



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 240 OF 2016

VICTORIA MWIHAKI MUCHIRA.....1ST PLAINTIFF

CHARLES MUGO MUCHIRA.....2ND PLAINTIFF

CATHERINE NJERI MUCHIRA.....3RD PLAINTIFF

VERSUS

WANJIKU MWENJA MWANGI1ST DEFENDANT

TERESINA MWINGI2ND DEFENDANT

AND

CLIFFORD MWANGI MUCHIRA.....1ST INTERESTED PARTY

NANCY WANJIKU MWANGI.....2ND INTERESTED PARTY

JUDGMENT

1. Following the death of the Late Gabriel Muchira Mwangi (hereinafter the deceased), his body was preserved at the Kenyatta University Funeral Home. A burial dispute arose concerning who is lawfully entitled to bury the remains of the deceased. There is also a dispute over where the deceased should be buried.

2. Vide an amended plaint dated 19th September, 2016, Victoria Mwihaki Muchira the 1st Plaintiff, Charles Mugo Muchira the 2nd Plaintiff and Catherine Njeri Muchira the 3rd Plaintiff filed this suit as the wife and children of the deceased respectively. They sued the 1st Defendant, Wanjiku Mwenja Mwangi, a widow to the late brother to the deceased and the 2nd Defendant, Teresina Mwingi who was described as a caretaker of the deceased.

3. The Plaintiffs have prayed for judgment against the Defendants as follows:

“(a)A declaration that the 1st ,2nd and 3rd Plaintiffs are the lawfully entitled persons to decide on the place of burial of the deceased.

b. An order to be issued to allow the Plaintiffs to take the remains of Gabriel Muchira Mwangi being preserved at Kenyatta University Funeral Home and inter the same at a parcel of land owned by the Deceased being LR.LOC.1/MUKARARA/54.

(c)An injunction to restrain the 1st and 2nd Defendants, their servants and agents from accessing the body of the deceased being preserved at Kenyatta University Funeral Home, interfering in any manner whatsoever in the funeral arrangements and burial of the deceased save attending the said burial.”

4. The 1st and 2nd Defendants filed the statement of defence and counter-claim dated 23rd September, 2016. The Plaintiffs’ claim is denied. It is stated that the 2nd Defendant was the deceased’s lawful wife married under the Kikuyu customary law. That the 2nd Defendant has made arrangements to bury the deceased at his rural home in Kiunyu village, Gatanga Division of Murang’a County. The 1st and 2nd Defendants count-claimed for the loss incurred when the burial was stopped vide the orders of temporary injunction issued herein.

5. The 1st Interested Party, Clifford Mwangi Muchira is the first born son of the deceased and the 1st Plaintiff. He filed a defence and counter claim. He denied the Plaintiffs case and seeks the following orders:

“(a)The interested party be allowed to inter the remains of Gabriel Muchira Mwangi on LOC.1/KIUNYU/126 as per his wishes;

(b)The interested party be allowed to take the remains of Gabriel Muchira Mwangi from Kenyatta University Funeral Home.

(c)The plaintiffs and defendants be allowed to attend the deceased’s burial and be ordered to maintain peace.

(d)The OCS Gatanga Police Station be ordered to ensure compliance with Prayer (a) and (c) above.

(e) The costs of this suit.

(f) Any other relief that this honourable court may claim fit to grant.”

6. The Plaintiffs filed a reply to the defence and defence to the counter-claims. They denied the counter-claims filed by the Defendants and the 1st Interested Party.

7. The 2nd Interested Party Nancy Wanjiku Mwangi was subsequently enjoined in this case. The 2nd Interested Party in the affidavit evidence described herself as the putative wife to the deceased with whom she lived with in Upper Hill area of Nairobi. That later they moved to South B, Balozi estate with her four children and her three grandchildren. They later moved to Loresho estate, Nairobi. She further stated that the deceased donated his surname to the children and grandchildren under the Kikuyu customary law.

8. The 2nd Interested Party prayed for an order of temporary injunction to restrain the first plaintiff, Victoria Mwihaki Muchira whether by herself, her servants or agents or any person acting under her direction, permission and/or authority from interfering with the deceased’s immovable and movable property and more particularly the parcel of land known as Block No. 2/524 situate within Thika Town until the hearing and determination of this application *inter parties*.

