



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waruiru & 2 others v Waruiru & 5 others (Miscellaneous Civil Application  
E067 of 2025) [2025] KEHC 12638 (KLR) (20 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CIVIL APPLICATION E067 OF 2025  
GL NZIOKA, J  
AUGUST 20, 2025**

**BETWEEN**

**ALICE NUNGARI WARUIRU ..... 1<sup>ST</sup> APPLICANT  
ROBERT KARIUKI WARUIRU ..... 2<sup>ND</sup> APPLICANT  
JAMES KAMAU WARUIRU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**CAROLINE WANJIKU WARUIRU ..... 1<sup>ST</sup> RESPONDENT  
THE CABINET SECRETARY, MINISTRY OF HEALTH ..... 2<sup>ND</sup> RESPONDENT  
KENYATTA UNIVERSITY TEACHING REFERRAL AND RESEARCH  
HOSPITAL ..... 3<sup>RD</sup> RESPONDENT  
THE REGISTRAR OF BIRTHS AND DEATHS ..... 4<sup>TH</sup> RESPONDENT  
THE DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 5<sup>TH</sup> RESPONDENT  
THE CHIEF GOVERNMENT PATHOLOGIST ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. By a notice of motion application dated 29<sup>th</sup> April, 2025, brought under the provisions of; section 146(4) of the *Public Health Act* (Cap 248) Laws of Kenya, section 18(3) of the *Births and Deaths Registration Act* (Cap 149) Laws of Kenya, Article 22, 23, 26, 35(1) and 165 of *the Constitution* of Kenya, 2010, section 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya and all other enabling provisions of the law, the applicants are seeking for the following orders: -
  - a. Spent
  - b. spent



- c. That this Honourable court be pleased to issue an order directing the exhumation of the body of George Waruiru Kariuki, currently buried at Mai Mahiu on Kijabe/Kijabe Block 1/1657 by the Chief Government Pathologist within 7 days.
  - d. That the Cabinet Secretary, Ministry of Health to instruct the relevant health officials to assist in the enforcement of exhumation order.
  - e. That this Honourable court order and directs the Chief Government Pathologist to carry out a post mortem/autopsy and toxicological analysis on the body of George Waruiru Kariuki to determine the time and actual cause of death and file the report in this court within 7 days of conducting the post mortem/autopsy.
  - f. That the Registrar of Births and Deaths be and is hereby directed to record the actual cause of death based upon the report of the Chief Government pathologist upon the conclusion of the inquiry into the death of George Waruiru Kariuki.
  - g. That the Registrar of Births and Deaths be and is hereby directed to issue a certificate of death only upon the exhumation, Post mortem and toxicology reports being filed in court.
  - h. That the Officer Commanding Station, Mai Mahiu and the relevant Public Health Officer, Mai Mahiu, be directed to supervise and facilitate the exhumation and examination process.
  - i. That the Director of Criminal Investigations be and is hereby directed to investigate the cause of death upon filing of the Chief Government Pathologist's report.
  - j. That such further or other orders be made as the court may deem just and expedient in the circumstances.
2. The application is based on the grounds thereto and affidavit of even date sworn by the 1<sup>st</sup> applicant. She avers that she is the former wife of George Waruiru Kariuki (herein "the deceased") while and the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are children of the deceased. That the deceased died on 11<sup>th</sup> April, 2025 at his residence in Mai Mahiu and the body taken to Kenyatta Memorial Funeral Home for storage pending funeral arrangements and interment.
  3. That it was agreed that the deceased would be buried on 22<sup>nd</sup> April, 2025. However, the 1<sup>st</sup> respondent staged a hurried burial of the deceased on 16<sup>th</sup> April, 2025 without the applicants' knowledge and/or participation of the members of the public.
  4. The applicants aver that the death of the deceased was shrouded in secrecy and that the 1<sup>st</sup> respondent refused to allow a post mortem to be carried out on the body prior to his highly secretive, opaque and mysterious interment. Further that the notification of death recorded in the register of births and deaths indicates the cause of death as; "sudden death".
  5. The applicants further aver that as a result of the aforesaid, they were denied the opportunity to know the actual cause of deceased's death and attend the burial ceremony.
  6. Furthermore, that they were informed by morticians at Kenyatta Memorial Funeral Home at Kenyatta University Teaching Referral and Research Hospital that, the deceased's body had visible injuries which taken together with other factual inconsistencies including the cited cause of death creates doubt to the cause of death as reported by the 1<sup>st</sup> respondent.
  7. That despite inquiry made to the 3<sup>rd</sup> respondent to clarify the circumstances under which the deceased's body was released, no response has been forthcoming. That, the Registrar of births and



