

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Appeal 10 of 2004

MARGARET MWITUNGI MUTURI.....APPELLANT

VERSUS

DORAS CIAITA MUTURI.....RESPONDENT

JUDGMENT

The Plaintiff filed a plaint on 26/2/2004 claiming the right to bury her dead husband on plot No. Mbeere/Mbita/1579 which was her matrimonial home.

The defendant opposed the proposals of the plaintiff and wanted deceased to be buried on another land elsewhere by the defendant and her children. On the same date the plaintiff took out Chamber Summons under certificate of urgency seeking to restrain the Defendant from proceeding with her objections as to the place of burial. In supporting affidavit the plaintiff swore that she was married by deceased in 1940 and their matrimonial home was established in plot **No. Mbeere/Mbita/1579** and that the deceased husband was sick for some time before death and she had been taking care of him. That the Respondent is a co-wife obviously a younger wife. At the hearing of the Interlocutory application both applicant and respondent were in court.

The applicant was represented by Counsel while Respondent was in person. She was given time to produce any documents that there was other alternative land for burial but by 2.30 p.m. she had not produced any evidence. The Trial Magistrate proceeded to make orders sought and therefore opened way for the burial of the deceased according to the wishes of the Applicant/ Plaintiff.

I have perused the grounds of Appeal the deceased has been buried since then. The Trial Magistrate did what was correct. There is evidence that the Applicant was the first wife who was residing with her husband in his land which would be called matrimonial home. She saw no alternative place to bury her husband.

The Trial Magistrate saw the urgency of the matter and rightly acted as necessary. I do not find that the Respondent was not given time to organize her opposition. I also do not say that the Applicant has no cause of action. It is against public policy to keep dead bodies unburied on the grounds that survivors are disputing the burial.

I therefore do not see any merit in this appeal and the same is dismissed with costs to the Respondent in this court only.

Dated on 25th September, 2006.

J. N. KHAMINWA

JUDGE

Read in presence of Mr. Kathungu , Mr. Mogusu

J. N. KHAMINWA

JUDGE