

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CIVIL APPLICATION NO. E230 OF 2025

STEPHEN NDUNG’U

MWAURA.....APPLICANT

VERSUS

**PUBLIC HEALTH OFFICER RUIRU
SUBCOUNTY.....RESPONDENT**

R U L I N G

Brief facts

1. The application dated 4th November 2025 seeks for orders of granting a permit to exhume the body or remains of one JOHN MWAURA NDUNG’U interred on LR No. 13136/6 in North East of Ruiru Township in Kiambu County. The applicant further seeks that the court do direct the respondent to supervise the said exhumation and issue a permit for reburying the remains of John Mwaura Ndung’u on LR. No. Nyandarua/South Kinangop/166853 within Nyandarua County.

Applicant’s Case

2. The applicant testified as PW1 and stated that he is the father of the late John Mwaura Ndung’u who died on 2/1/2009 at Nairobi Hospital undergoing treatment. The

applicant further stated that he interred his son's remains on 9/1/2009 on LR No. 13136/6

situated in North East of Ruiru Township which was registered in his name. Over the years, the applicant registered the said parcel of land under Profile Development Limited which later changed its name to Ndakafield Limited. The applicant further stated that over the years the surrounding parcels of land have been converted from agricultural to commercial use which necessitated a need to purchase an agricultural parcel of land known as LR. No. Nyandarua/South Kinangop/166853 within Nyandarua County to relocate to.

3. The applicant testified that he wanted to dispose of the said parcel of land for commercial use but the same cannot be disposed of while the remains of his son are interred there. Thus, the applicant prays that he is allowed to exhume his son's remains to enable him bury them on the said land in South Kinangop where his children and himself have designated as a permanent resting place.

The Law

4. **Section 146 of the Public Health Act** provides:-

Subject to the provisions of Section 147, it shall not be lawful to exhume any body or the remains of any body which may be interred in any authorized cemetery or in any other cemetery, burial ground or

other place without a permit granted in the manner hereinafter provided.

Such a permit shall be granted only to the legal representative or the next of kin of the person buried, or to his or their duly authorized agent.

5. The applicant has given evidence on oath that he is the biological father of the deceased and given reasons why he wished to move the remains of his deceased son from North East of Ruiru Township to South Kinangop. He has annexed the two title documents of his two parcels of land. The death certificate of the deceased is also annexed to this application. The applicant being the biological father of the deceased and his next of kin has complied with the provisions of Section 146 of the Public Health Act.

6. I find this application successful and hereby give the following orders: -

a) That the respondent do issue the applicant with a permit to exhume the remains of the late John Mwaura Ndungu interred in L.R. No.1336/6 North East of Ruiru Township within Kiambu County.

b) That the respondent do supervise the exhumation and issue a permit for reburial of the remains of the said John Mwaura Ndungu on L.R.

No. Nyandarua/South Kinangop/166853 within Nyandarua County.

c) That the officer Commanding South Kinangop Police Division do provide Security during the re-interment.

d) This being an ex parte application, there shall be no order as to costs.

7. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 7TH DAY OF MAY 2026.***

F. MUCHEMI

JUDGE