- deaths has also failed, refused and/or neglected to issue the applicants with a certified copy of the notification of death filed by the 1<sup>st</sup> respondent.
8. The applicants further aver that, they lodged a complaint at King'eero Police Station in Kiambu ide OB No. 11/18/4/25, where the deceased and the 1<sup>st</sup> applicant's matrimonial home is but no action has been taken on the same.
  9. That the deceased was a notable member and leader of his community at Mai Mahiu as he operated a sizeable school in the area, as such it was naturally expected that his entire family, friends and associates would be accorded the opportunity to give him a respectable burial.
  10. That the applicants suspect foul play by the individuals who were with the deceased in his final moments and therefore an order of exhumation, post mortem on the deceased's body and a toxicology report will go a long way to bring closure and finality to the circumstances of the death of the deceased. Further that by virtue of being the next of kin, the applicants are entitled to the inquiry and information by dint of their constitutional right of access to information under Article 35(1) of *the Constitution* of Kenya.
  11. Finally, that the evidence on the deceased's body stands the risk of being destroyed as such this application is extremely urgent.
  12. However, the application was opposed by the 1<sup>st</sup> respondent vide a replying affidavit dated 15<sup>th</sup> April 2025. She avers that the 1<sup>st</sup> applicant's marriage with the deceased irretrievably broke down in the year 1995, culminating in a divorce cause as evidenced by the decree annexed to the replying affidavit. That among the grounds for the divorce of the 1<sup>st</sup> applicant were infidelity and theft of Kshs 5,000,000 from the deceased business.
  13. That the 1<sup>st</sup> respondent was married to the deceased in the year 1998 and have been blessed with four children as evidenced by the birth certificate produced. Further she has been living with the deceased for the last twenty-eight (28) years.
  14. That on or about the year 2016, the deceased was diagnosed with hypertension and kidney problems as evidenced by the medical report annexed to the replying affidavit. Further for nine (9) years he has been battling the medical condition and going for dialysis as she took care of him all along. That the 1<sup>st</sup> applicant never visited or took care of him during that period.
  15. The 1<sup>st</sup> respondent avers that on 11<sup>th</sup> day of April 2025, the deceased who was on a portable oxygen concentrator developed complications and she called in Oakland Hospital personnel to administer to him first aid and provide an ambulance to transfer him AIC Kijabe Hospital.
  16. That the medics administered the first aid and left for the hospital but unfortunately the deceased died before arrival at the hospital. Consequently, the body was taken to the mortuary.
  17. The 1<sup>st</sup> respondent avers that the funeral committee members agreed that the deceased would be buried on 16<sup>th</sup> April 2025. That the 2<sup>nd</sup> applicant attended the meeting held on 13<sup>th</sup> April, 2025 while the 3<sup>rd</sup> applicant and his brother Moses Gitungo attended the last funeral committee held on 15<sup>th</sup> April 2025 where it was agreed that the deceased would be buried the following day on 16<sup>th</sup> April 2025, for reasons given at paragraph 19 of the replying affidavit, inter alia that, it is a customary tradition that the mourning period takes seven (7) days.
  18. That on the burial day the casket was opened and the members of the public allowed to view the body as evidenced by the photos availed and therefore the allegations that the burial was secretive are untrue. Further the applicants did not request for a post-mortem on the body of the deceased before he was



