# DISSOLUTION OF ISLAMIC MARRIAGES IN TANZANIA: DO MUSLIM HUSBANDS TAKE PACE WITH THE STATUTORY LAW?

By Abdulrahman O.J. Kaniki, Senior Lecturer and Dean, Faculty of Law, Catholic University of Mbeya, Tanzania.

https://orcid.org/0000-0001-8552-9111

**ABSTRACT**

This paper analyses the legal and institutional framework related to dissolution of Islamic marriages in Tanzania. The paper gives a brief historical perspective on status and application of Islamic law on domestic relations aspects in the country. Despite the independence, colonial influence was still felt, given the fact that the judicial system which was instituted by the colonial power survived the independence and continued to operate as before. This moved the country at early years of independence to come up with efforts of integrating main rules and principles emanating from different kinds of laws through having single uniform law of marriage. The efforts resulted into the enactment of the Law of Marriage Act in 1971. The paper therefore, inquires into the extent to which the Law of Marriage Act accommodates Islamic law especially when dissolution of Islamic marriages is at issue. The Act has put into an end of having extra-judicial system of dissolving Islamic marriages. This means limiting dissolution of Islamic marriages in the country due to an introduction of new legal aspects to this effect. The Act has introduced under sections 100,101and107 restriction on petition for divorce during first two years of marriage, the need to refer matrimonial matters to the marriage conciliatory boards before lodging petitions for divorces and that it is the court only which is empowered to dissolve all marriages, respectively. So far, only the court of law has power to dissolves all known marriages in the country. That means the practice of Muslim husbands of issuing talaks to their wives is no longer having legal effect of dissolving the marriages. Neither the demands by the wives for divorce from their husbands through mutual agreements known as khula divorces no longer end the Islamic marriages. The paper however, finds that some Muslim husbands still prefer religious authorities to attend their family matters than courts of law. They are not ready to comply with provisions of the Law of Marriage Act. The study concludes that these new legal aspects under the Act have brought some controlling and limiting mechanisms to the full application of Islamic law on dissolution of Islamic marriages, where

some Muslim husbands are not ready to comply with.

**Keywords:** Holy Qur'an, Islamic law, domestic relations aspects, Islamic marriages, talak, khula divorce, dower (mahr), Law of Marriage Act.

## Introduction

Although marriage is intended to last until death separates the spouses, there are instances under which no better solution than dissolving it.[1] These are situations where marriage is said to have broken down irreparably, that is the marriage has broken down beyond any recall whatsoever. And it does not matter whether the marriage was contracted in Christian, Islamic, civil or customary form. It is on the basis of this reality that this paper is set to discuss dissolution of Islamic marriages in Tanzania. The discussion confines itself to Tanzania Mainland and not otherwise. It seeks to briefly look at the legal and institutional framework in place. It needs to be underscored at the outset that marriage is one of the religious matters a particular religion comprises of. This explains why majority of marriages are contracted according to a particular religion the spouses confess. After all, the constitutional position on religious matters in Tanzania is very clear, as stipulated by the following part of the discussion.

## The Single Uniform Law of Marriage *vis a vis* Application of Islamic Law

The post independence Tanzania Mainland saw different kinds of laws being applied in family matters, which existed in the plural legal system inherited from the former British colonial rule.

They were the Marriage Ordinance[2] and Matrimonial Causes Ordinance[3] governing Christian and civil marriages; the Judicature and Application of Laws Ordinance[4] governing Islamic and customary marriages of Africans; and the Marriage, Divorce, and Succession (Non-Christian Asiatics) Ordinance[5] governing Asian marriages. It means that every community therein was

* LL.B (Hons), LL.M (Dar); Master Degree in Security and Strategic Studies (National Defence College-Tanzania); PhD (Law), Dar; Senior Lecturer and Dean, Faculty of Law, Catholic University of Mbeya, Tanzania, This author can be contacted at *abdulkaniki@yahoo.com*; *abdulrahman.kaniki@cuom.ac.tz*

[1] The term "marriage" is defined by section 9(1) of the Law of Marriage Act, Cap. 29 [R.E. 2023], as the voluntary union of a man and a woman, intended to last for their joint lives. Similarly, the case of *Ahmad Saidi Kidevu v. Sharifa Shamte* [1989] T.L.R.148 defines the term "marriage" where Maina, J., states that a marriage is a voluntary union of a man and a woman, and it is contracted with the consent of the parties. It is intended that the marriage will last for their joint lives of the parties. It is on this spirit of the law that nobody should be compelled to contract a marriage.

[2] Cap. 109.

[3] Cap. 364.

[4] Cap. 453.

[5] Cap. 112.

governed by its own personal law of marriage namely, the customary law, Islamic law and the English common law. There was a great need for integrating main rules and principles emanating from these different kinds of laws through having a single uniform law of marriage. The need was in line with the recommendation of the African Conference on Local Courts and Customary Law in Dar es Salaam in 1963, to attempt an integration of the existing African family laws. It has been argued that:

> *"... after independence many African countries were dissatisfied with the state of their personal laws and were anxious to make changes appropriate to their new goals and aspirations. Their colonial experience had convinced them that it was necessary to restructure their legal system and laws in order to remove various forms of discrimination which had risen from the way the colonial legal system functioned. There was also the desire to remove the chronic internal conflict of laws which was caused by the application of the variety of personal laws within the same jurisdiction*." [6]

This need led the Republic of Kenya making the appointment of a Commission on the Law of Marriage and Divorce by the Kenyan government in 1967. The Commission was formed in order to address unsatisfactory features of the existing laws on marriage and divorce, which were discriminatory in nature. It has been stated that:

> *"Much of the existing statute law has its roots in English law, which, being founded on the canon law where marriage and divorce are concerned, only recognized as marriage the voluntary union for life of one man with one woman to the exclusion of all others. The result is that although the law recognizes polygamous marriages, both Islamic and customary, they have tended to be treated as inferior to the monogamous marriage*."[7]

The Commission presented its Report in 1968, recommending for reform and integration of the different systems of religious, customary and statutory law through the draft bill, which was appended thereto. However, the bill was rejected by the Kenyan government on the grounds

[6] Rwezaura, B.A. (1983-84) "The Integration of Personal Laws: Tanzania's Experience", *The Zimbabwe Law Review*, Vols. 1 &2, pp. 85-96, p.86.
[7] Republic of Kenya, (1968) *Report of the Commission on the Law of Marriage and Divorce*, The Government Printer, Nairobi, p.197, paragraph 47.

that it was "un-African, a model of English law that took insufficient account of African customs and traditions and gave too many rights to women."[8]

