



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 463 OF 2017

**KENNETH GATHURA KIMANI (Suing as the personal representative of the estate of
STANLEY KIMANI MUKABI -deceased.....PLAINTIFF/APPLICANT**

VERSUS

GRACE NJERI MACHARIA.....DEFENDANT

RULING

1. The Plaintiff/Applicant filed the Notice of Motion dated 13/10/2017 Under Section 63(c) of the Civil Procedure Act, Order 40 Rule 3 (1) of the CPR, section 3 and 4(1) (a) of the Contempt of Court Act No 46 of 2016 and all enabling provisions of the law, seeking the following orders;

- a) That this Honourable Court do find, hold and declare that **GRACE NJERI MACHARIA** is in contempt of Court for disobeying Court Orders issued on the 28th September 2017.
- b) That this Honourable Court be pleased to Order the committal to prison of GRACE NJERI MACHARIA for such period of time as this Honourable Court may deem fit and just for disobeying/defying the Court orders of 28th September 2017.
- c) That this Honourable Court be pleased to order the exhumation of the remains of PETER MACHARIA MUKABI on land parcel No. Loc.8/GATUYA/419 as the act of interring him was against a Court order.
- d) That the Officer Commanding Kahuro Police Station do supervise the execution of the orders to ensure compliance.
- e) That the Court do grant such further orders or directions as it shall deem fit under the circumstances of this case.
- f) That the costs of the application be awarded to the Plaintiff /Applicant.

2. The application is premised on the following grounds;

- a. By orders made by the Honourable Court on 28th September 2017 (hereinafter referred to as “the order”), the Learned Judge directed and ordered inter alia, that:-

“Pending the hearing and determination of the application dated 27th September 2017 inter-parties a temporary injunction issues against the Defendant/Respondent, her agents, servants, and/or any persons claiming or acting on the Defendant/Respondent’s instructions, restraining her from burying and/or interring the remains of PETER MACHARIA MUKABI on the land parcel No. Loc. 8/GATUYA/419”.

- b. The order was duly extracted by the Plaintiff’s Advocates for service upon the Defendant.

c. On the same date 28th September 2017, a process server by the name Francis Makau Itule, in the company of the Plaintiff herein, proceeded to Gatuya Village, Kahuro Sub-county within Murang’a County, where the burial was scheduled to take place and served a copy of the Order, Plaint, Verifying Affidavit, Notice of Motion under Certificate of Urgency, summons to enter appearance and Plaintiff’s list of documents upon the Defendant herein.

d. That as at the time of service 11.30 am, burial had not taken place and the cortege had just arrived from the mortuary in readiness for the burial.

- e. The order was served before actual interment of the remains of the deceased person in clear breach of the order which was already served.
- f. Notwithstanding the foregoing, the Defendant and/or her Agents, in a blatant and deliberate breach of the Court orders proceeded and buried on the suit land.
- g. As a consequence, thereof, the authority and dignity of this Honourable Court has been and continues to be exposed to ridicule and disrepute.
- h. In the result, the Defendant/Respondent herein is in contempt of the Court order.
- i. In the interests of justice and for the purposes of upholding the dignity and honour of this Honourable Court, the orders sought herein ought to be granted.
- j. The Applicants has no other means of enforcing the order.

3. Kenneth Gathura Kimani avers in his affidavit that he obtained orders on 28th September 2017 against the Respondent her agents servants and/or any persons claiming or acting on the Respondent's instructions restraining her from burying and or interring the remains of Peter Macharia Mukabi on the Parcel No. Loc 8/Gatuya/419. That he accompanied the process server one, Francis Makau Itule who effected service on the Respondent in his presence as evidenced in the affidavit of service attached. That neither the service nor the burial had taken place as the cortege had just arrived at the homestead from the mortuary. He states that upon service of summons, the master of ceremony together with some relatives held a brief meeting and resolved that the burial should proceed as the order had been served in the absence of a police officer. That in total disobedience of the Court order the burial proceeded. That he did confirm the burial took place when he went back to the homestead the same evening and even took pictures of the fresh grave with the cross and flowers which he has attached to the application.

