**MNN v SMM (Appeal E080 of 2022) [2024] KEHC 11757 (KLR) (Family) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11757 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**APPEAL E080 OF 2022**

**BM MUSYOKI, J**

**OCTOBER 3, 2024**

**BETWEEN**

**MNN ..... APPELLANT**

**AND**

**SMM ..... RESPONDENT**

***(Being an appeal from judgment and decree of Honourable Aduke Jeal Praxades Atieno (RM) in Chief Magistrate's Court at Milimani Commercial Courts Divorce Cause number E1369 of 2020 dated 10-05-2022)***

**A marriage based on cohabitation can only be ripe for registration after declaration of its existence by courts**

*The parties cohabited between 2007 to 2017 and had been blessed with children. The appeal challenged the judgment of the trial court dismissing the petition seeking to dissolve the parties' marriage. The instant court highlighted the ingredients for proof of presumption of marriage by cohabitation. The court held that a marriage which was implied by cohabitation could only be ripe for registration after declaration of its existence and that only the courts could do so. The court further held that marriages through long period of cohabitation could not be termed as customary marriages. Further, there was no inconsistency between the doctrine of presumption of marriage and the Marriage Act.*

Reported by Kakai Toili

***Family Law*** *– marriages – presumption of marriage – what were the ingredients for proof of presumption of marriage by cohabitation - when did a marriage which was implied by cohabitation become ripe for registration.*

***Family Law*** *– marriages – types of marriages – customary marriages - whether marriages through long periods of cohabitation could be termed as customary marriages - Marriage Act (cap 150), section 55(1).*

***Statues*** *– interpretation and application of statutes – interpretation and application of the Marriage Act - whether marriages which subsisted before enactment of the Marriage Act became invalid after the enactment of*

*the Act - whether the doctrine of presumption of marriage was inconsistent with the Marriage Act – Marriage Act (cap 150), sections 3, 44, 55 and 98; Judicature Act (cap 8), section 3(1)(c).*

**Brief facts**

The parties cohabited between 2007 to 2017 and had been blessed with children. In the pleadings, both parties referred to their relationship as a marriage. The appeal challenged the judgment and decree of the trial court. At the trial court the appellant was sought among other orders, that; the marriage between her and the respondent be dissolved. The respondent filed an answer to petition and a cross-petition in which he prayed for among other orders; a declaration that there was cohabitation between the parties leading to a presumption of marriage.

The trial court dismissed the petition by stating that the presumption of marriage was a question of fact, subject to the requisite proof and that it had not been proved on a balance of probabilities. The trial court issued among other orders that either party to apply for registration as under section 3 of the Marriage Act before a petition for divorce could be filed and with respect to the issue of the union, status *quo* be maintained for 90 days on physical and legal custody pending a suit before the children court. Aggrieved, the appellant filed the instant appeal.

**Issues**

i. What were the ingredients for proof of presumption of marriage by cohabitation?
ii. When did a marriage which was implied by cohabitation become ripe for registration?
iii. Whether marriages through long periods of cohabitation could be termed as customary marriages.
iv. Whether marriages which subsisted before enactment of the Marriage Act became invalid after the enactment of the Act.
v. Whether the doctrine of presumption of marriage was inconsistent with the Marriage Act.

**Held**

1. Being a first appeal, the court had a duty to conduct the appeal as a re-hearing by re-evaluating, re-analysing and re-examining the evidence produced before the trial court and come to its own independent conclusion. However, the court should keep in mind that it did not take the evidence of the parties or observe their demeanour and should therefore give due allowance for that.
2. The parties cohabited between 2007 to 2017. Even when the respondent went for further studies in South Africa, they did not part ways. By the time the respondent left for South Africa, the couple had already been blessed with two children. The respondent told the trial court which was confirmed by the appellant that, even when he was in South Africa, their relationship remained that of husband and wife. In the pleadings, both parties were referring to their relationship as a marriage.
3. The presumption of marriage was a matter of fact which required proof. The ingredients for proof of presumption of marriage by cohabitation were;
    1. The parties must have lived together for a long period.
    2. The parties must have the legal right or capacity to marry.
    3. The parties must have intended to marry.
    4. There must be consent by both parties.
    5. The parties must have held themselves out to the outside world as being a married couple.
    6. The onus of proving the presumption was on the party who alleged.
    7. The evidence to rebut the presumption had to be strong, distinct, satisfactory and conclusive.
    8. The standard of proof was on a balance of probabilities.
4. The relationship between the parties fit the criteria for presumption of marriage by cohabitation. The parties cohabited for ten years which was long enough to qualify for presumption of marriage; they had capacity to enter into marriage; the parties confirmed that the relationship was consensual and by consent and that their intention was to marry. It was in the evidence of both parties that the parties had made arrangements for payment of dowry although it did not materialize. Throughout the evidence,

