



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC. MISC. CIVIL APPLICATION NO. E003 OF 2022

JULIANA NZILANI KITEMA.....1ST APPLICANT

JACINTA KATUNGE KITEMA.....2ND APPLICANT

ANGELINA KANINI KITEMA.....3RD APPLICANT

MARY NDINDA KITEMA.....4TH APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF MAKUENI.....1ST RESPONDENT

MEDICAL OFFICER OF HEALTH MAKUENI.....2ND RESPONDENT

OFFICE OF THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. Before me is an application dated 17th January 2022 brought by way of Notice of Motion under section 146 of the Public Health Act, Order 51 Rule 1 of the Civil Procedure Rules, and section 1A and 3A of the Civil Procedure Rules, seeking the following orders –

1. That the body of the applicants' deceased mother Kamene Kitema Nyumu be exhumed from its place of its burial in Ndauni Location, Kathulumbi Division in Mbooni East Sub-County and thereafter re-buried in Kitoto Village Kathulumbi area where the deceased had bought land before she passed on.

2. That the court issues any other relief that it may deem fit and just in this case.

2. The application has grounds on the face of the Notice of Motion that the land where the deceased was buried had now been acquired by the National Government for construction of Thwake Multipurpose dam and it was the wish that the deceased be buried in a place far from the water mass, and that before her death the deceased had been compensated by the National Government and bought land in a different location.

3. The application was filed with a supporting affidavit sworn by Mary Ndinda Kitema one of the applicants on 17th January 2022. The affidavit amplifies the grounds of the application and annexes a number of documents including the death certificate of the deceased Kamene Nyumu.

4. The application and hearing notice was served to the 1st and 2nd respondents on 3/2/2022, but no response was filed.

5. When the application came up for hearing on 30th March 2022, only Mr. Kioko for the applicants appeared in court. None of the respondents appeared in court. Mr. Kioko for the applicants urged the court to allow the application stating that he had spoken to representatives of the 1st and 2nd respondents who had no objection to the application.

6. On my part, having considered the requests of the applicants, and in view of the fact that there is no objection filed, I find no reason to decline the application.

7. I thus allow the application and grant prayer (1) herein subject to the provisions of section 146 of the Public Health Act (cap. 242). I make no order as to costs.

DELIVERED, SIGNED & DATED THIS 4TH DAY OF APRIL, 2022, IN OPEN COURT AT MAKUENI.

.....

GEORGE DULU

JUDGE