The prayers for a temporary injunction failed when the court ruled that the same fell outside the purview of the dispute herein. The 2nd Interested Party did not file any other documents herein but remained in

court most of the times. The 2nd Interested Party informed the court that she took a neutral stand in this burial dispute and would only watch the proceedings.

9. During the hearing of the case, the 1st Plaintiff testified and called two witnesses. DW2 John Ngugi Mwaura is the Chief of Kiriani Location under which the land parcel LOC 1/MUKARARA/544 (hereinafter Mukarara farm) falls. PW3 Salome Muthoni Wachira is a sister to the 1st Plaintiff and a police officer currently based in Nairobi.

10. The 1st Plaintiff's case is that she got married to the deceased in the year 1977 under customary law. That in the year 1984 the marriage was formalized through a civil marriage at the Attorney General's Chambers. In the year 1992 the marriage was solemnized in church. That the marriage was blessed with three children. They lived in various rental premises and government quarters in Nairobi and Kakamega where her late husband worked as an engineer. They also inherited the Mukarara farm from her Late husband's parents where they built some houses, grew food crops and kept some domestic animals. A worker stayed at the Mukarara farm and they often visited the farm over the weekends. In their younger days, during these visits to their rural home at Mukarara farm, they would walk up and down the valley to the river that borders their farm. During these walks, the deceased often expressed his wishes that the Mukarara farm is where he should be buried. They later built their own house in Thome Estate of Nairobi where they lived.

11. The 1st Plaintiff stated that the deceased had once filed a divorce case against her which she responded to. That the deceased informed her that he had filed the divorce cause to frighten her and she never heard of the said case again until when she filed this case and the defendants exhibited the divorce papers in these proceedings. The Plaintiff described herself and the deceased as Catholics by faith who were member No. 1837 at St Paul's University Chapel. That as a Catholic she does not believe in divorce and they never divorced with the deceased. That the deceased by the time of death worked in Kisii with Kenya National Highways Authority and she used to visit him there and that the deceased also used to come to their Thome home.

12. The 1st Plaintiff's further case is that her daughter and 2nd born son who are the 2nd and 3rd Plaintiffs herein are based in the United Kingdom where they work and study and were not able to attend court and give evidence. That her 2nd born child Clifford Mwangi Muchira the 1st Interested party had a difficult relationship with the father due to absconding school and failure to engage himself in any work.

13. The 1st Plaintiff stated that the parents of the deceased bequeathed their land to their children. That the deceased's siblings live in their own land and those who have passed on were buried in their own land. That the deceased inherited the Mukarara farm from his parents and moved there and even the mother of the deceased at some point lived there prior to her demise. The Mukarara farm was described as well taken care of with a well-manicured compound and a suitable place to lay the deceased to rest as per his wishes.

14. The bid by the 2nd and 3rd Plaintiffs to have their authority to plead and their witness statements produced in court by the 1st Plaintiff was unsuccessful. The production of the same was strenuously opposed to and the court ruled in favour of the objection. The case for the 2nd and 3rd Plaintiffs was therefore a non-starter.

15. The 1st and 2nd Defendants testified and called their witnesses. DW1 Wanjiku Mwenja Mwangi is the widow of the late Tiras Mwenja Mwangi the eldest brother to the deceased herein. Her evidence is that her late father-in-law had two wives and was buried in the farm belonging to the first wife. That the mother to the deceased was the 2nd wife and the land she inherited was divided between her sons, with the deceased herein inheriting the Mukarara farm. That the deceased and his brothers each settled in their own land which they inherited from their parents. Those who passed on have been buried in their own land. That the mother to the deceased was buried in the land of the late Tiras Mwenja Mwangi, her eldest son. The said eldest son is also buried in his land, LOC 1/KIUNYU/126 (hereinafter Kiunyu land) which

is registered in his name. The Late Nyambura a daughter to the late Tiras Mwenja Mwangi and his grandmother are also buried in the said Kiunyu land.

16. The 1st Defendant stated that the deceased and the 1st Plaintiff separated completely. That about six years ago, the deceased married the 2nd Defendant, Teresina Mwingi. DW1 further stated that the deceased did not want to be buried at his Mukarara farm where the first wife was and expressed his wishes to her as his sister-in-law that to be buried at the Kiunyu land next to his late mother.

