



**Muicheni v Kooru (Civil Appeal E244 of 2025)  
[2026] KEHC 5538 (KLR) (10 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5538 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E244 OF 2025**

**HM NYAGA, J  
APRIL 10, 2026**

**BETWEEN**

**RUTH KARAMBU MUICHENI ..... APPELLANT**

**AND**

**CHARITY KOORU ..... RESPONDENT**

*(Being an appeal from the Judgement of Hon. J.M Njoroge -  
CM in Meru CMCC No. E141 of 2025 delivered on 24/9/2025)*

**JUDGMENT**

**Background:**

1. The appellant filed suit in the lower court seeking the following prayers:
  - a. That the Manager Meru General (CEO)Hospital be ordered to release the body/remains of one Huron Micheni to plaintiff for burial unconditionally.
  - b. That the respondent be ordered to return/surrender to the plaintiff the deceased documents and properties i.e identity care, 4 title deeds for Parcel No. IGOJI/MWERU E3/1181, 855, 941 and 1375, power saw cow and its calve and other personal items.
  - c. The respondent be ordered to pay for the hospital charges and burial expenses.
  - d. The respondent be restrained from entering or interfering with the deceased rental houses and pieces of land or interfere with any property.
2. The appellant's case was that she was the legal wife of Huron Micheni (deceased) having been married under the customary law. That she and her deceased husband put up their matrimonial home on land parcel No. IGOJI/MWERU III/562. That they also bought other property together some of which was developed. That's when the deceased fell ill. The respondent took him to hospital without the



appellant's knowledge. That the deceased died thereafter. That she came to realize that the respondent had confiscated the deceased's personal items and documents, yet she was just their worker. That when she went to collect the deceased's body for burial, she was informed that she could not do so due to lack of essential documents held by the respondent and the respondent's refusal to consent for the body of the deceased to be released from Meru General Hospital.

3. The respondent filed defence. In a nutshell she stated that she was a legal wife of the deceased having been married vide Meru customary law and had at all times been living and cohabiting with the deceased on land parcel No. Igoji/Mweru III/575. She further stated that from 2014 she was the one who had been taking care of the deceased.
4. The respondent denied the appellant's averment that she was the only legal wife of the deceased and mentioned one Stella Muthoni as the first wife of the deceased. That the deceased had separated from the appellant many years prior to his death.
5. For these reasons, the respondent averred that she was the one entitled to burying the deceased.
6. The suit proceeded to full hearing and in a judgment delivered on 24<sup>th</sup> September 2025 the trial court issued the following orders:
  - a. That the CEO/Manager Meru Teaching and Referral Hospital be ordered to release the body of the late Huron Micheni to both Ruth Karambu Micheni and Charity Koru.
  - b. That the body of the late Huron Micheni be buried or interred on parcel No. IGOJI/MWERU III/575.
  - c. The plaintiff and defendant to share equally the hospital and burial expenses.
  - d. Prayer (c) shall not restrict the larger family/clan, friends or well-wishers from making their contributions towards hospital and burial expenses.

### **The appeal**

7. Aggrieved by the said judgment, the appellant filed a Memorandum of Appeal dated 13<sup>th</sup> October 2025. She set out the following grounds:
  - a. That the trial magistrate erred in law and in fact by giving reliefs that had not been prayed for by the appellant.
  - b. That the trial court erred in law and in fact by giving judgment without following the parties pleadings and entering judgment in favour of respondent on issues she had not pleaded for.
  - c. The trial court entered judgment with sufficient evidence and case not proved on a balance of probabilities.
  - d. That the trial court erred in law and in fact by establishing issues not requested for to favour the respondent unjustifiably.
  - e. That the trial court failed to establish that the respondent was not a legal wife to the deceased Huron Micheni subject of the matter and entered judgment to a stranger without any legal basis.
  - f. That the trial court erred in law and in fact by refusing to find that this was not a succession matter but a burial dispute.



