

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION

MISCELLANEOUS FAMILY APPLICATION NO. E061
OF 2026

LEE FUNERAL SERVICES LIMITED
APPLICANT

VERSUS

THE COUNTY EXECUTIVE COMMITTEE MEMBER
FOR HEALTH, WELLNESS AND NUTRITION IN
NAIROBI CITY COUNTY GOVERNMENT.....

..... 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND
RESPONDENT

(In the matter of the exhumation of the remains of

Late Sarah Anne Furlong)

JUDGMENT

1. This Court is called upon to determine the Notice of Motion Application dated 3rd February, 2026 filed by the Applicant, Lee Funeral Services Limited, seeking orders permitting the exhumation of the remains of the late **Sarah Anne Macoun**, who was interred at Lang'ata Cemetery, Burial Site Block No. RC8, Grave No. 172, following her death on 15th October, 1996.
2. The Application is brought under **Articles 28, 32 and 165 (3) (a)** of the **Constitution of Kenya, 2010**, **Section 146** of the **Public Health Act, Cap 242**, **Sections 1A, 1B and 3A** of the **Civil Procedure Act and Order 51** of the **Civil Procedure Rules**.
3. The Applicant seeks principally, an order permitting the exhumation of the remains of the deceased and authorizing their subsequent cremation in accordance with the wishes of the deceased and her family.
4. The Application is supported by the Affidavit sworn by **Paul Van Brussel**, the Funeral Director of the Applicant, on behalf of Lee Funeral Services Limited.
5. The Applicant testified that they were instructed by Mr. Brian Macoun, the widower of the deceased,

through an authorization letter dated 9th December, 2025, to facilitate the exhumation and cremation of the deceased's remains.

6. The evidence before the Court is that the deceased and Mr. Macoun were lawfully married and cohabited as husband and wife until the deceased's demise on 15th October, 1996. The deceased was subsequently interred at Lang'ata Cemetery in Nairobi.
7. According to the Applicant, the family of the deceased wishes to exhume the remains and have them cremated in fulfilment of the deceased's wishes.
8. The Applicant has further acquired all the requisite statutory approvals and clearances from the Nairobi City County Government and the Ministry of Health and that the only outstanding requirement is a Court order authorizing the exhumation.
9. The matter came up for hearing before this Court on 5th March, 2026. Learned Counsel for the Applicant appeared and urged the Court to allow the Application. During the hearing, the brother of the deceased expressed his consent to the exhumation and

subsequent cremation of the remains. Furthermore, it was noted that there were no objections raised by any party regarding the Application.

10. The burial site was identified through the documentation that was produced.

Determination

11. Having considered the pleadings and evidence presented, the Court finds that the sole issue for determination is:

Whether the Applicant has established sufficient grounds to warrant the grant of orders for the exhumation and cremation of the remains of the deceased.

12. The law governing exhumation in Kenya is primarily found in **Section 146** of the **Public Health Act (Cap 242)**, which provides that no body shall be exhumed without a permit issued by the relevant authority and without lawful authority.

13. The Court therefore plays a supervisory role to ensure that exhumation is undertaken lawfully, with proper justification and in a manner consistent with public health requirements and respect for the dignity of the deceased.
14. **Article 28 of the Constitution 2010** guarantees the right to human dignity, which extends to the dignified treatment of the dead. The Courts have previously addressed the circumstances under which exhumation may be permitted.
15. In ***Apeli & Another v Buluku (1985) KLR 777***, the Court held that exhumation may be permitted where there are compelling reasons and where such action does not offend public policy or public health considerations. Similarly, in ***Peter Ouma Okeyo & Another v The Public Health Officer, Kisumu Municipality & Another [2013] eKLR***, the Court held that exhumation may be authorized where the relevant statutory approvals have been obtained and where the family of the deceased consents to the process.

16. The Court must therefore consider whether the request is lawful, justified and respectful of the dignity of the deceased.
17. In the present case, the Court notes several important considerations. First, the request for exhumation was made by the deceased's widower, Mr. Brian Macoun, who has lawful standing to make decisions relating to the remains of his spouse.
18. Second, the deceased's brothers, Walter and Michael, attended Court and consented to the proposed exhumation and cremation. They stated to the Court that there were no objections from the family.
19. Third, the Applicant has demonstrated that it has obtained all the necessary statutory approvals from the Nairobi City County Government and the Ministry of Health. The Applicant has satisfactorily established the capacity to fulfil the requested orders.
20. Fourth, there were no objections from the Respondents or any interested parties. The Office of the Attorney General officially stated that they do not

oppose the application at the hearing. Importantly, the purpose of the exhumation is to honour the wishes of the deceased and to facilitate the cremation process.

21. The Court is satisfied that the application is made in good faith and in a manner consistent with respect for the dignity of the deceased.

22. The Court further observes that the exhumation is to be carried out under the oversight of the appropriate public health authorities. This supervision is in place to ensure adherence to established public health protocols, which the attending representatives affirmed during the hearing.

23. In the circumstances, the Court finds that the Applicant has demonstrated sufficient grounds to justify the grant of the orders sought and finds the Application meritorious.

24. Consequently, the Court makes the following orders:

a. The Notice of Motion Application dated 3rd February 2026 is hereby allowed.

- b. An Order is hereby issued permitting the exhumation of the remains of the late Sarah Anne Macoun, currently interred at Lang'ata Cemetery, Burial Site Block No. RC8, Grave No. 172.***
- c. The said remains shall thereafter be cremated in accordance with the wishes of the deceased and her family.***
- d. The exhumation shall be carried out under the supervision of the designated appropriate public health authorities from the Ministry of Health and Nairobi City County Government to ensure full compliance with public health regulations.***
- e. Each party shall bear its own costs.***

It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI

through the Microsoft Teams Online Platform on this

16TH day of MARCH, 2026.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Chetambe, Advocate holding brief for Mr. Omiti,

Advocate for the Applicant

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