Tanzania has, however, adopted the Kenyan model in its bid to overhaul its own family law system. Thus, the origin of the LMA owes much from the Kenyan *Report of the Commission on the Law of Marriage and Divorce*. It was in 1969 the Tanzanian government came up with proposals on uniform law of marriage, namely The United Republic of Tanzania, *Government's Proposals on Uniform Law of Marriage*, Government Paper No.1 of 1969[9], which resulted in the enactment of the Law of Marriage Act[10] 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. It is in this spirit that Rwezaura argues that these proposals are divided into the following four main sections: (i) provisions aimed at giving women an equal voice in the marriage relationship and to give a husband and a wife a right to determine their marriage choices; (ii) provisions intended to introduce parity between different forms of marriage recognized under the law; (iii) provisions relating to procedure for contracting a marriage, and; (iv) provisions introducing a uniform procedure for divorce, separation and other matrimonial relief.[11]

It would be noted that the Parliament of Tanzania, after only a very short public discussion in a Government Paper in 1969 with minor variations, copied verbatim the provisions drafted by the Kenyan Commission.[12] It was on this reason that in 1969 the Tanzanian government came

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[8] Rahmatian, A. (1996) *"*Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzanian Experience", *International Journal of Law, Policy and the Family*, 10, pp.281-316, p.297. See also Cotran, E. (1966) "Marriage, Divorce and Succession Laws in Kenya: Is Integration or Unification Possible?", *Journal of African Law*, Vol. 40, No. 2, Liber Amicorum for Professor James S. Read, pp. 194-204, p.202.

[9] The United Republic of Tanzania, (1969) *Government's Proposals on Uniform Law of Marriage*, Government Paper No.1 of 1969, Government Printer, Dar es Salaam, p.7, para.1. According to Rahmatian, A, *ibid*., p.298:

> *"The Tanzanian LMA subscribes to the notion of a uniform law that must be founded on the African way of life, and that also recognizes the existence of different ethnic and religious groups but emphasizes the necessity of guaranteeing equal rights and responsibilities for everyone. The law should interfere with religious and customary practices as little as possible*."

[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] Rwezaura, B. A., *op cit*., p.87.

[12] Rahmatian, A., *op cit.*, p.297. See also Read J. S. (1972) "A Milestone in the Integration of Personal Laws: The New Law of Marriage and Divorce in Tanzania", *Journal of African Law*, Vol 16, No 1, p.19; Rwezaura, B. A. (1983-84) "The Integration of Personal Laws", *Zimbabwe Law Review*, Vol. 1&2, p.85.

up with proposals on uniform law of marriage, [13] which resulted in the enactment of the Law of Marriage Act[14] in 1971.

Coming into force of the Law of Marriage Act, (hereinafter referred to as the LMA) caused the amendment of the Judicature and Application of Laws Ordinance, 1961 with the purpose of limiting the application of customary law and Islamic law in some aspects of specified personal status matters. The amendment provided that rules of customary law and rules of Islamic law do not apply in regard to any matters provided for in the LMA.[15] It is apparent that with the coming into force of the Law of Marriage Act there are some limitations in the application of principles of Islamic law in relation to some those specified personal status matters under the Judicature and Application of Laws Ordinance, 1961 (now the Judicature and Application of Laws Act[16]).

In view of the above, the following comments are made. It is true that the coming into force of the Law of Marriage Act is regarded as a milestone in the integration of personal laws in the country. However, the LMA has continually intervened or limited in some aspects the fully-fledged application of the rules of Islamic law. Thus, the move by the legislature to intervene and limit full application of the rules of Islamic law in some aspects was not accidental but a deliberate attempt. It was necessary to integrate and reform different laws on personal status matters that were in place prior to 1971.

The following part briefly provides for the legal-institutional framework in place in respect of Islamic marriages.

## The Legal-institutional Framework on Islamic Marriages and Divorces in Context

### *The Purpose of Islamic Marriages*

Islamic marriage has a purpose. It is expected that through marriage love and affection as well

[13] The United Republic of Tanzania, (1969) *Government's Proposals on Uniform Law of Marriage*, Government Paper No.1 of 1969, Government Printer, Dar es Salaam, p.7, para.1. For the Republic of Kenya, it was until 2014 when it enacted a comprehensive law of marriage, namely the Marriage Act, 2014, Act No 4 of 2014. According to the Kenya Gazette Supplement No. 62, Nairobi, 6th May, 2014, date of assent is 29th April, 2014 and date of commencement is 20th May, 2014.

[14] Cap.29 (R.E.2023). 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.

[15] The Law of Marriage Act, Cap. 29 (R.E.2023) amended the Judicature and Application of Laws Ordinance by adding sub-section 3A to section 9(3).

[16] Cap. 385 (R.E.2023).

as mutual rights between a man and woman can exist. It establishes a successful relationship for achieving positive outcomes for all the family. Islamic marriage is viewed as a relationship that promotes modesty, procreation, love and enjoyment of the spouses. It creates a successful union that promotes love, tranquillity and mercy between husband and wife, and contributes to a healthy society.[17]

Marriage has been ordained by Allah as the correct and legal way to produce children and replenish the earth. This is in appreciation of the fact that the family is the basic unit of an Islamic nation or society. It is through marriage that families, which constitute unit of the structure of society are brought into existence. So, marriage in Islam is more than just a means of obtaining legal sex; it is an extremely important institution which safeguards the rights of men, women and children while satisfying the physical, emotional and intellectual needs of the family members[18]. Such marriages stabilise society by protecting its primary unit, the family.[19] Marriage is seen as the important aspect because it creates and sustains the Muslim family; and thus, the world is populated by believers through reproduction.[20] This is so because, one of the purposes of Islamic marriages is to fill the world with faithful Muslims, who believe in the word of God as revealed to the Prophet Muhammad (SAW).