17. Teresina Mwingi (hereinafter Teresina) testified as DW2. Her case is that the deceased divorced the 1st Plaintiff (hereinafter Victoria). That she got married to the deceased under customary law in November 2011. They lived in Nyachae estate in Kisii town. She knew Clifford the 1st Interested party who is a son to the deceased and who used to visit the deceased in Kisii. She was also aware that the deceased had two other children who lived in the United Kingdom. She had however not met Victoria until after the death of the deceased.

18. That when the deceased passed away, together with Clifford they transported the body to Nairobi and had it preserved at Kenyatta University Funeral Home. They then proceeded to the Kiunyu home of the 1st Defendant for funeral arrangements. A hall was subsequently hired at All Saints Cathedral, Nairobi for holding the funeral meetings. The burial was set for 15th September, 2016. However on 16th September, 2016 she was served with a court order stopping the burial. The court orders were complied with.

19. Teresina further stated that the deceased had given her the divorce papers in respect of Victoria. The said divorce papers included a copy of the judgment and a copy of the decree. Attempts to produce the copies of the said documents hit a snag as the same were opposed to by the Plaintiffs side. The court sustained the objection. The Divorce case file was not traced by the time this case was wound up. DW2 (Teresina) produced as exhibits the burial permit, the admission and acceptance of body form from the Kenyatta University Funeral Home, receipts from the said Funeral Home, receipts from All Saints Cathedral and photographs taken with the deceased while the deceased was admitted in hospital during the final stretch of his earthly sojourn.

20. It is Teresina's evidence that she used to visit the Kiunyu home of DW1(sister-in-law) with the deceased. That the deceased who had been ailing for a long time became critically ill during the last three years. That the health of the deceased became very critical during the last 1 ½ years and involved admissions in hospital. That during the hospital admission in the last few months before the deceased passed on, he made his burial wishes known to her, the son Clifford and the sister in law (DW1) that he wished to be buried at the Kiunyu land. Teresina's evidence was that she had not been to the Mukarara farm which the deceased had told her was in the possession and control of Victoria.

21. Ndung'u Muguongo (DW3) is a cousin to the deceased. His evidence is that he accompanied the deceased to the home of Teresina's father in Embu where they paid dowry. The said cousin to the deceased further testified that the deceased had divorced his first wife, Victoria. That the deceased had inherited land in Mukarara from his father and built a house there.

22. Masila Mbungu (DW4) is the father to Teresina. The Octogenarian's evidence is that the deceased visited his Embu home with elders and paid dowry for Teresina in a big ceremony. He also stated that the deceased was to visit their home again and they were to visit the home of the deceased but the deceased fell sick and passed away before the marriage process was complete.

23. The 1st Interested Party, Clifford Mwangi Muchira adopted his witness statement dated 6th October, 2016 as his evidence. He denied having recorded the statement herein dated 9th September, 2016 and the court expunged the same from the record. He stated that the deceased was his father and that the 1st Plaintiff (Victoria) is his mother. He had visited his father in Kisii one week prior to his death. That the deceased lived in Kisii with his wife Teresina. That his parents separated in the year 2000 when he was in standard 8. He was in a boarding school and used to go to their Thome home where the mother and the

brother lived. Their sister was in the United Kingdom. Their father used to give their mother money for their maintenance.

24. That after school he went to live in Nairobi West. His father who worked with H. Young as an engineer lived in Upper Hill. The father moved to Kisii in the year 2010 to work with Kenya National Highways Authority. That he used to visit his father in Kisii often and his mother once accompanied him to Kisii to see his ailing father. That he conversation was cordial until the following day when his mother started inquiring where the deceased lived. That his father's wishes were to be buried in the Kiunyu land of uncle Tirus Mwenja Mwangi next to his late mother. That his father during his life time used to visit the said Kiunyu home and sometimes he accompanied him there. That the father never used to visit the Mukarara farm in incase the mother chased him away as they were not in good terms.

25. On 4th September, 2016 at 5.45 a.m. he received a telephone call from Teresina who informed him of his father's death. He started his journey to Kisii and where he joined Teresina and they transferred the father's body to Nairobi to Kenyatta University Funeral Home. That colleagues, friends and neighbours of the deceased met the expenses. Funeral meetings started. They were meeting at All Saints Cathedral, Nairobi but his mother did not participate in the meetings although informed of the same. There were death announcements in both the newspapers and radio but the same tactfully avoided the mention of both his mother and Teresina so as not to offend any of them. He stated that the relationship between him and his mother has turned sour because of this burial dispute. That his mother wants to bury the remains of the deceased at the Mukarara farm while the deceased's wishes were to be buried in Kiunyu. The 1st Interested Party's position is that their father should be buried as per his wishes.

