



**Murage & another v Office of the Attorney General Registrar of Marriages (Miscellaneous Cause E152 of 2023) [2023] KEHC 21949 (KLR) (Family) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS CAUSE E152 OF 2023  
PM NYAUNDI, J  
AUGUST 18, 2023**

**BETWEEN**

**SIMON GIKONYO MURAGE ..... 1<sup>ST</sup> APPLICANT**

**MAUREEN RUGURU KARANJA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE OFFICE OF THE ATTORNEY GENERAL REGISTRAR OF MARRIAGES ..... RESPONDENT**

**No requirement under the Marriage Act to obtain a certificate of no impediment from the Registrar of Marriages for parties solemnising their marriage as Christians.**

*The case revolved around the authority of the Registrar of Marriages and the jurisdiction of the High Court in marriage-related matters. The applicants sought to solemnize a Christian marriage, but the Registrar required them to obtain a certificate of no impediment, a procedure outlined for civil marriages under the Marriage Act. The applicants contested this requirement, arguing it did not apply to Christian marriages. The High Court found that the Registrar had acted beyond their statutory mandate by imposing civil marriage procedures on Christian marriages. The court held that Christian marriages under Part III of the Marriage Act were distinct from civil marriages, and the certificate of no impediment was unnecessary. Furthermore, the High Court reaffirmed its unlimited jurisdiction in civil matters, dismissing any claims that the Resident Magistrate's Court had exclusive authority under the Marriage Act. The decision of the Registrar was set aside, and the marriage was allowed to proceed.*

Reported by John Ribia

***Family Law** – marriages – Christian marriages – requirements under Christian vis-à-vis Civil marriages – role of the Registrar of Marriages in Christian marriages – certificate of no impediment - whether the Registrar of Marriages was performing a quasi-judicial function, rather than an administrative function, when determining the legal capacity of parties who wanted to engage in a Christian marriage to marry - whether the officiating minister of a Christian marriage, rather than the Registrar, had the responsibility to address objections and*



*issue the marriage certificate under the Marriage Act - whether the Registrar's powers under section 50(2) of the Marriage Act should be interpreted alongside the specific provisions for Christian and civil marriages, without subsuming one regime under the other. - whether the parties who were solemnising their marriage as a Christians were required under the Marriage Act to obtain a certificate of no impediment from the Registrar of Marriages - whether the Registrar of Marriages acted ultra vires by requiring parties intending to marry under Christian rites to comply with procedures applicable to civil marriages, including obtaining a certificate of no impediment - Marriage Act (cap 150) sections 2, 3(3), 6, 17- 27, 32, 36, and 50 (2).*

**Jurisdiction** – jurisdiction of the High Court – jurisdiction to determine marital disputes or challenges to the registrar of marriages - Whether the High Court had jurisdiction in civil matters, including those governed by the Marriage Act, despite the designation of the Resident Magistrate's Court as the court with jurisdiction under section 2 of the Marriage Act - Constitution of Kenya, 2010 article 165(3)(a); Marriage Act (cap 150) sections 2; Magistrate's Court Act (Cap 10) section 3.

**Words and Phrases** – administrative – definition - a decision or an implementation relating to the government's function or a business's management - Black's Law Dictionary 11<sup>th</sup> Edition.

### **Brief facts**

The applicants having purposed to conduct a Christian marriage proceeded to process an application towards securing authorisation from the Office of the Registrar of Marriages (the Registrar) through the e-citizen account of the 2<sup>nd</sup> applicant. By SMS messages, the registrar confirmed receipt of the application and notified that the application had been approved and forwarded to the notice board for 21 days display. The registrar by SMS invited the two applicants to book an appointment to appear before the Registrar and to bring with them their original documents. Confident that all things were in order the parties proceeded to fix their wedding at their church.

However, the Registrar notified them that they could not proceed with the marriage as the groom was yet to file a divorce suit and obtain a decree noting that he was in a previous marriage for ten years under a customary marriage (between 2001 to 2011) and blessed with one child in his previous marriage. Aggrieved the petitioners filed the instant suit to reverse the decision of the Registrar.

The respondent contended that the proper procedure for challenging the decision of the executive was by way of judicial review under article 47 of the Constitution and the Fair Administrative Act. The respondent further contended that when determining whether or not the applicants could marry they were in fact exercising an administrative and not quasi-judicial function.

