

**THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

MISC. CIVIL CAUSE NO. 8 OF 2020

PAUL KING'ARA MTUI APPLICANT

VERSUS

**1. THE DIRECTOR MWANZA CITY COUNCIL }
2. THE ATTORNEY GENERAL } RESPONDENTS**

RULING

Last Order: 12.02.2021

Ruling Date: 16.02.2021

A.Z MGEYEKWA, J

The applicant filed an application made under the certificate of urgency brought under sections 68 (e) and 95, Order XLIII Rule 2 of Civil Procedure Code Cap.33 [R.E 2019]. The application was accompanied by an affidavit sworn by Paul King'ara Mtui, the applicant.

The respondent opposed the application vide counter-affidavit sworn by Joseph Vungwa, Solicitor.

The application is borne from the facts that, the applicant has brought this application under the certificate of urgency claiming that the respondents intend to deny the applicant an opportunity to bury the deceased one Ntondi Michael Manugwa who was the applicant's close friend and he had no any relative apart from the applicant who was the only guardian of the deceased.

When the application was called for hearing, Mr. Faustine Chebwa, learned counsel appeared for the applicant, and Mr. Joseph Richard Vungwa, Solicitor appeared for the respondents.

In supporting the application, the applicant stated that he has filed a Miscellaneous Civil Case No. 08 of 2020 before this court whereas the applicant's Advocate prays for this court to declare that the applicant has the right to claim the deceased's body of Ntondi Micahel Manungwa and bury him. He went on to urge this court to retrain the respondent from removing the body of the deceased from the mortuary and not to interfere with burial arrangements as it has been organized by the applicant. Mr. Chibwa urged

this court to order the respondent to handover the deceased body to the applicant.

He argued that the applicant and the deceased meet in 2007 at that time the deceased was sick. He stated that the applicant was the only person who was a relative and a friend of the deceased. He added that the applicant provided shelter, food, and medical care to the deceased since he had no any other relative to take care of him. To support his submission he referred this court to Annexure B a medical receipt. Mr. Chubwa went on to state that on 06th April, 2014 out of natural love and affection, the deceased gifted the applicant a plot. To bolster his submission he referred this court to the deed of gift which accompanied the application.

It was Mr. Chibwa further submission that the deceased passed away on 03rd November, 2020, and the applicant was informed that his friend had passed away. He went on to narrate that on 05th November, 2020 the applicant wrote a letter to Kigoto Sreet Chairman requesting for recognition letter that he was the only close friend of the deceased. He added that on 10th November, 2020 the applicant wrote another letter to Nyamagana District Commissioner requesting intervention to allow him to take the deceased body for the burial ceremony.

Again, on 24th November, 2020 the applicant wrote a letter to Mwanza Regional Commissioner asking for permission to take the deceased body from the mortuary whereas the Regional Commissioner replied on 08th December, 2020 his request was rejected on the ground that the wife or blood relative of the deceased are the ones who are entitled to request for the deceased body. Mr. Chebwa valiantly argued that it was not correct to say that only a blood relative can request for the deceased body. He lamented that there is an allegation that the deceased is not a Tanzanian citizen, he wondered why the same allegation did not arise when the deceased was alive. He strongly argued that the deceased is a Tanzanian. To fortify his submission he attached a voter's card of the deceased.

Mr. Chibwa did not end there, he argued that in a letter from the Immigration Department (MCC1) it is stated that the deceased is a person who stayed in Tanzania for a long and the Immigration Department found that the deceased arrived in Tanzania before 1972. For that reason, it was Mr. Chebwa view that the deceased was required to be buried in Tanzania, not in Burundi.

On the strength of the above submission, Mr. Chibwa urged this court to allow the applicant's application and allow him to bury with honour and respect the deceased.

In riposte, the respondent's Solicitor urged this court to adopt the counter affidavit and form part of his submission. Mr. Vungwe valiantly argued that there is no any evidence to prove that the deceased had no any relatives. To support his submission he referred this court to Annexure A whereas the deceased's wife witnessed the transfer of the gifted plot to the applicant. He strongly argued that a relative is not formed by giving one aid. He added that giving charity can be done to anyone and the same does not make them blood-related.

Mr. Vungwe went on to argue that the deceased was not a Tanzanian citizen, he was not registered as a Tanzanian. To bolster his argumentation he referred this court to paragraph 5 of the counter affidavit. He went on to argue that the Tanzanian Government through the Ministry of Foreign Affairs conducted the Burundian Embassy via a letter dated 23rd December, 2020 to make arrangements of collecting the deceased body and his properties. He added that the Burundian Government replied via a letter dated 30th

December, 2020. He insisted that the Government cannot allow the applicant to take the deceased's body while they have already communicated with the Burundian Embassy. He added that the process of the gifted deed was *void ab initio* because the deceased was not a Tanzanian citizen. He also insisted that there is no any proof that the applicant paid for medical treatment of the deceased considering that the two were not living under one roof.

