



**Kariuki v Aga Khan University Hospital & another (Family Appeal  
E042 of 2025) [2025] KEHC 6382 (KLR) (Family) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6382 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**FAMILY APPEAL E042 OF 2025**

**CJ KENDAGOR, J**

**MAY 9, 2025**

**BETWEEN**

**ANTONY NDIRANGU KARIUKI ..... APPELLANT**

**AND**

**AGA KHAN UNIVERSITY HOSPITAL ..... 1<sup>ST</sup> RESPONDENT**

**RAHAB WANGARI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Deceased, Duncan Maigua Kariuki, died at the Aga Khan Hospital in Nairobi on 1<sup>st</sup> February, 2025 and a dispute arose as to who was entitled to collect his body for burial. The dispute pitted the Applicant, a brother of the Deceased, and the 2<sup>nd</sup> Respondent, who claimed she was the wife of the Deceased. The Applicant sued the 1<sup>st</sup> Respondent, asking the Court to declare him the next of kin of the Deceased. He also sought to be given the body of the Deceased for burial. The 2<sup>nd</sup> Respondent opposed the Applicant's suit and claimed that she was the one entitled to be given the body of the Deceased for burial. She claimed she was the wife and that the Deceased had designated her as the next of kin during his admission to the Hospital.
2. The Parties agreed by consent on 11<sup>th</sup> February, 2025, that the determination (Ruling) of the application dated 4<sup>th</sup> February, 2025, filed by the Appellant herein, should be adopted as a Judgment of the Court in the main suit. The matter was therefore canvassed by way of affidavits, and there was no viva voce evidence.
3. The trial Court delivered a ruling on 13<sup>th</sup> March, 2025 on the application dated 4<sup>th</sup> February 2025, which ruling was adopted as judgment of the Court pursuant to the consent recorded.



4. The trial Court dismissed the Applicant's case and entered judgment in favour of the 2<sup>nd</sup> Respondent. It found that the Applicant was not the next of kin of the Deceased, and consequently, he was not the one entitled to bury the Deceased. It held that the 2<sup>nd</sup> Respondent was the next of Kin and the closest person to the Deceased. It therefore ordered the 1<sup>st</sup> Respondent to release the body of the Deceased to the 2<sup>nd</sup> Respondent for burial, as well as give her access to the Deceased's medical records.
5. The Applicant was dissatisfied with the Judgment and appealed to this Court vide a Memorandum of Appeal dated 19<sup>th</sup> March, 2025. He listed the following Grounds of Appeal;
  1. The learned Magistrate erred in law and in fact by failing to consider the whole dispute before her as a burial dispute between the whole family and clan of the Deceased person against a presumed spouse.
  2. The learned Magistrate erred in law and in fact by considering the [2<sup>nd</sup> Respondent] to be a spouse of the Deceased without evidence and against the evidence available that he was also married to Catherine Wangari.
  3. The learned Magistrate erred in law and in fact by misconstruing the decency of Catherine Wangari in not taking sides against the wishes of the parents and family of the Deceased person as disinterest in the matter.
  4. The learned Magistrate erred in law and in fact in failing to appreciate that the [2<sup>nd</sup> Respondent] cannot take charge and prepare a burial ceremony at the Deceased person's parent's home as a stranger and legal adversary of the family.
  5. The learned Magistrate erred in law and in fact by failing to appreciate that the [2<sup>nd</sup> Respondent] is a stranger to the clan and family of Deceased person not having been married to the Deceased under customary law, common law, or any law.
  6. The learned Magistrate erred in law and in fact by presuming a formal or customary marriage without evidence.
  7. The learned Magistrate erred in law and in fact by misapprehending a presumption of marriage to be a marriage.
  8. The learned Magistrate erred in law and in fact by taking an extremely narrow view of the dispute, considering irrelevant matters and relying on irrelevant evidence in making a determination on issues that were not relevant to determination of the dispute between the parties.
  9. The learned Magistrate erred in law and in fact by arriving at a decision that was plainly wrong and impractical.
  10. The learned Magistrate erred in law and in fact by arriving at a decision that is oblivious of the applicable customary law or tradition on the Deceased person's and his family.
  11. The learned Magistrate erred in law and in fact by basing her decision on an abstract and unproven concept of 'closeness.'
  12. The learned Magistrate erred in law and in fact by failing to appreciate that the [2<sup>nd</sup> Respondent] claimed the remains of the Deceased person for succession purposes and has no wherewithal or intention to conduct a decent send-off at the Deceased's home in Murang'a.