- g. That the trial court erred in law and in fact by ordering the body of deceased be given to Charity Kooru and that the deceased to be buried on parcel Igoji/Mweru 111/575 and payment of hospital bill by appellant which was not pleaded.
8. The appellant thus sought the following orders:
- a. That the court to set aside and or vacate the judgment in Meru – CMCC No. e141 of 2025 and substitute the same in that the body of Huron Micheni be released to the appellant for burial and CEO Meru General Hospital to be ordered to so release.
  - b. The respondent to pay hospital charges.
  - c. That costs of appeal to appellant.
9. The appeal was argued vide written submissions which I have considered and where necessary refer to them.
10. As a first appellate court, this court’s duty is to re-evaluate the evidence adduced and arrive at its own independent conclusion. (see *Selle -vs- Associated Motor Boat Co. Ltd* (1968) EA 123).
11. There is no dispute as to the time and place of the death of the deceased.
12. The dispute herein revolves around the status of the two parties each claiming to be a wife of the deceased and disowning the other.
13. I have considered the evidence adduced during the trial. The salient issues that a rose can be summarized as follows:
- a. The place of interment the deceased.
  - b. Whether the appellant was entitled to inter the remains of the deceased in priority over the respondent.
  - c. Any other order that is in the interest of justice.
14. The appellant tendered evidence to the effect that she was married to the deceased under Meru Customary Law. She admitted that prior to the said marriage, the deceased had also been married to another woman. That the deceased had expressed his wish that he be buried on his ancestral land. She conceded that she and the deceased had separated and he left the matrimonial home. She described the respondent as having been one of their tenants.
15. The appellant’s witnesses all gave evidence that supported her claim. Some witnesses like Winford Gichunge (PW2) described the respondent as having been a casual worker employed by the deceased.
16. The respondent’s evidence was that after the deceased separated from the appellant, he got married to her, also under Meru Customary Law. Her position was that both her and the appellant were co-wives of the deceased and as such, they ought to jointly bury the deceased.
17. This is a typical burial dispute, which is evidently pointed towards the succession of the deceased’s estate.
18. It is clear that the deceased never formalized his union to the appellant under Meru Customary Law, and as such the deceased could legally be polygamous.
19. It is also quite evident that the deceased had separated from the appellant and had resorted to living on one of his properties, abandoning the matrimonial home. There is no evidence that he divorced the



- appellant under Meru Customary Law. As such, and in agreement with the finding of the finding of the lower court, the appellant was still a wife of the deceased.
20. The status of the respondent was highly contested. Naturally, she is viewed as a total stranger, in the eyes of the appellant.
  21. However, the evidence before the trial court points to some form of relationship between the deceased and the respondent. She was much more than a tenant or casual worker as the appellant would want the court to believe. At the material time, the deceased was living with the respondent, who now claims to be a co-wife to the deceased.
  22. It is not very clear if the deceased undertook any customary rights in intending to marry the respondent. She did not avail any witness to prove this fact and its difficult to hold that she was married under customary law.
  23. That said, it is evident that the respondent started living with the deceased from 2014 until his demise. They had a child together. Perhaps, and I repeat, perhaps, she may rely on her cohabitation with the deceased to stake her claim as a wife.
  24. This court has not been called upon to determine the nature of the relationship between the respondent and the deceased. I believe that there is an appropriate forum for that discussion.
  25. It is a well settled principle that there is no property to be vested in a dead body. However, it is common knowledge that parties will always use such a dispute as a platform to launch a claim in the succession cause that may arise.
  26. Having looked at the evidence, I find that the deceased had separated from the appellant and moved out of the matrimonial home and he then went ahead to live with the respondent. While the appellant was not lawfully divorced, the deceased appears to have abandoned her completely, for reasons best known to him.
  27. The respondent describes herself as a co-wife, but there is really nothing to show any intention to contract a customary law marriage in the part of the deceased.
  28. Clearly, the two warring parties are using the burial dispute to fight their own battles which is normal.
  29. The trial court, faced with the situation herein, opted to grant both parties the right to bury the deceased.
  30. The appellant feels that the respondent was granted a greater right but that is not the position. The court granted them equal rights.
  31. It was the evidence of the appellant that the deceased had stated that he wished to be buried on parcel Igoji/Mweru III/562. The respondent's position was that the deceased wanted to be buried on his land, parcel No. Igoji/Mweru III/575. Clearly, there is no certainty as to which of these claims is true.
  32. When it comes to the place of burial of a deceased person the considerations are; the ascertainable wish of the deceased, either by deed, word or conduct, the religious and cultural practices of the deceased and lastly the interest of the parties.
  33. This position was reiterated in *SAN v GW* [2020] KECA 46 (KLR) where the Court of Appeal held as follows;