As a matter of fact, every Muslim man and woman is required to marry so that he/she does not commit *zina* (fornication or adultery), that is illicit sex relations, which is sinful. They will only be relieved from marriage only if they are physically, mentally, or financially unable to marry.[21] From this understanding, marriage is viewed as a religious duty, a moral safeguard and a social commitment. Moreover, a Muslim husband is allowed under Islamic law to practice polygamy. He can marry up to four wives provided that he has financial capacity to meet the needs of any additional wife he marries and that he must do equal justice to all the wives. He should treat each wife equally in fulfilling conjugal and other rights.[22] This legal position has been reiterated

[17] Qur'an 30:21.
[18] Arifudi, Y.F.(2018) "Three Major Factors that Cause Divorce and its Solution in Islam: A Case Study at Majalengka Religious Court in 2014 – 2017", *Al Mashalih – Journal of Islamic Law*, Volume 1, No. 1, June, pp.24-40, p.24.
[19] *Ibid.*
[20] See Qur'an 30:21 and Esposito, J.L. (2001) *Women in Muslim Family*, Syracuse University Press, Syracuse, New York, p.15.
[21] See Qur'an 30:21 and Esposito, *ibid*., p.14.
[22] *Qur'an* 4:3. For some discussion on polygamous marriages in Tanzania generally and conditions precedent, which a polygamous Moslem husband should fulfil in particular, see Kaniki, A.O.J. (2008) "The Essence and Usefulness of Polygamous Marriage Institution in Tanzania: An Appraisal of Some Legal and Socio-economic Aspects," *The Open University Law Journal*, Vol.2, No.2, December, pp.110-139.

by the High Court in the case of *Abdalla Hamid Mohamed v. Jasnena Zaludova*[23], where Msumi, J. stated that one of the salient features of Islamic Marriage is that it allows plurality of wives. That a Muslim husband is allowed to marry up to four wives provided that he can maintain them sufficiently and impartially.

Therefore, marriage is seen by Islamic law as a civil contract, which legitimises reproduction and procreation. Moreover, marriage in Islam is regarded as the most important stage in life whereby a man and woman fulfil one of the religious obligations. However, the Islamic marriage is not a sacrament. It is open to dissolution if irreconcilable differences arise.

***The Concept of Divorce in Islam***

It is expected that an Islamic marriage should bring happiness to husband and wife. However, there may be some instances where unhappiness dominates. This uncalled-for situation may be caused by several reasons, including lust, infidelity, misunderstandings, lack of trust, financial pressures and differences in social status. The situation may culminate to the breaking down of the marriage such that the only option should be to dissolve it. Thus, in Islam, divorce is defined as the dissolution of an unhappy marriage. It means break-down the tie of matrimonial contract. A termination of a Muslim marriage can occur in one of the following ways: by the act of the husband, referred to as *talak*; by mutual agreement, known as *khula* or *mubarat*; and by a judicial decree of separation at the request of the wife or the husband.[24] As far as '*khula*' is concerned, it is particularly for the woman to protect herself, if she requires a complete separation from her husband.

Divorce is the most hated and unpleasant thing in Islam. This is so because it is seen as disintegrating the family unity. It means that divorce in Islam is generally allowed though it is not a joyful act. It is when the reasons advanced are so compelling that divorce is entertained. The goal of Islam is to maintenance of stable marriages among the believers. So, Islam encourages reconciliation between spouses whenever there is any misunderstanding. However, Islam permits divorce as it becomes inevitable in some extreme situations when it is not possible for the husband and wife to pull on together. It is allowed normally when all the efforts for reconciliation have proved abortive and there are no chances left for them to live together

[23] (1983) T.L.R.314.
[24] Thompson, E. and Yunus, F. (2007) "Choice of Laws or Choice of Culture: How Western Nations Treat the Islamic Marriage Contract in Domestic Courts", *Wisconsin International Law Journal*, Vol. 25, p.361 at p.363.

amicably.[25] This is due to the fact that Islam tends to take a realistic and sympathetic view of human affairs and thus stresses on the happiness of both spouses.[26] If a husband and wife cannot live happily together in peace and harmony and are not satisfied with their matrimonial life, in the sense that they have physical, emotional, and sexual problems with each other, the Qur`an prescribes to them `divorce` only if the problems are severe.[27] Allah says: "But if they disagree and must part, Allah will provide abundance for all from His all reaching bounty. For Allah is He who careth for all and is wise".[28]

**Dissolution of an Islamic Marriage**

In principle, the process of dissolution of an Islamic marriage can be unilaterally initiated by either husband or wife if it appears that there is no harmony in a married life. The status and application of Islamic Law on domestic relations aspects in Tanzania have this spirit in mind. The following part of the discussion illustrates.

***The Period before the LMA Came into Operation***

Before the LMA came into operation in 1971, a marriage that has been lawfully contracted according to Islamic law could be terminated by any of the following events:

***An act of the husband pronouncing a unilateral talak***

*Talak* is a divorce, which is formally proclaimed by a Muslim husband to his wife with the effect of informing her that he has divorced her. The *Qur'an* allows divorce on the form of divorce and requires the three divorces to be uttered at one month's interval, and to pronounce one divorce at one time, after checking that the woman was not in a state of menstruation.[29] The man could take back his wife before one month is over. If that did not happen and the second pronouncement was made, the man could still back the declarations until the third pronouncement. After pronouncement of the third divorce, the woman could marry another

[25] Gul, A. *et al*. (2021) "Divorce: Causes and Consequences in Islamic Perspective", *Palarch's Journal of Archaeology of Egypt/Egyptology,* 18(4), pp.6136-6151, p.6142.
[26] Hamid, R.A. and Sanusi, A.R.M. (2016) "Challenges and Negative Effects of Divorce among Muslim Women in Northern Nigeria", *Journal of Arts & Humanities,* Volume 05, Issue 11, pp.13-25, p.16.
[27] *Ibid.*
[28] Qur'an 4:130.
[29] Hussain, P.A. (2014) "The Notion of Divorce among the Muslim Women during Medieval Period and Contemporary Times: A Feminist Perspective", *World Journal of Social Science,* Vol. 1, No. 2, pp.49-59, p.50. *http://wjss.sciedupress.com.*

person of her choice. If the second husband divorces her for any lawful reason, and not for making commitment with her divorced husband then the woman is free to remarry her first husband.[30]

***The demand by the wife for divorce from her husband***

The demand by the wife for divorce from her husband is known as *khula* divorce. Under Islamic law, a *khula* divorce is obtainable at the initiative of the wife. The two parties, or their agents, speak or write appropriate words, the wife offering and the husband accepting compensation out of her property for the release of his marital rights.[31] This is the right of a woman in Islam to seek a divorce or separation from her husband when she feels she can no longer cope with her marital obligations to him for any reason whatsoever. It means that Islam allows the wife the right to request and apply to dissolve the marriage through *Khula. Khula* refers to the agreement between the husband and the wife whereby the wife may surrender her claim to unpaid dowry (*mahr*) or returns the full or partial amount of paid dowry in order to induce the husband to agree to divorce. It is her right in Islam to seek a divorce from her husband. The basis and origin of the legality of *khula* is the Quran which provides that:

> *"If the wife decides to end the marriage, she may return the marriage gifts to her husband. This is regarded as a fair compensation for the husband who is keen to keep his wife, while she chooses to divorce him. Thus "there is no blame on either of them, if she gives something for her freedom.*"[32]

In Islam, wife's fears of cruelty or desertion on the husband's part is enough ground for them to arrange an amicable settlement to end their marriage through khula divorce.[33] Furthermore, if the wife is of the opinion that the husband has failed to fulfil the duties that have been imposed on him by the marriage, making the family life miserable, she may terminate the marriage at her request and pay some fair compensation as a consideration.[34] In the same vein, the wife has the right to terminate the marriage relationship if it transpires that the husband suffers from an

[30] *Ibid*.
[31] See the case of *El Haji Salum Mbogoromwa v. Asumini Ngobesi* (1968) HCD 383.
[32] Qur'an 2:229.
[33] Yusuf, A.A. (1938) "Chapter IV" The Holy Quran: Text, Translation and Commentary 178 at pp. 221-222.
[34] Doi, A.R. (1984) "The Sunnah: Second Primary Source of Shari'ah", *Shari'ah: The Islamic Law* at pp. 96-97.

incurable incompetency or insanity (or any other terminal disease).[35]

The Islamic legal position on *khula* divorce has been summed up in the Pakistani case of *Khurshid Bibi v. Muhammad Amin*[36] that:

> *"**Verse 2:229 of the Holy Qur'an** implies that the wife has to pay compensation to the husband in order to obtain dissolution of marriage by khula. This conclusion clearly emerges from its words 'what she gives up to be free' or 'by what she ransomes herself' ... It is a further check on the wife's exercise of the right of khula that, as a general rule, she cannot retain the benefits, i.e., the consideration of the marriage, the same as the husband cannot take back whatever he has given to the wife in consideration of the marriage, if he divorces her, which is a corresponding restraint on his right. Therefore, it is necessary for the Court to ascertain in a case of khula what benefits have been conferred on the wife by the husband as a consideration of the marriage, and it is in the discretion of the Court to fix the amount of compensation…"*

Noting from the foregoing, a *khul'* is the primary mechanism in Islamic law by which a woman is granted the right to dissolve the marriage where she feels that the husband mistreats her or fails to fulfil his marital obligations such as neglecting the maintenance of the wife and children. Such reasons could make family life miserable for the wife. In those circumstances as discussed above, a Muslim woman can seek divorce from her husband and it is lawful for her to give something to her husband to ransom herself from the marriage. She can initiate the divorce to that effect. The divorce by *khula* is also to be found in the sunnah of Muhammad. The following hadith that is found in *Sunan al-Baihaqi* explicitly states that:

> "*A woman came to the Prophet and said: 'I hate my husband and like to separate from him'. The Prophet asked: 'Would you return the orchard that he gave you as dower?' She replied: 'Yes, even more than that.' The Prophet said: 'You should not return more than that."*[37]

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[35] Munir, M.A. (2020) *Development of Khul' Law: Legal, Judicial and Interpretive Trends in Pakistan*, PhD Thesis, Institute of Islamic Studies, McGill University, Montreal, January, p.34.
[36] PLD 1967 Supreme Court 97.
[37] Nadvi, S.H.H. (1989) "Muslim Personal Law" Islamic Legal Philosophy and the Qur'anic Origins of Islamic Law (A Legal-historical Approach), p.47 at p.62. See also Doi, A.R. (1989) "Divorce in the Shari'ah", Women in Shari'ah (Islamic Law), p.81 at p.97.

The two parties, of their free will, speak or write appropriate words, the wife offering and the husband, accepting compensation out of her property for the release of his marital rights.[38] It is a mutual agreement between the husband and wife where divorce is effected by the husband at end of period agreed on receipt of money. Under Islamic law, a *khula* divorce is obtainable at the initiative of the wife, where she moves her husband to pronounce the *talak* on her. Consideration for *khula* divorce is based upon a bargaining between the parties to the marriage.[39]

The moment the husband accepts the offer given by her wife, he has no option but to divorce her. It was held in *Saada Jamali v. Hassan Swaleh*[40], that in this type of divorce the operative factor is the offer to pay, and once this offer is accepted the operation of the divorce is immediately effective and not postponed until the execution. Thus, *khula* is used by a wife to sever the marital bond by paying a ransom to the husband or foregoing some entitlements accruing out of the marriage in exchange of divorce.

In view of what has been stated above, much as a *khula* divorce can be initiated by at the instance of the wife, the consent of the husband is required. If the husband does not consent, the court is duty bound to intervene and grant the divorce.

***By a judicial decree at the request of the wife or husband***

Apart from the non-judicial divorce by *talak* and *khul*, Muslim spouses had an avenue of their marriage be dissolved through judicial process. A good example was where the wife sought to move the court to dissolve the marriage on some matrimonial offences such as neglecting to maintain the wife and children. It was held in the case of *Kilango v. Kilango*[41] that where the wife seeks to move the court (Kadhi) to dissolve the marriage on some matrimonial offence such as neglecting to maintain the wife, then the principles of "talak khula" do not apply. Instead the court should find out whether the matrimonial offence is proved and should there be proof, then the court should, on its own motion, pronounce the marriage dissolved.

***The Period with the LMA in Force***

It would be noted from the foregoing discussion that before the LMA came into force in 1971,

[38] See the case of *El Haji Salum Mbogorowe v. Asumin d/o Ngobesi* (1968) HCD 383.
[39] See the case of *Bark Saidi Salumu v. Mohamedi Saidi* (1970) HCD 95.
[40] (1970) HCD 9.
[41] (1971) HCD 105.

dissolution of Islamic marriage could validly take place even without involving the court of law. Under the rules of Islamic law there is no mandatory provisions which force parties to the marriage to refer their matrimonial problem before the court, in case the dissolution of marriage which was conducted under Islamic law principles has to be effected. However, with the advent of the LMA some new elements, which affect the law of domestic relations as far as dissolution of Islamic marriages is concerned, were introduced. The main objective was to promote the stability of marriage and family life and making sure that divorce is taken as the last resort. The following parts go into details:

***Restriction on Petition for Divorce during First Two Years of Marriage***

The LMA provides under section 100 that spouses are restricted on bringing petitions for divorce during the first two years of marriage. Under this section, no petition for divorce should be made in the first two years of the marriage unless leave to present is granted by the court. The court may grant leave to allow presentation of the petition if it is established that there is an existence of exceptional hardship, which is being suffered by the person applying for such leave. In this instance, an application may be made to the court under this section either before or after reference to a Board under section 101 of the Act. The rationale behind having such a restriction is to usefully safeguard against irresponsible or trial marriages and a valuable external buttress to the stability of marriages during the difficult early years. The restriction is intended to pose an obstacle to the hasty ending of an early marriage which, during an imposed period of reconsideration, might eventually be salvaged. This is aimed at protecting the best interests of both husbands and wives of the early shaking marriages. The restriction acts as a deterrence to such hasty ending of marriages, which are still in their infancy stages. The restriction has stabilising effect in the sense that it creates the room for husbands and wives to resolve their differences in the few years of their married lives. It is a useful safeguard against irresponsible marriages and a valuable external buttress to the stability of marriages during the difficult early years.[42] It is emphasised that divorce should not be so easy that the parties to the marriages are under no inducement to make a success of their marriage and, in particular to overcome temporary difficulties.[43] All this has the purpose of protecting and promoting the best interests of the family members affected. Thus, the two-year time restriction is considered

[42] The Law Commission, (1980) *Time Restrictions on Presentation of Divorce and Nullity*, Working Paper No. 76, Her Majesty's Stationery Office, London, p.7.
[43] *Ibid*., p.8.

important in creating a room for prospects of reconciliation.

It is only where there is established external hardship, which is being suffered by the person applying for such leave that the court may grant leave for petition for divorce during the first two years of marriage. The hardship suffered by the applicant must have been something out of the ordinary.[44] Under Islamic law, there is no such restriction. Nevertheless, spouses of Islamic marriages need to observe this restriction given the legal position that rules of Islamic law do not apply in regard to any matters provided for in the LMA.[45]

***Requirement of Prior Reference to Marriage Reconciliation Board***

One of the new aspects is the introduction of a marriage conciliatory board whereby all divorce matters have first to be referred to it for reconciliation. This aspect is foundation emanating from the fact that where the board fails to reconcile the concerned parties, it has to issue a certificate that it had failed to reconcile the two hence refers the matter to court of law. Pursuant to section 101 of the LMA, no person shall petition for divorce unless he or she has first referred the matrimonial difficulty to a Board and the Board has certified that it had failed to reconcile the parties. It a mandatory requirement for prior reference of matrimonial disputes or matters to the Marriage Conciliation Board before a petition for divorce is filed in court. This legal position is reiterated in the case of *Mwanahawa Kulomba v. Rashidi Kulomba*[46] where it was held that according to section 101 of the Law of Marriage Act 1971, no person shall petition for divorce unless he/she has first referred the matrimonial dispute to the Marriage Conciliation Board and the Board has certified that it has failed to reconcile the parties. It has been similarly stated in the case of *Ismail Omari Kasomo v. Fatuma Kassim Mdoe*[47] that it is the requirement of the law that every matrimonial dispute must be referred to a conciliatory board before one can petition for divorce in a court of law. The Court stated further that the effect of contravening the said provision makes the whole petition incompetent.

According to section 101 of the LMA, the following instances do not require reference to the Board:

(a) Where the petitioner alleges that he or she had been deserted by, and does not know the

[44] *Fay v. Fay* [1982] AC 835 (HL).
[45] See section 9(3A) of the Judicature and Application of Laws Act, Cap. 385 (R.E.2023).
[46] [1999] T.L.R. 21.
[47] (Civil Appeal 9 of 2020) [2022] TZHC 12536 (4 March 2022).

whereabouts of, his or her spouse.

(b) 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.

(c) Where the respondent has been required to appear before the Board and has wilfully failed to attend.

(d) 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.

(e) Where the petitioner alleges that the respondent is suffering from an incurable mental illness.

(f) Where the court is satisfied that there are extraordinary circumstances which make reference to the board impracticable.

It was stated in the case of *Zinat Khan v. Abdullah Khan*[48] 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 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.

The LMA provides further under section 104(5) that a certificate of the Board should set out findings of the Board. 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.[49] According to the Court of Appeal of Tanzania in the case of *Hassani Ally Sandali v. Asha Ally*[50], 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. The certificate should be in a prescribed form as provided for under

[48] [1973] LRT n.57.
[49] See the case of *Sadiki Rashid vs Mariam Mohamed* (PC Civil Appeal 3 of 2021) [2021] TZHC 4249 (2 July 2021).
[50] (Civil Appeal No. 246 of 2019) [2020] TZCA 14 [24 February 2020].

the Marriage Conciliatory Boards (Procedure) Regulations, 1971[51], 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*".

With the LMA in force, nobody can petition for divorce 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.[52] 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 Onyiuke, J. states in the case of *Zinat Khan v. Abdullah Khan*[53] 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 Onyiuke stresses on the importance of the Marriage Conciliatory Board and warns that

[51]GN No.240 of 1971. The form is prescribed under the schedule as Form No. 3.
[52] The LMA, Cap. 29 [R.E.2023], s.101.
[53] (1973) LRT n.57.

nobody should attempt to suppress it. He argues that:

> *"From the aforegoing, 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."*[54]

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.

Therefore, all the courts that have jurisdiction to deal with matrimonial disputes are required to observe the rules relating to reconciliation in dissolving the marriages.[55] The idea of the establishing conciliatory boards is to make them informal and operating procedure to be as flexible as possible as well as to give them minimal connection with the court.[56] In fact, couples usually seek informal conciliation before divorce where family councils, relatives and religious officials are at least as important as state officials.[57] If all these attempts to settle the dispute fail, either party can institute divorce proceedings.[58]

All in all, basing on the foregoing discussion, an absence of certificate from reconciliation board makes a petition for divorce immature and incompetent before a trial court.[59]

***All Marriages to be Dissolved by the Court Only***

Another new aspect, which was brought by the LMA is an introduction of a uniform procedure to be followed in enforcing dissolution of marriages. The LMA abolished all extra-judicial divorces. The coming into force of the LMA has introduced provisions of the law that all

[54] *Ibid*.
[55] Rwezaura, B. A. (1977) "Recent Cases and Conflicts: A Short Study of The New Tanzanian Divorce Law"', *Dar es Salaam University Law Journal*, Vol l 6, p.71, at p.81.
[56] Wako, S. A. (1969) "An Assessment of the Marriage and Divorce Commission Report in Kenya", *Journal of the Denning Law Society*, University of East Africa, Dar es Salaam, Vol 2, No 2, p.73, at p.82.
[57] Rwezaura, B. A. (1983-4) "The Integration of Personal Laws", *Zimbabwe Law Review*, Vol 1&2, p.85, at p.91.
[58] Rahmatian, A., *op cit*., p.298.
[59] See the case of *Shilo Mzee v. Fatuma Ahmed* (1994) T.L.R.112.

marriages whether in Islamic, Christian or civil form are only dissolved by the court.[60] It means that judicial divorce is mandatory, and only a court of competent jurisdiction[61] can dissolve a marriage, by a judicial decree.[62] In the case of *Haruna Makwata v. Fatuma Mselemu*[63], the High Court followed the procedure of hearing the evidence first to determine whether or not the marriage had broken down irreparably. The Court held that:

> "*The right of a Muslim husband to divorce his wife by pronouncing a talaq was given a peaceful and decent burial. The funeral ceremony took place on May 1, 1971, the day the Law of Marriage Act, 1971 came into force. Since that day a Muslim husband like a husband professing any other religion must seek and obtain a decree of divorce if he wants to bring his lawful marriage to an end*."

