

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO. 9 OF 2017 (OS)

IN THE MATTER OF THE BURIAL DISPUTE OF THE LATE NAOMI MUTHONI MWANGI (DECEASED)

BETWEEN

FREDRICK HARISON OKUNGU.....PLAINTIFF

VERSUS

NJERI MWANGI..... 1ST DEFENDANT

KEVIN KINYANJUI..... 2ND DEFENDANT

RULING

1. The deceased Naomi Muthoni Mwangi died on 8th September 2017 at AIC Kijabe Hospital. The plaintiff Fredrick Harison Okungu filed a suit on 14th September 2017 seeking to be declared the deceased's husband who was entitled to bury the remains in his rural home in Kajulu, Kadero in Kisumu County. The matter was opposed by the 1st defendant Njeri Mwangi who was the deceased's mother. Her case is that the plaintiff was not married to the deceased as required under Kikuyu customary law. The deceased left three children, two of whom were fathered by the plaintiff. She had another child Kevin Kinyanjui (the 2nd defendant) who is an adult. Justice Farah Amin directed that the deceased's body be released to the plaintiff and the 2nd defendant for burial at her property at Ngong.

2. The remains of the deceased have not been buried. This is what led the 1st defendant to bring the present application dated 31st August 2018 seeking to have the orders above varied, reviewed and set aside and in their place there be an order that the body be buried on parcel Loc.5/Mugumoini/2150 which has been offered by her (1st defendant's) son Daniel Kamande Mwangi. This is where her husband was buried, and where she will be buried when she dies. Her case is that it has become impossible to bury the body at Ngong.

3. The plaintiff and 2nd defendant opposed the application. Instead, they sought to be allowed to bury the body at Langata cemetery where they have booked a burial place. The plaintiff is giving an alternative place, which is his father's land at Kajulu, Kadero in Kisumu. Both the plaintiff and the 2nd defendant do not say why they have not buried the deceased's body at Ngong.

4. I note that the court found that it was the plaintiff and the 2nd defendant who had the right to bury the deceased's body. It would appear clear that Ngong property is not available for burial. The 1st defendant and members of her family were found not to have the right to bury the remains.

5. So that the body can be buried, I allow the application and review the orders issued on 21st December 2017 as to burial place. I do this because the unavailability of Ngong as burial place introduces new and important evidence that was not available at the time of the decision. I also consider that burial in Kisumu would present a far and expensive place for the 1st defendant and all those from her family who would wish to attend the burial. I direct that the body of the deceased Naomi Muthoni Mwangi shall be released to the plaintiff Fredrick Harison Okungu and the 2nd defendant Kevin Kinyanjui by AIC Kijabe Hospital for burial at Langata cemetery. The other orders made on 21st December 2017 shall remain in place.

6. Each party shall pay own costs.

DATED and DELIVERED at NAIROBI this 9TH day of MAY 2019.

A.O. MUCHELULE

JUDGE