

# **European Master's Degree in Human Rights and Democratisation**

## **“Marriage of Convenience”: a controversial, hardly demonstrable phenomenon or an efficient instrument of migration policy?**

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## **ABSTRACT**

The title of the thesis poses the question of whether the notion of marriages of convenience is just a social construct expressed in legal terms which insufficiently, and in very simplistic way, tries to lay down means for combating the phenomenon of marriage migration, and thereby impersonating a threat to the highest social value of human rights. Or have the states succeeded in addressing the issue of marriages of convenience by adopting effective and efficient measures combating marriages contracted for the sole aim of circumventing national immigration laws? The aim of the thesis is not to recommend any particular measures that should be adopted by the states. The aim is through analysing the case law of the, predominantly, European Court of Human Rights and the European Court of Justice to indicate such measures that could/can have the effect of violating human rights. The first two chapters introduce the concept of “marriages of convenience” and its various modifications among the states together with a brief overview of the Community legislation showing the obvious difficulties arising from the implementation of the measures into practice. Third chapter indicates national measures aimed at combating marriages of convenience, and analyses the existing jurisprudence on human rights with a view to either demonstrate, or indicate possible abuses of human rights by such measures.

*Marriages of convenience have been known at many times and in many societies and have in the past withstood the scrutiny of judges who have decided that the motives people have for entering a marriage are of no concern to the state.*

H. U. Jessurun d'Oliveira

*... the couple remained living together separately after their marriage ceremony and continued claiming benefits as a single person. Neither of them gave a convincing explanation as to why they did not live together and the absence of any such explanation undermines the credibility of their claim to be in a genuine marriage. Apart from the marriage certificate, wedding photographs and the evidence of the Appellant and her husband, there is no evidence to support their claim to be in a genuine relationship. They do not live together; there is no joint bank account; no evidence of joint purchases or bills; no evidence of joint activities; no statements from family members or friends concerning their relationship. The Appellant is represented and, if such evidence existed, I would have expected it to have been submitted but none has been. When this situation is looked at, in the round, I am satisfied that this is a marriage of convenience.*

Determination of the Adjudicator in case known as *VK (marriage of Convenience) Kenya*  
[2004] UKIAT 00305

## Abbreviations

CoE	Council of Europe
EC	European Community
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECommHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
ECJ	Court of Justice of the European Communities (European Court of Justice)
IAT	Immigration Appeal Tribunal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TNC	Third-country national

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