13. The learned Magistrate erred in law and in fact by failing to consider the Appellant's written submissions in the judgment and the weight of the evidence produced at the hearing.
6. He asked this Court to allow the appeal and set aside the lower Court's judgment. He also asked that he be allowed to take charge of the remains of the Deceased on his behalf and on behalf of his family for purposes of interment at the family home in Murang'a.
7. The Appeal was canvassed by way of oral submissions.

### **Appellant's Written Submissions**

8. The Appellant submitted that the lower Court should not have granted the 2<sup>nd</sup> Respondent the right to bury the Deceased. He argued that the 2<sup>nd</sup> Respondent did not prove that she was married to the Deceased because she did not show that they intended to marry. He also argued that the Court should not have declared the 2<sup>nd</sup> Respondent as the closest person to the Deceased at the time of his death. He argued that the 2<sup>nd</sup> Respondent had abandoned the Deceased and that she only showed up at the time the Deceased was ailing, and recorded herself as the next-of-kin. He argued that she took advantage during his admission and recorded herself as the next-of-kin because the Deceased at the time did not have the cognitive abilities to record his preferred next of kin.
9. The Appellant submitted that the lower Court should have instead declared him the right person to bury the Deceased. He argued that he was the closest person to the Deceased because he was always involved throughout the time the Deceased was ailing, and that he took charge of the Deceased's personal belongings at the time he was being admitted. He also argued that he was in constant communication with the hospital over the Deceased's bills and that all hospital payment receipts were received by him and addressed to him. Lastly, he argued that the family had entrusted him with the responsibility of making the arrangements for the burial of the Deceased.
10. Lastly, the Appellant submitted that the Deceased's place of burial should be at their home in Murang'a County. He argued that Kikuyu customs dictate that the burial place should be determined by athuri a nyumba, who are the elders of the community and the clan, mbari. He argued that the said elders had already identified the Deceased's resting place to be at his home in Murang'a County. For these reasons, he argued that the Deceased should be interred at their home in Murang'a County.

### **2<sup>nd</sup> Respondent's Written Submissions**

11. The 2<sup>nd</sup> Respondent submitted that the lower Court was right not to pronounce itself on the issue of the place of burial. She argued that the parties had mutually agreed that the Deceased would be buried at his father's place in Murang'a. For this reason, she argued that the question of where to bury the Deceased was not an issue before the trial Court to make a determination on. In addition, she submitted that the Appellant should not be given the right to bury the Deceased because he ranks lower on the persons entitled to bury the Deceased. She argued that in law, the right to bury a Deceased is given to spouses, children, parents, and siblings in that order. Based on this, she argued that the Appellant ranks 4<sup>th</sup> in the hierarchy to be considered by the Court in determining the proximity of closeness.
12. The 2<sup>nd</sup> Respondent submitted that the Appellant has raised issues that were not before the Court and that the trial Court did not pronounce itself on. She argued that is not proper for the Appellant to argue that the lower Court found a presumption of marriage in favor of the 2<sup>nd</sup> Respondent. She argued that the trial Court did not hear the parties on any issue concerning marriage. She submitted that the Appellant should not be allowed to bring up new issues that were not raised at the trial Court



because he would be departing from his initial pleadings. She submitted that the Appellant cannot bring up the issue of marriage unless he obtains the leave of this court to raise new triable issues.