The learned Solicitor continued to lament that the District Commissioner and Regional Commissioner have discharged their duties under the National Security Council Act No. 08 of 2010 and Regional Administrative Act. Mr. Vungwe stated that the Burundian Government is in the process to collect the deceased body.

On the strength of the above argumentation, Mr. Vungwa urged this court to dismiss the application.

In his brief rejoinder, the applicant's Advocate reiterated his submission in chief and insisted that the applicant has proved the relationship with the deceased as the next of kin the applicant takes charges. Mr. Chibwe went on to state that the deceased's wife passed away. He insisted that the Immigration Office advised the proper Government body to issue a burial

permit and the Ministry of Foreign Affairs is the proper body to decide on the matter at hand because the Immigration Office already stated that the deceased stayed in Tanzania for a long time thus he cannot be removed. He valiantly argued that examining annexure MCC2 the respondent stated that the deceased passed away at Bugando Hospital while the fact differs from what is stated in other annexures.

In conclusion, Mr. Chebwa urged this court to grant their prayers and observe the Immigration orders.

I have given due consideration to the submissions of both learned counsels, on the application whereby both learned counsels have submitted in length for and against the instant application. Given the nature of the application before me, I will be guided by the submissions made by both learned counsels. The Applicant is praying for an order among others that he should be allowed to bury the body of the deceased friend one Ntondi Michael Manungwa who passed away on 03rd November, 2020. The basis of his application is such that the applicant met for the first time in 2007 and became very close friends to the date of death of the deceased.

The applicant also stated that there are times when the deceased got sick and he is the one who attended and took care of him including payment of medical expenses to the time of his recovery. The applicant's advocate Mr. Chebwa informed this court that at one time the late Ntondi Michael Manungwa disposed of his land to the applicant by way of a gift where the said transaction was witnessed by the street Chairman.

On the other hand, Mr. Vungwa, Solicitor valiantly opposed the application based on the reason that the applicant has no good reason to convince this court to allow him to bury Ntondi Michael Manungwa's body because he is not a relative of the deceased. He added that the Ministry of Foreign Affairs has already communicated with the Burundian Embassy and ordered them to collect the deceased's body.

In reply thereof, the applicant's stated that the deceased has no any relative who can bury him and that even the Immigration Authority *vide* a letter dated 10th November, 2020 which is marked as annexure MMC -1 confirmed that the deceased was a person who has stayed in Tanzania for a long time that he cannot be taken back to his country. The respondent also told the Court that the Government through the Ministry of Foreign Affairs and East African Cooperation has, *vide* its letter dated 23rd December, 2020 requested

the Burundian Embassy to make arrangements of collecting the deceased body and his belongings. The Burundian Embassy vide his letter dated 30th December, 2020 informed the Ministry of Foreign Affairs and East African Cooperation that they are working on the Ministry directives.

I understand that the applicant has a good intention to bury his friend with honour and respect. However, in a situation where there is a dispute like the one at hand the court is required to examine the circumstance of the case. In case, if the matter could have been between a relative and a friend then the court could have decided in favour of a relative.

Conversely, the circumstance of the instant case is between a close friend and the United Republic of Tanzania. The applicant claims for the deceased body for the reason that he wants to bury his close friend with honour and respect. On the other side, the Government of the United Republic of Tanzania has stated that the deceased was not a citizen of the United Republic of Tanzania. They went further to communicate with the Burundian Embassy requesting them to collect the body of their beloved one.

In my considered view, in a situation where a close friend and Government come into a conflict like in the instant case, the court has to decide the

matter prudently and allow the Government to proceed with the arrangements, which was already in motion.

Therefore, I order the responsible Ministry of Foreign Affairs and East African Cooperation to proceed with the burial arrangements.

In the upshot, the applicant's application fails and the same is hereby dismissed without costs.

Order accordingly.

Dated at Mwanza this 16th February, 2021.




A.Z.MGEYEKWA
JUDGE
16.02.2021

Ruling delivered on 16th February, 2021 via audio teleconference whereas Mr. Chebwa, learned counsel for the applicant, and Mr. Vungwe, Solicitor for the respondent were remotely present.


A.Z.MGEYEKWA
JUDGE
16.02.2021