it was shown that the parties' friends and relatives knew and understood them to be husband and wife. The trial court erred in fact when it held that the conditions for presumption of marriage had not been proved to the required standards.

5. The presumption of marriage by cohabitation was a common law principle recognised and applicable in Kenya. The Marriage Act did not make any clear provision for registration of marriage by cohabitation. It provided for registration of customary marriages. A marriage which was implied by cohabitation could only be ripe for registration after declaration of its existence and only the courts could do so. That was a grey area where reforms may be necessary but lack of such clear provisions did not erode or obliterate the doctrine of presumption of marriage in Kenya's legal system.
6. As the living styles, customs, ethos and culture of the society evolved, the doctrine of presumption of marriage may disappear or become unrealistically operative but for now, it was still a sound principle noting that pertinent provisions of the Marriage Act may not be applicable retrospectively.
7. There were no provisions for registration of presumed marriages. The registration the trial court must have had in mind was that of customary marriages under section 55 of the Marriage Act which were pegged on a particular customary law. Marriages through long period of cohabitation were not attributable to a specific customary group and they could not be termed as customary marriages. The purport of section 55(1) of the Marriage Act where it provided that parties applying for registration must identify the customary law applicable. For instance, in the instant matter, the parties had stated that no formal marriage ceremony was carried out meaning that there were no customary rites done.
8. There was no issue of customary marriage before the trial court which would have justified her reverting to section 3, 44 and 55 of the Marriage Act. A marriage which subsisted before enactment of the Marriage Act did not become invalid after the enactment of the Act. Section 98 of the Marriage Act saved the pre-existing marriages.
9. The parties started living together in 2007 and parted ways in 2017 before the requirement of registration of customary marriages came into effect which meant that even if the court were to categorise their marriage as a customary one, they would not have been caught up by the provisions of the law requiring registration.
10. Section 3(1)(c) of the Judicature Act Chapter 8 of the Laws of Kenya made the principles of common law applicable in Kenya's legal system unless they were inconsistent with any written law. There was no inconsistency between the doctrine of presumption of marriage and the Marriage Act. it would be manifestly unfair and breach of the parties' constitutional rights if the law applied in a way to invalidate a pre-existing marriage by a mere fact that a new law had come into force. Coming into force of any law could not pull back or invalidate acts which were hitherto lawful. A new law could only look into the future and not backwards.
11. The trial court erred and was wrong in making a finding which made registration of the parties' marriage as a pre-requisite for their filing matrimonial causes or pursuing their already acquired rights.
12. Sections 65, 69 and 70 of the Marriage Act gave grounds upon which different marriages may be dissolved among them irreconcilable differences, cruelty and adultery. Both parties pleaded adultery and cruelty against each other. However, there was no evidence in proof of adultery.
13. The kind of environment that had developed in the parties' home seemed to have been unsustainable and unconducive for a marriage. Failure to pay dowry may not be in itself cruelty but could lead to an inference that there were broken promises and lack of cordial relationship between the parties. From the accusations and counter accusations, there was no trust left between the parties. The parties' relationship had hit the bedrock bottom for whatever reasons. The fact that there was a petition and cross petition inferred that the parties had had enough of each other. The animosity was too high that the appellant left home, whether voluntarily or forced out, to live with her parents.

