



REPUBLIC OF KENYA



KENYA LAW
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**KHNK v WKK (Miscellaneous Civil Case E006 of 2024)
[2025] KEHC 5510 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL CASE E006 OF 2024
RM MWONGO, J
APRIL 30, 2025**

BETWEEN

KHNK PETITIONER

AND

WKK RESPONDENT

JUDGMENT

1. The petitioner sought that her marriage to the respondent be annulled through a petition dated 12th August 2024. The petition is founded on the following grounds:
 1. That the petitioner and respondent are Kenyan Citizens both domiciled in Kenya. The petitioner resides in Kahawa West Nairobi County while the respondent resides in Makutano Meru County.
 2. That on 31st August, 2023, the petitioner, at the time, a spinster was lawfully married to the respondent, a bachelor in the registrar's office at Embu and a certificate of marriage No. 553884 issued.
 3. That on the day of their marriage the petitioner and the respondent went to celebrate their marriage at home with their friends and relatives and that is when they learnt from the petitioner's mother CKW that they were cousins and related.
 4. The respondent's mother and the petitioner's mother are cousins making the parties herein related as cousins in the third degree and within the prohibited degree of affinity and consanguinity. This fact was not known to the parties at the time of marriage.
 5. That on discovering this, the respondent ran away in guilt or shame, and they never spent the night together; the marriage was never consummated since its celebration.



6. That the respondent has never returned since the date of marriage on 31st August, 2023. It is 11 months since the marriage was celebrated and within the one-year period required for annulment under the law.

1. The petition was accompanied by a supporting affidavit through which the petitioner rehearsed her position as stated in the petition.

Response

3. The respondent was served with the petition but he did not enter appearance or file any response to the petition. The matter proceeded as an undefended petition and it was scheduled for formal proof.

Formal Proof

4. At the hearing, PW1 was the petitioner who relied on her supporting affidavit to the petition. She produced her marriage certificate as P.Exhb 1 as evidence and stated that she only learned that she was related to the respondent after her marriage to him. She found out about their close relations as relatives from her mother after the marriage had been officiated.

5. PW2 was the petitioner's mother who stated that she had joined her daughter to celebrate her civil marriage. When she met the groom, she discovered that they were related by blood. She knew her cousin, the respondent's mother, had raised her son in Meru while she raised the petitioner in Nairobi. The petitioner and the respondent did not know each other. At the point of their marriage, the families of the petitioner and respondent had never met.

Submissions

6. The petitioner filed her written submissions in support of annulment of the marriage. She relied on sections 11, 12 and 73 of the *Marriage Act* 2014 and the cases of *EMO v PNO* [2014] eKLR and *JO v HO* [2019] eKLR. she urged the court to find that her marriage to the respondent is prohibited under section 11 of the *Marriage Act*.

Issue for Determination

7. The only issue for determination is whether the petitioner's marriage to the respondent should be annulled.

Analysis

8. Section 73 of the *Marriage Act* provides for annulment of a marriage as follows:

“(1) A party to a marriage may petition the court to annul the marriage on the ground that—

- (a) the marriage has not been consummated since its celebration;
- (b) at the time of the marriage and without the knowledge of either party, the parties were in a prohibited relationship;
- (c) in the case of a monogamous marriage, at the time of the marriage one of the parties was married to another person;
- (d) the petitioner's consent was not freely given;



- (e) a party to the marriage was absent at the time of the celebration of the marriage;
 - (f) at the time of the marriage and without the knowledge of the husband, the wife is pregnant and that the husband is not responsible for the pregnancy; or
 - (g) at the time of the marriage and without the knowledge of the petitioner, the other party suffers recurrent bouts of insanity.
- (2) The court shall only grant a decree of annulment if—
- (a) the petition is made within one year of the celebration of the marriage;
 - (b) at the date of the marriage and regarding subsections (1)(b) and (c), the petitioner was ignorant of the facts alleged in the petition; and
 - (c) the marriage has not been consummated since the petition was made to the court.” [Emphasis added]

9. The petitioner testified that she wished for her marriage to the respondent to be annulled because they are cousins. Her evidence was supported and corroborated by PW2. She asserted that shortly after their civil marriage, she learned that her mother and the respondent’s mother are cousins who lived in different towns, and had never introduced their children to one another as relatives as second cousins. Section 10(1)(a) of the Marriage Act provides that:

“A person shall not marry that person’s grandparent, parent, child, grandchild, sister, brother, cousin, great aunt, great uncle, aunt, uncle, niece, nephew, great niece or great nephew.”

10. If this happens, the marriage is void ab initio under section 11(1)(b) of the Marriage Act which provides that:

“A union is not a marriage if at the time of the making of the union the parties are within the prohibited marriage relationship” [Emphasis added]

11. The petitioner also testified that the marriage was not consummated since the date of officiating it. The evidence adduced by the petitioner is uncontroverted, thus could be taken as fully probative and proving her petition beyond reasonable doubt.

12. The marriage certificate was produced to guide the court on the amount of time that has lapsed since the marriage was officiated and when the petition was filed. The date of marriage was 31st August 2023 and this petition was filed on 12th August 2023, being 11 months, 12 days since the marriage was registered.

Conclusion and Disposition

13. All in all, on the basis that the union between the parties was statutorily void ab initio, the petition is for granting and is hereby allowed as prayed. Accordingly, a decree of annulment is hereby issued to formally reinstate the original unmarried status of the couple.



14. There are no orders as to costs as the petition was unopposed.

15. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Mr. Njue for the Petitioner

No Representation for the Respondent

Francis Munyao - Court Assistant

