



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CIVIL APPL. NO. 15 OF 2014**

J M M.....APPLICANT

VERSUS

N M M.....RESPONDENT

**RULING**

Before court is the notice of motion dated 25<sup>th</sup> April, 2014 brought under certificate of urgency. The background to the matter is that the applicant **J M M** had planned and arranged to marry a certain lady known as **M K**. He filed a notice of marriage serial number *[Particulars withheld]* in the Registrar's Office in Mombasa on 25<sup>th</sup> February, 2014. On 8<sup>th</sup> April, 2014 the father of the applicant **N M M** who is the respondent in this matter filed a caveat objecting to the marriage. The applicant has now come to court seeking that the caveat be removed to enable the marriage to proceed.

The court certified the matter as urgent and directed that *vive voce* evidence be tendered by both parties on 9<sup>th</sup> May, 2014. Counsel for the respondent now informs the court that his client does not wish to face his biological son in a court case and has opted not to testify in support of the caveat. He asked that the court make a ruling on the material before it.

I have looked at the reasons advanced by the respondent at the time of filing the caveat. He basically objects to his son's marriage on the grounds that the intended wife is older and the family does not approve of her. However no legally persuasive reason as to why the marriage cannot proceed has been advanced.

It is conceded that the applicant is 26 years old. I have seen his baptism certificate which proves that he is well over 18 years old. As such the applicant is an adult and is entitled to make his own decision. He does not require parental consent to marry. There is no allegation that the applicant is married to any other woman. He does not lack legal capacity to marry. The objections of his father though well-intended cannot bar the applicant from charting his own course in life. I have found no legal basis for this caveat. I direct that the same be removed and the applicant is authorized to proceed with his plans to marry. I allow this notice of motion in terms of prayer (3) of the same. No order on costs.

**Dated and delivered in Mombasa this 9<sup>th</sup> day of May, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Mwanyumba for Respondent

Mr. Mwawasi for Applicant

Court Clerk Mutisya