



**AWW & another (Miscellaneous Application E299 of 2025)
[2026] KEHC 2917 (KLR) (Family) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E299 OF 2025
PM NYAUNDI, J
MARCH 6, 2026**

IN THE MATTER OF REGISTRATION OF A DEED POLL IN FAVOUR OF AWW & TWM

IN THE MATTER OF

AWW 1ST EX PARTE APPLICANT

TWM 2ND EX PARTE APPLICANT

RULING

Introduction

1. By the Notice of Motion dated 9th September 2025, expressed to have been brought under the [Marriage Act](#), 2014, and the [Registration of Documents Act](#), the Applicants seek the following orders:
 - a. The Honourable Court be pleased to issue an order directing the Registrar of Marriages to forthwith approve and/or accept the Applicant's Notice of Intention to Marry, so that the Applicants can proceed and make payment on the solemnization fee, so that they can book a date for their wedding.
 - b. That in the alternative to the above, this Honourable Court be pleased to issue an order directing the Registrar of Documents to register the Applicant's Deed Poll lodged on 17th June 2025 and forthwith put out a gazette notice in the Kenya Gazette evidencing the Applicant's change of name for purposes of approval of their Notice of Intention to Marry pending at the Registrar of Marriages.
 - c. That in alternative to (i) and (ii) above, this Honourable Court be pleased to issue a declaratory order to wit that an Affidavit of Declaration of Name would suffice as evidence of the identity of an individual and would thus cure any defect of document in the respect of the Applicants' Notice of Intention to Marry.



- d. Any further orders that the Court may deem fit.
2. The Application is premised on the grounds on the face thereof and is supported by the Affidavit sworn by Applicants' Counsel, Hakim Suleiman Rajab. In the Affidavit, the Applicants' Counsel deponed that the Applicants' Notice of Intention to Marry, sent on 20th February 2025, remains suspended by the Registrar of Marriages despite the fact that the Applicants', on the direction of the Registrar of Marriages, applied for an application for registration of a Deed Poll in the prescribed manner and with the requisite supporting documents, which application was rejected by the Land Registrar on the basis that the Applicants' National Identity Cards had already been issued with the new names.
3. It is further deponed that the Registrar of Marriages was informed of the outcome of the Applicants' Deed Poll Registration and that the Applicants requested that the Registrar adopt their sworn Affidavits of Declaration of Name as a cure to the discrepancy in their identity documents, which request was declined, leaving the Applicants' Notice of Intention to Marry suspended.
4. The Applicants intended to formalise their union as a Christian Marriage at the PCEA Undiri Parish on the 28th March 2025.
5. The Respondent was served with the application, but has not filed either a response or submissions. The Applicant's submissions are dated 28th January 2026.

Summary Of The Applicant's Submissions

6. The Applicant frames the following as the issues for determination-
 - a. Whether the Registrar of Marriages acted unlawfully, unreasonably and procedurally unfairly in suspending the Applicants' Notice of Intention to marry.
 - b. Whether the refusal by the Registrar of Documents to register the Applicants' deed poll was lawful and reasonable in the circumstances.
 - c. Whether the Applicants' constitutional rights have been violated or threatened with violation
 - d. Should the orders sought issue?
7. At the outset, I note that the submissions filed and the issues as framed do not align with the pleadings and prayers sought in the Notice of Motion dated 9th September 2025. It is well established that parties are bound by their pleadings.
8. Section 2 of the [Civil Procedure Act](#) defines pleading as:

“pleading” includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant;
9. In the Tanzanian case of *Salim Said Mtomekela Versus Mohamed Abdallah Mohamed*, Dar-es-salaam Court of Appeal Civil Appeal No. 149 Of 2019 (Mugasha. J.A. Kihwelq. J.A., Rumanyika. J.A, the court stated –

“Pleading in law means, written presentation by a litigant in a lawsuit setting forth the facts upon which he/she claims legal relief or challenges the claims of his opponent. It includes claims and counterclaim but not the evidence by which the litigant intends to prove his case ... That said, since the pleading is a basis upon which the claim is found, it is settled law that, parties are bound by their own pleadings and that any evidence produced by any of



the parties which is not supportive or is at variance with what is stated in the pleadings must be ignored."

10. In Joshua Mungai Mulango & Another -vs- Jeremiah Kiarie Mukoma [2015] eKLR, the Court of Appeal held as follows:

"Parties are bound by their pleadings. The court is bound to determine a dispute on the basis of the pleadings filed by the parties and the evidence adduced on the basis of such pleadings. In an adversarial system such as ours, it is the parties who set the agenda for the trial by their pleadings. The need for this cannot be gainsaid. For the purpose of ensuring certainty and finality, a party cannot be allowed to resile from its pleadings without due amendment. Each party knows the case he has to meet and cannot be taken by surprise. The purpose and importance of the rules in this regard clearly is to ensure that litigation is conducted in a framework that will guarantee fair play without prolixity and needless escalation of litigation costs."

11. Additionally, in Hellen Wangari Wangechi -vs- Carumera Muthoni GathuA [2015] eKLR, the Court reiterated: -

"As parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is bound by the pleadings of the parties themselves..."(Emphasis Supplied)

12. The Miscellaneous Application presented to the Court seeks orders compelling the Registrar of Marriages to publish the Notice of Intention to Marry. The Submissions invite the Court to find that the applicants' constitutional rights have been infringed. For this reason, I will not be referring to the submissions in arriving at my decision.

