



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NO. 111 OF 2011**

**HANNAH WANJIRU KAMAU.....PLAINTIFF/APPLICANT**

**VERSUS**

**TERESIAH NJERI.....DEFENDANT/RESPONDENT**

**RULING**

In a Complaint dated and filed on 19<sup>th</sup> May, 2011 the Plaintiff sought the following orders -

- (a) *A temporary injunction restraining the Defendant, either by herself, her agents, servants, employees or otherwise howsoever from removing the body of the deceased SAMUEL KAMAU WANJIRU from Lee Funeral Home or from making any funeral arrangements in relation to the deceased.*
- (b) *A permanent injunction restraining the Defendant, either by herself, her agents, servants, employees or otherwise howsoever from removing the body of the deceased SAMUEL KAMAU WANJIRU from Lee Funeral Home or from making any funeral arrangements in relation to the deceased.*
- (c) *Costs of this suit.*

The suit was entitled Fast Track Civil Case No. 111 of 2011. Simultaneously with the Complaint, was filed a Notice of Motion for orders that -

- (1) *that service of this application and Summons to enter appearance be dispensed with and the application be certified as urgent and heard ex-parte at the first instance.*
- (2) *that this Honourable Court be pleased to issue a temporary injunction restraining the Defendant, either by herself, her agents, servants, employees or otherwise howsoever from removing the body of the deceased SAMUEL KAMAU WANJIRU from Lee Funeral Home or from making any funeral arrangements in relation to the deceased pending the hearing and final determination of this application.*
- (3) *that this Honourable Court be pleased to issue a temporary injunction restraining the Defendant, either by herself, her agents, servants, employees or otherwise howsoever from removing the body of the deceased SAMUEL KAMAU WANJIRU from Lee Funeral Home or from making any funeral arrangements in relation to the deceased pending the hearing and final determination of this suit.*
- (4) *that the costs of this application be provided for.*

On 19<sup>th</sup> May 2011 I granted prayers (1) and (2) of the Motion and restrained the Respondent for a period

of 14 days from removing the body of the deceased from Lee Funeral Home pending the post-mortem to be carried out on the body of the deceased - Samuel Kamau Wanjiru. I also directed that the parties appear before me on 2<sup>nd</sup> June 2011 when counsel for both, the Applicant and Respondent, reported that the post mortem had been carried out in the presence of both the Chief Government Pathologist and two doctors representing the Applicant and the Respondent. I therefore, found no need for the maintenance or perpetuating the temporary orders which were granted on 19<sup>th</sup> May 2011.

Unhappy with the discharge of temporary orders of injunction, the Applicant filed a further Notice of Motion dated 7<sup>th</sup> of June 2011 seeking the following orders -

- (1) *that this application be certified urgent and heard on priority basis.*
- (2) *that pending the inter partes hearing of this application, the Honourable Court be pleased to issue an interim order of injunction restraining the defendant either by herself, her agents, servants, or employees or otherwise howsoever, from removing the deceased SAMUEL KAMAU WANJIRU from Lee Funeral Home or from making funeral arrangements in relation to the deceased.*
- (3) *that this Honourable Court be pleased to review its unilateral order of the 2<sup>nd</sup> June 2011 discharging the interim order of injunction issued on 19<sup>th</sup> May 2011 and to substitute it with further orders of interim injunction in terms of prayer (b) of the application dated 19<sup>th</sup> May, 2011.*
- (4) *that this Honourable court be pleased to order that the application dated 19<sup>th</sup> May 2011 be heard on priority basis.*

This Motion was argued before me on 10<sup>th</sup> of June 2011, by Mr. Ogola the Learned Counsel for the Applicant appearing together with Mr. Konosi that I should review my orders of 2<sup>nd</sup> June 2011 and re-impose a further temporary injunction pending investigations into establishing who killed the deceased - Samuel Kamau Wanjiru.

Mr. Ogola relied on the grounds and the Supporting Affidavit of the Applicant Hannah Wanjiru Kamau sworn on 7<sup>th</sup> June 2011 and concluded that the Applicant had established a prima facie case for the restoration of temporary injunctive orders.

Mr. Wahome who appeared for the Respondent argued to the contrary that there was no ground whatsoever for imposing further injunctive orders. He argued that nobody has any further interest in the body of the deceased, The records and results of the post-mortem are now in possession of both the Chief Government Pathologist and the two doctors who represented the Applicant and the Respondent.

I have, with a lot of anxiety considered the respective arguments by counsel. The grounds for review of the judgment and order for Decree of the court are set out in Order 45 of the Civil Procedure Rules and that they are -

*"(i) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge or could not be produced by the applicant at the time when the Decree or Order made.*

*(ii) An apparent mistake or error on the face of the record.*

*(iii) Some other sufficient cause."*

Mr. Ogola, Counsel for the Applicant argued that the post-mortem results are inconclusive and the Applicant pleads for more time to facilitate investigations by the Police as to whether the cause of death resulted from the fall or some other cause. Counsel argued particularly that the post-mortem report by Doctor Rogena could not have caused injuries to which the deceased succumbed because according to the

report, the deceased fell on his four limbs and the limbs sustained the impact of the fall and therefore there was no explanation as to the other injuries on the head. The counsel submitted that it was subject to further investigations to establish the true cause of the injuries.

For this reason, counsel submitted that he had established a prima facie case for imposition for further temporary orders and urged the court, according to the prayers in the Notice of Motion, to review its orders of 2<sup>nd</sup> of June, and re-impose orders of injunction in accordance with prayer 1 in the Notice of Motion.

Mr. Wahome who argued on behalf of the Respondent had completely different view and submitted that there was no other valid ground for the restoration of the injunctive orders. Counsel submitted that the post-mortem having been successfully carried out, further investigations into the death of the deceased is a matter to be carried out by the Police. The grandfather of the deceased, in particular, whom the deceased is named, is keen to have him buried without further delay.

Matters of death are highly traumatizing and even without dispute among members of the family also, highly emotional. Taking away the trauma or the emotions, neither the Applicant nor the Respondent have any proprietary interest in a dead body. All the interest really is about succession and who to inherit what. In my respectable view, as I said in another Ruling on this matter today, is a matter of another forum and for another day.

Mr. Ogola submitted that time would heal the animosity and suspicions brought by the death of the deceased. I agree, the postponement of the deceased's burial however, exacerbates the animosity and the feelings of distrust. As the burial is not the matter entirely within the control of the Applicant or the Respondent, but of the entire family of the deceased, I would see no possible reason for postponing or granting injunctive orders at this stage.

More fundamentally the investigations as to who caused the injuries sustained by the deceased besides those on his limbs is a matter not within the purview of the Applicant nor the Respondent. That matter is entirely confined to the Kenya Police. There is no information that the Kenya Police or other investigatory agencies require the body of the deceased to carry out those investigations.

In my own view, in order to allay the strong feelings of the Applicant and Respondent I would direct that an Inquest be carried out into the death of the deceased so that anyone with any information do present the evidence to such an Inquiry.

For those reasons I decline to grant any of the orders prayed for in the Motion of 7<sup>th</sup> June, 2011.

**Dated, delivered and signed at Nakuru this 10<sup>th</sup> day of June, 2011**

**M. J. ANYARA EMUKULE**  
**JUDGE**