



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO.395 OF 2016
ESTHER TALU MWAKICHILU.....PLAINTIFF
VERSUS
ZEDEKIA MWAMVUNYU..... DEFENDANT
RULING

1. This is the Notice of Motion dated 13th November 2016. It is brought under Section 19 of the Environment and Land Court Act Section 1A, 3A and 63 (e) of the Civil Procedure Act, Order 40 and 51 of the Civil Procedure Rules 2010 and all enabling provisions of the Law.

2. It seeks orders to

1. Spent

2. That pending the hearing and determination of this application this Honourable Court do issue orders for the exhumation of the remains of Dominic Mwamba Mwaluma from the Applicant's unsurveyed plot situated at Marapu Village Teri a sub-location of Sagalla.

3. That the O.C.S., Voi Police Station do have see and provide security to effect these orders.

4. That costs of this application be in the cause.

3. The grounds relied upon are that the applicant is the owner of the suit land and that the respondent has without any colour of right and in total disregard of the rights of the applicant interred the remains of the deceased on the suit property. The application is supported by the affidavit of Esther Talu Mwakichilu the Plaintiff/Applicant herein sworn on the 13th November 2016.

4. The application is opposed. There is a replying affidavit sworn by Zedekia Mwamvunyu the Defendant/Respondent on the 15th day of March 2017.

5. I have considered the application herein and the supporting affidavit. I have also considered the Replying affidavit and relevant provisions of law. The issue for determination is whether the Plaintiff/Applicant has made out a prima facie case to warrant the grant of the orders sought.

6. The Plaintiff/Applicant told the court she is the owner of unsurveyed plot that the Defendant/Respondent has interred the remains of the late son on the plot. That as a result she is unable to

go on with her farming activities.

7. The Defendant/Respondent on the other hand claims that this is family land which has not been subdivided.

8. From the foregoing, I find that the application herein cannot be allowed until all the parties are heard. I find that it is in the interest of justice that the parties are given an opportunity to ventilate their claims by way of adducing evidence.

9. I hereby decline to grant the orders sought to at this stage. The Plaintiff/Applicant counsel is hereby directed to expeditiously have this suit set down for hearing.

10. The upshot of the matter is that the application is hereby dismissed. The costs do abide the outcome of the suit.

Orders accordingly.

L. KOMINGOI

JUDGE

22/6/17

Ruling dated and delivered in open court on the 22nd day of June 2017 in the presence of Mr. Ratemo for the plaintiff, the defendant and the court assistant Koitamet.

L. KOMINGOI

JUDGE

13/6/17