



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

HC CC. NO. 193 OF 2015

VERONICA GITIRI NDUIGA.....APPLICANT

VERSUS

THE ATTORNEY GENERAL

KENNETH MUCUIYIA NGAIRESPONDENTS

RULING

The application is brought under sections 3 and 3A of the Civil Procedure Act, section 24 of the Land Registration Act (Act No. 3 of 2012), section 146 of the Public Health Act and all enabling provisions. It is for the exhumation of the following bodies:

1. Lilian Muthoni Nyaga
2. Joshua Waweru Nduiga
3. Ann Wanjiru, all from land parcel No. Ngandori/Kangaru/T.30 and for their re-burial in land parcel No. Gaturi/Weru/712.

The application is supported by a supporting affidavit of the applicant and the attached annexes.

In her supporting affidavit, the applicant has stated that she is the registered owner of the two above named parcels of land. She also stated that the remains of the deceased persons are her daughter in law (Lilian Muthoni Nyaga), her son (Joshua Waweru Nduiga) and daughter in law (Anna Wanjiru). She has further stated that she sold land parcel No. Ngandori/Kangaru/T.90 to the interested party.

According to her, the exhumation of the remains of the three deceased persons and their re-burial on another piece of land is being done in consideration of Aembu traditional customs and practices.

Finally she has stated that it will be in the interests of justice that health officials and the police to be involved in the exhumation process.

I have considered the affidavit evidence of the applicant. I find that the exhumation and re-burial process is not opposed by the respondent (the Hon Attorney General). It is important to point out that the respondent was not served.

I find that this application raises a weighty issue. As a result, it is such that it cannot be resolved on affidavit evidence.

Furthermore, the administrators of the estate of the three persons ought to have been joined as respondents. Finally, this is a matter that ought to be resolved through oral evidence and not through

affidavit evidence.

In the circumstances, I find that the application is fundamentally defective in seeking to resolve the matter through affidavit evidence. And secondly, for omitting to join the administrators of the estates of the deceased persons or other interested parties.

In the light of the foregoing, I hereby dismiss this application with no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **5th** day of **NOVEMBER .2015**

In the absence of all parties.

Court clerk Nyaga

J.M. BWONWONGA

JUDGE

05.11.15