

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**(FAMILY DIVISION)**  
**MISCELLANEOUS CAUSE NO. 141 OF 2021**  
**AND**  
**MISCELLANEOUS APPLICATION NO. 652 OF 2021**  
**(ARISING OUT OF MISCELLANEOUS CAUSE NO. 141 OF 2021)**

**JOVIA MATSIKO=====APPELLANT**

**VERSUS**

**EMMANUEL WANDERA=====RESPONDENT**

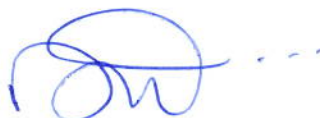
**BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA**

**RULING**

**Introduction**

This ruling is in respect of an application by Notice of Motion brought under Section 98 of the Civil Procedure Act, Sections 14 and 33 of the Judicature Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules. The application seeks orders that;

- (a) An order be issued authorizing the applicant to exhume and rebury the body of her late daughter the late Rebecca Nahurira from Aboke, Lira to her ancestral home in Rubaare village, Rwampara District;
- (b) A restraining order be issued against the respondent or anyone claiming any rights through him from interfering with the applicant in exhuming and decent reburying of the body of the late Rebecca Nahurira from Aboke, Lira to her ancestral home in Rubaare village, Rwampara District; and
- (c) The costs of the application be provided for.



### **The application**

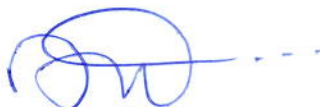
Miscellaneous Cause No. 141 of 2021 is brought by Mrs Jovia Matsiko against Mr. Emmanuel Wandera while Miscellaneous Application No. 652 of 2021 arises from the Miscellaneous Cause and is brought by Mr. Emmanuel Wandera against Mrs. Jovia Matsiko. The Miscellaneous Cause is supported by the affidavits of Mrs. Jovia Matsiko, Mr. Joab Twongirwe, and Caleb Magara (mother, brother, and paternal uncle of the deceased respectively) while the Miscellaneous Application is supported by the affidavit of Mr. Emmanuel Wandera. When the matters came up for hearing the two applications were merged and this decision will dispose of both of them.

### **Appearance and Representation.**

At the hearing of the applications, Mrs Jovia Matsiko was represented by Mr. Mujurizi Jamil David and Ms. Samantha Simenta Sayuni of Ms Mujrizi, Alinaitwe and Byamukama Advocates while Mr. Emmanuel Wandera was represented by Mr. Isaac Semakadde of Centre for Legal Aid and Mr. Ricky Mudali of Orima and Co. Advocates.

### **Facts**

The facts as deduced from the pleadings and submissions by counsel are as follows; Nahurira Rebecca (deceased) was a daughter of the applicant Ms. Jovia Matsiko and the late John Matsiko of Rubaare Rwampara District. The respondent Mr. Emmanuel Wandera was a husband to the deceased the two having got married at Mbuya Catholic church on 5<sup>th</sup> August 2017. This was after an introduction and giveaway ceremony that was held on 29<sup>th</sup> July 2017. The deceased and Mr. Emmanuel Wandera lived together as husband and wife until 7<sup>th</sup> May 2021 when she died at Paragon Hospital Kampala during child birth.

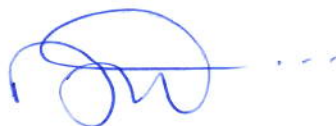




According to Mrs. Jovia Matsiko, the deceased was her late husband's favorite daughter and before he died, he made a WILL to the effect that whoever married the deceased should not pay bride price but she should also be buried next to him in Rubaare Village Rwampara District. She further states that when Mr. Emmanuel Wandera was introduced to the applicant by the deceased as an intending marriage partner, that position was communicated to him and he agreed to it. That the same position was communicated to Mr. Emmanuel Wandera and his relatives during the introduction ceremony that was held at the deceased's home and he was agreeable to it. Mrs. Jovia Matsiko further states that at the time of her death, the deceased's marital relationship with the respondent was strained due to the respondent's cruelty and marital infidelity. That the deceased had confided in her that she intended to leave the matrimonial home and return to her mother's house which she had even started renovating pending filing for a formal divorce.

Ms. Jovia Matsiko further states that even after the death of the deceased, the respondent was agreeable to burying the deceased at Rubaare Rwampara as per her wishes and those of her late father and even the grave had already been dug. However, he later changed his mind and violently stole the body of the deceased and indecently buried her in Aboke Lira in an isolated land belonging to a missionary father and the grave is not being taken care of. She further stated that since the burial of the deceased in Aboke, Lira, the spirit of the deceased and that of her late husband have continued to torment her because she did not implement their wishes.