4. In opposing the application, the Respondent in her replying affidavit filed on 29.9.2017 stated that vide an order of the Court dated 15.11.2002, the suit land had been subdivided into two parcels measuring 1.21 Ha and 3.48 Ha, that is Loc 8/Gatuya/1074 and 1075 respectively. That Peter Macharia Mukabi was buried on his land Loc 8/Gatuya/1074 by the clan members and not herself. She voiced her understanding that this terminated ELC No 277 of 2017, Muranga which had been filed by the parties before. On one hand the Respondent seems to be alluding to the fact that the process of subdivision is not complete and faults the land office for being inefficient in issuing the new title deeds for the resultant parcels of the land.

5. The Respondent termed the Court order attached to the application dated the 13/10/2017 stale as it was made subsequent to a certain order made on the 15.11.2002.

6. In her further replying affidavit filed on 22.11.2017 the Respondent admits that Peter Macharia Mukabi was interred on the 28th 9.2017. That on receipt of the telephonic news at about 11 am that her son Moses Mwangi had collapsed at the morgue leading to hospitalization, she lost consciousness and remained in her bedroom and neither her son nor her participated in the burial. That the sequence of events after she collapsed was narrated to her by mourners after the body had been buried. That neither her and her son Moses Mwangi participated in the burial. That the burial permit was issued in the name of her son Moses Mwangi. She avers that she was not aware of the goings on and that the burial was done by clan members and the public as is usual in burials.

7. Further she avers that she and her late husband Peter Macharia Mukabi have lived on the portion of the suit land since 1978. That the land was given to them by the late Stanley Kimani and her mother in law Anne Wangui. That they developed the land by planting additional 80 coffee trees and building a house. That exhumation of the body of her husband would be unfair and improper while the suit ELC No 257 of 2013- Nyeri is still pending.

8. The Applicant in his supplementary affidavit filed on 6.12.2017 confirmed that the Respondent was served in his presence whilst seated in the sitting room of her house.

9. The Respondent further filed grounds of opposition to the application dated the 13.10.17 on the grounds stated below;

- a. Prayers Nos. 1 & 2 are not properly brought before this Court
- b. The defendant has not committed any act which may be considered to be in contempt of Court
- c. The Preliminary objection dated the 3.10.17 relates to the suit and to the motion dated the 27.9.17 and not to the motion dated the 13.10.2017.

10. The Applicant submitted that the Respondent has not disputed service of the Court order issued on 28/9/17. That the Respondent has been evasive in her response to the application; that on one hand she claims that she did not play any part in the burial and on the other hand lost consciousness during the burial. That she has failed to lead evidence on the goings on of the day by affidavit or through an independent witness. Citing section 4(1) of the Contempt of Court Act No 46 of 2016, the Applicant gave the definition of contempt as simply the willful disobedience of a Court order. Citing the case of **Shimmers Plaza Limited Vs National Bank of Kenya Limited- CA NO 33 of 2012**, the Applicant submitted that a party who knows of an order is not permitted to hold that the suitors, solicitors could themselves judge whether an order was null or valid and decide not to obey it. As long as an order exists it must not be disobeyed. He further submitted that the Court expressed itself under the rules that notwithstanding that the penal notice is not contained, an undertaking to do or not do an act which is contained in a judgement or order may be enforced.

11. Finally, the Applicant submitted that there existed an order issued by the Court. That the said order was disobeyed. That the order was served at 11.30 am by the process server before interment of the body. That the Respondent became aware of the Court order. The deceased was the Respondent's husband and is a party in this case for which the order sought to restrain. That the only conclusion the Court should reach is to find that there is willful disobedience of the Court order.

12. The Respondent submitted that she did not personally disobey the Court order issued on the 28/9/17. That the defendant is not disputing service of the Court order hence she does not need to cross examine the process server. That she did not participate in the burial as she lost consciousness when she was informed that her son had collapsed at the morgue and had been admitted for treatment. That she did not engage in such conduct which would amount to disobedience of a Court order. In respect to the order for exhumation of the body, the Respondent terms it unfair as she and her late husband have always lived on the suit land and carried out developments over the years.

