



Opiyo v Medical Officer of Health, Homa Bay County & another (Miscellaneous Civil Application E075 of 2023) [2024] KEHC 927 (KLR) (6 February 2024) (Ruling)

Neutral citation: [2024] KEHC 927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E075 OF 2023**

KW KIARIE, J

FEBRUARY 6, 2024

BETWEEN

NEVILLE OPIYO APPLICANT

AND

MEDICAL OFFICER OF HEALTH, HOMA BAY COUNTY ... 1ST RESPONDENT

THE HON THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The applicant moved the court through a Notice of Motion dated the 6th day of October 2023. He is seeking the following orders:
 - a. That the application filed herein be certified as urgent for reasons set forth in the certificate filed herein. [Spent]
 - b. That this Honourable Court be pleased to order and direct that the remains of Meresa Auma Akomo be exhumed from its place of burial on land parcel number Kagan/Kanyaruanda/2 within Homa Bay County and be re-interred and buried at Homa Bay Cemetery.
 - c. That upon granting prayer two above, the Honourable Court direct the 1st respondent to grant and/or issue the applicant with a permit to exhume the body or remains of Meresa Auma Akomo interred on the subject parcel of land.
 - d. That upon granting prayer three above, this Honourable Court be further pleased to order and direct the 1st respondent to issue a burial permit of reburying the exhumed body or remains of Meresa Auma Akomo by the Applicant.
 - e. That this Honourable Court be pleased to make such other interlocutory orders as may appear to the Court to be just and convenient.



- f. That the cost of this suit and application be provided for.
2. The application was premised on the following grounds:
- a. That the late Meresa Auma Akomo died on 18th January 2020 at East Kagan within Homabay County.
 - b. That she was neither married nor related to the late Kennedy Onyango Koga.
 - c. After her death, one Francis Otieno Koga, a brother to Kennedy Onyango Koga, took charge of the burial proceedings and misled all to interring and bury her on the parcel number East Kagan belonging to the late Kennedy Onyango Koga.
 - d. That the applicant and his siblings are not beneficiaries of the late Kennedy Onyango Koga.
 - e. There is genuine apprehension that once the above subject succession matter is concluded, the beneficiaries of the late Kennedy Onyango Koga would proceed to exhume the body of Meresa Auma Akomo out of their deceased's land as the same forms part of his estate.
3. The respondent opposed the application on the following grounds:
- a. That an order to exhume the body of the deceased pending the conclusion of succession proceedings would be tantamount to interfering with due process and administration of justice, thereby rendering this application an abuse of court process.
 - b. That sufficient grounds do not exist to warrant the issuing of such drastic orders of exhumation.
 - c. That the dead should remain undisturbed and exhuming their bodies should be an option of last resort.
 - d. That orders for exhumation should not be granted where the existence of the evidence in support of such a request is speculative and uncertain.
 - e. That the application is otherwise premature in the case circumstances.
 - f. The exhumation should only be granted where it will resolve a demonstrably important or material issue.
4. The applicant has contended that the remains of his mother were interred in the year 2020 in the land parcel number Kagan /Kanyaruanda/2. This parcel of land is registered in the name of Kennedy Onyango Koga. Meresa Auma Akomo, deceased, who is the subject of this application, was not in any way related to Kennedy Onyango Koga who is also deceased.
5. Though the late Kennedy Onyango Koga led to the late Meresa Auma Akomo being buried on his land, her family are apprehensive that once the estate of the late Kennedy Onyango Koga is distributed, his heirs may exhume the body of Meresa Auma Akomo because was not part of the family.
6. Daniel Kombimbo, senior litigation counsel, contended for the Attorney General that the application had no merit. He argued that there were no sufficient grounds to warrant the issuance of the orders sought.
7. If indeed the late Meresa Auma Akomo was not part of the family of the late Kennedy Onyango Koga, it is prudent that the administrator of her estate takes the steps he has taken to avoid the heirs of the estate of Kennedy Onyango Koga from moving the court for orders of exhumation.



8. The Attorney General contended that exhumation should only be granted where it will resolve a demonstrably important or material issue in the case. True, we are aware that the only enduring value of the dead, other than what they left behind, is a sentimental attachment by the family. We cannot belittle this desire by the family. Equally, the respondent will not be prejudiced if the orders are granted.

9. I, therefore, grant the orders sought in prayers (b) to (e). To avoid doubts, each party will bear its costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 6TH DAY OF FEBRUARY 2024

KIARIE WAWERU KIARIE

JUDGE.

