Appellant Submissions on Capacity Before Presuming Marriage

Educational sample 084 | 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]

WRITTEN SUBMISSIONS

1. The certified marriage question requires analysis of capacity and evidence, not merely the duration of the relationship. The Petitioner identifies the trial findings on the alleged earlier marriage and its continuation at [pages].

2. The Respondent’s evidence of shared residence and public presentation must be read alongside any proved impediment. Those facts may be relevant to a presumption, but do not automatically establish that the parties were legally free to marry.

3. The Court should identify the burden and the evidence on each disputed proposition. The Petitioner does not ask the Court to assume a prior marriage solely because one is alleged; she relies on the admissible material and findings actually in the record.

4. Any finding that capacity was absent should be kept distinct from the property question. The Petitioner accepts that the Respondent may advance a constructive-trust argument if it is properly within the appeal and supported by the existing pleadings and evidence.

5. On property, the Respondent’s utility or development activity should be assessed for its evidential significance and value. Not every payment establishes an equal beneficial share, and title in one name does not itself conclude the equitable inquiry.

6. The equal allocation under challenge requires a stated basis. The Petitioner proposes [record-supported alternative], explaining acquisition payments and other contributions while avoiding unsupported percentages or valuation figures.

7. The source judgment’s rejection of presumed marriage and separate constructive-trust finding are consistent steps. A present appeal must address both rather than convert a successful status argument into an automatic entitlement to the whole property.

8. The Petitioner asks that the certified questions be answered on those distinct grounds, with any allocation tied to the record and the parties’ actual relief. New marriage records, valuations or banking documents require the proper admission procedure.

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

This is an appellate argument, not a witness statement about a party's marital history. Verify the status and proof of any prior marriage and the scope of certification. Do not describe the 70/30 result as a statutory matrimonial division rule.

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.