### **Issues**

- i. Whether the High Court had jurisdiction in civil matters, including those governed by the Marriage Act, despite the designation of the Resident Magistrate's Court as the court with jurisdiction under section 2 of the Marriage Act.
- ii. Whether the Registrar of Marriages was performing a quasi-judicial function, rather than an administrative function, when determining the legal capacity of parties who wanted to engage in a Christian marriage to marry.
- iii. Whether the officiating minister of a Christian marriage, rather than the Registrar, had the responsibility to address objections and issue the marriage certificate under the Marriage Act.
- iv. Whether the Registrar's powers under section 50(2) of the Marriage Act should be interpreted alongside the specific provisions for Christian and civil marriages, without subsuming one regime under the other.
- v. Whether the parties who were solemnising their marriage as Christians were required under the Marriage Act to obtain a certificate of no impediment from the Registrar of Marriages.
- vi. Whether the Registrar of Marriages acted *ultra vires* by requiring parties intending to marry under Christian rites to comply with procedures applicable to civil marriages, including obtaining a certificate of no impediment.



## Held

1. Jurisdiction was everything, without it, a court had no power to make one more step where a court had no jurisdiction there would be no basis for continuation of proceedings pending other evidence. Whereas by virtue of section 2 of the Marriage Act, the Resident Magistrate's Court was defined as the designated Court, that did not oust the constitutional mandate of the High Court as provided for under article 165(3)(a) which was unlimited original jurisdiction in criminal and civil matters. The claim of lack of jurisdiction was dismissed.
2. The Registrar was making a pronouncement on the legal right of the applicants to contract a marriage. The Registrar was making a pronouncement on the legal right of the applicants to contract a marriage. Administrative meant a decision or an implementation relating to the government's function or a business's management. In convening to determine whether or not the applicants had capacity to marry the respondent was exercising a quasi-judicial and not an administrative function.
3. The Marriage Act (the Act) provided that parties aggrieved by decision of Registrar could challenge the same in court. The law governing the formalisation of Christian Marriages was provided for under Part III of the Marriage Act. Under Section 6, a christian marriage was one that was celebrated in accordance with the rites of a christian denomination. Marriages celebrated under Part III were distinct from those celebrated under Part IV which provided for civil marriages, especially as relates to the role of the Registrar. Under Part III, it was the licensed church minister who presided over the preliminaries under the general guidance of part II and the specific rites of that denomination. Under section 19 and 20 of the Act it was the marriage officer or person in charge of the public place of worship who decided on any objection to the marriage.
4. After the determination, the decision was communicated to both the parties and the Registrar and if any party was not satisfied they would appeal to the court. It was the person who officiated over the marriage ceremony that issued a copy of the marriage certificate to the parties. Part IV related to Civil Marriages and the procedure was different. Under Section 25, the parties were required to give a written notice of not less than 21 days to the Registrar and the person in charge of the place where they intend to celebrate the marriage.
5. Under section 26 of the Act the Registrar was required to publish the notice and under Section 27 it was the Registrar or the person in charge of the place where the marriage was to be celebrated who received the notice of objection and decided on the same. In both instances a party dissatisfied with the decision could appeal to the Court. Under Section 32 the Registrar was mandated to issue a certificate of no impediment where there was no objection to the celebration of the marriage. It was important to note that this was in relation to civil marriages. Section 36 then provided that if the Registrar was satisfied that there was no impediment to the intended marriage, the Registrar was to celebrate the marriage.
6. The roles of the Registrar under Section 50(2) of the Marriage Act could not be read in isolation but must be read alongside Part III and Part IV of the Act. The Marriage Act consolidated the various laws relating to Marriage in Kenya but did not subsume the different regime under any other. Section 3(3) provided that all marriages Registered under the Act had the same legal status. The Act therefore dealt with each of the recognised Marriages under separate parts. Each of the respective parts was independent in relations to the steps that lead to the officiating of the marriage.
7. Parties who were solemnising their marriage as a Christians were not required under the Marriage Act to obtain a certificate of no impediment from the Registrar of Marriages. The certificate of no impediment only related to Civil marriages and the provisions of section 50 must be interpreted accordingly. If parliament had intended that the Registrar had that power in relation to Christian Marriages, it would have expressly stated so.
8. The interpretation and the manner of application of the law by the Registrar meant that the Marriages under the different regimes were required to undertake a two-step process of ascertaining that the parties were free to wed. The first was that provided for under the different regimes and the second that



had been laid out by the Registrar outside of the express provisions of the Act. Section 50(2)(d) of the Marriage Act did not apply to Christian Marriages.

