Originating Motion to Review Cohabitation Appeal Certification

Educational sample 081 | Supreme Court of Kenya at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

ORIGINATING MOTION

1. The Applicant seeks review under Article 163(5) of the Court of Appeal’s decision dated [date] refusing certification under Article 163(4)(b). The certified copy of that decision and the application determined below are identified in the accompanying record.

2. The questions proposed for certification are whether long cohabitation may support a presumed marriage despite a proved impediment to capacity, and what legally distinct basis may support a beneficial property interest where marriage is not established.

3. The Applicant asks for certification of those questions as matters of general public importance, stating their application beyond the parties. The request is not simply to reweigh which former cohabitant paid more money in this dispute.

4. The underlying judgments took materially different approaches to a relationship and property registered in one party’s name. The Applicant identifies the relevant legal conclusions at [judgment pages] and the points requiring authoritative clarification.

5. The questions arise from the proceedings already determined below. The Applicant does not introduce an unrelated constitutional controversy merely to bypass certification or seek an advisory answer disconnected from this appeal.

6. The proposed appeal distinguishes marital status from constructive trust. Certification should permit resolution of the legal threshold and remedial approach without presupposing that all long-term cohabitants are married or own property equally.

7. The Applicant requests that the refusal of certification be reviewed and the identified questions certified, with costs as the Court considers appropriate. A separate petition and record of appeal will be filed within the applicable period if certification is obtained.

8. This motion identifies the decision under review, service addresses, the questions and the supporting material in the structure of Form E. The filing date is [date], with the applicable fourteen-day review period or extension order expressly addressed.

DATED at [place] on [date]. [Signature of party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Rule 33 requires certification first in the Court of Appeal, followed by Supreme Court review of that decision; use Form E, not the general appeal Form G. Certification is not automatic because the case is important to its parties. The source appeal proceeded after certification review. Do not reuse the repealed 1882 Act as a new trial filing route.

C1 certification decision; C2 original certification application; C3 relevant lower judgments; C4 concise proposed legal questions and record references.

Source and procedural limits

Former cohabitants disputed property registered in the woman's name. The man relied on their relationship and contributions to acquisition, utilities and development. The High Court rejected the claim, while the Court of Appeal presumed marriage and divided the property equally.

The Supreme Court rejected the presumed marriage but found a constructive trust from the parties' conduct and contributions. It apportioned the interest 70% to the woman and 30% to the man. Long cohabitation did not create an automatic half share.

Constitution Article 163(4)(b) and (5); Supreme Court Rules 2020 rules 33, 38–40 and 42; constructive-trust principles. The historical originating summons invoked the repealed Married Women's Property Act 1882: that is not a current new-claim filing route.

Supreme Court Petition 9 of 2021 — 27 January 2023. Source: https://supremecourt.judiciary.go.ke/wp-content/uploads/2026/06/Mary-Nyambura-Kangara-v-Paul-Ogari-Mayaka-SC-Petition-No.-9-of-2021-Judgment-27th-January-2023.pdf

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.