13. The Respondent further submits that when she received the news that her son had been hospitalized after collapsing at the morgue, she too collapsed and lost consciousness and was carried to her bedroom where she stayed for the rest of the day. That this agrees with the process server's statement that the Respondent was served in her house. That she must have collapsed before the cortege arrived at around 11.30 am. That the Applicant stated in his affidavit that immediately after the service of the Court order he saw the master of ceremony together with some relatives hold a brief meeting and resolved to proceed with the burial as the order was not served in the presence of a police officer. The Respondent submits that this agrees with the Respondent's submission that she did not participate in the burial as she fell unwell before the arrival of the process server. That in any event this unnamed master of ceremony and the relatives must have been the ones who disobeyed the order and not the Respondent.

14. That the Applicant has not challenged the evidence that the son of the Respondent who had gone to collect his father's body collapsed and was admitted for treatment at the Muriranja Hospital mortuary and this is what triggered the Respondent's illness at home. That no evidence has been tendered by the Applicant to suggest that she had the power to stop the master of ceremony and some relatives from reaching the decision to conduct the burial. She cited the case of **Priscila Wanja Kibui & James Kiongo Kibui & Anor (2014) ECLR** in support of her case.

15. Relying on the definition of contempt as stated in the contempt of Court Act, the Respondent submitted that the alleged contemnor must have willfully and deliberately engaged in conduct in contempt of the Court order, that in this case the plaintiff has not led evidence to show that the Respondent was in breach of a Court order.

16. She further submitted that since the Respondent was not present in Court when the order was served, the same ought to have been endorsed with a penal notice. That the penal notice was a crucial requirement which the Court overlooked. He pointed the Court to the case of **CFC Stanbic Limited Vs Florence Wairimu Mbugua (2016) ECLR**.

17. In further submissions the Respondent states that granting the prayer No 2 in the application would amount to pre-empting the decision of the Court in the ELC NO 277 OF 2017 which is pending determination and in which the Plaintiff's father had sued the defendant's husband for an order of eviction.

Analysis and Determination

18. The facts of this case are straight forward: On the 27.9.2017 the plaintiff filed suit against the defendant seeking an order to permanently restrain the defendant from interring the body of Peter Macharia Mukabi on the suit land. Simultaneously, he filed an application for seeking interim orders on even date and obtained a Court order on the 28.9.2017 in the following terms;

“That pending the hearing and determination of the application interpartes, this Court issues a temporary injunction order against the defendant/Respondent, her agents, servants and/or any persons claiming or acting on the Defendant/Respondent's instructions, restraining her from burying and/or interring the remains of Peter Macharia Mukabi on the land parcel No Loc /Gatuiya/419.

That the notice of motion dated the 27.9.2017 be heard interpartes on 5.10.2017.”

19. The following facts are not in dispute; that the parties seem to have had a long running litigation on the suit land dating back to 1995 between the defendant's husband and her brother in law (Peter Mwangi Mukabi) who is also the plaintiff's father; that the parties are related- the plaintiff's father was the brother of the defendant's husband; that Peter Macharia Mukabi died on 22/9/2017; That a Court order barring the Respondent from interring the remains of the said Peter Macharia Mukabi on the suit land was issued on the 28 /9/17. That the said Peter Macharia Mukabi was buried on the suit land on 28/9/17. The Respondent has admitted in submissions as well as her replying affidavit that she was served with the Court order.

20. I have considered the application the responses and the rival submissions and the annexures placed by the parties before the Court and the issues that commend themselves for determination are as follows; Whether there was a valid Court order? Whether the conduct of the defendant amounted to willful disobedience of the Court order whether the defendant is in contempt of the Court orders; Whether the Court can grant an order of exhumation of the remains of Peter Macharia Mukabi from the suit land.

