



**MMMM v JGCM & 2 others (Civil Application 215 of 2018)  
[2021] KECA 320 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 320 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 215 OF 2018  
DK MUSINGA, PO KIAGE & SG KAIRU, JJA  
DECEMBER 17, 2021**

**BETWEEN**

**MMMM ..... APPELLANT**

**AND**

**JGCM ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF TRANSPORT , INFRASTRUCTURE ,HOUSING AND URBAN  
DEVELOPMENT' ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(An application for injunction and stay of execution pending the appeal from the Order of the High Court of Kenya at Nairobi (Aroni, J.) dated 04th July, 2018 in HCCC (OS) NO. 37 of 2018)*

**RULING**

1. The genesis of this application is based on the Civil Union between the appellant (Mary) and the 1st respondent on 19th October, 1992. Years later, Mary discovered that the 1st respondent had purportedly married one MWA (Makonyi) customarily on 12th February, 2018 and a marriage certificate was issued to that effect. This prompted the appellant to file an application under the Matrimonial Properties Act and sought among other orders, a declaration of her rights in relation to their matrimonial property.
2. Thereafter, on 3rd July, 2018 Aroni, J recorded a consent order. Mary later claimed that the said order was made in her absence as she was asked to step outside while the 1st respondent and his Counsel conferred with the learned Judge. She later discovered that the learned Judge was personally known to the 1st respondent which, according to her, raised a conflict of interest.



3. Aggrieved by the turn of events, Mary filed a notice of appeal which gives us jurisdiction to hear and determine the 5(2)(b) motion dated 25th July, 2018. By virtue of appearing in person, her application is not well articulated. We have nevertheless summarized her prayers as follows;
  1. THAT an order of stay be issued against the proceedings in the High Court in HCCC No. 37 of 2018 and against the order dated 04th July 2018 issued by Ali Aroni, J.
  2. THAT the 1st respondent be ordered to tender before this Court a deed poll as evidence of the change of his name or in the alternative a directive be issued to the Directorate of Criminal Investigations and the Director of Public Prosecutions to investigate the inconsistencies in the appearance of his names in various documents.
  3. THAT an injunction be issued to stop the civil marriage between Makonyi Wavine Adroa to the 1st respondent.
4. The motion is founded on numerous grounds appearing on the face of it and is supported by an affidavit sworn by Mary. She cited that the 1st respondent goes by the name JCGM in the title of parcel number xxx/xxx of Mugoya Phase IV – House Number xx South C (the suit property) while in the civil marriage certificate number xxxxxx dated 05th March 2018 he appears as JSOM. She is desirous for the Court to determine whether both names belong to the 1st respondent.
5. The applicant further beseeches this Court to issue a temporary injunction prohibiting the civil marriage between Makonyi and the 1st respondent due to the pendency of her marriage to him and also prays that a declaration to be made for her to be added as a proprietor in the title of the suit property. She averred that this application is not frivolous and if the prayers sought are not granted, the arguable appeal shall be rendered nugatory.
6. The 1st respondent opposed the application and argued that the application is fatally defective and that; the reliefs sought are vague and therefore unsustainable in law. He maintained that the said order was made by consent of all parties. He argues that since Mary is displeased with the conduct of the learned Judge, she ought to have sought her recusal. Further, injunctive relief sought in respect of the suit property is presumptuous as her entitlement to the same has not yet been proved, while the rest of the prayers are multifaceted, incomprehensible and premature and not based on any order made by the High Court. He urged this Court to dismiss the application with costs.
7. For an applicant to succeed in obtaining the relief under Rule 5(2)(b) of this Court's Rules, she must show that she has an arguable appeal and that if the orders sought, be they of stay of execution or injunction, are not granted, the said appeal would be rendered nugatory or useless, illusory, academic and of no effect. For an appeal to be considered arguable, it needs only raise one *bona fide* point that calls for a response from the respondent and is worthy of decision by the Court hearing the appeal. See, [\*Stanley Kangethe Kinyanjui -vs- Tony Ketter & 5 others \[2013\] eKLR\*](#) and [\*Kieni Plains Co. Ltd & 2 others -vs- Ecobank Kenya Ltd \[2018\] eKLR\*](#).
8. We have considered the application and take the view that the grounds raised by the applicant are inconceivable and incomprehensible. They are not arguable as they do not arise from the order that the appellant intends to appeal from. We do not comprehend how the prayers sought, most of which are unsustainable in a Rule 5(2)(b) application in the first place, flow from the impugned order. We therefore have no jurisdiction to entertain any of them.
9. For these reasons, we find that this application has no merit and we dismiss in its entirety.



DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF DECEMBER, 2021.

D. MUSINGA (P)

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

S. GATEMBU KAIRU

.....

JUDGE OF APPEAL

*I certify that this is a true copy of the original*

DEPUTY REGISTRAR