The court dissolves the marriage when it finds that the said marriage has broken down irreparably. As has been stated above, all marriages whether in Islamic, Christian or civil form are only dissolved by the court. Thus, the mere act of a Muslim husband of issuing *talaks* to his wife no longer validly dissolves a marriage. It is apparent that before the LMA came into operation, parties to the marriage contracted in Islamic form were not mandatorily required by law to seek divorce in court.

***Dissolution of Islamic Marriages: An Analysis of Section 107(3) of the LMA***

Section 107(3) regulates dissolution of Islamic marriages in Tanzania. Subsection (3) of section 107 provides that:

> "*Where it is proved to the satisfaction of the court that-*
>
> *(a) the parties were married in Islamic form, and*
>
> *(b) a Board has certified that it has failed to reconcile the parties, and*
>
> *(c) subsequent to the granting by the board of a certificate that has failed to reconcile the parties, either of them has done any act or*

[60] See the LMA, Cap. 29 [R.E. 2023], s.107.
[61] *Ibid.*, s. 76.
[62] *Ibid.*, s. 110.
[63] (1978) LRT n.8.

> *thing which would, but for the provisions of this Act, have dissolved the marriage in accordance with the Islamic law,*
>
> *the court shall make a finding that marriage has irreparably broken down and proceed to grant a decree of divorce*."

It is apparent that as for an aspect of determining whether the Islamic marriage has irreparably broken down, the LMA has left the matter to the newly introduced Marriage Conciliatory Board and Muslim husbands. Paragraph 24 of the *"Objects and Reasons"* part of the bill, which was tabled before the Parliament and which resulted to the enactment of the LMA is to that effect. The Paragraph reads in part that:

> "*Where a marriage was performed in Islamic form and the husband has after reference to the boards pronounced talakas in accordance with Islamic law, this will be a conclusive proof that marriage has irreparably broken down*."

It is so far noted that issuing talaks by Muslim husbands to their wives, but after having referred the matter to the marriage conciliatory board and before bringing the said matter to court is a "…conclusive proof that the marriage has irreparably broken down."

The legislature intended to accommodate views of Muslim religious leaders who were and still are not ready to see that Islamic law principles on personal matters touching Muslims are eroded. It will be recalled that before the enactment of the LMA in 1971, a relevant body did collect views from different persons, institutions and religious bodies. According to Rwezaura, Islamic religious leaders demanded and insisted, among other things, that the right of a Muslim husband to dissolve his marriage by *talak* must be recognised and protected by the new law, which is the LMA.[64]

In view of what is stated above, it may be argued that by virtue of section 107(3) of the LMA, this demand by Islamic religious leaders was managed to be met.

It is argued that issuing of *talaks* by husbands can be said to be a "thing" or "act" as envisaged

[64] Rwezaura, B.A. (1989) "The Court of Appeal of Tanzania and the Development of the Law of Domestic Relations," *Eastern Africa Law Review* 16 Dec. No.2, pp.146-186, at p.167.

in the above-quoted section.[65] That is so because if the LMA were not in force, the issuing of *talaks* would have validly dissolved the Islamic marriage. Thus, despite that "... within the country our law knows no extra-judicial system of dissolving marriages...,"[66] those Muslim husbands who comply with the provisions of section 107(3) of the LMA are still said to have a say in determining dissolution of their marriages provided that (a) they have sent their matrimonial matters to the marriage conciliation boards, (b) and the boards had issued certificates showing that they have failed to reconcile the concerned husbands and wives, (c) and that subsequently husbands issued *talaks* to their wives; and (d) thereafter matters reach courts of law for annulment of the said marriages. If all these legal requirements are fully complied with, courts will have no choices but to find that the marriages have broken down irreparably hence proceed to dissolve them. It means that Muslim *talaks* are recognised under section 107(3)(a)-(c) of the LMA. Under the Act, the *talak* serves as evidence of 'irreparable breakdown' of marriage. A *talak* can only be granted either after a Marriage Conciliatory Board has certified that it has failed to reconcile the parties subsequent to their performing an 'act or a thing'. The act or thing here means either the pronouncement of a unilateral *talak* by the husband or the demand by the wife for divorce from her husband (*khula*), by the wife paying money or waiving of the unpaid part of the dower (the deferred dower) as consideration for the divorce.[67] It would be noted that the LMA recognises Muslim *talaks* together with the legal consequences, which define the manner in which a marriage in Islamic law can be dissolved.[68]

Likewise, obtaining divorce by self-redemption (*khului*) on the part of the wife, that is by paying to the husband an agreed amount of money, which is permissible in Islamic law, could constitute an act to terminate marriage under Islamic law as envisaged by section 107(3) (c) of the LMA. Just as is the case of issuing *talaks* by husbands, self-redemption (*khului*) on the part of the wife should be preceded by the following requirements: that the parties took their matrimonial matter before the Marriage Conciliation Board and that the Conciliation Board

[65] While allowing an appeal in the case of *Bibie Mauridi v. Mohamed Ibrahim* [1989] T.L.R. 162 on the ground that the Principal Magistrate had apparently overlooked the provisions of section 107(3) of the LMA, Maina, J. held that once the Marriage Conciliation Board has certified that it has failed to reconcile the spouses, and a *talaka* has been issued, then the court has to find that the marriage has irreparably broken down.
[66] *Per* Samatta, Ag. J (as he then was) in the case of *Abdallah Saidi v. Mwanamkuu Yusufu* (1978) LRT n. 43.
[67] Makaramba, R.V. (2010) "The Secular State and the State of Islamic Law in Tanzania", in Jeepie, S. *et al* (Eds.), *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges,* Amsterdam University Press, Amsterdam, pp.273-303*,* pp.287-288.
[68] *Ibid.*

had failed to reconcile them.[69] The High Court of Tanzania has reiterated this legal position in the case of *Mwinyihamisi Kasimu v. Zainabu Bakari*.[70] In this case, the parties were married under Islamic Law and after living together for over 13 years, the respondent petitioned for divorce. The Primary Court dismissed the petition and her appeal to the District Court was also dismissed. But the District Court magistrate advised that because theirs was Islamic marriage, the respondent could still obtain divorce by redeeming herself (*kujikhului*) by returning the dowry which the appellant had paid and that this would be in accorded with s.107(3) of the Law of Marriage Act, 1971. Subsequently the respondent applied to the court to redeem herself as advised, and her application was allowed *ex-parte*. The husband brought this appeal to the High Court.