9. In requiring parties who intended to celebrate Christian marriages or any other marriage that was not a civil marriage to comply with that section 25 of the Act, the Registrar of Marriages was acting in excess of their mandate. Any person intending to celebrate their marriage under Christian Marriage or any other marriage that was not a civil marriage was not required to obtain a certificate of no impediment under section 32 of the Marriage Act.

*Application allowed.*

### **Orders**

- i. *The decision of the Registrar of Marriages on the June 30, 2023 was set aside as the same was ultra vires the statutory mandate of the Registrar.*
- ii. *The church minister in charge of PCEA Church Mukarara to proceed and conduct the marriage between Simon Gikonyo Murage and Maureen Ruguru Karanja as long as there was no objection or impediment as provided for under section 19 of the Marriage Act.*
- iii. *Each party was to bear their own costs.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Abmad & another v Kadhi Mombasa; Khalifa & another (Interested Party)* Judicial Review 4 of 2020; [2021] KEHC 133 (KLR) - (Mentioned)
2. *Macharia & another v Kenya Commercial Bank Limited & 2 others* Application 2 of 2011; [2012] KESC 8 (KLR); [2012] 3 KLR 199 - (Explained)
3. *Owners of the Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd* Civil Appeal 50 of 1989; [1989] KECA 48 (KLR); [1989] KLR 1 - (Explained)
4. *Republic v Director of Immigration Services, Cabinet Secretary for Interior and Co-Ordination of National government & Attorney General Ex Parte Zarko Knezevic* Judicial Review Application E001 of 2021; [2021] KEHC 7910 (KLR) - (Mentioned)

#### **Statutes**

#### **Kenya**

1. Constitution of Kenya articles 10(2)(c); 27 (4); 35(1); 36 (1); 45(1) (2); 47; 48; 50(1); 159(2)(d); 165(6) (7) — (Interpreted)
2. Magistrate's Court Act (cap 10) section 3 — (Interpreted)
3. Marriage Act (cap 150) sections 2; 3(3); 6; 17- 23; 25; 26; 27; 32; 36; 50 (2); parts 2, 3, 4, 5, 7 — (Interpreted)

#### **Texts**

1. Bacchini, S., (Ed) (2011) *Concise Oxford English Dictionary* New York: Oxford University Press 9th Ed
2. Garner, BA., Black, HC., (Eds) (2014) *Black's Law Dictionary* St Paul, Minnesota: Thomson Reuters 11th Edn

#### **Advocates**

*Ms. Birundu* for the respondent

*Mr Malanga* for the applicant



## RULING

1. By notice of motion dated July 14, 2023 presented under articles 10(2)(c), 27(4), 35(1) 36(1), 45(1) & (2), 47, 48, 50(1), 159(2)(d) and 165(6) & (7) of the Constitution of Kenya, sections 17-23 of the Marriage Act 2014 and paragraph (c) of Gazette Notice No 6303 of 2023 and seeks the following orders -
  1. Spent
  2. That the record, file and/ or transcript of proceedings before the Registrar of Marriages at Sheria House leading to the decision by Miss/ Mrs Jane Wachira on 30.6. 2023 on the issue of the intended marriage between the applicants herein be called for and examined by this court for the purpose of satisfying itself as to the correctness, legality and/ or propriety of the procedure adopted therein and in particular the decision made by Miss/ Mrs Jane Wachira (Registrar and/ or Assistant Registrar of Marriages) on 30.6.2023 in respect to the intended marriage between the 1<sup>st</sup> applicant as the groom and the 2<sup>nd</sup> applicant as the bride
  3. That the said decision of the Registrar of Marriages through one Miss/ Mrs Jane Wachira made on 30.6. 2023 be set aside and / or quashed and the applicants be allowed to celebrate their intended Christian marriage as earlier planned albeit on a different date other than 14.7.2023 which has now long passed.
  4. That the Registrar of marriages be ordered to sign and/ or issue all and / or every relevant document that would enable the effectuation of the order (3) above.
  5. That the cost of this application be provided for.
2. The application is supported by affidavits sworn on the July 17, 2023 by the 1<sup>st</sup> and 2<sup>nd</sup> applicants. The respondent opposes the application *vide* replying affidavit sworn on July 26, 2023 by Joshua Muiru Mbira and in addition has filed a preliminary objection dated July 27, 2023.
3. During mention directions were given that the court would hear the preliminary objection and the application contemporaneously and that the matter would be canvassed by way of written submissions.
4. Accordingly, the applicants filed submissions dated July 27, 2023 whilst those of the respondents are dated July 30, 2023.