13. She argued that she cannot respond to such issues given the fact that no new evidence is allowed to be filed before this Court on appeal without Court's leave. She argued that the Appellant can file a proper suit to deal with that substantive issue. She submitted that the Court is bound by the pleadings that were before the trial Court. She submitted that the Deceased should be interred at his property/land which he bought in Nyandarua. She argued that the Kikuyu culture stated that a man can be buried in his land he had bought in his life time.

### **Issues for Determination**

14. I have considered the evidence and materials placed before the lower Court, the grounds of appeal, and submissions from respective parties. The following are the issues for determination;
  - a. Whether the issue of the disputed marriage between the Deceased and the 2<sup>nd</sup> Respondent was raised at the trial court
  - b. Whether a presumption of marriage arises in the circumstances
  - c. Who should bury the Deceased
  - d. Whether the issue on the Place of Burial is properly before this court
  - e. Where the Deceased should be buried

### **Whether the issue of the disputed marriage between the Deceased and the 2<sup>nd</sup> Respondent was raised at the trial court**

15. I have relooked at the documents filed before the lower Court to ascertain whether the issue of marriage between the Deceased and the 2<sup>nd</sup> Respondent was raised in the course of the proceedings. I have seen the 2<sup>nd</sup> Respondent's affidavit dated 5<sup>th</sup> February, 2025, and sworn by the 2<sup>nd</sup> Respondent, where she stated that she was the wife of the Deceased. She swore this affidavit when she was seeking to be enjoined to the suit as an interested party. The Appellant filed a further affidavit dated 10<sup>th</sup> February, 2025 in which he responded to the 2<sup>nd</sup> Respondent's claim that she was a spouse of the Deceased. In the affidavit, the Appellant stated that the two never married.
16. The 2<sup>nd</sup> Respondent responded to the Appellant's affidavit through a replying affidavit dated 21<sup>st</sup> February, 2021 and sworn by the 2<sup>nd</sup> Respondent. In the affidavit, she maintained that she was married to the Deceased. Based on this, I find that the issue of the disputed marriage was properly raised before the lower Court, but the Court did not make a determination on the same.
17. This Court also considered whether it is appropriate to determine this issue, given that the trial court did not address the same. I found guidance in the case of David Nyamweya v Michael Nyamweya Nyamweya [2015] eKLR, where the court held as follows;

“The lower court had a duty to determine whether the plaintiff acquired title to the suit property lawfully as he claimed or fraudulently as claimed by the respondent. The parties' did not agree on issues for determination. However, the lower court had a duty under Order 15 rule 2 of the Civil Procedure Rules to frame issues for its determination..... I am of the view that the lower court abdicated its duty by failing to determine the real issues that were presented before it by the parties for determination..... Due to the foregoing, I am in agreement with the appellant that the lower court misdirected itself when evaluating the



evidence that was placed before it. This led to its failure to identify the real issues that were before it for determination thereby occasioning a miscarriage of justice to the appellant.... The upshot of the foregoing is that the appellant's appeal has merit. Order 42 rule 25 of the Civil Procedure Rules gives this court power on appeal to determine the case fully where the evidence on record is sufficient."

18. I have carefully considered the evidence placed before the lower Court on this issue and I was satisfied that the evidence on record is sufficient for this Court to determine this issue.

### **Whether a presumption of marriage arises in the circumstances**

19. This Court is being invited to relook at the facts and determine whether there was a presumption of marriage between the Deceased and the 2<sup>nd</sup> Respondent. Section 119 of the *Evidence Act* provides that:

"The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".