It was held that in order for the court to make a finding that a marriage is irreparably broken down and to grant a decree of divorce as per s.107(3) of the Law of Marriage Act, 1971, it must be proved firstly, that the partied were married under Islamic Law, secondly, that a Marriage Conciliation Board has certified its failure to reconcile the parties and, thirdly, that subsequent to the Board's failure to reconcile them one of the parties has done an act which, under Islamic Law, is insufficient to terminate the marriage. The Court held further that in order for s.107(3) of the Law of Marriage Act, 1971 to come into play, all the three things must be proved to the satisfaction of the court hearing the petition for divorce, and they must be proved before judgment is entered, not after. The Court held furthermore that while it was established to the satisfaction of the court before judgment was entered that the parties were married according to Islamic Law and that the Conciliation Board had failed to reconcile them, the third requirement, that any one of them had done an act sufficient to terminate the marriage under Islamic Law, was not so established. It was furthermore held that even if the act of the respondent redeeming herself by returning the dowry could constitute an act to terminate marriage under Islamic Law, the act was legally ineffectual in this case because it was done after the court had pronounced judgment.

However, the applicability of section 107(3) of the Act at times has raised some problems where parties have failed to follow strictly the procedures laid down by the said section. In the case of *Rattansi v. Rattansi*[71] the parties fulfilled the two conditions stipulated by section 107(3). Neither of them had done "any act" or "thing" which would have dissolved the

[69] *Mwinyihamisi Kasimu v. Zainabu Bakari* [1985] T.L.R. 217.
[70] [1985] T.L.R. 217.
[71] (1975) LRT n.55.

marriage in accordance with Islamic law. The trial judge was of the view that since the third condition had not been met, the court had no material on which it would base a finding that the marriage has broken down irreparably in order to pronounce a *talak*. Katiti, Ag. J. (as he then was) insisted that according to section 107(3) the "act" or "thing" must take place between the issue of the certificate by the board and an institution of divorce proceedings. His lordship further noted that the act of filing a petition for divorce by either party does not amount to an "act" or "thing" envisaged by the law.

***Divorced Muslim Women should Observe Iddat Period***

As soon as the *talak* is pronounced, the wife will enter a period of *iddat,* also referred to as a waiting period. This is an obligation upon divorced Muslim women are required by Islamic law to observe *iddat* the moment they are divorced. When explained in the context of dissolution of Islamic marriages, *iddat* is the obligatory period of waiting that must be endured by a wife in the event that her marriage to her husband has ended.[72] It is a period of chastity which a Muslim woman is bound to observe after the dissolution of her marriage before she can lawfully marry again. This is in accordance with the Quran, which requires that a divorced woman is to observe *iddat* or waiting period of a menstrual cycle or three months if she is post-menopausal, i.e. ceased menstruating. In case of a woman whose menstruation has stopped due to a cause must wait for her menstruation to return to normal and then carry out the iddah period according to her menstruation period.[73] The reason behind observing *iddat* period is to ascertain whether the woman is pregnant at the time of divorce. If she is pregnant, *iddat* period ascertains the certainty of paternity. The basic reason for *iddat* is to determine whether the woman is pregnant at the time of divorce. Thus, an existence of *iddat* aims to find out whether a woman's womb has children from her ex-husband before she marries another man.[74] During this waiting period the woman is not allowed to re-marry. If she contracts the other marriage during this customary period of *iddat*, any ceremony purporting to be a marriage is a nullity.[75] It is only after completion of this period then she would be allowed to marry again.

[72] Parepare, I. *et al*. (2023) "Gender Equality in Islamic Family Law: Should Men Take Iddah (Waiting Period After Divorce)?", *Russian Law Journal,* Volume XI Issue 3, pp.1132-1134, p.1132.
[73] Afadi, A.A. (2023) "Analysis of Modern Women's Iddah and Ihdad From the Fuqaha Perspective", *Proceeding of 1st International Conference on Education, Society and Humanity*, Vol. 1 No. 1, pp.134-140, p.134. Available online at *https://ejournal.unuja.ac.id/index.php/icesh*.
[74] *Ibid*., pp.135-6.
[75] Section 38(1)(j) of the LMA, Cap. 29 [R.E. 2023].

Furthermore, *iddat* allows divorced Muslim women to detach themselves from any emotional and sexual feelings that they might have for their previous husbands. The Quran provides in Surah al Baqarah as follows concerning the period of *iddat* observation that:

> "*Divorced women shall wait concerning themselves for three monthly periods nor is it lawful for them to hide what God hath created in their wombs if they have faith in God and the Last Day*."[76]

It is compulsory for the divorced Muslim woman to observe *iddat* period in the same house she was residing permanently at the time of dissolution of marriage. *Iddat* is completed in the house which is the permanent residence of a wife. However, much as the period of *iddat* is to be observed in the husband's home the divorced parties are abstained from having sexual intercourse. They should occupy different rooms in the house of residence. The Qur'an in Surah al Talaq provides that:

> *"O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality.*"[77]

During the *iddat* period, the divorced wife is entitled as of a right, to accommodation and maintenance at the husband's expense.[78] The husband is legally bound to provide her all necessities for subsistence such as food, clothing, residence, and medical attendance and treatment. The provision of all these necessities should depend on their standard of life and the means of the husband about his ability to pay. The husband should provide sufficient resources of basic needs to the divorced wife so that she does not experience hardships throughout the *iddat* period.