On the other hand, Mr. Emmanuel Wandera did not make any response to the averments made by Ms. Jovia Matsiko but filed Miscellaneous Application No. 652 of 2021 which is supported by his affidavit in which he raised a number of preliminary objections and also emphasized his rights of burial of the deceased as a surviving spouse as compared to those of the deceased's mother Mrs. Jovia Matsiko.

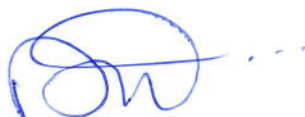


It is against that background that the two applications were filed in this court.

At the hearing, Mr. Isaac Semakadde counsel for Mr. Emmanuel Wandera while citing a number of court decisions made oral submissions and raised a number of preliminary objections as follows;

- (a) That Miscellaneous Cause No. 141 of 2021 was dismissed without notice on 9<sup>th</sup> September 2021 because the same was signed by the Registrar on 11<sup>th</sup> August 2021 but it was not served onto the respondent until 18<sup>th</sup> October 2021. He submitted that upon expiry of 21 days from the date of issue and 15 days thereafter without application for renewal of notice, the application was by law dismissed without notice.
- (b) That the High Court is not clothed with original jurisdiction to entertain Miscellaneous Cause No. 141 of 2021 because it is plainly an Inquest Cause. He submitted that the affidavit of Ms. Jovia Matsiko makes insinuations regarding the possible cause of death and this can only be handled by the Magistrates Court under the Inquests Act.
- (c) That paragraphs 11, 15, 17-20, 22-30, 33-45, 47-49, 51-52, 55-59 of the supporting affidavit of Jovia Matsiko, paragraphs 10, 12-13, 17-31, 33-38 of Joab Twongeirwe and paragraphs 10-14, 16, 18-20 and 24 of the affidavit of Caleb Magara should be struck out for being scandalous, irrelevant to the dispute before court and hearsay which is not admissible.
- (d) That after striking out the impugned paragraphs of the affidavits, the remainder does not disclose a reasonable cause of action.

Counsel for both parties made very lengthy submissions on the preliminary objections while relying on various court decisions. However, I have chosen not to address the preliminary objections but rather handle the application on its merits in





order to give this matter finality which should also resultantly bring possible closure to all the persons affected by the death and burial of the deceased.

### **Issues.**

Counsel for the parties did not raise any issues for determination but from the pleadings and submissions, I find that the following are the issues for determination

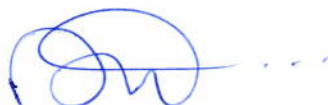
- 1. Who has the right to determine where the deceased, the late Rebecca Nahurira should be buried?*
2. Whether there exists a justifiable reason to exhume the remains of the late Rebecca Nahurira from Aboke, Lira and have her reburied in Rubaare Rwampara.

### **Resolution of the Issues.**

- 1. Who has the right to determine where the deceased, the late Rebecca Nahurira should be buried?*

It is the evidence of Mrs. Jovia Matsiko (mother to the deceased) and Caleb Magara (paternal uncle to the deceased) and the submissions of counsel that the deceased was the favorite daughter to her late father John Matsiko of Rubaare Rwampara. They contend that the deceased's late father made a WILL in which he clearly stated that whoever married the deceased should never be asked for the bride price and that upon death, the deceased should be buried next to him in Rubaare Rwampara. They further state that when Mr. Emmanuel Wandera was introduced to the deceased's family as the deceased's intended husband, he was informed of that condition about the burial wishes of the deceased's late father to which he agreed.

Mr. Mujurizi Jamil, Counsel for Mrs. Jovia Matsiko further submitted that in light of that WILL, she has the right to determine the burial place of the deceased given

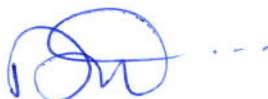


the fact that she is the holder of the Letters of Administration of the late John Matsiko. He further submitted that Mr. Emmanuel Wandera did not pay the bride price as the Banyankore culture dictates because of the condition that the deceased's late father had put in the WILL. While relying on the case of *Roe Versus Minister of Health (1954) 2ALL ER*, he submitted that since Mr. Emmanuel Wandera enjoyed the benefit of not paying the bride price for the deceased, he should also bear the associated burden of letting go of the rights to bury the deceased because the WILL which gave him an exemption from paying bride price also put a condition to the effect that the deceased would be buried near her late father in Rubaare Rwampara.

Counsel further relied on the court decision in the case of *Virginia Edith Wambuyi Otieno Versus Joash Ochieng Ouko and Omollo Siranga Civil Suit No. 4873 of 1986* and submitted that the right to bury does not automatically lie with the surviving spouse. That a lot of other factors should be considered including the wishes of the deceased on where to be buried upon death.