14. Irretrievable breakdown of a marriage was a ground for divorce. The parties seemed not be ready to have their differences sorted out. They were worlds apart and they had a right to go their separate ways. The circumstances of the case showed that the union between the parties had irretrievably broken down.
15. From the parties' evidence, the issue of custody of the children had not been raised. It was not pleaded and was not addressed by the parties during their testimony or submissions before the trial court. A court of law could only grant that which was prayed for.
16. The trial court had no jurisdiction to determine issues of custody of the minors as the same was by law vested in a children court, a fact the trial court seemed to have acknowledged when it held that the status *quo* would remain for 90 days pending a suit in the children court. It had been pleaded by the appellant that a suit number 1693 of 2019 was pending before the children court but the parties had not brought the issues of the children to the trial court for determination.
17. The mention of the children's matter was information whose disclosure was a requirement of the law. Parties were required to disclose any other proceedings pending before another court. Even if the trial court had been asked to make decision on the custody of the children, the trial court did not have powers to make orders in respect of a suit pending before a court of concurrent jurisdiction. The trial court had no supervisory powers over the children court. In that regard, the trial court erred when it delved into the issues of the children of the marriage.
18. The trial court did not make orders in respect of the cross-petition which was an oversight. The trial court had the duty to make orders in respect of the cross-petition.

*Appeal allowed.*

***Orders***

i. *The judgement and decree in the Chief Magistrate's Court at Milimani Commercial Court Divorce Cause Number E1369 of 2020 dated May 10, 2022 set aside.*
ii. *A declaration was issued that the appellant and respondent were married pursuant to the common law principle of presumption of marriage.*
iii. *The marriage between the appellant and the respondent as declared in 'ii' above was dissolved.*
iv. *Each party shall bear their own costs in the appeal and in the subordinate court.*

**Citations**

**Cases**

***Kenya***

1. *CSO v RBO* Civil Appeal 116 of 2018; [2019] KEHC 6792 (KLR) — (Applied)
2. *MNK v POM*; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) Petition 9 of 2021; [2023] KESC 2 (KLR) — (Applied)

**Statutes**

***Kenya***

1. Judicature Act (cap 8) section 3(1)(c) — (Interpreted)
2. Marriage Act (cap 150) sections 3, 44, 55, 65, 69, 70, 98 — (Interpreted)

**Advocates**

*Mr. Waiyaki* h/b for *Mr. Mumbi* for the appellant.
*Mrs. Sang* h/b for *Mr. Kioko* for the respondent.

## JUDGMENT

1. This appeal challenges judgment and decree of the Honourable Resident Magistrate in the Chief Magistrate's Court at Milimani Commercial Courts divorce cause number E1369 of 2020. In the cause, the appellant was seeking the following orders;

a. That the marriage between her and the respondent be dissolved.

b. That the respondent be ordered to pay the costs of the suit.

c. That the Honourable Court do grant such other relief as it may deem fit.

2. The respondent filed an answer to petition and a cross-petition in which he prayed for the following;

a. A declaration that there was cohabitation between the parties leading to presumption of marriage.

b. The petition be dismissed and divorce be granted in terms of the cross-petition.

c. The petitioner does pay the costs of the petition.

3. After hearing the parties, the Honourable Magistrate dismissed the petition by stating that;

> "It is my view that presumption of marriage is a question of fact, subject to the requisite proof. From the evidence on record, I find that this fact has not been proved on a balance of probabilities.
>
> Having found as above, I proceed to dismiss the petition dated November 16, 2020 before me on the following terms.
>
> 1. No order on costs.
>
> 2. Either party to apply for registration as under section 3 of the *Marriage Act* before a petition for divorce can be filed.
>
> 3. With respect to the issue of the union, status quo be maintained for 90 days on physical and legal custody pending a suit before the Children Court."

4. Aggrieved by the decision of the magistrate, the appellant filed this appeal vide memorandum of appeal dated August 17, 2022 raising the following grounds;

1. The learned magistrate erred both in fact and law in holding that a presumption of marriage in the circumstances, offended provisions of the section 3 of the *Marriage Act*, 2015.

2. The learned Magistrate misdirected herself in law in holding that a marriage by cohabitation may only be recognised by way of registration.

3. The learned magistrate erred in law and in fact in holding that a presumption of marriage had not been proved by the parties

4. The learned magistrate misdirected herself in law in holding that the marriage ought to be registered before a petition for divorce may be filed.

5. The learned magistrate misdirected herself in law by venturing outside the jurisdiction of the Court and the parties' pleadings by granting orders preserved for the children's court even when the same was not the subject of the divorce petition.

6. The learned trial magistrate erred in failing to consider whether the marriage between the parties was fit for dissolution.