20. The case-law on Presumption of Marriage is well-settled in Kenya. In *Phylis Njoki Karanja & 2 others v Rosemary Mueni Karanja & another* [2009] eKLR, the Court of Appeal held that the presumption of marriage could be drawn from long cohabitation and acts of general repute. It held as follows: -

"Before a presumption of marriage can arise a party needs to establish long cohabitation and acts of general repute; that long cohabitation is not mere friendship or that the woman is not a mere concubine but that the long cohabitation has crystallized into a marriage and it is safe to presume the existence of a marriage. We are of the view that since the presumption is in the nature of an assumption it is not imperative that certain customary rites be performed"

21. Similarly, the court in *Mary Njoki v John Kinyanjui Muthuru & 3 Others, (Mary Njoki)* [1985] eKLR held as follows concerning proof of a presumption of marriage:

“vi. Long cohabitation as a man and a wife gives rise to a presumption of marriage in favour of the party asserting it;

v. Only cogent evidence to the contrary can rebut the presumption (*Toplin Watson v Tate* [1937] 3 All ER 105

vi. If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage. (*Sastry Veliader Aronegary v Sembecutty Vaigalie* (1880-1) 6 AC 364; *Shepherd George v Thye*, [1904] 1 Ch 456).....

"Cohabitation and repute do not always constitute a marriage. They can be part of a mode of proving one in that they are substituted for some missing element or elements. One of the earliest put it this way. Cohabitation, with habit and repute, in the absence of countervailing proof to the contrary, establish a marriage on the ground that the cohabitation as husband and wife is proof that the parties have consented to contract that relationship."

22. I have re-examined the material placed before the lower Court by the 2<sup>nd</sup> Respondent to prove her claim that she was married to the Deceased. The 2<sup>nd</sup> Respondent stated that they started cohabiting together with the Deceased from 2018 to his death and that they were blessed with one child out of their marriage. She annexed several documents to prove the same.



23. She annexed a letter authored by the Assistant Chief Umoja I in Nairobi City County indicating that she was living together with the Deceased as a husband and a wife. The letter is dated 10<sup>th</sup> February, 2025. She also annexed other testimonies from other persons, namely, C. Adhiambo, A. Gatembo, and P. Mwarija, all of who confirmed that the two lived together as a husband and a wife at a specific house in Umoja One Estate. She also annexed several receipts issued in the name of the Deceased indicating the Deceased was paying for the rent and security charges for the house they were cohabiting in, as well as other house utilities like refilling gas. The dates of the receipts range from 2021 to 2025.
24. In addition to this, the 2<sup>nd</sup> Respondent produced employment records of the Deceased showing that the Deceased had registered her as his wife. She annexed a document from the University of Nairobi indicating that the Deceased had included her in the list of Dependants and had described her as a spouse.
25. Lastly, the 2<sup>nd</sup> Respondent annexed documents showing that the Deceased had, during his admission to the hospital, described her as his spouse and next of kin. The Appellant has argued that it was the 2<sup>nd</sup> Respondent who recorded herself as the next-of-kin. He argued that she took advantage during the Deceased's admission because the Deceased at the time did not have the cognitive abilities to record his preferred next of kin.
26. I have considered the affidavit sworn by one Catherine W. Kariba dated 10<sup>th</sup> February, 2025. She is the Senior Legal Officer at the 1<sup>st</sup> Respondent. She described the circumstances under which the hospital admission forms were filled. She stated that during his admission at the Hospital, the Deceased designated the 2<sup>nd</sup> Respondent as his next of kin, identifying her as his spouse. She stated that the designation was made in accordance with the Hospital's Next of Kin Guidelines which require every admitted patient to provide essential information regarding the person they identify as their Next of Kin, and where applicable, their primary caregiver. I have seen the admission form. It indicates that the 2<sup>nd</sup> Respondent is the next of kin and that she was recorded as a spouse.
27. The question before this Court at this juncture is whether this evidence was adequate to establish a presumption of marriage. I have carefully considered the above evidence, and the documents adduced by the 2<sup>nd</sup> Respondent. The testimony that the Deceased and the 2<sup>nd</sup> Respondent cohabited together since 2018 was not challenged. In addition, the documents from the University of Nairobi indicating that the Deceased had described the 2<sup>nd</sup> Respondent as his spouse was also unchallenged. In addition, the testimony from the Hospital that it was the Deceased who filled the admission forms was not challenged. There was also evidence that they had a child together. In my view, the totality of this evidence creates a presumption of marriage.
28. Courts have held that in these cases, the person disputing the presumption of marriage has the burden to prove that there was no marriage. This was restated by the court in Christopher Nderi Gathambo & Samuel Muthui Munene. Vs Samuel Muthui Munene [2003] eKLR where the Court adopted the treatise Bromley Family Law, 5<sup>th</sup> Edition which indicates at page 64 that: -

