



**IN THE COURT OF APPEAL
AT NAIROBI**

CIVIL APPEAL NO. 208 OF 1995

VIRGINIA KARUARA GAKUYA.....APPELLANT

AND

GEOFFREY MUREITHI.....RESPONDENT

(Appeal from the Ruling and Orders of the High Court of Kenya at Nyeri (Lady Justice Mary Angawa) dated 21st September, 1995

in

H.C.C.C. NO. 14 OF 1995)

JUDGMENT OF THE COURT

This is an appeal against the ruling and order of Angawa J given on 21st September, 1995 restraining:-

"the servant agent and relatives of the deceased, 3rd defendant and more particularly the wife and the children of the deceased from burying the deceased on the suit land No. Mutira Kaguyu/557 until the hearing and final determination of the suit or further orders."

In our view it is quite clear that Order 39 of the Civil Procedure Rules provides for orders of injunction to be made only against named parties in the suit, which in most cases are against the defendant. If orders are sought against persons who are not parties to the suit they must properly be brought before the court and named. The learned Judge made orders against unnamed persons not before the court. This fact alone is enough to dispose of this appeal. We were not impressed by the submissions of Mr. Waiganjo, for the respondent, that a court can issue an injunction against the whole world.

In the circumstances this appeal must and is thereby allowed with costs. The ruling and order of the Judge dated 21st September, 1995 is set aside and substituted with an order dismissing the respondent's application dated 11th September, 1995 and filed in court on 12th September, 1995, with costs. For the avoidance of doubt it is hereby ordered that the relatives of the deceased are at liberty to bury his remains on the suit land.

Dated and delivered at Nairobi this 5th day of February, 1996.

R.O. KWACH

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL