



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 127 OF 2015

RUNGARE MUTHOGA1ST PLAINTIFF (DECEASED)

DANIEL MAINA KARIENYE.....2ND PLAINTIFF/RESPONDENT

MONICA WANGECHI KARIENYE....3RD PLAINTIFF/RESPONDENT

-VERSUS-

VERONICA WANGECHI MUGEREKI.....DEFENDANT/ APPLICANT

RULING

1. On 23rd August, 2017 Veronica Wangechi Mugereki, hereinafter referred to as the applicant, obtained an order to restrain the 2nd and 3rd respondents herein, their families, servants and agents from burying the remains of the 1st plaintiff, Rungare Muthoga (the deceased) on the parcel of land known as LR No. Aguthi/Gititu/64-the suit property.

2. Claiming that the respondents despite having been served with the order referred to above, disobeyed it by burying the remains of the deceased in the suit property, the applicant filed the application dated 24th August, 2017 *inter alia* seeking the following orders:-

(i) Exhumation of the remains of the deceased person;

(ii) Punishment of the respondents for contempt of court.

3. The application is supported by the affidavit of the applicant where it is reiterated that the respondents disobeyed the order of the court referred to herein above despite the same having been served on them.

4. In reply and opposition to the application, the respondents filed the grounds of opposition and replying affidavit dated 18th September, 2017 and 24th October, 2017 respectively. Through those pleadings, the respondents deny having been served with the orders herein and contend that they were entitled to bury the remains of the deceased person in the suit property because he had become entitled to it by adverse possession.

5. In a rejoinder, the applicant filed further affidavits. One sworn by the police officer who participated in the service of the order, (Dina Mwita) and another one by herself reiterating her averment that the respondents were served with the order referred to herein above but deliberately disobeyed it.

Analysis and determination

6. After considering the application, the grounds, the affidavits and grounds of opposition, this court finds the sole issue for determination to be whether the applicant has made up a case for being granted the orders sought or any of them.

7. With regard to that issue, having read and considered the affidavit evidence tendered in this application, I have no doubt that the respondents were served with the court order hereto. That fact is laid bear by the affidavits sworn in support of the application whose contents I have no reason for disbelieving.

8. The reasons offered by the respondents for burying the deceased in the suit property being incapable of forming a basis or an excuse for disobeying the order hereto, I find and hold that the applicant has made up a case warranting the citing of the respondents for contempt of court. Accordingly, I order the respondents to, within 14 days of delivery of this ruling, show cause why they should not be punished for disobeying the court order hereto.

9. As concerns the order for exhumation of the deceased body, having considered the peculiar circumstances of this case, where the deceased has a decree entitling him to a portion of the suit property, the order that comments itself is to stay the consideration of that issue pending the hearing and determination of the main suit.

10. As the applicant has partially succeeded in her application, I award her costs of the application.

11. Orders accordingly.

Dated, Signed and Delivered in open court at Nyeri this 17th day of December, 2018.

L N WAITHAKA

JUDGE

Coram:

Mr. Ng'ang'a Munene h/b for Wahome Gikonyo for the plaintiffs

N/A for the defendants

Court assistant - Esther