Apart from these factors, courts have also been unanimous as far as we can tell from decided cases that, both laws, common and customary, have one thing in common, in so far as burial



is concerned; that the wishes of the deceased, though not binding, must so far as is possible, be given effect, so long as those wishes are not contrary to custom or to the general law or policy. See *Apeli vs. Buluku* [1980] eKLR and *Samuel Mungai Mucheru & 3 Others vs. Ann Nyathira* [2014] e KRL.

The wishes or a will on how the deceased's remains will be disposed of upon death are not, as a general rule binding because, in the first place, there is no property in a dead body and secondly, because a dead person cannot take part in the decision of his or her own burial. There must, however, be compelling reasons for not heeding the expressed wishes of the deceased.

34. The deceased had put up a home on the ancestral land parcel No. 562, where the appellant was living. He had also put up a house on land parcel No. 575 which was registered in his name.
35. It is evident that the said parcel No. 562 is in the name of the deceased's father. It is thus not certain that there would be a place to bury the deceased. Therefore, in agreement with the trial court, I find that the most appropriate place for burial is the deceased's own land; parcel NO. IGOJI/MWERU III/575.
36. I will now deal with the elephant in the room which is who should bury the deceased?
37. I have carefully considered the matter. Although the appellant may want to take preference over the respondent, it is not lost on the court just like the trial court, the deceased had taken up another woman and started to cohabit with him. It appears that the latter, who is the respondent is the one who was taking care of him during his illness. The appellant appears to have abandoned the deceased during his hour of need when he fell ill and required constant medical attention. The duty was taken up by the respondent.
38. In *Samuel Onindo Wambi vs. COO & Another* (2015) eKLR the Court of Appeal dealt with a similar situation. It expressed the following view:

“...A person's conduct to a deceased person can extinguish the right of that person of burying the remains of the deceased. The appellant did not show any family closeness with the deceased when she was alive. Though he said that he used to visit the deceased and that he mobilized his siblings to build a house for her at Kibos there was no credible evidence to prove so. (sic). The fact that he was the deceased's first-born son did not give him an automatic right to bury her even if Luo customary law dictates so. The court has to consider all the circumstances of the case and the justice of the case...In this case, besides the fact that given the father and his family's treatment of the deceased he is not deserving of the right to bury the deceased's remains”.
39. On the basis of the evidence adduced and the above finding, I am of the view that the appellant cannot claim to have a higher right to bury the deceased over and above other parties. She should have been more humane to the deceased while he was alive, and not pretend to be so after his demise.
40. In my view, since there is a dispute between two parties who may have no priority right over each other, the best course is to have parties who are not disputed take the lead in the burial. In this regard, I find that the children of the deceased, who all appear to be adults, are best suited to lay their father to rest.
41. After considering the matter, I find reason to interfere with some of the final findings of the trial court.
42. I allow the appeal partially and make the following orders:
  - a. The deceased is to be buried/ interred in his property namely IGOJI/MWERU III/575.



- b. The body of the deceased is to be released to the children of the deceased, who shall be identified upon delivery of this judgment. The children of the deceased shall take the lead in the burial arrangements.
- c. Both appellant and the respondent are allowed to participate, but not to hinder or interfere in the burial.
- d. The respondent is to release all the deceased personal documents required to secure the body from the mortuary for burial/interment within the next 7 days.
- e. There shall be no costs in the appeal.
- f. The matter to be mentioned on 22/04/2025 for compliance and further orders.

**DATED, SIGNED & DELIVERED VIA EMAIL AT MERU THIS 10<sup>TH</sup> DAY OF APRIL, 2026.**

**H.M. NYAGA**

**JUDGE**

