. 104(5).

that makes the trial court competent to hear and determine the divorce petition.³⁷ It is important to note that the Board's certificate is one of such conditions which the court is bound to be satisfied of its existence.³⁸ It was held in the case of *Clemence Ngonyani v. Baswita Komba*³⁹ that the petition for divorce is predicated upon a certificate from a competent Marriage Conciliatory Board indicating that the marriage could not be reconciled by the Board. As such, in the absence of the certificate no decree of divorce can be granted. The certificate should be in a prescribed form as provided for under the Marriage Conciliatory Boards (Procedure) Regulations, 1971⁴⁰, where regulation 9(2) states that:

"Where the dispute is between a husband and his wife, and relates to the breakdown of the marriage or an anticipated breakdown of the marriage, and the Board fails to reconcile the parties, the Board shall issue a certificate in the prescribed form."

The envisaged certificate is that one issued by the competent authority. By competent authority means a Board, which is consisted of a Chairman and not less than two and not more than five other members.⁴¹ A certificate cannot be considered as such if it is issued by the incompetent authority for lack of a quorum.⁴² An absence of certificate from reconciliation board makes a petition for divorce incomplete, immature and incompetent before a trial court.⁴³ Thus, if matrimonial proceedings take place without an attachment of a certificate from a Board, any decision therefrom becomes a nullity. Certificate of the Board should set out findings of the Board.⁴⁴ Thus, an existence of certificate from the marriage conciliation board signifying that it had failed to reconcile the parties is a jurisdictional issue which every court empowered to issue and grant decree of divorce must satisfy first before proceeding with the matter.⁴⁵ It is that finding of the Board and reference of parties to the court that makes the trial court competent to hear and determine the divorce petition.⁴⁶

3.6. Exception to Referring Marriage Dispute to a Conciliation Board

The law requires that in order to hear and determine the

divorce matter, it must ensure that there is a valid certificate by the MCB that it had failed to reconcile the parties. However, according to section 101 of the LMA, the following instances do not require reference to the Board:

- 1) *Where the petitioner alleges that he or she had been deserted by, and does not know the whereabouts of, his or her spouse.*
- 2) *Where the despondent is residing outside Tanzania Mainland and it is unlikely that he or she will enter the jurisdiction within the six months after the date of the petition.*
- 3) *Where the respondent has been required to appear before the Board and has wilfully failed to attend.*
- 4) *Where the respondent is imprisoned for life or for a term of at least five years or is detained under the Preventive Detention Act and has been so detained for a period exceeding six months.*
- 5) *Where the petitioner alleges that the respondent is suffering from an incurable mental illness.*
- 6) *Where the court is satisfied that there are extraordinary circumstances which make reference to the board impracticable."*

The above instances are some exceptions in section 101 from the requirement of prior reference to the Board, *inter alia*, where the court is satisfied that there are extraordinary circumstances which make reference to the Board impracticable. The term "impracticable" is literally interpreted as so Mwalusanya, J. states in the case of *Halima Athumani v. Maulidi Hamisi*⁴⁷ that:

"Thus, 'impracticable' in section 101(f) the Law of Marriage Act was literally interpreted such that it was not limited to physical impracticability. Reading through the letter of the chairman of Kibaoni Marriage Conciliatory Board, one cannot fail to see that it was found useless to call the husband and for reconciliation as it would be a waste of time and efforts. The allegations were so serious such that any reference to the Board would not be a practical preposition. I think the trial court took it that way. Therefore the trial court was right to proceed to hear the case, even if it had not been referred to the Marriage Conciliatory Board. And I agree that the petitioner had succeed to prove that her marriage was broken down beyond repair. On my part I concur with the trial court in dissolving the marriage in question."

Regarding an existence of extraordinary circumstances making it impracticable to refer a dispute to the Board as provided for under section 101(f) of the Act, the case of *Zinat Khan v. Abdullah Khan*⁴⁸ gives some guidance, where Onyiuoke, J. stated that:

"The discretion conferred on the court by paragraph (f) of section 101 should only be sparingly exercised and then only in circumstances where it is clear beyond only reasonable doubt that a reference to a Board is not a practical proposition. This may be due to the fact the circumstances of the case are such that no expectation can be entertained that the

³⁷ See the case of *Sadiki Rashid v. Mariam Mohamed*, (PC Civil Appeal 3 of 2021) [2021] TZHC 5490 (2 July 2021).

³⁸ *Hassani Ally Sandali v. Asha Ally*, (Civil Appeal No. 246 of 2019) [2019] TZCA 14 (24 February 2020).