### *Controlling and Limiting Mechanisms to Full Application of Islamic Law on Dissolution of Islamic Marriages*

Gathered from the foregoing discussion, the introduction of the two new elements in the LMA,

[76] Qur'an 2:228.
[77] Qur'an 65:1.
[78] See Qur'an 2:228; 2:231 and s.115(1)(f) of the LMA, Cap. 29 [R.E. 2023].

namely first, the establishment of marriage conciliatory board whereby all divorce matters have first to be referred to it for reconciliation and second, that all marriages have to be dissolved by the court of law only and not otherwise, have brought some controlling and limiting mechanisms to full application of Islamic law on dissolution of Islamic marriages. The newly introduced aspects under the LMA have brought some requirements and procedures, which have to be properly followed. Failure to abide by them renders a petition for divorce by a Muslim spouse immature and incompetent before a trial court.[79]

**What Transpires on the Ground: Do Muslim Husbands Take Pace with the LMA?**

However, it would be noted that in practice, many Muslim believers view the provisions of section 107(3) of the LMA as a kind of justice administration, which they are not used to. It is an alien part of the law they do not understand and not ready to follow. They prefer the position that the government should leave the issue of marriage and divorce to be handled by religious authorities.[80] Islamic marriage is largely a private matter, which is based on a contract which the husband, who has himself the power to divorce, can rescind without any reasons when the mutual confidence within the relationship vanishes.[81] The possibility of a divorce by mutual agreement again emphasises the private character of an Islamic marriage. The interference of an external authority, a court, which could control how the husband exercises his rights, is permissible but never recommended and often discouraged.[82] That means Muslim believers discourage matrimonial cases to be discussed in the ordinary courts. Thus, any issues between the husband and wife should be solved by them privately without interference of any third person or court.[83] It has been emphasised that:

> *"A modern standpoint should see marriage as a primarily private union which, of course, touches issues of public interest, such as the change of the status of the parties and the well-being of their children. Therefore, the parties who, as all modern marriage laws emphasize, have the freedom to contract their*

[79]See the case of *Shilo Mzee v. Fatuma Ahmed* (1994) TLR 112.
[80] Hayeshi, L.R. (2010) *The Merger of Civil Laws and Religious Laws Regarding Divorces*, LL.B. Dissertation, Tumaini University, Dar es Salaam College, August, p.16.
[81]Rahmatian, A., *op cit*., p.301.
[82] *Ibid*., pp. 301-302.
[83] This position by Muslim believers explains why a research, which was conducted by Rwezaura, B.A., "The Integration of Personal Laws: Tanzania's Experience", *op cit.*, p.92, in five regions with the aim of gathering a general impression on how the new law, that is the LMA, was working, the following were the findings:

> *"I found that many followers of the Islamic law continued to divorce their wives by pronouncing three **talaks**, without reference to the court as the law required them to do."*

> *marriage must also have the right to dissolve their contract. When a matrimonial dispute arises, it is only the parties who are able to decide whether their marriage has broken down. They are the parties to the marriage; hence they should have the choice to terminate the marriage or not. Even if only one party wants to break up the relationship, the marriage, as it is based on mutual affection, will invariably break down. To that extent this concept comes close to the notion of Islamic marriage."*[84]

In extreme cases, Muslim spouses prefer their issues to be addressed by Islamic institutions. Hayeshi, who did a research on the merger of civil laws and religious laws regarding divorces in Tanzania, argues that:

> "*To date the merger of civil marriages and religious marriages in uniform standards is still emotive and a source of conflicts in the law and practice of marriage and divorce. Priests and Sheikhs and believers do not want their religious values to be undermined."*[85]

It is on this reason, among others, that many extra-judicial divorces have been in place in utter disregard of the requirements of the law that such divorce matters should be dealt with in courts of law. It is further found that:

> "*It is ipso facto that though the LMA governs matrimonial relations, however, religious laws still influence major part of such relations. The prevalence of such religious laws side by side with the LMA renders the practice of dissolution of marriages not to conform with the provisions of the law mainly because of ignorance and to the big percentage by reliance to religious precepts*."[86]

In fact, an attention of the court has been drawn when there were some disputed matrimonial reliefs of which parties or religious authorities have failed to resolve. In addition, as noted above, ignorance of such legal requirements by Muslim spouses cannot be done away. In some areas where people are strongly believing in Islamic religion, they cannot go beyond principles of Islamic law, notwithstanding the presence of LMA which is a unified law. So, the existing

[84] Rahmatian, A., *op cit*., p.302.
[85] Hayeshi, *op cit*.
[86] *Ibid.,* p.17.

local practices also let the Muslim husbands believe that the unilateral decision of issuing *talaks* is more than enough to divorce their wives. This position taken by Muslim husbands is in total disregard of the existence of the relevant provisions of the LMA on how divorce should be processed through engaging marriage conciliation boards and courts of law. To them, the LMA has nothing to do with their daily private lives, which are entirely and expressly regulated by Islamic law. In this regard, the LMA is seen as an interference in matters of Muslim personal status instead of a protector.

## Conclusion

In conclusion, it is argued that the coming into force of the Law of Marriage Act in 1971 has actually brought some limitations to dissolution of Islamic marriages. The Act has put the limitations to full application of the Islamic law in dissolution of Islamic marriage through introducing some new aspects in the process that is involved in dissolution of all known marriages in the country. By so doing, the Act has put to an end of having extra-judicial system of dissolving Islamic marriages. The Act has introduced under sections 100,101and107 restriction on petition for divorce during first two years of marriage, the need to refer matrimonial matters to the marriage conciliatory boards before lodging petitions for divorces and that it is the court only which is empowered to dissolve all marriages, respectively. This means that so far, only the court of law has power to dissolve all known marriages in the country. Thus, the practice of Muslim husbands of issuing *talaks* to their wives is no longer having legal effect of dissolving the marriages. Neither the demands by the wives for divorce from their husbands through mutual agreements known as *khula* divorces ends the Islamic marriages. All these are just “any act” or “thing” conditions stipulated by section 107(3) of the LMA, which enable the court to conclude that a marriage has broken down irreparably hence proceeds to dissolve it.

It is true that 54 years have elapsed since the LMA came into force in May, 1971. However, despite such long period of time, the study has found that there has been resistance by some Muslim believers, especially husbands, in coping up with the provisions of the LMA on divorce aspect. Legally speaking, in practice extra-judicial/informal divorces are more pronounced notwithstanding the paucity or absence of data in place. It would be noted that such informal divorces are not reported and registered in the Registration, Insolvency and Trusteeship Agency

(RITA) offices compared to marriage registration.[87] Thus, it is not possible to officially measure the prevalence of dissolution of Islamic marriages through either husbands pronouncing unilateral *talaks* or wives demanding divorces from their husbands through mutual agreements known as *khula* divorces. But in reality, such informal divorces do take place.

[87] The Registration, Insolvency and Trusteeship Agency (RITA) is established by The Executive Agencies Act, Cap.245 [R.E. 2023] and The Trustees' Incorporation Act, Cap.318 [R.E.2023].