26. Jackson Gitau Mwenja testified as a witness for the 1st Interested Party. His evidence is that his uncle the deceased herein was raised in their home which is their ancestral land. That his late father, a sister, a niece and his grandmother are buried on the said land. That the deceased was unwell and used to express his wishes to be buried at the said Kiunyu home. That he had a close relationship with the deceased and used to look up to him as a father and has no objection to the deceased being buried in their Kiunyu land and none of the other family members have any objections to the said burial in Kiunyu.

27. I have considered the pleadings herein, and the evidence adduced. I have also considered the written submission filed by the learned counsel for the parties herein.

28. The law applicable in burial disputes is customary law. There is no statute law in place yet. As stated in the Landmark case of **Virginia Edith Wambui Otieno v Joash Ochieng Ougo & another (1987) eKLR**:

“the deceased was born and bred a Luo and as such under Luo customary law his wife on marriage became part and parcel of her husband's household as well as a member of her husband's clan. Their children are also Luo as well as members of their deceased father's clan. On the death of a married Luo man the customs are that the clan takes charge of his burial as far as taking into account the wishes of the deceased and his family. Under the Luo custom to which as we have said she is bound, she has no right to bury her husband and she does not become the head of the family upon the death of her husband. As with other African communities a man cannot change his tribal origin.....”

In the case of **Josinda Katumba Kamau v Annah Ngendo [1998] eKLR** the court held thus:

“.....it is important to recognize that in the Otieno case customary law is what was used as a guide in deciding the case. The principle outlined above can also be adopted here, namely that the wife becomes part of the husband's clan. A man cannot change his tribal origin. If we apply these principles to this case we find that the deceased was born and bred a Kikuyu by tribe. His wife by marriage according to DW4 becomes part of the clan member. It thus means that the deceased's clan is known and were in control of his affairs as far as burial is concerned.”

29. The analysis of the evidence from all the parties herein reflect some undisputed facts. Using chronological order, those undisputed facts include the following:-

- The deceased was as a child raised at the Kiunyu land where his mother also lived.
- The family land was later subdivided and each of the sons inherited their share.
- Each of the sons settled in their own land with their families.
- The deceased inherited the Makurara farm.
- The deceased's eldest brother (from the same mother) inherited the Kiunyu land. The said brother has since passed on and is buried in his own parcel of land.
- No succession cause has been instituted in respect of the said Kiunyu land.
- The other brothers of the deceased who have since passed on were buried in their own parcels of land. Their immediate family members who have also passed on have been buried in their own family land.
- The mother of the deceased is buried in the Kiunyu land which was inherited by her eldest son.
- The deceased had built a house at Thome estate where Victoria lives.
- In his lifetime the deceased worked as an engineer in Nairobi and other parts of the country.
- The deceased had filed divorce cause no. 178/2001
- By the time of death the deceased worked in Kisii.
- The deceased was ailing for a long time prior to his death.

30. The parties herein look different positions in their evidence regarding the rest of the issues. It is noteworthy that the main issues herein is who has the right to bury the deceased and where the deceased should be buried.

31. In the case of **Ruth Wanjiru Njoroge v Jemimah Njeri Njoroge & another [2004] eKLR** Hon Ojwang, J (as he then was) held as follows:

“in social context prevailing in this country, who is in the first line of duty in relation to the burial of any deceased person, is the one who is closest to the deceased in legal terms. Generally the marital union will be found to be the focus of the closest chain of relationships touching on the deceased. And therefore, it is only natural that the one who can prove this fundamental proximity in law to the deceased, has the colour of right of burial, ahead of any other claimant.”

I am in full agreement with the said authority which has been relied on by all the parties herein. The question who is the deceased's wife is therefore the focus of this burial dispute in making the determination on who has the right to bury the deceased herein.

32. The evidence of Victoria is that she was married under civil law is supported by the marriage certificate under Cap 150 Laws of Kenya. The said marriage was also solemnized in church as per the endorsement at the back of the said marriage certificate. Having registered their marriage under Cap 150 Laws of Kenya, the same superseded the previous customary marriage (see for example **JMK & another v DMK [2013] eKLR**).