³⁹ (2017) TLS Law Report 176.

⁴⁰ GN No. 240 of 1971. The form is prescribed under the schedule as Form No. 3.

⁴¹ The LMA, Cap. 29 [R.E. 2023], s.103 (1).

⁴² *Seif Omary Ngung v. Husna Ally Mikengesi*, (Civil Appeal 397 of 2021) [2022] TZHC 13602 (30 September 2022).

⁴³ See the case of *Shilo Mzee v. Fatuma Ahmed* (1994) T.L.R. 112. See also *James Benezeth v. Magreth Moses*, (Matrimonial Appeal No. 20 of 2022) 2024 TZHC 85 (25 January 2024).

⁴⁴ The LMA, Cap. 29 [R.E. 2023], s.104 (5).

⁴⁵ See cases of *James Benezeth v. Magreth Moses*, (Matrimonial Appeal No. 20 of 2022) 2024 TZHC 85 (25 January 2024) and *Yohana Balole v. Anna Benjamin Malongo*, Civil Appeal 18 of 2020 [2021] TZCA 388 (TANZLII).

⁴⁶ See the case of *Sadiki Rashid v. Mariam Mohamed*, (PC Civil Appeal 3 of 2021) [2021] TZHC 5490 (2 July 2021).

⁴⁷ [1991] T.L.R. 179.

⁴⁸ [1973] LRT n.57.

Board will be able to achieve any useful results and that any reference to it will be so much a waste of time and effort."

It should be noted that the mere allegation of violence on the part of the respondent by the petitioner does not constitute such an extraordinary circumstance.⁴⁹

4. Some Challenges

Noting from the foregoing discussion, it is apparent that there are some challenges that affect effective operation of MCBs as envisaged by the law. Those challenges include the following:

4.1. Lack of Training and Adequate Skills to Members of the Boards and Married Couples

It has been recognised globally that coaching is a necessity for performing any assignment with accuracy. So is the case for members of the MCBs while carrying out their responsibilities. Training helps in instilling necessary qualities such as impartiality and smart communication skills in members of the Board in order to enable them to comprehensively understand matrimonial conflicts, and grasp the interest of each parties appearing before the Board. It appears that members of the MCBs lack proper training, which could equip them adequately to be able attend matrimonial disputes brought to the boards. Equally true, majority of married couples are not aware of the mandatory requirement of referring their matrimonial difficulties to the MCBs for reconciliation instead of straight forward going to court. They fail to appreciate the fact that conciliation is a strong tool, which can help spouses to arrive at consensual agreements without going to court. The recent research conducted by Alphonse *et al* has revealed that the divorce rate in Mainland Tanzania is increasing and case law indicates that some parties are by-passing MCBs without good cause. [14]

4.2. Spouses Opting for Improper Fora

There have been some spouses who while moved by religious beliefs, bring their matrimonial difficulties to religious bodies which are not designated as communal boards as envisaged by the law, having their dispute solved at family level or at the local government which in terms of section 102 of the LMA is not the marriage conciliation board.⁵⁰ Some parties to the matrimonial disputes have been referring their disputes to family members, religious leaders who are not forming communal boards as envisaged by the LMA, believing that those are MCBs while they are not. It is apparent that passing the dispute through such improper fora means that parties do not refer the dispute to the marriage conciliation board to reconcile

them.

4.3. Poor Handling of Matrimonial Cases by Petitioners and Lawyers

It would be noted from this study, especially some cases cited herein as decided by the appellate courts, shows that there is poor handling of matrimonial cases by petitioners, lawyers and lower courts. [10] The poorly handling of matrimonial cases emanates from the fact that despite the LMA being in operation since 1971, legal provisions on MCBs are not well understood by some petitioners, lawyers and judicial officers of lower courts. This state of affairs could be reflected by the most notable grounds that have been prompting the High Court and Court of Appeal of Tanzania to allow the appeals and nullify trial court proceedings. Among the grounds is failure by petitioners to either make reference of their matrimonial disputes to the MCBs for reconciliation or annexing proper or valid certificate of the MCBs signifying that they failed to reconcile the petitioners. In the same vein, despite that in some of those cases petitioners were represented by lawyers, yet they were poorly handled for failure to abide by legal provisions relating to MCBs.