- buried yet they were very well aware of the date of the burial and only filed this application three (3) weeks after the burial.
19. The 1<sup>st</sup> respondent further aver the application is meant to vex her and her children and to arm twist her in relation to the matrimonial case at Kiambu High Court. Further the order to exhume the body of the deceased are not only impractical but also pernicious to her, her children, the community and dignity of the deceased.
  20. That the applicants should have formally lodged whatever complaint they had with the 5<sup>th</sup> respondent who upon concluding investigation will take appropriate action including moving the Honourable court for an order to exhume the deceased's body.
  21. Further that the applicants have unhindered access to the grave of the deceased which they have been visiting and can conduct whatever rights they claim to have been excluded from without exhuming the body.
  22. The application was also opposed by the 2<sup>nd</sup>, 4<sup>th</sup> to 6<sup>th</sup> respondents vide grounds of opposition dated, 15<sup>th</sup> April, 2025, in which they state that; -
    - a. That the application lacks merit and does not demonstrate sufficient legal or factual justification for the exhumation of the deceased's body as the reasons provided are insufficient to warrant disturbing the deceased's final resting place;
    - b. That the applicant's claim of foul play surrounding the death of the deceased is purely speculative and appears to be driven by personal differences or bad blood between the applicants and the 1<sup>st</sup> respondent, rather than any credible or substantial evidence.
    - c. That the exhumation sought will pose a significant public health risk as disturbing the deceased's remains could expose the living things to potential contamination, spread of infectious diseases or other environmental hazards.
    - d. That the applicants lack locus standi to bring the application for exhumation as they have failed to provide any evidence of kinship or relationship to the deceased and therefore have no legal standing to sustain this application.
    - e. That granting the orders sought would set a dangerous precedent and open the flood gates to unwarranted exhumations on flimsy grounds, undermining public policy and the respect for the dead.
    - f. That the exhumation sought would violate established customs and cultural practice which consider the final resting place of the deceased to be sacred.
    - g. That the application is an abuse of court process, brought in bad faith and is intended to cause distress and psychological harm to the deceased's surviving relatives.
  23. The 3<sup>rd</sup> respondent also opposed the application through a replying affidavit dated 15<sup>th</sup> April 2025, sworn it's in charge; Joyce Nduku Kivaya. She avers that the deceased's body was taken to the facility on 11<sup>th</sup> April 2025, by the 1<sup>st</sup> respondent and Elvis Kwame Kariuki, who identified themselves as spouse and deceased's son respectively.
  24. That before the body was admitted, a letter issued at Mai Mahiu police station was availed showing that the deceased had been ailing for a long time. That in accordance with facility's policies and operating procedures, the family was taken through admission process, and the services available including; embalming, post-mortem, reconstruction, among others.



25. That the family completed and signed the admission and acceptance forms and indicated that the only service required was embalming. That, the body was identified by the family members and it was received in the normal way. That it was found to be in a normal state with no visible cuts, abrasions, or other abnormalities.
26. That thereafter 1<sup>st</sup> respondent wrote to the 3<sup>rd</sup> respondent instructing it to release the deceased's body to Elvis Kwame Kariuki as she was unable to make it to funeral home. A letter to that effect has been produced herein.
27. Further, on 16<sup>th</sup> April, 2025, Elvis Kwame Kariuki presented a burial permit to the Funeral home and the body was cleared in the usual manner and released to him, after he filled and executed the clearance form and an inpatient check-out slip which is normally processed upon clearance.
28. The 3<sup>rd</sup> respondent argues that its duty ended upon clearance and handing over the body. Further during the deceased's stay at the morgue, there was no claim raised by a third party against the 1<sup>st</sup> respondent or Elvis Kwame Kariuki, as such the applicants remain strangers to the 3<sup>rd</sup> respondent, unless it is shown that due process was not followed.
29. That in any case, the service rendered was based on client relationship established between the 1<sup>st</sup> respondent, Elvis Kariuki and the 3<sup>rd</sup> respondent. Furthermore, the 3<sup>rd</sup> respondent has no interest in any of the orders sought and lacks experience, expertise on matters of exhumation.
30. However, the application was further supported by an affidavit dated 9<sup>th</sup> June 2025, sworn by the 2<sup>nd</sup> applicant. He deposes that the 1<sup>st</sup> respondent is skirting around the substantive and serious issues raised in the application. Further, that the matrimonial relationship between the 1<sup>st</sup> applicant and the deceased is not disputed and is not an issue in the present case.
31. He further avers that allegations by the 1<sup>st</sup> respondent that the applicants willingly refused to participate in the meeting and/or contribute to the medical expenses of the deceased, is not true.
32. Further that the 1<sup>st</sup> respondent has also failed to show that the deceased was taken to any hospital at all. Furthermore, it was clear in the family meeting held on 13<sup>th</sup> April, 2025, that the deceased died at home under mysterious circumstances. More so, Moses Gitungo Kariuki confirmed in the said meeting and in the presence of the elders who had accompanied him to Mai Mahiu, that the burial date was 22<sup>nd</sup> April, 2025.
33. That the 1<sup>st</sup> respondent conspired with others to bury the deceased hastily. Further, the decision to file the application herein was arrived at after the family regrouped. Finally, that Dr Joseph R. Ndung'u has indicated that exhumation should be carried out urgently to preserve scientific evidence.
34. At the conclusion of the arguments by the parties, I note that the following issues have arisen for consideration:
  - a. Whether the prayers sought for can be granted through a miscellaneous application;
  - b. Whether the 1<sup>st</sup> applicant has the locus standi in this matter;
  - c. Whether the court can grant the prayers sought;
  - d. Who should bear the costs;
35. As regard, the first issue, I note that the miscellaneous application is premised on several provisions of the law both constitutional, statutory and procedural. From the outset, if by dint thereof, the