33. It is admitted that in the year 2001 the deceased filed a divorce petition against Victoria. Victoria's evidence is that she even instructed an Advocate to respond to the same but that they were never served with any other court papers and that the deceased had informed her that he had only filed the divorce case to frighten her. On the other hand the position taken by Teresina was that the divorce case was concluded and a judgment delivered and the decree absolute issued. That the deceased was a free man when they started a relationship which ended up in a customary marriage. Unfortunately the court file and the relevant register were not traced by the time the proceedings herein were closed.

34. What does the above scenario portend for the parties herein? In my view there is no conclusive evidence before this court at this stage which the court can rely on to say the divorce case was concluded. Whether one looks at the divorce cause as merely a means to frighten Victoria or as a long struggle of about ten (10) years by the deceased to divorce Victoria is like looking at a half full glass. It is capable of being interpreted in the different ways as seen by different parties.

35. The Defendants and the 1st Interested Party attached to their submissions a copy of the Kenya Law Reports in High Court Divorce Cause No. 178 of 2001 *GMM v VMM*. In the said case the judgment was delivered on 4th February, 2010. The said divorce cause proceeded ex-parte and declared the marriage dissolved and a *Decree Nisi* issued. The *Decree Nisi* was to be made absolute in six months. However, this case was not part of the evidence herein. It was annexed to the submissions and the court was urged to take judicial notice of the same. Although the case number is the same one (178/2001) as the one that Teresina referred to earlier in her evidence, the said judgment was not produced as evidence. This court can take judgment notice of Kenya Law Reports generally but a particular case in the Kenya Law Reports may not be of such notoriety that the court would be aware of the same.

36. If the said judgment and the *Decree Nisi* are presumed to be part of the evidence herein, there is still the issue of whether the decree absolute was issued. The decree absolute has not been exhibited before this court in any manner whatsoever. The consequence of not having obtained a decree absolute was expressed in the case of **Machani v Vernoor [1985] eKLR** where the Court of Appeal stated as follows:

“During the continuance of a previous marriage, the already married party would have no capacity to enter into the new marriage, and the new marriage would be null until the previous marriage had been brought to an end by a final decree of divorce; such as a decree absolute (see Rayden on Divorce 12th Edition Volume 1 page 600 – the latest edition is to the same effect).”

In Halsbury's Laws of England, 4th Edition, Volume 13, Divorce, page 452, it states at para 985 that;

“The decree absolute is the final decree in the suit, for until that decree the marriage subsists.”

Thus the decree absolute is the final decree in a divorce cause. Without the decree absolute the marriage still subsists. Consequently, the marriage between the deceased and Victoria had not come to an end.

37. The evidence adduced by the defendants concerning the customary marriage between the deceased and Teresina is unshakeable. This court does not doubt the evidence that there were visits to the home of the father of Teresina and part of the dowry paid. DW4 Masila Mbungu who is Teresina's father struck this court as a truthful witness. He did not contradict himself even during cross examination. His evidence was that they had commenced the marriage process but that the deceased fell sick and passed on before the deceased could make further visits to his home in Embu and before the Embu team could visit the home of the deceased. This evidence is corroborated by all the other defence witnesses.

38. From the foregoing, the evidence herein has established a scenario where by the time the cruel hand of death took away the deceased, he had not completed the divorce process with Victoria nor completed the customary marriage process with Teresina. If one holds that the customary marriage is a process which continues even up to one's lifetime, there is the issue of whether the deceased had the capacity to marry. The Civil marriage between the deceased and Victoria was a monogamous marriage.

Without a decree absolute, the said Civil marriage was still in subsistence at the time the deceased made the trip to Embu to pay dowry for Teresina. The deceased had no capacity to marry Teresina whether by way of customary marriage or otherwise.

39. I now turn to the question of the wishes of the deceased in regard to his final resting place. The undisputed evidence is that the deceased was working in Kisii at the time of his death. It is also common ground that the deceased had been ailing for a long time. The evidence of the defence witnesses (DW1 Teresina) and DW2 (Wanjiku Mwenja) and that of the 1st Interested Party (Clifford) has established that the deceased lived with Teresina in Kisii. It is noteworthy that Victoria as a wife did not visit the residence of the deceased in Kisii during her trip there. Indeed Victoria in her evidence stated that when she visited her husband in Kisii during his life time she stayed in a hotel. Even when Victoria made the trip to Kisii after the deceased passed on, she did not go to her late husband's residence. All in all, I would not be surprised if the deceased during his different stages of his life intermittently made his burial wishes known. Each of the parties stood their ground as to where the deceased wished to be buried.