### Background

5. The applicants having purposed to conduct a Christian marriage proceeded to 'process an application towards securing authorisation from the Office of the Registrar of Marriages' through the e-citizen account of the 2<sup>nd</sup> applicant. By SMS messages on June 5, 2023, the registrar confirmed receipt of the application and notified that the Application had been approved and forwarded to the notice board for 21 days display. On June 26, 2023, the registrar by SMS invited the two applicants herein to book an appointment to appear before the Registrar and to bring with them their original documents.
6. Confident that all things were in order the parties proceeded to fix their wedding for the 14<sup>th</sup> of July 2024 at PCEA Church, Mukarara.
7. However, on the June 30, 2023, the Registrar notified them that they could not proceed with the marriage as 'Groom to file a divorce suit and obtain a decree noting that he was in a previous marriage



for ten years under a customary marriage (between 2001 to 2011) and blessed with one child in his previous marriage.

8. It is this decision of Registrar that triggered the current application as the 1<sup>st</sup> applicant denies having any subsisting marriage.

### **Analysis and Determination**

9. Having carefully reviewed the pleadings filed herein alongside the affidavits, submissions, authorities cited and the relevant law I frame the following as the issues for determination
  - a. Whether this court is clothed with the requisite jurisdiction to adjudicate over the application
  - b. If (a) is answered in the affirmative whether the court should set aside the decision of the Registrar of Marriages.

### **Whether the Court is clothed with requisite jurisdiction**

10. The respondent challenges the jurisdiction of the court on two fronts. Firstly, by way of preliminary objection dated July 26, 2023 which is presented on the following grounds-

That this honourable court has no jurisdiction to hear and entertain and / or determine the matters as section 2 of the Marriage Act No 4 of 2014 under the interpretation section defines court to mean a Resident Magistrate Court established under section 3 of the Magistrate's Act (cap 10)

11. Secondly, in their submissions, they contend that the application is presented under article 165(6) and must fail as the respondent does not exercise judicial or quasi-judicial function and therefore is not subject to the supervisory jurisdiction of the High Court.
12. It is contended further that the proper procedure for challenging the decision of the executive is by way of judicial review under article 47 of the Constitution of Kenya 2010 and the Fair Administrative Act.
13. In support of this proposition the applicant relies on the decision in Ahmad & Anor v Kadhi Mombasa; Khalifa & anor (Interested Party) (Judicial Review 4 of 2020) [2021] KEHC(KLR) (21 October 2021) (Ruling) and In Republic v Director of Immigration Services & 2 Others Ex Parte Knezevic [2021]
14. The locus classicus decision on jurisdiction is the case of Owners of Motor Vessels (Lilian (s) v Caltex Oil (Kenya Ltd) [1989] eKLR where the court pronounced *inter alia* that:

“Jurisdiction is everything, without it, a court has no power to make one more step where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence.”
15. In Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR the Supreme Court held as follows:

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for



without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (applicant), Constitutional Application Number 2 of 2011*. Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

16. Whereas by virtue of section 2 of the *Marriage Act*, the Resident Magistrate’s Court is defined as the designated court, this does not oust the Constitutional mandate of the High Court as provided for under article 165(3)(a) which is ‘unlimited original jurisdiction in criminal and civil matters.’ On this ground I would dismiss this ground.
17. With regards to the 2<sup>nd</sup> ground, the respondent states that in determining whether or not the applicants could marry they were in fact exercising an administrative and not quasi-judicial function. I find this an interesting argument to put forward as in making this decision, the Registrar was making a pronouncement on the legal right of the applicants to contract a marriage.
18. The *Concise Oxford Dictionary* (9<sup>th</sup> Edition) defines the word administrative as ‘concerning or relating to the management of affairs’. *Black’s Law Dictionary* ( 11<sup>th</sup> Edition) defines administrative action to mean ‘ a decision or an implementation relating to the government’s function or a business’s management’. From these definitions it is evident that in convening to determine whether or not the Applicants had capacity to marry the Respondent was exercising a quasi-judicial and not an administrative function.
19. For this reason, I will also dismiss the 2<sup>nd</sup> limb of the preliminary objection challenging the jurisdiction of this court.
20. In any event the Act provides that parties aggrieved by decision of Registrar to challenge the same in court.

