



**Godwilly v Manochi (Civil Appeal E060 of 2024)
[2025] KEHC 7102 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E060 OF 2024
AN ONGERI, J
MAY 30, 2025**

BETWEEN

WILLIAM MSAFIRI GODWILLY APPELLANT

AND

JACINTA LEONIDA MANOCHI RESPONDENT

(Being an appeal from the Judgment of Hon. D. M. Ndungi (PM) in Taveta Matrimonial Property Cause No. MCELC No. E009 of 2020 delivered on 24th October 2024)

JUDGMENT

1. The Respondent filed Taveta Matrimonial Property Cause No. E009 of 2022 seeking the following:-
 - i. A declaration that there existed a presumption of marriage between the Respondent and the Appellant and that the two are wife and husband.
 - ii. A declaration that property LR No. Kimorigo/Mboghoni/1358 (hereafter referred to as the suit property) situated at Msheghesheni, Taveta is matrimonial home of the parties within the meaning of the *Matrimonial Property Act*, 2013.
 - iii. A declaration that the suit property stated above LR Kimorigo/Mboghoni/1358 situated at Taveta and motor vehicle registration number T600 BRH (hereafter referred to as the suit motor vehicle), household goods and effects therein are matrimonial property within the meaning of the Matrimonial Properties Act.
 - iv. A permanent injunction to issue restraining the Appellant by himself, his agents and/or servants from intimidating, threatening, and/or harassing the Plaintiff in any manner whatsoever.
 - v. A declaration that the Appellant legally and unlawfully is entitled to live in the matrimonial home peacefully and quietly.



- vi. Costs of the suit and interest.
2. The Appellant filed a defence dated 21st October 2022 denying the Respondent's claim and stating that there was a simple relationship between himself and the Respondent which cannot be regarded as a marriage.
3. The Respondent's evidence was that she started living with the Appellant in the year 2003. Although the Appellant said they cohabited since 2010, the trial court found that the cohabitation was admitted and it was long enough to raise a presumption of marriage.
4. The trial court also found that the parties had capacity to marry and intention to marry and they held each other out as husband and wife until the Respondent discovered that the Appellant had a second wife.
5. The Appellant said in his evidence that he started cohabiting with the Respondent in the year 2010 until the year 2021 when the Respondent discovered that he had a love affair with another woman whom the Appellant called his second wife.
6. The trial court found that the Appellant regarded the Respondent as his first wife and the other woman as his second wife.
7. The trial court also found that the suit property and the motor vehicle were acquired while the parties were cohabiting as husband and wife and they are therefore matrimonial properties.
8. The trial court issued a declaration that the suit property and the suit motor vehicle and the household properties are matrimonial properties within the meaning of the *Matrimonial Property Act* 2013.
9. The trial court also granted prayers 4 and 5 of the plaint and a declaration that the Respondent was legally and lawfully entitled to live in the matrimonial home peacefully and quietly.
10. The Appellant is aggrieved with the judgment and he has appealed to this court on the following grounds:-
 - i. That the learned Magistrate erred in fact by finding that there existed a marriage by presumption between the Appellant and the Respondent despite cogent and conclusive evidence to the contrary rebutting the purported presumption of marriage presumption.
 - ii. That the learned Magistrate erred in law and in fact in finding that the property land parcel number Kimorigo/Mboghoni/1358 to be the Matrimonial property of the parties herein despite no certain proof to support this assertion.
 - iii. That the learned Magistrate erred in law and in fact in finding that the property land parcel number Kimorigo/Mboghoni/1358 motor vehicle registration no. T600 BRH, the household goods and effects thereon form part of the matrimonial property of the parties herein to be the matrimonial home of the parties herein in total disregard of the evidence adduced before court challenging the Respondent's claim.
 - iv. That the learned Magistrate erred in law and in fact in failing to appreciate that the presumption of marriage should only be used sparingly and limited to where there is cogent evidence to buttress it.
 - v. That the learned Magistrate erred in law and in fact by failing to recognize the realities of life that there exists relationships where couples cohabit with no intention whatsoever of



contracting a marriage and/or have neither the desire, wish nor intention to be within the confines of matrimony.