“If a man and woman cohabit and hold themselves out as husband and wife, this in itself raises a presumption that they are legally married and when it is challenged, the burden lies on those challenging it to prove that there was in fact no marriage, and not upon those who rely on it to prove that it was solemnized.”
29. The Appellant denied that the two were married. However, based on the above authority, the burden was on him (the Appellant) to disprove the existence of the marriage. I have considered the evidence adduced by the Appellant to show that there was never a marriage between the Deceased and the



2<sup>nd</sup> Respondent. Other than his averments disputing the presence of the marriage, the Appellant did not tender any cogent evidence to disprove the alleged marriage between the 2<sup>nd</sup> Respondent and the Deceased.

30. In my view, it is more likely than not that the Deceased regarded the 2<sup>nd</sup> Respondent to be his wife. The evidence shows that he was very consistent in registering the 2<sup>nd</sup> Respondent on his employment documents, as well as his hospital admission documents. I therefore find that there was a presumption of marriage between the Deceased and the 2<sup>nd</sup> Respondent.

### **Who should bury the Deceased?**

31. The next question for determination is who between the Appellant and the 2<sup>nd</sup> Respondent should be allowed to bury the Deceased. In determining this issue, this Court is guided by the decision of the Court of Appeal in *SAN V GW* (2020) eKLR, where the court held as follows;

“The law only recognizes the persons who are closest to the deceased to have the right to bury the deceased. Those persons have been identified as the spouse, children, parents and siblings, in that order. Those persons have been identified as the spouse, children, parents and siblings, in that order. The other consideration is that the person claiming the right to bury the deceased must be one who is demonstrated to have been close to him or her during his or her lifetime.”

32. Similarly, the Court in *Neema Mulwa v Joyce Mwangi* [2015] eKLR, held as follows;

“Courts have also held that a wife is a close person to a deceased husband and should be the one with priority to bury a deceased husband – See the case of *Lilian Waithera Mwangi v Salome Mukami Mugo* [2011]eKLR.”

33. This Court is also guided by the Court of Appeal’s decision in *Samuel Onindo Wambi v COO & Another Kisumu Civil App No. 13 of 2011* [2015] eKLR, where the Court held that a person’s conduct to a deceased person can extinguish the right of that person of burying the remains of the deceased. It held:

“...A person’s conduct to a deceased person can extinguish the right of that person of burying the remains of the deceased. The appellant did not show any family closeness with the deceased when she was alive. Though he said that he used to visit the deceased and that he mobilized his siblings to build a house for her at Kibos there was no credible evidence to prove so. (sic). The fact that he was the deceased’s first-born son did not give him an automatic right to bury her even if Luo customary law dictates so. The court has to consider all the circumstances of the case and the justice of the case...In this case, besides the fact that given the father and his family’s treatment of the deceased he is not deserving of the right to bury the deceased’s remains.”

34. In the instant case, the dispute is primarily between the Appellant and the 2<sup>nd</sup> Respondent. I note that, as per the authority cited above, the 2<sup>nd</sup> Respondent ranks 1<sup>st</sup> in priority while the Appellant ranks 4<sup>th</sup> in the hierarchy. Besides this, the Court is also mandated to look at the conduct of the parties to the Deceased and determine whether their conduct extinguishes their right to bury the Deceased. The 2<sup>nd</sup> Respondent showed that she was close to the Deceased while he was alive. There was evidence that she was present when the Deceased was being admitted at the 1<sup>st</sup> Respondent. There was also evidence that she was present and besides the Deceased at the Hospital bed until he met his death.



