



**QAN v MN (Civil Appeal E066 of 2025)
[2026] KEHC 1534 (KLR) (Family) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E066 OF 2025
PM NYAUNDI, J
FEBRUARY 13, 2026**

BETWEEN

QAN APPELLANT

AND

MN RESPONDENT

(Being an appeal from the Judgment of the Chief Magistrate’s Court at Nairobi (Hon. F. Terer, Senior Resident Magistrate in Milimani Chief Magistrate’s Court Family Case No. E057 of 2025 delivered on 5th May 2025)

JUDGMENT

Introduction

1. By plaint dated 14th April 2025, the Appellant herein moved the Court for the following orders-
 1. An order restraining the defendant from removing from Montezuma Funeral Home the body of the late JLO pending the hearing and determination of this suit.
 2. An order compelling all parties involved to involve the plaintiff in the funeral and burial arrangements of the deceased.
 3. An order declaring that the Plaintiff and her children are entitled to participate in the last rites of the late JLO being his wife nad children respectively.
 4. The costs of the suit be awarded to the Plaintiff
 5. Before this court for determination is the Appeal filed by PGM (the Appellant) through a Memorandum of Appeal dated 25th September 2023. The Appeal arises out of a Judgment



delivered on 12th September 2023 by Hon. C.C Oluoch, Chief Magistrate in Nairobi Children's Case No. E253 of 2023.

2. In defence dated 25th April 2025, the defendant denied that the Plaintiff was a wife to the deceased. She agreed that the deceased had expressed a desire to be cremated. She stated that it was not tenable to bury the deceased at the ancestral home as they was a pending case in court touching on that parcel of land and there was hostility between the deceased and his siblings. She stated that she and the deceased had established a home at Machakos and he should be buried there. She charged that the plaintiff's suit was malicious, ill conceived and meant to cause undue emotional distress at a time of grief, she urgd that it should therefore be dismissed,with a permanane tinjunction restraining the Plaintiff from further interfering with the deceased burial arrangement.
3. The matter proceeded to hearing by way of viva voce evidence and at the close of the hearing, the Court in its judgment delivered on 5th May 2025 having found that the Plaintiff had not established that there was a marriage with the deceased held as follows-
 1. The the Plaintiff's suit be and is hereby dismissed with no Order as to costs.
 2. That the defendant (MN) be granted authority to bury the remains of JLO
 3. That Montezuma Funeral Home be and is hreby directed to release the remains of JLO to the Defendant (MN)
 4. That the defendant to allow the Plaintiff and her children attend the burial of JLO.
 5. No order as to costs.
4. The appellant challenges this judgment and by Memorandum of Appeal amended on 16th June 2025 prays that-
 1. The Judgment delivered on 5th March 2025 be set aside and the appeal allowed
 2. An order of exhumation of the body of JLO be issued.
 3. The Respondent herein be held in contempt tof Court Orders issued in the trial Court and the subsequent interim orders.
 4. Costs of the Appeal be costs in the Cause.

Analysis And Determination

5. This is a first appeal. The duty of a first appellate Court was succinctly stated by Wendoh J in JWN v MN [2019] eKLR in the following words:

It is settled law that the duty of the first appellate court is to re-evaluate the evidence tendered in the subordinate court, both on points of law and facts and come up with its findings and conclusions.

6. Before I consider the merits of this appeal, I am obligated to first consider its competence. Having regard to the fundamental principle of our justice system that dictates that parties are bound by pleadings which was well enunciated by the Court of Appeal in Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91-

We have carefully considered the judgment of the superior Court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are



impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non- existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail. (Emphasis added)

7. As observed the plaintiff sought for orders to be involved in the burial arrangements and an order requiring that she and her children be involved in the last rites of the burial of the deceased. She did not as she seeks now seek an order declaring that she was married to the deceased or an order on the place of burial. Given this factual position it would be extreme over reach for this Court to even consider exhuming the deceased. This is an appropriate case to allow the deceased to rest in peace.
8. For reasons stated above, I do not think that the appeal as framed has merit and I find no reason to interfere with the judgment of the trial magistrate. The appeal is therefore dismissed with no order as to costs.
9. I will add that I am unable to consider whether or not the respondent is in contempt as no details are given as to the orders in which she is in contempt.
10. Parties are at Liberty to exercise their right of appeal within 30 days
11. No order as to costs

It is so ordered

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH FEBRUARY 2026.

P.M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Owiti holding brief for Rakwai for the Respondent

Ms. Munene for Appellant

