Case Number:	Civil Appeal 187 of 1990
Date Delivered:	01 Dec 1995
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	John Wycliffe Mwera
Citation:	David Kinyua Njiri v Peris Wanja Kinyua [1995] eKLR
Advocates:	Mr Kanyi for the Appellant Ms Karua for the Respondent
Case Summary:	**David Kinyua Njiri v Peris Wanja Kinyua** **High Court, at Nairobi December 1, 1995** **Mwera J** **Civil Appeal No 187 of 1990** ***Marriage*** *- customary marriage – Kikuyu customary marriage – where there is evidence of payment of dowry – whether this is evidence of marriage – whether failure to perform 'ngurario' rite an indication that marriage has not been fully celebrated.* The respondent filed a suit for declaration that she had been married to the appellant for 6 years and that she was entitled to maintenance. The Court established this fact and ordered that she was entitled to Shs 1500 per month from the appellant for maintenance. The appellant challenged this fact stating that the lower court was wrong in finding that he and the respondent were married, and further that an amount of Shs 1500 was without considering the

	financial means of the appellant. **Held:** 1. There is evidence of payment of dowry which was accepted by the respondent's side. 2. A full celebration including performing the '*ngurario*' rite is not all that is to Kikuyu Customary Marriage, since the right has no time limit. 3. It was incumbent upon the appellant to show the learned trial magistrate that it could be hardship on him to pay the respondent Shs 1500. *Appeal dismissed.* **Cases** No cases referred to. **Statutes** No statutes referred. **Advocates** *Mr Kanyi* for the Appellant *Ms Karua* for the Respondent
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO 187 OF 1990

DAVID KINYUA NJIRI .....APPELLANT

VERSU

PERIS WANJA KINYUA.....RESPONDENT

JUDGMENT

On 21.8.90 the learned trial magistrate in the Kerugoya RMCC no 8 of 1988 delivered a judgment which stated that the respondent Peris Wanja had succeeded in establishing that she had been married by the appellant David for six years or thereabout. That the two had had one child during that marriage while the appellant, as it were, adopted and accepted a child the respondent had earlier, as his own child. That Court considered the incomes of the two and ordered that the respondent was entitled to Shs 1500/- pm from the appellant for maintenance.

The appellant got a stay of execution of this order. It has been so for 5 years. Indeed the first child now has become an adult.

The appellant filed 2 grounds of appeal stating that the lower court was wrong in finding that he and the respondent were married. The other ground was that the award of Shs 1500/= was without considering the financial means of the appellant.

The appeal was argued in this Court by Mr Kanyi for the appellant while Ms Karua appeared for the respondent.

In essence Mr Kanyi submitted that a marriage had not been proved in the lower court either as a customary marriage or by presumption at common law. He added that the respondent had not tabled her expenditure needs and how she financed them. It was suggested that going by the record while she claimed to earn a net of Shs 2690/= pm she told the Court that she spent Shs 3500/= and that she only wanted Shs 2000/= for maintenance per month. By this then the respondent must have had another source of income in order to spend more than she earned. Indeed, it was added, the award of Shs 1500/= pm was hard on the appellant whose net was Shs 2877/= pm and had other needs to cater for financially.

Ms Karua went through the proceedings and judgment of the lower court. She urged this Court to uphold the learned trial magistrate's judgment as based on evaluation of evidence placed before him – both on the marriage issue and the maintenance award.

Looking at the proceedings and the judgment in the court below this Court is satisfied that the judgment thereat should not be disturbed.

On marriage, the learned trial magistrate heard evidence from the respondent's side and that of the appellant. There was evidence on payment of dowry by David which was accepted by the respondent's side. She presented affidavits signed by both her and David. On the strength of these documents she

changed her name to incorporate that of the appellant. On his part he got his employer procure him a NHIF card with the respondent appearing as a wife. The two then opened a joint account wherein the respondent appeared as Mrs Kinyua – by virtue of the appellant's surname. No more can be said. Such things do not happen on two strangers who meet on the road. Furthermore the two had a child born between them.

In any case even if a Kikuyu customary marriage had not been fully celebrated, and full celebration including performing the "*ngurario*" rite is not all that is to such a marriage, since the rite has no time limit, the two lived together for so long portraying themselves and society taking them as husband and wife. Yes. David and Peris were husband and wife and the lower court found so. Ground 1 fails.

The award of Shs 1500/= pm from the appellant to maintain the respondent plus the 2 children may have appeared rather quite a cut from a net of Shs 2877/= pm.

But the trial magistrate came to this conclusion after accepting the figures of income and expenditure as presented by both the appellant and the respondent. The respondent was not barred from illustrating his other financial needs. In fact it was incumbent on him to show the learned trial magistrate that it could be a hardship on him to pay the respondent Shs 1500/=. If he was not able to do so as at the time of the award, it cannot be gainsaid that he could not do so by asking for a review. In this kind of cases such courses are normal. He did neither and so this Court has no reason to disturb that award of maintenance. But he can avail himself of liberty to review now that one of the children is an adult. But that is not for the Court to advise. The appellant has a competent lawyer to guide him along. All this Court is doing here is to order the appellant to take over his marital burden and discharge it with responsibility.

In sum this appeal is dismissed with costs.

Judgment accordingly.

Dated and delivered at Nairobi this 1st day of December 1995 .

J.W MWERA

JUDGE