- vi. That the learned Magistrate erred in law by disregarding Appellant's crucial evidence tendered before court, submissions and authorities thus arriving a totally wrong conclusion.
 - vii. That the learned Magistrate erred in law and in fact by failing to exercise his discretion in favor of the Appellant.
 - viii. That the learned Magistrate erred in law and in making outright prejudicial substantive conclusions, applying selective justice and delivered a weird judgment.
11. The parties filed written submissions as follows;- The appellant submitted that to prove the existence of the customary marriage the appellant ought to have produced the documents enumerated in section 59 of the Marriage Act or called evidence to prove that the formalities of customary marriage were conducted or an admission of existence of the marriage by the respondent.
 12. It was the appellant's argument that in the matter herein there has never been a presumption of marriage. The parties separated for some time after disagreements and were not living together. It was thus argued that when the Marriage Act came to force and its regulations made thereunder, the presumption of marriage died a natural death.
 13. Further, that one has to go through the procedure and formalize the union for it to be considered failure to which one will not have a recourse before a court of law.
 14. The appellant submitted that from the evidence provided, it is clear there was no marriage between him and the respondent and therefore Land Title Number Kimorigo/Mgoghoni/1358 cannot be considered to be Matrimonial property. The appellant had already built a house on Land Title Number Kimorigo/Mgoghoni/1358 before being involved with the respondent and the claim by the respondent that he used her money in development is unsubstantiated.
 15. That there existed no evidence proving that the respondent made contributions towards the purchase and development of the property.
 16. The respondent alternatively submitted that MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) (Petition 9 of 2021) [2023] KESC 2 (KLR) (Family) (27 January 2023) (Judgment) set out a list of parameters within which a presumption of marriage can be made to wit;
 - a. The parties must have lived together for a long period of time.
 - b. The parties must have the legal right or capacity to marry.
 - c. The parties must have intended to marry.
 - d. There must be consent by both parties.
 - e. The parties must have held themselves out to the outside world as being a married couple.
 - f. The onus of proving the presumption is on the party who alleges it.
 - g. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
 - h. The standard of proof is on a balance of probabilities.
 17. The respondent contended that it is by the above parameters that the trial court made its decision that there existed a presumption of marriage between the appellant and the respondent.



18. According to the respondent, she met the appellant in the year 2003 and started living together in the year 2005. They live in several places together being Mombasa, Nairobi and Taveta.
19. The respondent provided evidence that she constructed a two-bedroom house in the matrimonial property in Taveta in addition to the main house and photographs were adduced as proof of the same. The appellant further confirmed at trial that the two-bedroom house was built by him and the respondent jointly. They as well constructed a borehole, another washroom, repainted the house jointly.
20. The respondent further submitted that the appellant confirmed that the respondent was living in the house when he was away and taking care of it. He confirmed that neighbors knew the respondent was his lover and fiancé and she was living in the house under that capacity.
21. It was further his evidence that he sent elders to the respondent's home to inform them that he was living with her and he intended to marry her. It was the respondent's argument therefore that the evidence produced on record fell squarely within the parameters set by the Supreme Court in MNK v POM (supra).
22. This being a first appeal, the duty of the first appellate court is as follows:- In *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

23. The issues for determination in this appeal are as follows:-
 - i. Whether the Respondent proved her case to the required standard in civil cases.
 - ii. Whether the suit property, suit motor vehicle and household goods qualify to be matrimonial properties under the Matrimonial Properties Act 2013.
24. On the issue as to whether the Respondent proved her case to the required standard, the trial court found that although the Respondent said they started living together in 2003 and the Appellant said the cohabitation started in 2010 to 2021, there is evidence that the parties cohabited for a long period of time.
25. The trial court also found that the two held out each other as husband and wife and they had capacity to marry and also that the parties intended to get married.
26. I have re-evaluated the evidence adduced before the trial court and I find that the Respondent proved her case to the required standard in civil suits.



27. On the issue as to whether the suit property, the suit motor vehicle and the household goods qualify to be matrimonial properties under the Matrimonial Property Act, 2013, the definition of matrimonial property under the Matrimonial Property Act is as follows:-
6. Meaning of matrimonial property
- (1) For the purposes of this Act, matrimonial property means—
- (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
28. I find that the Respondent sufficiently proved, on a balance of probabilities, that a presumption of marriage existed between herself and the Appellant based on their prolonged cohabitation, mutual intention to marry, and public acknowledgment as husband and wife.
29. The Appellant's arguments to the contrary were adequately addressed and dismissed by the trial court, and this court finds no reason to overturn those findings.
30. Further, the trial court properly classified the suit property (LR No. Kimorigo/Mboghoni/1358), the motor vehicle (Registration No. T600 BRH), and the household goods as matrimonial property under the Matrimonial Property Act, 2013.
31. The evidence demonstrated that these assets were acquired and developed during the subsistence of the relationship, with contributions from both parties.
32. Consequently, this appeal is hereby dismissed in its entirety. The judgment of the trial court delivered on 24th October 2024 is upheld.
33. The Respondent shall have the costs of this appeal.

DATED, SIGNED AND DELIVERED THIS 30TH MAY 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Millicent

