



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 8 OF 2015

ROSEMARY GACHOKI.....PLAINTIFF

VERSUS

MARY GACHOKI (also known as WAKIHORO).....DEFENDANT

RULING

1. There are two applications for determination, one dated 2nd June 2015 and the other 13th July 2015. It had been directed that the two be disposed of by way of written submissions.
2. The Motion of 2nd June 2015 seeks orders relating to the disposal of the remains of Rosemary Gachoki, and related orders. The deceased is the mother of the plaintiff and a daughter of the defendant. She fears that the remains may be disposed of during her absence.
3. The application dated 13th July 2015 is by the defendant. She seeks that the plaintiff deposits a sum of money in court as security for costs with regard to mortuary and related expenses. She would also like the order stopping the burial lifted.
4. The suit herein is between family members. Both have a fundamental interest in the burial of the remains of the deceased. The hearts of both cannot be at peace until the issues between them are resolved.
5. There is good reason to preserve the body in the mortuary pending hearing and disposal of the suit herein, and also for grant of the other preservative orders sought pending the full disposal of the suit herein.
6. However, the keeping of the body at the mortuary continues to expose the family to costs. The ultimate cost ought to be borne by the party who is causing the delay in the disposal of the remains. She should deposit a sum of money in court as security for the costs that are to be ultimately borne with respect to mortuary fees.
7. I will dispose of the two applications in the following terms:-
 - (a) That the orders sought in the application dated 2nd June 2015 are granted in their entirety;
 - (b) That the said orders shall subsist pending further orders of the court;
 - (c) That the application dated 13th July 2015 is granted on the terms that the plaintiff shall deposit in court, in the next fourteen (14) days of the date herein, a sum of Kshs. 500, 000.00 as security for costs with respect to mortuary charges;

(d) That in default of (c) above the order in (a) above and that made on 3rd June 2015 shall lapse automatically at the expiry of the fourteen (14) days stated in (c) above; and

(e) That the costs of this application shall be borne by the plaintiff.

8. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF OCTOBER, 2016.

W. MUSYOKA

JUDGE