



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 178 OF 2003**

KIHOTO FARMERS CO. LTD.....PLAINTIFF

**VERSUS**

MARY WANJIKU NDICHU.....DEFENDANT

**RULING**

This application has been brought under certificate of urgency through Chamber Summons.

The application has relied on Order XXXIX R. 1 & 2 of the Civil Procedure Rules and Section 3 (A) of the Civil Procedure Act, Cap. 21, Laws of Kenya. The application basically seeks the following Order:-

***“That the defendant/respondent be restrained by herself/servants, agents or otherwise from burying the body of Joseph Ndichu Gacheru deceased on Land Parcel No. 12930 – Naivasha Municipality on 6 th November, 2003 or any other date until this application is heard inter -parties.”***

This Court has carefully perused the submissions by the applicant’s counsel. Apart from the above, I have also had an opportunity to peruse all the attached documents in support of the application. Apparently, the deceased viz, Joseph Ndichu Gacheru was registered as the owner of the above parcel of land from 1st April, 1982.

Assuming that the deceased took occupation around that period then it means that he had stayed on the disputed land for over 20 years. Unfortunately, during that lengthy period, the applicant never filed any suit nor raised any hue and cry.

The applicant sat on his rights till the deceased passed away and waited for the eleventh hour to block his burial. According to the applicant the respondent is the wife of the deceased. Having lost her husband, the respondent must not only be devastated but also traumatized. Since the burial has been set down for tomorrow, it is imperative that all the necessary arrangements have already been made.

In African Society, these arrangements usually involve a lot of expenses in the name of giving a departed relative - “ a decent burial.” Having sat for his rights for over 20 years, the Applicant has to be estopped from blocking the burial.

Apparently, the application was not brought with any due diligence nor good faith. The application is obviously an abuse of the process of the Court. Whatever damage the applicant may incur may be compensated by other suitable remedies which can be provided by the law.

In view of the above, the application is hereby dismissed.

**MUGA APONDI**

**JUDGE**

**Ruling read, signed and delivered in Open Court in the presence of M/s G.**

**M. Njuguna, Advocate for the Plaintiff.**

**MUGA APONDI**

**JUDGE**

**5TH NOVEMBER, 2003**