Petition of Appeal on Marriage Capacity and Cohabitant Property Shares

Educational sample 082 | 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]

PETITION OF APPEAL

1. The Petitioner appeals from the Court of Appeal judgment dated [date] concerning the property registered in her name. The appeal is brought under Article 163(4)(b) on the questions certified by [decision and date], a copy of which appears at [record page].

2. The parties lived together for a long period and later separated. The Respondent asserted marriage and a beneficial interest in acquisition and development. The Petitioner disputes the presumption of marriage and the basis for an equal division.

3. Ground one: the appellate court presumed a marriage without properly determining capacity in light of the pleaded prior marriage and its legal status. The relevant evidence and findings are [pages]. Long cohabitation does not dispense with a proved legal impediment.

4. Ground two: the judgment treated presumed marriage as sufficient to support an equal property allocation without separately analysing the established contributions and the legal basis for beneficial ownership.

5. Ground three: if the record supports a constructive trust independently of marriage, the extent of that trust must be quantified on the proved conduct and contributions. The petition challenges an unexplained equal split rather than asserting that registration always excludes another person’s beneficial interest.

6. The evidence material to the certified issues includes the acquisition documents, testimony about the relationship, utility payments and development through rental proceeds. The petition identifies those existing items without submitting a fresh contribution narrative as evidence.

7. The Petitioner requests that the marriage-presumption conclusion be set aside and the property relief reconsidered on the proper legal basis and the record. Any alternative allocation sought is [pleaded percentage and record justification], not a universal formula taken from another case.

8. The appeal is confined to the certified questions and the permissible record. The document schedule contains the notice, certificate, judgments and relevant pleadings. Any need for additional evidence will be the subject of a formal application.

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

Kangara resulted in a constructive trust and a 70/30 allocation even though marriage was not presumed. A petitioner should address that alternative rather than assume that defeating marriage defeats every property claim. Use Form G and check whether each ground falls within certification.

P1 notice and certificate; P2 appellate judgment; P3 trial judgment and pleadings; P4 existing acquisition, contribution and capacity evidence.

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.