40. During his terminal days, the deceased is said to have been critically sick and was in and out of the hospital. His burial wishes as per the evidence of Teresina (DW 2), the sister in law (DW1) and the son (1st interested Party) is that the deceased wished to be buried at the Kiunyu land next to his mother and away from the Mukarara farm which was said to be under the control and possession of Victoria. No medical documents have been availed to this court. The question as to the mental state of the deceased during the last few months of his life remains unanswered. This court's view is that each of the parties appeared ready to steal a march from the other side in respect of the said burial wishes. This is best demonstrated by the evidence of DW3 Ndung'u Muguongo the cousin to the deceased. The said witness was evasive and failed to answer some of the questions during the cross examination. This court had to even caution him of the consequences of his actions in court. Indeed this court noted that the said witness only stated what he wanted to say even if the answer was not in response to the questions asked. The evidence of the sister-in-law (DW1) can only be taken with a pinch of salt. It is noted that she is the only witness who stated in evidence that the deceased and Teresina married through a church ceremony in a catholic church in Embu. DW1's turn around during re-examination to state that she did not attend any church wedding ceremony between the deceased and Teresina in Embu was not only self-contradiction but made her an unreliable witness. It is also noted that her evidence that the deceased's mother never lived with the deceased was contradicted by that of Jackson Gitau Mwenja who was called as a witness by the 1st Interested Party.

41. With the foregoing, it is difficult to establish the wishes of the deceased. However, actions speak louder than words. In his life time, the deceased moved from his brother's home to his own land. The evidence on record establishes that the deceased put up some semi-permanent houses on his said inherited land (the Mukarara farm). This comes out clearly from the evidence of Victoria (PW1) Victoria's sister (PW2) the son (1st Interested Party) and even the other family members e.g. the cousins who have testified herein. The evidence on record from Victoria (PW1), the son (1st Interested Party), the sister-in-law (DW1) and the cousins show that the deceased used to visit the Mukarara farm before year 2000 and indeed even the mother of the deceased lived there at some point. If the deceased wanted to wrest the control and possession of the Mukarara farm from Victoria, he could have done so. There is no evidence of any attempts by the deceased to do so. The deceased also left Victoria and his children at his Thome home. Once again there is no evidence before this court of any attempts to disturb Victoria's stay in the said Nairobi residence.

42. On the other hand the deceased had no house or any structure of his own at the Kiunyu land. The Kiunyu land is registered in the name of the late brother of the deceased who inherited it as his share of land from their parents. The said Kiunyu land remains the estate of a deceased person. No succession cause has been filed in respect of the said Kiunyu land. The deceased was not part of the immediate family of his said late brother. The deceased was also not amongst expected heirs of the Kiunyu land. The undisputed evidence herein is that each of the male siblings of the deceased who have passed on are buried in their own parcel of land as per the customary law of the Kikuyu people. There is no convincing evidence on record that the deceased herein should be treated differently. The deceased left behind a

home and ancestral land where his remains can be laid to rest. That is the land that is expected to pass on to the descendants/ beneficiaries of the deceased.

43. Having analyzed the evidence above and having arrived at the foregoing conclusions, I find the 1st Plaintiff has proved her case on a balance of probabilities. Consequently, the first and 2nd Defendants case and counter-claim fails. It would not be reasonable to award the defence the special damages claimed when Teresina has admitted in her evidence that on the day the deceased passed on she transferred money in excess of Kshs.500,000/= from the account of the deceased ostensibly to meet the hospital expenses. The case and counter-claim by the 1st Interested Party also fails. The 1st Interested Party is at liberty to team up with his mother and give his father a befitting burial at their Mukarara farm. Indeed burial being a communal affair, nobody has been barred by the judgment herein from attending the burial. In the final analysis, judgment is hereby entered in favour of the 1st Plaintiff as prayed in the amended plaint. This being a family matter each party to meet own costs.

Dated, signed and delivered at Nairobi this 2nd day of Dec.,2016

B. THURANIRA JADEN

JUDGE