



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 943 OF 2001**

**IN THE MATTER OF THE ESTATE OF MAP (DECEASED)**

**FSD.....APPLICANT**

**VERSUS**

**KP.....RESPONDENT**

**RULING**

1. The Applicant in her application dated the 29<sup>th</sup> September 2018 seeks the following orders;

- i. **THAT** the late MAP's grave situated in Kariakor Cemetery be opened to exhume his body with a view to take samples there from for the purposes of Deoxyribonucleic Acid Test.
- ii. **THAT** in the alternative the Respondent's children and brother in law BWMP be ordered to submit to a Deoxyribonucleic Acid Test (DNA) with the Applicant's children namely SK and YK.
- iii. **THAT** the Officer of Kenya Medical Research Institute to undertake the disinterment and do obtain the necessary samples of DNA testing.
- iv. **THAT** the costs of the Deoxyribonucleic Acid Test be in the cause.

The application is based on the following grounds and supported by the annexed affidavit of FSD;

- (a) That the matter has been scheduled for hearing on then 22<sup>nd</sup> day of November 2017 upon which the Applicant is to close her case.
- (b) That it is crucial that a Deoxyribonucleic Acid Test is carried out to determine the paternity test of the Applicant's children.
- (c) That the main issue in dispute in the case herein is the paternity of the Applicant's children.
- (d) That the conduct of the Deoxyribonucleic Acid Test is the most scientific way to establish paternity of the Applicant's children.
- (e) That it is in the interests of justice that the orders sought for are granted.
- (f) That the Respondents will not suffer any harm as a result of the Deoxyribonucleic Acid Test.

2. The application was opposed by the Respondent.

**DETERMINATION**

3. Having considered the affidavits and cases relied on I find as follows; In my Ruling dated the 16<sup>th</sup> May 2019 I have made a finding that the applicant has failed to prove that she was the wife of the deceased and that her children were not dependants of the deceased. Having made the said finding I find no merit in this application. I also find that seeking an exhumation of the deceased's body 15 years after his burial without any reasonable cause has no merit.

4. On the prayer seeking to have the Respondent's children and Brother in law BWW to submit to DNA test I find that the said persons were

not made parties to the application and granting the orders would be prejudicial to the said parties.

I therefore find no merit in the application and dismiss it with costs.

Dated signed and delivered at Nairobi this **16<sup>th</sup>** day of **May 2019**.

**R.E. OUGO**

**JUDGE**

**In the presence of;**

**Miss Khafafa For the Applicant**

**Miss Mburu h/b for Mrs Mbanya For the Respondent**

**Ms Mercy Court clerk**