



REPUBLIC OF KENYA



KENYA LAW
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**Mukuha v Ndirangu & another (Miscellaneous Civil Application
35 of 2019) [2022] KEHC 11063 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CIVIL APPLICATION 35 OF 2019**

CM KARIUKI, J

JULY 28, 2022

BETWEEN

GRACE WAMBOI MUKUHA APPLICANT

AND

MARGARET MAGERE NDIRANGU 1ST RESPONDENT

PETER KARIUKI NDIRANGU 2ND RESPONDENT

RULING

1. The matter is for hearing an application dated 20th March 2019. Seeking the prayers:
2. That the court be pleased to make an order directed at the Respondents to remove and/or exhume the remains of Ndirangu Mwangi Kinjaand John Gakuo Ndirangu from Title No. Marmanet North Rumuruti Block2/10336 a subdivision of the former Title No. Marmanet North Rumuruti Block2/459 (Ndurumo) registered in the name of the Applicant and to bury them or inter them on Title No. Marmanet North Rumuruti Block2/461 (Ndurumo) which belong to the Respondent and/or anywhere else in the Republic of Kenya upon applying for and obtaining or being issued with a permit by the minister of the County Government of Laikipia under section 146 of the [Public Health Act](#) chapter 242 laws of Kenya.
3. That an order be made directed at the O.C.S Rumuruti Police Station to provide security, law and order during the entire excise removal or exhumation of the bodies of the persons above mentioned.
4. The costs hereof be borne by the Respondents. The same is supported by the grounds on the Application namely:
5. The applicant case is that she is the registered absolute proprietor of all that parcel of land known and described as Title No. Marmanet North Rumuruti Block2/10336 a subdivision of the former Title No. Marmanet North Rumuruti Block2/459 (Ndurumo).



6. The Respondent admitted on oath that they mistakenly interred or buried the bodies of both Ndirangu Mwangi Kinja(Deceased) and John Gakuo Ndirangu (deceased)on the Title No. Marmanet North Rumuruti Block2/459 (Ndurumo)
7. The deaths of the said Ndirangu Mwangi Kinja (deceased) and John Gakuo Ndirangu(Deceased) are duly registered under the Births and Death Registration ActChapter 149 Laws of Kenya.
8. The Respondents have been notified to obtain a permit for the purposes aforesaid to no avail to date. The Respondents in the indolence or delay have caused the Applicant untold misery mental anguish and untold economic losses in that she could not possibly utilize her entire land as long as the said remains stays in a portion of her land.
9. The 1st Respondent swore an affidavit of her intention to remove the said remains but took no step thereafter to date. That unless the orders sought are granted, the constitutionally guaranteed rights to ownership of property and economic benefits or use thereof under Article 40 of *the Constitution* may be curtailed and violated to the detriment of the Applicant.
10. The application is supported by affidavit of Grace Wamboi Mukuha sworn on 20th March 2019: The same in brief reiterates the content of above laid out grounds in support of the application.She states that, she reported the Respondents to the Area Chief Rumuruti Location over burying named persons' body in her parcel of land stated above where they were summoned and asked to remove the remains aforesaid from her land but despite several promises, they failed ,refused or neglected to do so.
11. The Respondents have adequate notice of applicant's grievances and they know as a matter of fact that where the bodies of the two are buried in part her land.
12. The applicant issued demand notice to the 1st Respondents to exhume or remove the said bodies but at first, she denied the fact of burial in her land and alleged boundary dispute to which she replied to vide a reply letter dated 9/6/2018, the 1st Respondent admits having title deed for her own separate parcel of land which is separated from mine by a public road.
13. The delay by the Respondents in removing the said remains and graves have also occasioned me untold misery, mental anguish and untold economic losses in that I cannot possibly utilize my entire land as long as the said remains stays in a portion of my land.
14. The Court had directed the County Surveyor Laikipia to visit site and confirm the condition of the two (2) graves in issue.
15. By Report of 15th November 2021 the Surveyor confirmed the graves of Peter Kariuki Ndirangu father Ndirangu Mwangi and brother John Gakuo Ndirangu are related and on site within land parcel No. 10336 a subdivision of 459) owned by the Applicant.
16. The Respondent has not contested that nor has he filed any objection to the Application despite being granted time to do so.
17. Thus, the court finds merit in Application and makes the orders;
 - (i) Prayers 2, 3 and 4 of the Applicant are granted.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 28TH DAY OF JULY 2022.

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CHARLES KARIUKI

JUDGE