He further submitted that according to the affidavit of Mrs. Jovia Matsiko, the deceased had wished to be buried next to her late father and she used to tell this to her siblings.

On the other hand, Mr. Isaac Semakadde counsel for Mr. Emmanuel Wandera while relying on the decision of this court in the case of *Kyobe Julius Luseleka and 5 others Versus Aida Namalwa Miscellaneous Application No. 167 of 2021* submitted that Mr. Emmanuel Wandera as a surviving spouse enjoyed superior burial rights of the deceased over and above the rights of the mother, Mrs. Jovia Matsiko.





He further attacked the “WILL” that Mrs. Jovia Matsiko seeks to rely on in order to have burial rights of the deceased. He submitted that there is no right under our law to enforce any provision in a WILL that has not been probated. He further submitted that the alleged WILL did not name an executor and Mrs. Jovia Matsiko is only a holder of Letters of Administration of the estate of the late John Matsiko and therefore cannot purport to execute the alleged WILL. He also criticized the construction of the WILL and submitted that from the wording of the alleged WILL, it was not the deceased’s late father who dictated that the deceased should be buried near his grave but rather it was the wish of the deceased to be buried near the grave of her father.

Mr. Isaac Semakadde further submitted that the claim by Mrs. Jovia Matsiko and other witnesses that Mr. Emmanuel Wandera agreed to the condition of burying the deceased at Rubaare Rwampara as per the wishes of her late father, would be a prenuptial agreement. He submitted that a prenuptial agreement is one entered into before marriage by the two people intending to marry and it spells out how property owned by either or both parties shall be dealt with during the marriage, at its dissolution, or upon the death of either party. He further submitted that whereas our law does not make specific provisions for prenuptial agreements, it is trite that the terms and conditions of a prenuptial agreement will not be enforced if they are found to be repugnant to the constitution, written law, and the doctrines of equity as well as customary law and principles of justice, equity and good conscience. See Articles 2, 20, and 126 of the Constitution and Sections 14 and 15 of the Judicature Act.

Counsel then submitted that if at all, Mr. Emmanuel Wandera entered into the oral prenuptial agreement, it was unconstitutional, unlawful, illegal, inoperative, unenforceable, null and void. He contended that is unlawful because it had the



implication of taking away the matrimonial rights of Mr. Emmanuel Wandera enshrined in Article 31(1) 31(3) and 43 of the constitution.

In resolving the issue before me, the following questions have been framed to guide me;

- a) What is the law applicable in Uganda in determining contestations over burial grounds for a person who dies intestate?
- b) Who has priority rights over the burial of a person who dies intestate?

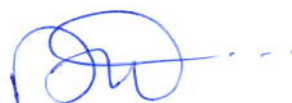
**What is the law applicable in Uganda in determining contestations over burial grounds for a person who dies intestate?**

In Uganda, there is no express law that regulates burial rights for a person who dies intestate. Any person that wishes to be buried in a particular place and in a particular way must state that wish either in a will or some other document that can be used to ascertain his/her wishes easily and clearly.

However, laws have been put in place to help courts in resolving such matters when they arise such as; the Constitution of the Republic of Uganda, 1995 (as amended), the Succession Act, Cap. 162, The Administrator General's Act Cap 157, the Judicature Act, Cap. 13, Civil Procedure Act, to mention but a few.

Section 14 (1) and (2) of the Judicature Act empower the High Court with unlimited jurisdiction over all matters that are in conformity with; written law, common law and the doctrines of equity.

Section 14 (2) (c) in particular provides that subject to the Constitution and this Act, the jurisdiction of the High court shall be exercised- where no express law or rule is applicable to any matter in issue before the High Court, in conformity with principles of justice, equity and good conscience.





Section 98 of the Civil Procedure Act provides that nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the court.

Thus, in absence of a specific law, this court shall exercise its powers in determining the issues before it while applying the principles of natural justice, equity, and good conscience.

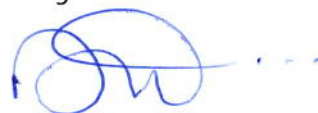
**Who has priority rights over the burial of the person who dies intestate?**

As earlier stated above, the wishes of the deceased are found in the WILL of that person. Those wishes are under the law executed by the executors who are always appointed by the deceased and named in the WILL. The executors should therefore enforce the wishes and or the rights of the deceased person. These rights may include the burial place, the burial arrangements and management of property etc.