- applicants are alleging violation of any constitutional rights under Articles 22, 23, 26 and 35, then the question that arise is whether; the same can be canvassed vide a miscellaneous application.
36. To institute proceedings for enforcement of fundamental rights under *the constitution* of Kenya, one must file a petition with the High Court outlining the specific rights violated and the manner of violation, supported by an affidavit.
  37. Furthermore, in any other case, the main methods of instituting proceedings are; filing a plaint, which is the most common way to initiate a civil case and Originating summons.
  38. However, a litigant can file a miscellaneous application when they need to address a matter that is not a main suit or a formal appeal, but still requires court intervention. These applications are often used for procedural matters, interim relief, or to address issues arising during the course of a main suit.
  39. Notably, the examples of situations where a miscellaneous application is appropriate are; seeking leave to appeal out of time, transferring a case, registration of foreign judgments or arbitral awards, bill of costs, seeking interim relief and contempt of court.
  40. Furthermore, the characteristics of miscellaneous applications are that:
    - a. They are typically filed to address a specific issue or request rather than initiating a new legal action.
    - b. They often require an affidavit outlining the facts and reasons for the application.
    - c. They may be filed before, during, or after the main suit.
    - d. They are subject to the relevant rules of procedure, such as the Civil Procedure Rules.
  41. In addition, some of the prayers herein are framed in finality. For example, the applicant seeks that the deceased's body be exhumed and post mortem done. The question is; what happens after the results of post mortem or subsequent analysis is done?
  42. In that regard, the application herein seeking for the orders to finality at interim stage and on matters that may require viva voce evidence and filed as a miscellaneous is not tenable.
  43. On the issue of the 1<sup>st</sup> applicant's locus standi, I find that the same require to be canvassed through hearing of the matter by parties adducing evidence and thereof at this stage, I will not delve into it and in any case the 2<sup>nd</sup> and 3<sup>rd</sup> applicants' locus standi is not challenged.
  44. On the main issue of exhumation of deceased's remains I note that the same is primarily governed by specifically section 146 of the *Public Health Act* (Cap 242) Laws of Kenya. This section requires a permit for exhumation from a cemetery or burial ground, which is usually granted to the deceased's legal representative or next of kin. The Cabinet Secretary in charge of Health is the permitting authority and can impose conditions for the exhumation.
  45. In this matter, the applicants aver that they suspect that the deceased died as a result of foul play. The question that arises is this; where is the evidence to that effect and at what time will that evidence be availed, before or after exhumation
  46. The applicants also want this court to order public authorities including; Chief Government Pathologist, Cabinet Secretary, Ministry of Health, the Registrar of Births and Deaths, Officer Commanding Station at Mai Mahiu and Director of Criminal Investigation to carry out the exhumation and clinical and/or medical examination or analysis on the deceased's body.



47. It suffices to note that these are Government or public office(s) empowered to handle public matters and/or criminal in nature but not matters of private interest or civil in nature.
48. The question is; how then can these Government bodies get involved in these matters. In my considered opinion, the only way these public bodies will be involved in the exhumation of the body and subsequent examination or analysis thereof is through a complaint being lodged and criminal investigation commenced, so that the orders sought for herein for exhumation of the body be part of investigation.
49. In that case it will be the investigating agent(s) moving the court through a miscellaneous application for an order of exhumation for limited purpose of investigation. The orders will thus be granted to an independent body and the investigation will be objective and credible.
50. Furthermore, the question that arise is whether the exhumation should be done before investigation of the matter or after the investigation. In my considered member, the investigation should be conducted first before exhumation is done.
51. Finally, exhumation of the deceased body is not an exercise or process that should be conducted whimsically as the deceased too has his/her rights in their deaths. In that regard, Article 28 of *the Constitution* of Kenya, guarantees the right to inherent dignity for every person. These legal provisions ensure that the deceased are treated with respect particularly concerning burial and sanctity of burial rights. In addition, as already stated herein, the *Public Health Act*, prohibits exhumation of bodies from burial grounds without a permit.
52. Consequently, the prayers sought for herein cannot be granted. The application is thus dismissed but as this matter involves family members, in the interest of justice, there are no orders as to costs,
53. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 20<sup>TH</sup> DAY OF AUGUST, 2025.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of: -

Ms Wagechi and Mr King'ori for the applicants

Ms Omondi for the 1<sup>st</sup> respondent

No appearance for 2<sup>nd</sup> to 6<sup>th</sup> respondents

Mr Komen: Court Assistant

