



**Wambura (Suing on Behalf of the Estate of James Munyiri Karaya) v Muthoni
(Civil Appeal 43 of 2008) [2023] KEHC 19100 (KLR) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 43 OF 2008
EM MURIITHI, J
JUNE 26, 2023**

BETWEEN

**LYDIA WAMBURA (SUING ON BEHALF OF THE ESTATE OF JAMES
MUNYIRI KARAYA) APPLICANT**

AND

GLADYS MUTHONI RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 17/5/2023 brought under Order 40 Rule 1 of the *Civil Procedure Rules*, Sections 1,1A,1B,3,3A and 63(e) of the *Civil Procedure Act*, and any enabling provision of the law, applicant seeks that:
 1. Spent
 2. Spent
 3. This Honorable Court be pleased to issue orders of temporary injunction restraining the defendant's agents, servants, family members, employees or anybody working at her behest from burying the remains of the respondent on parcel number L.R no Plot no Ex-lewa 668 pending the hearing and determination of the respondent's appeal to wit Meru Civil Appeal no 43 of 2008.
 4. The orders sought herein be served upon the O.C.S Subuiga police station for strict compliance.
 5. This Honorable Court be pleased to issue such further orders to meet the ends of justice.
 6. The costs of this application be met by the respondent.



2. In her supporting affidavit sworn on even date, the applicant avers that she is the wife and the legal representative of the estate of the deceased herein James Munyiri Karaya, who was the sole registered owner of L.R no Plot no Ex-lewa 668 (henceforth called the suit land). On or about the year 2014, the respondent was involved in fraudulent dealings in relation to the aforestated parcel of land. After the death of the respondent, her son now secretly intends to inter his mother, a trespasser and a stranger to her family members and the beneficiaries of the estate of the deceased on the said parcel, and unless the application is allowed, she will be prejudiced.
3. The respondents did not file a response to the application.

Analysis and Determination

4. There is no doubt that this appeal is at the tail end of conclusion, where the ownership of the suit land is in contestation. It would be in the interest of justice, therefore, that the orders sought herein are granted pending the hearing and determination of the appeal, in order to preserve the substratum of the appeal.

Orders

5. Accordingly, for the reasons set out above, the court allows the application dated 17/5/2023 in terms of prayer 3 of the application as follows:
 - a. A temporary injunction is hereby issued restraining the defendant's agents, servants, family members, employees or anybody working at her behest from burying the remains of the respondent on parcel number L.R no Plot no Ex-lewa 668 pending the hearing and determination of Meru Civil Appeal no 43 of 2008.
 - b. The costs of the application shall abide the outcome of the appeal.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Otieno Advocate for Applicant.

Mr. Kaumbi Advocate for Respondent.

