



**MM v RWW (Family Miscellaneous Application E007 of 2025)
[2026] KEHC 2448 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS APPLICATION E007 OF 2025
MA ODERO, J
FEBRUARY 27, 2026**

BETWEEN

MM APPLICANT

AND

RWW RESPONDENT

RULING

1. The Applicant MM has filed the Notice of Motion dated 3rd March 2025 seeking the following orders:-
 - “ 1. That the court be pleased to issue a declaratory order declaring that there has never been a Kikuyu customary marriage between the Applicant, MM and the Respondent, RW and that the joint Affidavit sworn by both the Applicant and the Respondent on 3rd January 2016 attesting to the existence of Kikuyu customary marriage could not be a substitute for the requirements of a valid customary marriage under section 43 of the *Marriage Act*.
 2. That consequent upon grant of prayer (1), the court be pleased to issue a declaratory order declaring that that the joint Affidavit of 3rd January 2016 did not take away the capacity of the Applicant to contract another marriage under any other regime.
 3. That costs of this application be provided for.”
2. The application was premised upon Section 43 of the *Marriage Act*, Sections 3 and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules* and was supported by the affidavit of even date sworn by the applicant.
3. The Applicant went to great length to serve this application on the Respondent RWW. Eventually with leave of the court service was effected through an advertisement in the newspapers. The Respondent



did not enter appearance nor did she file any reply to the application. As such the application was not opposed.

4. The application was canvassed by way of oral evidence. The Applicant told the court that he is a German citizen. That sometime in the year 2014 whilst on a visit to Kenya he met the Respondent and a friendship developed between the two and the Applicant would meet up with the Respondent whenever he travelled to Kenya.
5. The Applicant states that through ignorance of local customary marriage rites and due to honest mistake on his part he together with the Respondent swore an Affidavit dated 3rd January 2016. In that affidavit it was averred that the Applicant and the Respondent got married to each other in the year 2014 under Kikuyu Customary Law. The parties further deponed that their union resulted in the birth of a daughter 'LJM' born on 17th July 2016.
6. The Applicant states that he has since sought advice and has realized that he did not conform to any of the requirements of a Kikuyu customary marriage. The Applicant pleads that he had no intention to deceive and/or mislead by swearing that affidavit.
7. Finally Applicant avers that the relationship between himself and the Respondent has now ended. He seeks a declaration that no valid marriage was contracted between himself and the Respondent under Kenyan law. The applicant is apprehensive that if the said declaratory orders are not issued then he will be deemed to be married under a system of law (i.e customary law) recognized in Kenya and may be prevented from contracting a marriage in Germany, or elsewhere.
8. The applicant called one witness in support of his case. PW2 VM told the court that the applicant was his brother. The witness confirmed that he knew the Respondent.
9. PW2 is categorical that the Applicant and the Respondent never got married to each other and that he never attended any marriage ceremony between the two.

Analysis and Determination

10. I have considered the application before this court as well as the evidence adduced in support thereof.
11. I have carefully perused the Affidavit dated 3rd January 2016. The Applicant readily admits that he did sign that affidavit. The affidavit was what is commonly (but mistakenly) referred to in this country as an Affidavit of marriage. In said affidavit it was averred that the applicant and the Respondent got married to each other in the year 2014 under Kikuyu customary law. What then is the legal effect of such an affidavit.
12. The forms of marriage which are legally recognized in Kenya are provided for by Section 6(1) of the [Marriage Act](#) 2014 which provides as follows:-
 - “6(1) A marriage may be registered under this Act if it is celebrated -
 - a. In accordance with the rites of a Christian domination.
 - 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.”

13. It is important to note that under Kenya law there is no provision for marriage by way of an Affidavit. The mere fact that two persons have sworn an affidavit claiming to have been married under one of the legally recognised systems in Kenya is not proof that such a marriage actually took place.
14. An affidavit is simply a written declaration made on oath. The facts deponed in an affidavit are subject to proof in the normal manner.
15. The applicant states that he signed the affidavit in ignorance and due to honest mistake. He states that at no time did he ever contract a Kikuyu customary marriage with the Respondent.
16. Under Section 6(1) of the Marriage Act one of the legally recognised forms of marriage in Kenya is a marriage which complies with the rites and norms of one of the communities in Kenya.
17. As with most other communities in this country a Kikuyu customary marriage is an elaborate affair which involves the family and indeed the clan. A marriage cannot be conducted in secret or clandestine manner.
18. The requirements of a Kikuyu customary marriage were clearly set out by Dr Eugene Cotran in his pioneering work Restatement of African Law: Kenya Vol 1 The Law On Marriage And Divorce. In that work at Page 30 it was stated as follows:-
 - “(i) Capacity; the parties must have capacity to marry and also the capacity to marry each other.
 - (ii) Consent;- the parties to the marriage and their respective families must consent to the union.
 - (iii) Ngurario; no marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.
 - (iv) Ruracio; there can be no valid marriage under Kikuyu law unless part of the ruracio (dowry) has been paid.
 - (v) Commencement of cohabitation; the moment at which a man and a woman legally become husband and wife is when the man and woman commence cohabitation i.e under the capture procedure when marriage is consummated after the eight days seclusion, and nowadays when the bride comes to the bride grooms home.” [Own emphasis]
19. The key elements of a marriage under Kikuyu customary law is the ‘Ruracio’ or payment of dowry and the ‘Ngurario’ or slaughter of a ram. There is no evidence that either ceremony took place.
20. The Applicant asserts that he did not pay any dowry to the family of the Respondent and nor did he ever participate in a ‘Ngurario’ ceremony.
21. PW2 who was the applicant’s brother told the court that he never attended any marriage ceremony between the applicant and the Respondent. PW2 being a brother to the applicant, would have been one of the key persons to be involved if a customary marriage took place.
22. There was no evidence to controvert the evidence adduced by the Applicant and his brother. I find that the Affidavit notwithstanding, no customary marriage was contracted between the Applicant and the Respondent. In any event this Affidavit has been repudiated by one of the makers. As stated earlier an



Affidavit on its own is not evidence of a customary union. Accordingly I do declare that no customary marriage exists between the Applicant and the Respondent.

23. The Applicant has sought for a declaration from this court that he has the capacity to contract another marriage. This the court cannot do. The question of whether or not the Applicant has capacity to enter into another marital union is one which can only be considered and/or determined at the point at which he is seeking to enter into a marriage with another party.
24. Finally this application is partially successful and this court makes the following orders;-
 - (1) A declaration be and is hereby issued that no Kikuyu customary marriage was contracted between the Applicant MM and the Respondent RWW under Section 43 of the [Marriage Act](#) 2014 Laws of Kenya.
 - (2) Prayer (2) of the Notice of Motion dated 3rd March 2025 is dismissed.
 - (3) No order on costs.

DATED IN NYERI THIS 27TH DAY OF FEBRUARY 2026

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MAUREEN A. ODERO

JUDGE

