

## Burhan v. Ismail

COURT OF APPEAL,

RATWATTE, J. AND TAMBIAH, J.

S.C. (C.A.) 1/77—BOARD OF QUAZIS, COLOMBO 1761.

NOVEMBER 6, 1978.

*Muslim Law—Maintenance—Father's duty to maintain his son—When does that duty cease.*

Where a Quazi Court dismissed an application for the enforcement of a maintenance order on the ground that the child in question was over 18 years of age and it was submitted in appeal that the said child was unemployed and continuing with his studies and entitled therefore to maintenance:

### Held

Inasmuch as a Muslim father was required to continue to maintain his adult son in these circumstances, the Quazi Court should have inquired into this aspect of the matter.

### Case referred to

(1) *Ummul Marzoonah v. Samad*, (1977) 79(1) N.L.R. 209.

APPEAL from an order of the Board of Quazis.

*E. St. N. D. Tillekeratne*, for applicant-appellant.

Respondent absent and unrepresented.

November 6, 1978.

**RATWATTE, J.**

The appellant and the respondent had been married and later divorced under the Muslim Law. There is one child of that marriage. By order dated 11.4.1957 the respondent was ordered to pay a sum of Rs. 30 per month as maintenance in respect of the child. Subsequently, upon a settlement dated 29.4.1972 the respondent had consented to pay Rs. 50 per month up to February 1974. At the time the settlement was entered into, the child was 17 years of age. On 17.9.1975 the appellant, who is the mother of the child, filed an affidavit in the Quazi Court, Colombo South, and moved for an enforcement order in respect of the arrears of maintenance for her son amounting to Rs. 900 for the period 1.3.1974 to 31.8.1975 at the rate of Rs. 50 per month. On 8.2.1976 the Quazi of Colombo South made order dismissing the application for an enforcement order only on the ground that the child was over 18 years of age. The appellant thereafter appealed to the Board of Quazis against the order of the Quazi Court.

On 9.6.1976 the Board of Quazis after hearing the parties affirmed the order of the Quazi and dismissed the appeal. The appellant appeals to this Court against the order of the Board of Quazis. The only ground on which the enforcement order was refused was that the child had reached the age of 18 years. The learned counsel for appellant cited the judgment of the Supreme Court in the case of *Ummul Marzoonah v. A. W. A. Samad* (1). In that case, Vythialingam, J., after consideration of the authorities cited, stated as follows :—

“Under the modern conditions even the simplest job requires some form of educational qualification. The requirement that a Muslim father should continue to support his adult son who is engaged in studies in order to qualify for employment is, therefore, in keeping and not in conflict, with the Shaffi School of Muslim Law which requires a Muslim father to maintain his adult son who is necessitous or is incapacitated or disabled by infirmity or disease. For an adult son who is engaged in studies is also necessitous or is incapacitated from earning his livelihood because of his studies.”

In that case, Justice Vythialingam set aside the order of the Board of Quazis.

Counsel for the appellant states that the appellant's child is unemployed and is continuing his studies. While we are in agreement with the judgment cited above, we set aside the order of the Board of Quazis, and send the case back to the Quazi Court, Colombo South, for inquiry into the application for enforcement. The Quazi Court can inquire into the question as to whether the child in question is unemployed and is in necessitous circumstances. The appellant would be entitled to the costs of this appeal.

**TAMBIAH, J.**—I agree.

*Set aside and sent back.*