21. Contempt of Court is defined under section 4 of the contempt of Court Act No. 46 of 2016 as follows; -

“(1) Contempt of Court includes —

(a) civil contempt which means willful disobedience of any judgment, decree, direction, Order, or other process of a Court or willful breach of an undertaking given to a Court; [emphasis is mine]

(b)

Section 3 states as follows;

“The objectives of this Act are to —

- (a) uphold the dignity and authority of the Court;
- (b) ensure compliance with the directions of Court;
- (c) ensure the observance and respect of due process of law;
- (d) preserve an effective and impartial system of justice; and
- (e) maintain public confidence in the administration of justice as administered by Court.

22. **Black’s Law Dictionary, 9th Edition at page 360** defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or Orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

23. Contempt is necessary for maintenance of law and Order and so that the dignity of the Courts is upheld. It is trite law that every person against whom a Court Order is made against has unqualified obligation to obey the Order however unpalatable the Order may be until or unless the Order is discharged or set aside. **See Econet Wireless Kenya Ltd vs. Minister for information & Communication of Kenya & Another [2005] 1 KLR 828** where the Court noted;

“Where an application for committal for contempt of Court orders is made the Court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious-a contemnor would have no right of audience in any Court of law unless he is punished or purges the contempt.” **Emphasis is mine.**

24. In the **Teachers Service Commission V Kenya National Union of Teachers & 2 others (2013) EKLR** Justice Ndolo stated as follows;

“The reason why Courts will punish for contempt of Court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the Court or even the personal ego of the presiding Judge. Neither is it about placating the Applicant who moves the Court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a Court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A Court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option”.

25. In the case of **Kenya Tea Growers Association Vs Francis Atwoli & 5 others (2012) EKLR** Justice Lenaola (as he then was) cited with approval the case of **Clarke & Others Vs Chadburn & Others (1985) 1 ALL ER (PC) 211** in which the Court observed that;

“I need not cite authority for the proposition that it is of high importance that orders of the Courts should be obeyed, willful disobedience to an order of the Court is punishable as a contempt of Court, and I feel no doubt that such disobedience may properly be described as being illegal... even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

26. It is also trite law that the standard of proof in contempt is higher than that of Civil Cases, but lower than the standard of beyond reasonable doubt as required in criminal proceedings. See the case **Gatharia K Mutikika Vs Baharini Farm Limited**

27. In order to succeed in civil contempt proceedings, the Applicant is duty bound to prove the following 4 elements; -

- a. the terms of the Order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
- b. the Defendant had knowledge of or proper notice of the terms of the Order;
- c. the Defendant has acted in breach of the terms of the Order; and

d. the Defendant's conduct was deliberate.

28. As to whether there was a valid Court order, the Court has perused the file record and the Court order complained about states as follows;

“That pending the hearing and determination of the application interpartes, this Court issues a temporary injunction order against the defendant/Respondent, her agents, servants and/or any persons claiming or acting on the defendant/Respondent's instructions, restraining her from burying and/or interring the remains of Peter Macharia Mukabi on the land parcel No Loc /Gatuiya/419

That the Notice of Motion dated the 27.9.2017 be heard interpartes on 5.10.2017.”

29. The Respondent has acknowledged receipt of the Court order thereby had knowledge of the same before the burial begun. As to the requirement whether the terms of the aforesaid order were unambiguous and clear and whether the defendant had knowledge or notice of the same, it is clear from the pleadings and affidavit evidence that these two are not disputed by the Respondent. In that case this Court therefore reaches an unescapable conclusion that the order was both clear in its meaning and import and also that the Respondent had knowledge of it. The finding is that there was indeed a valid Court order.