Analysis And Determination

13. The following are the issues for determination-

1. Is the application dated 9th September 2025 merited?
 2. Arising from (a) above, what, if any, are the consequential orders?
2. These are the facts. The applicants are long-standing friends who intend to formalise their marriage at PCEA Undiri Parish; the originally set date was March 28, 2025. They submitted a Notice of Intention to Marry to the Registrar of Marriages on 20th February 2025. However, they encountered an issue because the names on their National Identity Cards did not match those on their birth certificates. They were advised to rectify this situation by executing and registering a deed poll. Upon submission, the deed poll was rejected because the requested names already appeared on the applicants' identity cards.
3. Consequently, the applicants approached the Registrar of Marriages, requesting that they accept affidavits of declaration of name in lieu of the Land Registry's refusal to register the deed poll. The Registrar of Marriages denied this request and subsequently ceased communication. At the time of this application, the Notice of Intention of Marriage remained pending.



4. As observed, the parties intend to formalise their marriage at PCEA Undiri Parish.

That would mean they intend to celebrate or formalise their marriage under the rites of a Christian denomination. The relevant law is the *Marriage Act*, which, under Section 6(1), sets out the recognised kinds of marriage as:

6.

Kinds
of

marriages

1. A marriage may be registered under this Act if it is celebrated—
 - a. in accordance with the rites of a Christian denomination;
 - b. as a civil marriage;
 - c. in accordance with the customary rites relating to any of the communities in Kenya;
 - d. in accordance with the Hindu rites and ceremonies; and
 - e. In accordance with Islamic law.

14. The Act then proceeds to dedicate distinct sections to each form of marriage; hence, Part III is dedicated to Christian Marriages. Part IV to Civil Marriages. Part V to Marriage under Customary Law. Part VI Hindu Marriage and Part VII Marriage Under Islamic Law. The requirements of each of these kinds of Marriage are set out separately. This is important because the Section 25 of the Act and the Notice of Intention to Marry and role of the registrar is applicable only to Civil Marriages.

Part IV – Civil Marriage

24. Celebration of civil marriages

A marriage under this Part shall be celebrated by the Registrar in the place determined by the Registrar.

25. Notice of intention to marry

(1) Where a man and a woman intend to marry under this Part, they shall give to the Registrar and the person in charge of the place where they intend to celebrate the marriage a written notice of not less than twenty-one days and not more than three months of their intention to marry. (Emphasis Supplied)

15. From a reading of Part III, it is evident that the Notice is published at the public place of worship where the parties intend to celebrate their marriage. It is the Church Minister who is designated a marriage officer and ensures that the marriage is conducted in accordance with the rites of that church or denomination. These include the preliminary issues of notice of intention to marry and notice of objection.

16. In *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) by parity of reasoning, I found that it was not within the province of the Registrar of Marriages to issue a Certificate of No Impediment where parties are solemnizing their marriage under Part III

17. That should dispense with the matter. I feel it is necessary, however, to address the conduct of the office of the Registrar of Marriages in this matter, which in my view falls short of the Values and Principles of Public Service as enunciated under Article 232 of *the Constitution* of Kenya as follows:

- (a) high standards of professional ethics;



- (b) efficient, effective and economic use of resources;
 - (c) responsive, prompt, effective, impartial and equitable provision of services;
 - (d) Involvement of the people in the process of policy making;
 - (e) accountability for administrative acts;
 - (f) transparency and provision to the public of timely, accurate information;
 - (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
 - (h) representation of Kenya's diverse communities; and
 - (i)
18. *The Constitution* has raised the bar for how public servants provide services; one of the principles is that public officials ought to be responsive, prompt, and effective. This, in my mind, means they must be solution-oriented. The service required was to facilitate two consenting adults in actualising their dream of formalising a 13-year-old relationship.
19. Understandably, the registrar needed to confirm that they had proper identity documents. The variance in names between the identity card and the birth certificate presented a problem that needed to be resolved. The Land Registrar declined to register a deed poll.
20. The authenticity of the birth certificate and identity card is not in question. The applicants proposed submitting an affidavit confirming that all the names were theirs, but they wished to proceed with the names on their identity cards.
21. An affidavit is a written statement of facts voluntarily made by a person (the deponent) under oath or affirmation, typically signed before a Commissioner for Oaths, a notary public, or a magistrate. It serves as legally binding evidence in court proceedings (civil, criminal, and family) or in administrative matters, confirming the truthfulness under penalty of perjury. The relevant law is the Oaths and Statutory and Declarations Act. The Registrar of Marriages owed the applicants a reason for declining this, as the effect of the refusal would be to freeze the pending Notification to Marry Application.
22. This is not acceptable. If I had found that it was within the Registrar of Marriages' province, I would no doubt have directed that the Affidavit of Names be lodged alongside the application for notification of intention to marry and be deemed to cure the discrepancies in the applicants' names.
23. Perhaps even more disturbing is the failure by the Registrar of Marriages to participate in these proceedings. This is unfortunate because, as referenced above, public officials are required to be accountable and transparent in the provision of public services. It reflects poorly on that office when it fails to appear and explain its actions.
24. What then are the consequential orders-
1. The Application is allowed.
 2. The notice of Intention to Marry lodged by the applicants on 20th February 2025 is redundant.
 3. The Applicants will proceed to fulfil the requirements of a Christian Marriage with the Church Minister at PCEA Undiri Parish and have leave to formalise their marriage at that Church without reference to the registrar of marriages, except to lodge the Certificate of Marriage with the registrar of marriages as required under Section 21 (2)(c) of the *Marriage Act*.



4. This Judgment and the Decree are to be served upon the Registrar of Marriages.
25. Each party will bear their own costs.
26. Parties are at Liberty to appeal the party exercising their right to do so within 30 days

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH 2026.

M. NYAUNDI

JUDGE

In the presence of:

Court Assistant Ng'alamoi

Kubo holding for Lempaa for Applicant