7. The trial magistrate erred in failing to address on whether or not the parties had established grounds for dissolution of the marriage between the parties.

8. The learned Magistrate erred in dismissing the petition as she did.

5. On January 25, 2024, the parties appeared before my brother Honourable Justice E Ogola who directed them to file submissions. When the matter came for mention before me on July 31, 2024 to confirm filing of submissions, the respondent had not filed his submissions and his counsel told the court that he was not opposing the appeal save to the extent that each party should bear their own costs. The appellant had filed her submissions dated May 16, 2024.

6. This is a first appeal. As such, I have a duty to conduct it as a re-hearing by re-evaluating, re-analysing and re-examining the evidence produced before the trial court and come to my own independent conclusion. However, I should keep in mind that I did not take the evidence of the parties or observe their demeanour and should therefore give due allowance for that. That is the position in law.

7. The appellant testified and adopted her witness statement dated November 16, 2020. It was her testimony that she started cohabiting with the respondent in 2007 before when they had been in a relationship which bore their first child, AM on 10-01-2006. Their relationship had started in 2003. After she moved in with the respondent, they were blessed with ZM, their second child. The cohabitation went on until 2017 when the respondent kicked her out of the house. She accused the respondent of cruelty and adultery. She narrated the particulars of adultery and cruelty. In cross examination, the appellant admitted that she did not name the person the respondent had committed adultery with and that their marriage was never formalised. She also denied having an affair with the respondent's friend and other persons.

8. The respondent also testified by adopting his witness statement dated April 29, 2021 and his pleadings. According to the statement and pleadings, the respondent confirmed the appellant's testimony on how they met and started cohabiting. He told the court that the cohabitation was interrupted for five years when he traveled to South Africa for further studies between 2010 and 2014 but while there, he continued supporting the appellant and the children as his family and he would occasionally visit when he had saved enough for the journey. He also confirmed that their relationship was that of husband and wife and asked the court to declare that they were married and proceed to grant divorce as per his cross-petition.

9. The appellant has in her submissions framed five issues for determination. However, having read the evidence of the parties and pleadings, the memorandum of appeal and the appellant's submissions, I have come to a conclusion that the issues for determination in this matter are;

    1. Whether the parties' cohabitation could sufficiently lead to presumption of marriage.

    2. Whether the court was wrong in holding that parties could not file divorce without first registering their marriage.

    3. Whether the parties established sufficient grounds for dissolution of the marriage.

    4. Whether the trial court should have made orders in relation to custody of the children.

10. It is common ground that the parties cohabited between 2007 to 2017. Even when the respondent went for further studies in South Africa, they did not part ways. By the time the respondent left for South Africa, the couple had already been blessed with two children. The respondent told the trial court which was confirmed by the appellant that, even when he was in South Africa, their relationship remained that of husband and wife. In the pleadings, both parties were referring to their relationship as a marriage. This clearly comes out in paragraphs 6(a), 9(b) and 11 of the answer to the petition; paragraphs 2 and 11 of the appellant's response and answer to cross-petition and paragraph 10 of the petition.

11. On the first issue, the trial magistrate stated that, the issue of presumption of marriage was an issue of fact subject to requisite proof and went on to hold that the same had not been proved. The Magistrate was right by stating that the presumption of marriage was a matter of fact which required proof. What constitutes a cohabitation which can lead to presumption of marriage has been settled. In *MNK v POM* [2023] KESC 2 (KLR), the Supreme Court set the ingredients for proof of presumption of marriage by cohabitation when it held that;

> "We find it prudent at this juncture to lay out the strict parameters within which a presumption of marriage can be made:
>
> 1. The parties must have lived together for a long period.
> 2. The parties must have the legal right or capacity to marry.
> 3. The parties must have intended to marry.
> 4. There must be consent by both parties.
> 5. The parties must have held themselves out to the outside world as being a married couple.
> 6. The onus of proving the presumption is on the party who alleges.
> 7. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
> 8. The standard of proof is on a balance of probabilities."