30. The Respondent has raised the issue of absence of a penal notice attached to the Court order. It is alleged that the burial proceeded as the order was not served in the presence of a police officer. The Court of Appeal in the case of **Shimmers Plaza Ltd Vs NBK (2015) Eklr** Karanja, Mwera, Mwilu JJA also approved the growing jurisprudence right from the High Court that has reiterated that knowledge of a Court order suffices to prove service and dispenses with personal service for the purposes of contempt proceedings. The Court of Appeal in the above Shimmers Plaza case cited with approval Hon Lenaola J in **Basil Criticos Vs Attorney General & 8 Others (2012) eKLR** where the learned Judge pronounced himself thus:-

“...the law has changed and as it stands today knowledge supersedes, personal service.....where a party clearly acts and shows that he had knowledge of a Court order, the strict requirement that personal service must be proved is rendered unnecessary.”

It is my understanding that where knowledge has been proved then personal service and the requirement of penal notice is not necessary.

31. As to whether the Respondents conduct was in breach of the order, the Respondent has in her pleadings and affidavit evidence persuaded the Court that she collapsed before the process server and the cortege arrived and did not play any part in respect to the interment of the deceased's body and/or the actual burial. She however did not state who buried the deceased body other than to say it was the act of the unnamed clan members and other persons unknown to her as is usual at burials. The Respondent appears to be apportioning blame on unnamed third parties and in her submissions attempted to paint a picture of utter helplessness on her part to prevent the alleged unnamed master of ceremony and some relatives from disobeying a valid Court order.

32. From the evidence on record, the Court has pieced together the events of the day. Moses Mwangi, the Respondent's son, accompanied some mourners to Muriranja mortuary at 9 a.m to collect the body. Moses Mwangi collapsed at the morgue at 11 am. There is a treatment note which states he was treated at 11.10 am. On receipt of the news, the Respondent states that she collapsed and fell unconscious. The cottage carrying the body of the deceased arrived at the homestead just before 11.30 am. The process server accompanied by the Applicant arrived at 11.30 am upon inquiry served the Respondent at 11.30 am. She was served in her house/sitting room and she willingly accepted service of the Court order. At this time the burial had not begun as the body had just arrived from the morgue. The burial took place notwithstanding the knowledge of the existence of the Court order by the Respondent.

33. The Respondents averments that Moses Mwangi was admitted is not supported by any admission and discharge documents. What is on record is a treatment and prescription note to show that upon collapse the doctor prescribed some medication. The Respondent is a party to the suit and the target of the Court order and not Moses Mwangi who had been issued with a burial licence. From the events of the day, even if it is taken that indeed the Respondent collapsed on receipt of the news in respect to Moses Mwangi, it is stated that Respondent was served with the Court order in the sitting room in her house at around 11.30 am. She accepted service but declined to sign the documents. This denotes that the Respondent was conscious and well aware of the goings on. In the absence of evidence to the contrary, the Court is unable to believe the Respondent's evidence that she did not participate in the burial as she lost consciousness the whole time. No contrary evidence has been adduced otherwise.

34. Given that she was conscious at the point of accepting service, the Respondent had a duty to obey the Court order from the moment she had knowledge of the same as well as to bring the existence of the said order to the attention of all concerned that the burial had been stopped. There is no evidence that she did so.

35. Black's Law Dictionary, 9th Edition defines “wilful” to mean voluntary and intentional Wilfulness is the fact or quality of acting with purpose or by design; deliberateness; intention...; the voluntary, intentional violation or disregard of a known legal duty. Wilful disobedience refers to an offence of intention. Intention is a state of mind or wilful actions of the mind. You are not gravitated by any default. The person is premeditated in the action and result.

36. It is clear from the wording of the order aforesaid that the order sought to restrain the defendant/Respondent, her agents, servants and/or any persons claiming or acting on the defendant/Respondent's instructions, restraining her from burying and/or interring the remains of Peter Macharia Mukabi on the land parcel No Loc /Gatuiya/419. The Respondent cannot be heard to blame the master of ceremony, clans men relatives and the public. On receipt of the Court order all these actors were by extension and inference enjoined from taking any step towards the interment of the body of the deceased. It is difficult to believe that clan members/relatives and other persons would proceed to bury the husband of the Respondent without her involvement. The Respondent has not stated for how long she remained unconscious. It is doubtful that she remained comatose throughout the burial ceremony. The fact is she was served with a Court order which she elected to disobey.