4.4. Inadequate Skills by Judicial Officers of Lower Courts

Many parties to the matrimonial disputes file petitions for divorce before magistrates' courts without being having certificates from the marriage conciliatory boards. Despite the absence of the certificate, magistrates have been proceeding with hearing the matrimonial causes and issue divorce orders. It appears that some magistrates have inadequate legal knowledge to enable them abiding by the mandatory legal provisions requiring petitioners to appear before the MCBs to be reconciled prior going to court. The fact that magistrates proceed hearing the matrimonial causes without certificates from MCBs signifying failure to reconcile the parties to the marriage is quite contrary to the law because a petition which is not accompanied by a certificate becomes premature and incompetent.⁵¹ Thus, all the proceedings become a nullity.

5. Conclusion

The discussion has demonstrated that while matrimonial disputes within married lives are considered normal occurrences, the law provides for modalities geared at managing such disputes in the best ways possible. The modalities reduce friction among the involved parties and salvage future married relations. Among those modalities is conciliation,

⁴⁹ *Ibid*.

⁵⁰ See the case of *James Benezeth v. Magreth Moses*, (Matrimonial Appeal No. 20 of 2022) 2024 TZHC 85 (25 January 2024).

⁵¹ *Shillo Mzee v. Fatuma Ahmed* [1984] T.L.R.112. See also the case of *Alex George Tarazo v. Paulina Daudi Urassa*, Matrimonial Appeal No. 31 of 2020 (High Court of Tanzania, Mwanza Registry) [2021] TZHC 2232 (26 February 2021).

which is considered to be a viable means of resolving domestic disputes before divorce, where divorce is the ultimate outcome.

6. Recommendations

In view of what has been discussed, the following recommendations are made in order to improve access to and operationalisation of MCBs:

6.1. The Need for Legal Education to Members of the Public

There is a need for legal education to be carried out by various stakeholders in order to increase awareness of members of public on the existence of the legal-institutional framework on MCBs, which are established in every ward throughout the country. More so, the role of these boards should be well known. Thus, given the challenges in place, there should be outreach programme for the Tanzanian populace on a number of aspects regarding operationalisation of MCBs. It must be appreciated that in married life, disputes are expected to happen. And that if those disputes cannot be handled effectively in early stage, they may culminate into harming spouses and other people related to them. At that stage, conciliation is seen as an effective tool for resolving the marriage disputes. In order for this tool to be resorted to, married parties and others in the community should well know in advance on the existence of MCBs and expected role they should play. Therefore, Government and other stakeholders in the marriage life should take up the matter urgently.

6.2. Strengthening Legal-Institutional Capacity of Members of MCBs

It is emphasised that since an MCB sets in motion access to justice for parties to the marriage dispute, members of the Board should be equipped with necessary knowledge and skills on how to undertake reconciliation of parties to matrimonial disputes. It is through training that capacity building can be effected. In order to realise all this, there should be several basic training programmes to members of MCBs. The programmes shall equip members of MCBs with skills and knowledge on how to effectively attend spouses' matrimonial difficulties. It is encouraging to note that the government is determined to strengthen alternative mechanisms for resolving marital disputes through reconciliation, particularly by building the capacity of members of MCB⁵². The Government is expected to ensure that reconciliation processes

remain participatory, transparent and rooted in Tanzanian cultural values, while upholding the dignity and differences of the parties involved.⁵³

6.3. Needed Training for Magistrates on Legal-Institutional Framework Governing Matrimonial Matters

It has been apparent that parties to the matrimonial disputes file petitions for divorce before magistrates' courts without being having certificates from the marriage conciliatory boards and magistrates have been proceeding with hearing the matrimonial causes and issue divorce orders. This is improper and contrary to the provisions of the LMA. The study shows that the magistrates lack adequate knowledge of the law on the role played by MCBs. It is recommended that magistrates should be afforded adequate training on salient features of the law on marriage conciliation. They should be well equipped with legal requirements and procedures to be followed by MCBs.

Abbreviations

Cap	Chapter
G.N.	Government Notice
IJA	Institute of Judicial Administration
LMA	Law of Marriage Act
LRT	Law Report of Tanzania
MCB	Marriage Conciliation Board
MCBs	Marriage Conciliation Boards
No	Number
ODR	Online Dispute Resolution
R.E.	Revised Edition
S	Section
T.L.R.	Tanzania Law Report
TLS	Tanganyika Law Society
TZHC	Tanzania High Court
TZCA	Tanzania Court of Appeal
V	Versus

Author Contributions

Abdulrahman Omari Juma Kaniki is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflict of interest.

⁵² This Government commitment was made by Permanent Secretary in the Ministry of Constitution and Legal Affairs, Mr Eliakim Maswi, to a team of about 40 legal experts who met in Arusha for a two-day session to validate a training manual designed to support reconciliation in marital conflicts across Mainland Tanzania. The event was reported in the Daily News, 14 September, 2025.

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