

PRESUMED MARRIAGES IN KENYA:
High Court Clarifies Property Rights in Cohabitation Cases

From: *CM Advocates LLP – Private Wealth, Family Law & Global Mobility Department*

KEY TAKEAWAY

In a landmark judgment, the High Court of Kenya reaffirmed that **long-term cohabitation**, even without formal marriage, can constitute a **presumed marriage**, carrying full legal implications under the Matrimonial Property Act, 2013. The decision provides critical guidance for individuals in informal unions, especially where property ownership, joint investments, or blended family dynamics are involved.

LANDMARK CASE: *GODWILLY V MANOCHI [2025] KEHC 7102 (KLR)*

In this pivotal case, the High Court at Voi upheld a ruling that declared a presumed marriage between a man and a woman who had cohabited for nearly two decades. Key highlights:

- Cohabitation occurred across Nairobi, Mombasa, and Taveta.
- Joint development of property, including a two-bedroom house and borehole.
- Public introduction as fiancée and customary involvement of elders.
- Property including LR No. Kimorigo/ Mboghoni/1358 and motor vehicle T600 BRH was declared matrimonial property under the law.

The judgment affirms the Supreme Court precedent in MNK v POM (2023): long-term cohabitation, mutual intent, and public recognition are sufficient to establish a presumed marriage, placing the burden of rebuttal on the denying party.

WHAT THIS MEANS FOR YOU

1. Informal relationships may attract full legal consequences, including matrimonial property claims.
2. Parties in long-term cohabitation may be deemed spouses, even in the absence of formal ceremonies.

3. Property acquired or developed during such unions may be jointly owned and subject to division.
4. Without proper planning, family wealth, estates, and business interests may be exposed to litigation.

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  - Structuring of cohabitation and prenuptial agreements
  - Advisory for blended families, elder care, and guardianship
  - Court-appointed curatorship and mental capacity protections

- ***Succession Planning & Estate Protection***
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  - Probate litigation, inheritance claims, and estate administration
  - Estate asset partitioning and family business succession
  - Diaspora estate claims and resealing of foreign grants

- ***Family Trusts & Wealth Structuring***
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  - Governance and legacy planning via family foundations

- ***Family Business Governance & Transition***
  - Family constitutions, shareholder agreements, and succession charters
  - Business continuity planning, NextGen leadership, and transition
  - Intra-family buyouts, equity realignment, and strategic restructuring

- ***Private Client Tax & Global Mobility Solutions***
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