35. On the other hand, the Appellant did not demonstrate that he was closer to the Deceased than the 2<sup>nd</sup> Respondent. There was also something peculiar about the conduct of the Appellant, particularly on the days before the death of the Deceased. The Appellant sued his own father and obtained a Court order dated 30<sup>th</sup> January, 2025 giving him the right to be listed as the next of Kin of the Deceased. He obtained the Court order while the Deceased was still fighting for his life in the hospital bed, because the Deceased died on 1<sup>st</sup> February, 2025. It was said that the order was later set aside by the Court that gave it.
36. However, this Court observes that the manner in which the Appellant obtained the said Court order raises questions about his motive. It was proved that at the time the Appellant obtained said order, he knew that the 2<sup>nd</sup> Respondent was in the picture and that the order would prejudice her interests. The same observation can also be made concerning the instant case. The Appellant sued the 1<sup>st</sup> Respondent and did not list the 2<sup>nd</sup> Respondent as a party or inform her about the proceedings. The 2<sup>nd</sup> Respondent had to seek to be included as an interested party. In my view, the conduct of the Appellant as demonstrated in the outlined events casts doubts on his closeness to the Deceased, and diminishes his rights to bury him.
37. The Court in *Onderi v Ontweka & 3 others (Civil Appeal E048 of 2023)* [2023] KEHC 19506 (KLR) (Civ) (5 July 2023) (Judgment) faced a similar issue and held that the nuclear family of the Deceased has a higher right to bury the Deceased over the extended family.
- “ 54. Article 45 of *the Constitution* recognizes the family unit and provides that “the family is the natural and fundamental unit of the Society and the necessary basis of social order and shall enjoy recognition and protection of the state.”
55. The nuclear family is the basic unit of the family which is recognized and protected by the state. The core and basic unit of a family is the nuclear family; this means that basic unit of the family has rights that should be recognized and upheld by the state. In this case, the Appellant’s family being the basic unit and the nuclear family of the deceased, has the right to bury their dead unless exceptional circumstances arise to render the nuclear family undeserving of burying the dead. With that in mind, I declare that the Appellant has the right to bury the deceased.”
38. Based on the above cited authorities, and upon careful consideration of the circumstances of this case, I find that the 2<sup>nd</sup> Respondent is the right person to bury the Deceased. There are no exceptional circumstances that show that the 2<sup>nd</sup> Respondent does not deserve to bury the Deceased.

#### **Whether the issue on the Place of Burial is properly before this court**

39. The Appellant submitted that the Deceased’s place of burial should be at their home in Murang’a County. On the other hand, the 2<sup>nd</sup> Respondent submitted that the Deceased should be interred at his property/land which he bought in Nyandarua. Both parties held onto the Gikuyu customs and traditions to justify their position. The Appellant argued that athuri a nyumba, who are the elders mandated by Gikuyu customs to decide the place of burial, had already identified the Deceased’s resting place to be at his home in Murang’a County. The 2<sup>nd</sup> Respondent, on the other hand, argued that the Deceased should be interred at his property in Nyandarua because the Kikuyu culture states that a man can be buried in land he had bought in his life time.



40. The 2<sup>nd</sup> Respondent submitted that the issue of the place of burial was not an issue before the lower Court because the parties had mutually agreed on it. This Court is being invited to determine whether the issue of place of burial is properly before this Court for re-evaluation and determination. I have also relooked at the typed proceedings to ascertain what transpired at the lower Court concerning this issue. I have confirmed that, in the course of the proceedings, the parties deliberated about the issue but they did not record a formal consent before the Court.
41. Based on this factual background, I therefore find that the issue of place of burial was an issue before the trial Court, but the lower Court did not determine the same. This Court has carefully considered the available evidence to determine whether there is sufficient evidence to make a determination on the same. In my view, there is sufficient evidence to determine this issue.

