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| Case Number:                 | Civil Case 9 of 2012  |
| Date Delivered:              | 26 Nov 2013   |
| Case Class:                  | Civil   |
| Court:                       | Environment and Land Court at Nyeri   |
| Case Action:                 | Ruling  |
| Judge:                       | Antony Ombwayo  |
| Citation:                    | Esther Wambui Njagi (suing as a next friend and sister) n Charles Macharia Muitu v John Kihara Kamau & 2 others [2013] eKLR |
| Advocates:                   | Mr Wachira for the Applicants   |
| Case Summary:                | -   |
| Court Division:              | Land and Environment  |
| History Magistrates:         | none  |
| County:                      | Nyeri   |
| Docket Number:               | -   |
| History Docket Number:       | none  |
| Case Outcome:                | Application allowed   |
| History County:              | -   |
| Representation By Advocates: | One party or some parties represented   |
| Advocates For:               | none  |
| Advocates Against:           | -   |
| Sum Awarded:                 | none  |

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**ENVIRONMENT & LAND COURT**

**CIVIL CASE NO.9 OF 2012**

ESTHER WAMBUI NJAGI (*suing* )

*as a next friend and sister* )

CHARLES MACHARIA MUITU

).....PLAINTIFFS

**VERSUS**

JOHN KIHARA KAMAU )

MARY MURINGI KIHARA )

THE CHIEF LAND REGISTRAR ).....

DEFENDANTS

**RULING**

The application before court is dated 11/11/2013 commenced by way of Notice of Motion. The applicant prays for orders that a **mandatory injunction** compelling Peter Njagi Wambugu, his agents, servants or anybody claiming interest under him to exhume and remove the body of Esther Wambui Njagi from parcel of land Chinga/Kagongo/1033 and bury it elsewhere and that a **temporary injunction** be issued to restrain the enjoined party Peter Njagi Wambugu, his agents, servants or anybody claiming interest under him from entering, occupying or doing anything that may prejudice the interest of the applicants in parcel of land Chinga/Kagonjo/1033. **Moreover**, that the Honourable Court be pleased to order the District Public Health Officer, Nyeri South to supervise the exhumation process. **Lastly**, that the Honourable Court be pleased to order the Officer Commanding Police Station, Othaya to provide adequate security during the exhumation exercise.

The application is based on grounds that the first plaintiff Esther Wambui Njagi died on 4th October 2013 and her body had been lying at Consolata Catholic Mission Hospital Mortuary until on 7th November, 2013 at 6 am when the body was released to her husband Peter Njagi Wambugu for burial who, without informing the applicants, went to the suitland with young men, dug a grave and interred the first plaintiff's body therein an act that the applicants who are the registered owners of the land came to know later in the day when the body had already been buried as the entire exercise was shrouded in secrecy. He claims that the 1st plaintiff never claimed any personal interest in this land. She was married and had matrimonial land in the neighborhood where she could be buried. He complains that the act of burying the deceased in his land is a nuisance that was aimed at causing him annoyance and distress.

In the supporting affidavit the 1st applicant John Kihara Kamau states that he is registered jointly with the 2nd defendant as owners of parcel of land Chiang/Kagongo/1033. He states that Esther

Wambui Njagi filed this suit alleging that she was doing so as a next friend of Charles Macharia Muitu, the former owner and claiming that that the seller had no capacity to sell the land and that the transfer of the same to the defendants should be cancelled. The defendants filed their defence and stated that the seller of this land was of sound mind and the first plaintiff had no authority to file this suit on behalf of the second plaintiff. The seller also raised an issue that he had not been adjudged that he was of unsound mind and that the first plaintiff had no mandate to bring this suit on his behalf, which issues are pending in court for determination. In her pleadings and other documents she had filed, Esther Wambui Njagi does not claim any personal interest in this land and according to her she only intends to protect the seller's interest. Unfortunately, during the pendency of this suit the first plaintiff died on 4th October 2013 and her husband refused to bury her in their own land alleging that she left a curse that she must be buried in the suitland. However, her husband kept her body in Consolate Mission Hospitals mortuary until 7th November 2013 when very early in the morning he took away the body and buried it in the suitland before 8 am in the morning.

The interested party Mr. Peter Njagi Wambugu was served but did not appear. There is an affidavit of service sworn and filed on 19/11/2013.

Mr. Wachira, advocate for applicants submitted that Mr. John Kihara Kamau and Mrs Mary Muringi Kihara are the proprietors of suit parcel of land No.Chinga/Kagongo/1033. Their nature of title is absolute.

Mr. Ng'ang'a for the 2nd defendant did not oppose the application whilst M/s Wambui for 1st plaintiff left it to court. **Section 24 of the Land Registration Act No.3 of 2012** provides that the registration of a person as the proprietor of land shall vest in the person the absolute proprietorship (ownership) of that land together with all rights and privileges belonging or appurtenant thereto. The applicants being registered owner of the suit land, are entitled to the orders sought to Notice of Motion dated 11/11/2013.

The upshot of the above is that this court grants a **mandatory injunction compelling Peter Njagi Wambugu, his agents, servants or anybody claiming interest under him to exhume and remove the body of Esther Wambui Njagi from parcel of land Chinga/Kagongo/1033 and bury it elsewhere. secondly a temporary injunction is hereby issued to restrain the enjoined party Peter Njagi Wambugu, his agents, servants or anybody claiming interest under him from entering, occupying or doing anything that may prejudice the interest of the applicants in parcel of land Chinga/Kagonjo/1033. Thirdly, I do order the District Public Health Officer, Nyeri South to supervise the exhumation process and lastly the Court orders the Officer Commanding Police Station, Othaya to provide adequate security during the exhumation exercise. Costs to be born by the interested party. Orders accordingly.**

**Dated, signed and delivered at Nyeri this 26th day of November 2013.**

**A. OMBWAYO**

**JUDGE**



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