

6. That costs be provided for.

- (3)The motion is based on seven (7) grounds and is supported by an affidavit sworn by the 1ST Applicant dated 9-4-2026. The gist of the motion is as follows. One, the deceased was the registered owner of the suit land and he has been litigating over it since the year 2007. He had already testified before sadly passing away during the pendency of this case. Two, the Defendants have forcefully and unlawfully obstructed the Plaintiff's family from accessing the land for burial. Burial is a matter of human dignity, culture and public interest and does not confer proprietary rights. The family of the deceased is now faced with the painful and undignified prospect of failing to accord the deceased a timely and dignified burial due to the ongoing dispute. For the above and other reasons, the Applicants pray for the orders.
- (4)The motion is opposed by the Defendants and the 1st Defendant has sworn a replying affidavit dated 16-4-2026 in which the following is deposed. Firstly, the 1st Defendant is in occupation of the suit property for over 50 years. Secondly, the burial permit confirms that the deceased's area of residence is Majengo. Three, the Applicants had previously buried a relative on the suit land unlawfully but his remains were exhumed vide a court order.
- (5)I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and the replying affidavit. The following issues arise from the material filed by both sides.
- (i) Whether the deceased Plaintiff should be substituted by the Applicants.**
 - (ii) Whether it is fair or just to allow the deceased to be buried on disputed land that he has not occupied for long.**
- (6)On the first issue, I find that the Respondents have not responded to the second prayer in the motion. They have not therefore opposed it. It is also fair and just that the motion be allowed so that the suit can be concluded. Without the substitution of the deceased Plaintiff, the suit will stall and the dispute which has been pending for long will continue weighing upon the parties.
- (7)Regarding the second issue, I find it is not fair or just to allow the remains of the deceased to be buried on the suit land because the ownership of the said land is contested. Since the suit is

pending determination, it is not prudent to rule on whether a prima facie case with a probability of success has been made out. The proper thing to do is to look at the balance of convenience which tilts in favour of not allowing the deceased's burial on the disputed land. For the above reasons , I **allow** the notice of motion dated 9-4-2026 in terms of **prayer 2** only. **Prayers 3,4 and 5 are** not allowed.

Costs in the cause.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 6th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistants – Jackline and Antony
Applicants' Counsel – Mr Wachira
1st Respondents' Counsel – Miss Karanja