### **Where the Deceased should be buried**

42. In *John Omondi Oleng and another v Sueflan Radal* [2012] eKLR, the Court held this concerning a determination on the place of burial of a deceased person.

“...When it comes to the disposal of the body of a married man or woman the spouse should play a leading role. It would be better if the relatives of the deceased can sit down and agree on how to give their loved one a dignified exit. When they fail to agree and approach the Court for solution, the court has no option but to step in...”

43. Similarly, the Court in *RM & 3 others v EAO (Civil Appeal E100 of 2021)* [2022] KEHC 12074 (KLR) (Family) (20 May 2022) (Judgment) held as follows;

“ 50. The court has already found that the Respondent was the wife of the deceased. The Appellants claim that the family of Deceased did not know his Soy Village home and had never been there. This is not entirely true. PW2 Ian Lwangu a son of the Deceased confirmed that he and the other children of the Deceased lived with their mother in Soy Village. Even the eldest son of the Deceased Hillary Adamba admitted that her father had a home in Soy Village and that he regularly used to stay there.

51. In the premises I find that the wishes of the wife of Deceased regarding place of burial should prevail.”

44. I have carefully considered the facts around this dispute. There was evidence that the 2<sup>nd</sup> Respondent initially wanted to inter the Deceased at the Deceased’s father’s home in Murang’a. There was also evidence that the Appellant and the rest of the family members were reluctant and did not co-operate about the burial arrangements. I have seen a communication from the 2<sup>nd</sup> Respondent addressed to the Appellant and the family requesting them to forward 4 people from their end to form a burial committee. The message was declined. The 2<sup>nd</sup> Respondent stated that it was as a result of their refusal and non-cooperation that she decided to change the place of burial to Nyandarua. She was concerned that the Appellant and the Deceased’s extended family were not going to be supportive on burial.
45. Based on this factual background, I find that it is in the interest of justice to let the 2<sup>nd</sup> Respondent bury the Deceased at her preferred place of choice, either in Murang’a at his father’s home or in Nyandarua on the parcel of land she says they had jointly purchased with the Deceased.



## **Disposition**

46. I have reached the same conclusion as the Learned Magistrate: the Appellant is not entitled to bury the deceased. This right is held by the 2<sup>nd</sup> Respondent.
47. These are the final orders of the Court regarding this appeal;
- a. The Court finds a presumption of marriage between the Deceased and the 2<sup>nd</sup> Respondent.
  - b. The Deceased's body be and is hereby released to the 2<sup>nd</sup> Respondent for burial.
  - c. The 1<sup>st</sup> Respondent and Chiromo Funeral Home shall issue the 2<sup>nd</sup> Respondent with all the necessary documents for collection and interment of the Deceased's body and access to his medical records.
  - d. The Notification of Death, the Burial Permit, and the Certificate of Death for the Deceased shall be given to the 2<sup>nd</sup> Respondent.
  - e. The 2<sup>nd</sup> Respondent shall decide where to bury the Deceased.
  - f. The 2<sup>nd</sup> Respondent shall liaise with the Deceased's immediate family members, to wit, his adult child, his parents, and his siblings, in making the funeral arrangements and burial programme, but in case they cannot agree on any issue, the wishes of the 2<sup>nd</sup> Respondent shall prevail.
  - g. The members of the Deceased's extended family who wish to participate in the same and/or attend his burial are at liberty to do so.
  - h. The funeral expenses shall be covered by the family members or other arrangements made by the family, but they can be treated as a debt of the deceased's estate.
  - i. The sum of Kshs. 200,000/= that was deposited in Court as security to be released to the 2<sup>nd</sup> Respondent to meet any incidental costs arising from the preservation of the Deceased's body.
  - j. As regards costs, this being a family matter, each party shall bear their own costs of this appeal and in the lower Court.
48. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Amin

Mr. Kabugu, Advocate for the Appellant

Mr. Kyobika Advocate for the 2<sup>nd</sup> Respondent

No attendance for 1<sup>st</sup> Respondent