#### **Whether the Court should set aside the decision of the Registrar of Marriages.**

21. It is common ground that the applicants intended to celebrate a Christian Marriage under the *Marriage Act*, 2014 at PCEA Church Mukarara. The Christian marriage is one of the kinds of marriage recognised under section 6 of the *Marriage Act*.
22. The law governing the formalisation of Christian marriages is provided for under part III of the *Marriage Act*. Under section 6, a Christian marriage is one that is ‘celebrated in accordance with the rites of a Christian denomination.’
23. Marriages celebrated under part III are distinct from those celebrated under part IV which provides for Civil marriages, especially as relates to the role of the Registrar. Under part III, it is the licensed church minister who oversees the preliminaries under the general guidance of part II and the specific rites of that denomination. Of relevance to this application, under section 19 and 20 of the Act it is the ‘marriage officer’ or person in charge of the public place of worship who decides on any objection to the marriage.



24. After the determination, the decision is communicated to both the parties and the Registrar and if any party is not satisfied they may appeal to the court. It is the person who officiates over the marriage ceremony that issues a copy of the marriage certificate to the parties.
25. Part IV relates to Civil Marriages and the procedure is different. Under section 25, the parties are required to give a written notice of not less than 21 days to the Registrar and the person in charge of the place where they intend to celebrate the marriage.
26. Under section 26, the Registrar publishes the notice and under section 27 it is the Registrar or the person in charge of the place where the marriage is to be celebrated who receives the notice of objection and decides on the same. In both instances a party dissatisfied with the decision can appeal to the court.
27. Under section 32 the Registrar is mandated to issue a certificate of no impediment where there is no objection to the celebration of the marriage. It is important to note that this is in relation to civil marriages. Section 36 then provides that if the registrar is satisfied that there is no impediment to the intended marriage, the Registrar shall celebrate the marriage.
28. I have reproduced these provisions in extenso as in paragraph 4 of the replying affidavit the respondents state

That from the onset, I wish to state that the office of the Registrar of Marriages in which I serve, is mandated under the Act to; perform civil marriages, register all marriages, issue marriage certificates for all registered marriages, issue certificates of no impediment to persons who intend to marry and who qualify for such a certificate; determine the rules governing customary marriages; and determine objections of notices to marry.

29. These are the roles of the Registrar as provided for under section 50(2) of the *Marriage Act*. This section cannot be read in isolation but must be read alongside part III and part IV summarised above and indeed the entire Act.
30. The *Marriage Act* consolidated the various laws relating to marriage in Kenya but did not subsume the different regime under any other. Section 3(3) provides that all marriages registered under the Act have the same legal status.
31. The Act therefore deals with each of the recognised Marriages under separate parts. So, the Christian marriage is under part III, the Civil Marriage under part IV, marriage under Customary law under part V, marriage under Hindu Law part VI and marriage under Islamic Law under part VII.
32. Each of the respective parts is independent in relations to the steps that lead to the officiating of the marriage. Having so observed the question that is left for determination is whether the parties who are solemnising their marriage as a Christians are required under the *marriage Act* to obtain a certificate of no impediment from the Registrar of Marriages.
33. Having reviewed the Act it is clear to me that there isn't such a requirement under the Act. The certificate of no impediment only relates to Civil marriages and the provisions of section 50 must be interpreted accordingly. If parliament had intended that the Registrar has this power in relation to Christian marriages it would have expressly stated so.
34. Further the interpretation and the manner of application of the law by the Registrar means that the marriages under the different regimes are required to undertake a two-step process of ascertaining that the parties are free to wed. The first is that provided for under the different regimes and the second this that has been laid out by the Registrar outside of the express provisions of the Act.



35. For the avoidance of doubt I reiterate that section 50(2)(d) does not apply to Christian marriages.
36. For the reasons set out above I find that in requiring parties who intend to celebrate Christian marriages or any other marriage that is not a civil marriage to comply with that section 25, the Registrar of Marriages is acting in excess of their mandate. It follows therefore that any person intending to celebrate their marriage under Christian marriage or any other marriage that is not a civil marriage is not required to obtain a certificate of no impediment under section 32 of the Act.
37. I will therefore allow the application and make the following orders
  - a. The decision of the Registrar of Marriages on the 30.6.2023 is set aside as the same was *ultra vires* the statutory mandate of the Registrar.
  - b. The church minister in charge of PCEA Church Mukarara to proceed and conduct the marriage between Simon Gikonyo Murage and Maureen Ruguru Karanja as long as there is no objection or impediment as provided for under section 19 of the Act
  - c. Each party to bear their own costs

It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF AUGUST, 2023.**

**P M NYAUNDI**  
**JUDGE**