37. Borrowing the words of Justice Ndolo in the case of **Teachers Service Commission V Kenya National Union of Teachers & 2 others (2013) EKLK** this Court associates itself with the following;

“A Court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option”.

38. Guided by the above decision the Respondent had only and only one option which is to obey the Court order however unpalatable it may have been, call off the burial and appear in Court on the 5/10/17 as directed by the honourable Court. She did not. In any event the said unnamed persons being the master of ceremony, relatives etc were equally bound by the said order. There is no escape. The Court is unable to accept that the Respondent was a helpless bystander.

39. The Court associates itself with the observation of the learned Justices of Appeal in the case of **Shimmers Plaza Limited Vs National Bank of Kenya Limited CA No 33 of 2012** when it quoted Theodore Roosevelt, the 26th President of the United States who once said;

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour.”

40. The Court finds that the Respondent knowingly buried the deceased on the suit land in breach of the terms of the Court order. Such actions amounts to contempt of Court. This Court finds the Respondent guilty of contempt of Court for disobeying lawful orders of the Court issued on 28 /9/2017. The next step is to consider the appropriate punishment that should be imposed on the Respondent.

41. Section 5(b) of the Contempt of Court Act gives this Court the power to punish for contempt of Court. Section 28(1) states as follows;

“Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of Court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both”. (emphasis mine).

42. Section 63(C) of the Civil Procedure Act provides as follows;-

“In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed—

(a)

(b)

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”

43. Order 40 rule 3 of the Civil Procedure Rules provides the consequences of contempt which includes in case of disobedience or breach of any terms of a Court Order, an order for the property of the person guilty of such disobedience or breach to be attached and may also Order such person to be detained in prison for a term not exceeding 6 months. This goes to show that the punishment for contempt is not light, other than attachment of the property of the guilty contemnor, his liberty is also at stake.

44. The Applicant has sought the committal of the Respondent to prison for such period as the Court may deem fit as well as exhumation of the remains of the deceased from Loc 8/Gatuya/419. In respect to a punishment of committal to prison, the Court notes that contempt of Court being quasi criminal in nature, it is important that the contemnor is given a chance to address the Court in mitigation before being sentenced. This Court has no reason to deny the Respondent this chance.

45. In respect to the prayer for exhumation of the remains of the deceased, this Court has power to so order for exhumation. It is trite law that a person cannot be allowed to benefit from an illegality. It has been brought to my attention in the pleadings that there subsists a dispute on the said Loc 8/Gatuya/419 ELC NO 277 of 2017 at Muranga between the parties in this case. The dispute concerns the ownership of the suit land. it therefore follows that the main suit in which the rights of the parties would be determined conclusively is yet to be heard. I find no justifiable reason to order for exhumation at this point and am inclined to defer the said exhumation until the hearing and determination of the suit when the final orders would be made regarding the rights of the parties over the suit property. The remainder of the body on the suit land does not give the Respondent an advantage over the suit property nor does it prejudice the rights of the plaintiff’s claim or right in the suit property. If on the other hand the body is exhumed and it turns out that the Applicant has no right over the suit property then the body of the deceased would have been disturbed unnecessarily and would have to be reburied on the suit property. It is equally true that if the contrary finding is arrived, then the body must be exhumed at that point without further orders of this Court. This Court is not satisfied that the Respondent’s contempt would justify the exhumation of the body at this stage. It is to be noted that the parties are related. The balance of convenience lies on the body remaining buried where it is and may be exhumed and buried at the rightful place when the case is heard and finally determined.

46. The upshot the application is merited and orders are as follows;

a. That Grace Njeri Macharia is guilty of contempt of Court orders issued on 28/9/2017 and is liable for punishment.

b. That the said Grace Njeri Macharia to appear before this Court for mitigation and sentencing on a date to be fixed to address the Court in mitigation if she wishes before the sentence is meted out.

c. The costs of the application are awarded to the Plaintiff.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF MAY 2018.

J G KEMEI

JUDGE