



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 123 OF 2006**

**IN THE MATTER OF THE ESTATE OF REUBEN LODONDE (DECEASED)**

**RULING**

1. The application for determination is the summons in chambers, dated 8<sup>th</sup> April 2021, principally seeking to restrain interment of the remains of David Masinza on some 2 acres on South Kabras/Chesero/86. It is brought at the instance of Christina Naliaka Barasa, together with 3 others on the basis that the respondents, being Silvanos Khayati Lidonde and 6 others, were planning on interring the remains of their loved one on a portion occupied by her and her family. The respondents reacted to the application by an affidavit sworn by Silvanos Khayati Lidonde, where he essentially avers that demarcations of the parcels to be inherited by various sides of the family had not been done, as the applicants had failed to cooperate so as to facilitate survey works.
2. The summons was brought under certificate of urgency, and since it concerned a burial I grant interim relief pending *inter partes* hearing.
3. Silvanus Khayati Litonde then filed his own application, dated 14<sup>th</sup> April 2021, seeking the setting aside of the orders made on 9<sup>th</sup> April 2021, allow the burial to go ahead, and for the applicants to be ordered to bear the mortuary charges. Obviously this second application ought not have been filed, for the issues raised could have been easily addressed in the first application. Anyhow, Christina Naliaka Barasa filed a response essentially saying that she could not bear the costs as she was not the one who had taken the body to the mortuary.
4. The application was argued orally on 28<sup>th</sup> April 2021, and was reserved for ruling on 7<sup>th</sup> May 2021. The ruling was not ready on 7<sup>th</sup> May 2021, and was adjourned to 21<sup>st</sup> May 2021.
5. I have seen a letter on record, lodged herein by the advocates for Christina Naliaka Barasa, indicating that after the ruling was put off on 7<sup>th</sup> May 2021, the respondents in the application dated 8<sup>th</sup> April 2021 had moved into the mortuary and removed the body in compliance with the orders made on 9<sup>th</sup> April 2021, and expressing that that action had meant that the application dated 14<sup>th</sup> April 2021 had been overtaken by events.
6. I shall take the advocates for the applicants for their word, and take it that burial has happened in accordance with the orders of 9<sup>th</sup> April 2021. It would be academic, in the circumstances to get into the motions of determining the two applications. I shall mark the two of them as spent. Each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 2<sup>ND</sup> DAY OF JULY, 2021**

**W. MUSYOKA**

**JUDGE**