



REPUBLIC OF KENYA



KENYA LAW
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**SKM v NWM & another (Civil Appeal E008 of 2021)
[2023] KEHC 19899 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E008 OF 2021
HK CHEMITEI, J
JULY 6, 2023**

BETWEEN

SKM APPELLANT

AND

NWM 1ST RESPONDENT

JWM 2ND RESPONDENT

*(Being an Appeal from The Ruling of Hon. E K Usui (CM) dated 2nd
September 2021 in Nakuru CMC Separation Cause No. E28 Of 2021)*

JUDGMENT

1. This is a straight forward appeal and the parties in my view have spent unnecessarily long time to litigate over it instead of going to the real issues bedeviling them.
2. The genesis of the problem is the ruling by the trial court disallowing the further affidavit by the appellant which was in response to the supplementary affidavit filed by the 1st respondent. The said respondent had raised objection to its admissibility for it was filed without the leave of the court.
3. The trial court in a short ruling struck out the said affidavit because of the reasons stated above.
4. I have read the said affidavit as well as the submissions by the parties. I have also read the grounds of appeal herein which essentially gravitate around the reasons for the court to strike out the said affidavit.
5. I note that this is a family matter. Serious issues were raised by all the parties in regard to the subsisting marriage. The 2nd respondent was applying for alimony pending the determination of the suit.
6. There was no cogent reason in my view for the court to have struck out the said affidavit which in any case was answering the new issues that had been brought out. All that the court would have done is



to allow the same with the usual issue of costs to cushion the respondent in any event and proceed to determine the matter.

7. Article 159 of the Constitution obliges the courts to deal with the matters before it without much technicalities. In the present case I do not see any prejudice the respondents stood to suffer. They would still have argued their way out in any case.
8. As regards representations, that was the discretion of the parties and the court. I think the court was right in assuming that whoever filed the pleadings first in the absence of any objection had the right to represent the party. At any rate it is not for the court to decide the question of representation as it is the prerogative of the litigants.
9. Without belabouring the point therefore, this appeal is allowed, the orders of the trial court dated September 2, 2021 are hereby set aside. The further affidavit dated August 24, 2021 and filed on the August 26, 2021 is hereby deemed filed within time subject to the payment of court fees if any.
10. The costs in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 6TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