12. It is my finding that the relationship between the parties in this matter fitted well in the criteria set by the Supreme Court. The parties cohabited for ten years which is in my opinion long enough to qualify for presumption of marriage; there is no doubt that they had capacity to enter into marriage; the parties confirmed that the relationship was consensual and by consent and that their intention was to marry. It is in the evidence of both parties that the parties had made arrangements for payment of dowry although it did not materialize. Throughout the evidence, it is shown that the parties' friends and relatives knew and understood them to be husband and wife. Based on this, I do not hesitate to hold that the Magistrate erred in fact when she held that the conditions for presumption of marriage had not been proved to the required standards.

13. The appellant has submitted that the presumption of marriage by cohabitation is a common law principle recognised and applicable in Kenya. This is not in doubt. The Magistrate also acknowledged that the principle is applicable but according to her, it could only be recognised after registration of the marriage as per sections 3, 44 and 55 of the *Marriage Act*. The *Marriage Act* does not make any clear provision for registration of marriage by cohabitation. It provides for registration of customary marriages. In my opinion, a marriage which is implied by cohabitation can only be ripe for registration after declaration of its existence and only the courts can do so. This is a grey area where reforms may be necessary but lack of such clear provision does no erode or obliterate the doctrine of presumption of marriage in our legal system. As the living styles, customs, ethos and culture of our society evolve, the doctrine may disappear or become unrealistically operative but for now, it is still a sound principle noting that pertinent provisions of the *Marriage Act* may not be applicable retrospectively. Debate on the changing regime of our marriage laws may not end soon but as the new laws continue to shape relationships between consenting adults, we cannot escape the realities of life.

14. We do not have provisions for registration of presumed marriages. The registration the Honourable Magistrate must had in mind was that of customary marriages under section 55 of the *Marriage Act* which are pegged on a particular customary law. Marriages through long period of cohabitation are not attributable to a specific customary group and in my opinion, they cannot be termed as customary marriages. That is in my view the purport of section 55(1) of the *Marriage Act* where it provides that parties applying for registration must identify the customary law applicable. For instance, in this matter, the parties have stated that no formal marriage ceremony was carried out meaning that there were no customary rites done. So, if the parties were to go for registration as directed by the Magistrate, which customary rites would they be identifying to the Registrar?

15. There was no issue of customary marriage before the magistrate which would have justified her reverting to section 3, 44 and 55 of the *Marriage Act*. It is my view that a marriage which subsisted before enactment of the *Marriage Act* did not become invalid after the enactment of the Act. Section 98 of the *Marriage Act* saved the pre-existing marriages by stating that;

> "A subsisting marriage which under any written or customary law hitherto in force constituted a valid marriage immediately before the coming to force of this *Act* is valid for the purposes of this *Act*."

16. The parties to this matter started living together in 2007 and parted ways in 2017 before the requirement of registration of customary marriages came into effect which means that even if we were to categorise their marriage as a customary one, they would not have been caught up by the provisions of the law requiring registration. The requirement for registration came into force on August 1, 2017 pursuant to Gazette Notice number 5345 dated June 2, 2017 and published on June 9, 2017. The parties separated permanently before the requirement for registration came into force. Telling them to go back together first and register their marriage and then file divorce proceedings would be stretching the law too much beyond what it was intended to achieve. I believe it was not the intention of the law to make invalid, marriages which existed before the *Act* was passed. The appellant has cited the authority of *CSO v RBO* [2019] eKLR where Honourable Justice Abida Ali held that;

> "Marriage by cohabitation as a principle of common law has been recognised over time in Kenya. My understanding of the Respondent's pleadings is that she alludes to marriage by cohabitation which is a common law marriage. Indeed section 98(1) of the *Marriage Act* is a saving clause and states that any marriage which under any written or customary law hitherto in force consists a valid marriage before coming into force of the *Act* is valid for purposes of the *Act*."

17. I totally agree with the holding of the honourable judge (as she then was). Section 3(1)(c) of the *Judicature Act* Chapter 8 of the Laws of Kenya makes the principles of common law applicable in our legal system unless they are inconsistent with any written law. I do not see any inconsistency between the doctrine of presumption of marriage and the *Marriage Act*. Actually, in my opinion, it would be manifestly unfair and breach of the parties' constitutional rights if the law applied in a way to invalidate a pre-existing marriage by a mere fact that a new law has come into force. Coming into force of any law cannot pull back or invalidate acts which were hitherto lawful. A new law can only look into the future and not backwards.

18. Based on the above analysis, it is my position and I hold so that, the magistrate erred and was wrong in making a finding which made registration of the parties' marriage as a pre-requisite for their filing matrimonial causes or pursuing their already acquired rights.

19. The third issue as framed above is whether the parties established sufficient grounds for dissolution of the marriage. Sections 65, 69 and 70 of the *Marriage Act* give grounds upon which different marriages may be dissolved among them irreconcilable differences, cruelty and adultery. Both parties pleaded adultery and cruelty against each other. I have read through the evidence on record and I am unable to trace any evidence in proof of adultery. Other than making general statements and mentioning names of the persons each party allegedly committed adultery with, the parties did not produce an iota of evidence to prove adultery.

20. The appellant claimed that she was kicked out of the home. She also listed several particulars of cruelty. She added that the respondent had promised to visit the appellant's family and pay dowry but never kept his promise. The respondent confirmed this position. She also alleged that the appellant was the one cruel to her. The respondent alleged that the appellant left their home after he confronted her about some suggestive text messages he saw in her telephone handset. The respondent also claimed that the appellant was cruel to her by refusing to let him see the issues of marriage among other particulars. He also claimed that the appellant had refused to acknowledge him as the husband before members of his family and friends and kept on taunting him as being of inferior birth.

21. The above may be allegations and counter allegations and one party's words against the other but whichever way one looks at it, the kind of environment that had developed in their home seem to have been unsustainable and unconducive for a marriage. Failure to pay dowry may not be in itself cruelty but can lead to an inference that there were broken promises and lack of cordial relationship between the parties. It is obvious from the accusations and counter accusations that there was no trust left between the parties.

22. What I discern from the evidence of both parties is that their relationship had hit the bedrock bottom for whatever reasons. The fact that there was petition and cross petition infers that the parties have had enough of each other. The animosity was too high that the appellant left home, whether voluntary or forced out, to live with her parents.

23. Irretrievable breakdown of a marriage is a ground for divorce. The parties seem not ready to have their differences sorted out. They are worlds apart and I do believe that they have a right to go their separate ways. I in the circumstances, I hold the view that the circumstances of the case shows that the union between the parties had irretrievably broken down. The Magistrate did not address herself to this issue but I think it is an important point of consideration.

24. The last issue for determination is whether the trial court should have made orders in relation to custody of the children. I have reproduced above, the prayers in the petition and cross petition. Having gone through the parties' evidence, I do not see anywhere the issue of custody of the children was raised. It was not pleaded and was not addressed by the parties during their testimony or submissions before the trial court. It is trite law that a court of law can only grant that which is prayed for.

25. It is my further finding that the trial court had no jurisdiction to determine issues of custody of the minors as the same is by law vested in a children court a fact the magistrate seem to have acknowledged when she held that the status quo would remain for 90 days pending a suit in the children court. It had been pleaded by the appellant that a suit number 1693 of 2019 was pending before the children court but the parties had not brought the issues of the children to the honourable magistrate for determination. The mention of the children matter was an information as a requirement of the law that parties disclose any other proceedings pending before another court. Even if she had been asked to make decision on the custody of the children, it is my position and I believe the position of the law that the trial magistrate did not have powers to make orders in respect of a suit pending before a court

of concurrent jurisdiction. She had no supervisory powers over the children court. In that regard, it is my finding that the magistrate erred when she delved into the issues of the children of the marriage.

26. I note that the magistrate did not make orders in respect of the cross-petition which I believe was an oversight. She had the duty to make orders in respect of the cross-petition. Be that as it may, I have come to the conclusion that this appeal is merited and consequently I allow it by granting the appellant's petition dated November 16, 2020 as well as the respondent's cross petition dated April 29, 2021 in the following terms;

    1. The judgement and decree in the Chief Magistrate's Court at Milimani Commercial Court divorce cause number E1369 of 2020 dated May 10, 2022 is hereby set aside.

    2. A declaration is hereby issued that the appellant and respondent were married pursuant to the common law principle of of presumption of marriage.

    3. The marriage between the appellant and the respondent as declared in '2' above is hereby dissolved.

    4. Each party shall bear their own costs in this appeal and in the subordinate court.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Waiyaki holding brief for Mr. Mumbi for the Appellant and Mrs. Sang holding brief for Mr. Kioko for the respondent.