Section 5(1) of the Administrator Administrator-General Act provides that;

“No grant shall be made to any person, **except an executor appointed by the will of the deceased or the widower or the widow of the deceased or his or her lawful attorney duly authorized in writing**, authorizing that person to administer the estate of the deceased person, until the applicant has produced to the court proof that the Administrator General or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear days’ definite notice in writing of his or her intention to apply for the grant.” [Emphasis added]

Applying a purposive interpretation to the above provision of the law, I find that upon death of a person, a number of rights accrue to different individuals in the following order of priority;

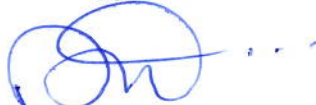


- (i) The rights and or wishes of the deceased take priority and that is why the WILL is given first mention;
- (ii) The widower or widow (the widower and the widow are given the same weight);
- (iii) The deceased's lawful attorney duly authorized in writing;
- (iv) Administrator General
- (v) Any other person with consent of the Administrator General.

Whereas number one (i) and three (iii) arise from the wishes of the deceased person either by a will or written authorization by the deceased, the second (ii) arises from the rights that accrue to the marriage parties upon marriage. Therefore, by law and in practice if you are not an executor, widow or widower of the deceased person, no Letters of Administration can be granted to you without a Certificate of No Objection from the Administrator General. Whereas an executor named in the WILL only needs to prove the authenticity of the will and whereas a widower or widow will only need to confirm the existence of a marriage between him/ her and the deceased, the rest of the world including close family members like parents and children of the deceased will require a Certificate of No objection from the Administrator General before court can grant them Letters of Administration to administer the deceased's estate.

Section 201 of the Succession Act Cap 162 provides for the order in which connections are entitled to administer. It provides thus;

*“When the deceased has died intestate, those who are connected with the deceased either by marriage or consanguinity are entitled to obtain Letters of Administration of his or her estate and effects in the order and according to the provisions hereafter contained.”*





The above provisions therefore recognize the rights of the widower and the widow as the most entitled persons to apply for Letters of Administration of the deceased's estate. Other relatives including parents will only come in where there is no widower, widow and children or where the children are still minors.

Section 277 of the Succession Act provides for the funeral of the deceased. It provides that;

*"It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his or her condition, if the deceased has left property sufficient for that purpose"*

The above provisions empower the executor of the deceased to perform the funeral. Whereas it does not specifically mention an administrator, it is trite that the administrator plays the exact same role as an executor.

In the instant case, the late Rebecca Nahurira died intestate and left no document stating where she wished to be buried. However, Ms. Jovia Matsiko, Mr. Joab Matsiko stated that the deceased told her and the siblings that she wished to be buried in Rubaare, Rwampara near the grave of her late father.

Mrs. Jovia Matsiko also seeks to rely on a document which she says is the WILL of her late her husband in which it is indicated that the deceased's late father had dictated that the deceased should be buried next to him in Rubaare, Rwampara. She attached a photocopy of that document on her application. It is written in vernacular but with an English translation. The English translation of the said document reads as follows;

*"KAKYEKA*

*20-02-2010*



## *TO MY LOVELY DAUGHTERS*

*I Matsiko John am informing my all relatives that when I die none should ask for bride price for my daughters Peninah and Edith. When they get married in future they should be buried at their husband's place. But Rabeca Nahurira the one I love most has requested me that she should be buried Rubare- Rwampara.*

*I Mastiko John*

*Signature*

## *WITNESS*

- 1. Nuwagaba Enock signature*
- 2. Kamurari James Kamurari James "*

Mr. Isaac Semakadde contended that this WILL has not been probated and therefore cannot be enforced and or executed and I agree with him. I also find that the said WILL is not authentic as having been authored by the late John Matsiko. In the first place, the court never had an opportunity of looking at the original of the document, none of the witnesses on the document was ever produced in court to confirm that the said document was authored by the late John Matsiko and its source was also not disclosed.

Supposing it was actually confirmed that the said document was indeed authored by the late John Matsiko, the next question that would arise is, who has the right to execute it? The document does not name any executor. Whereas it is not in dispute that Mrs. Jovia Matsiko is the administrator of the estate of the late John Matsiko, I have looked at a copy of the Letters of Administration which were granted to her on 28<sup>th</sup> May 2014 and I note that there is no mention of the WILL. If she was meant to execute the said WILL, then the Grant would indicate that they were "Letters of

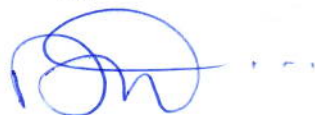


Administration with WILL Annexed.” The lack of that means that the said WILL has never been proved in court and Mrs. Jovia Matsiko cannot purport to execute it.

The other question relates to the wording of the document. Contrary to the contention of Ms. Jovia Matsiko and her counsel that it was the late father of the deceased who dictated where the deceased would be buried, the document indicates that it was the deceased who requested to be buried in Rubare- Rwampara. This would therefore mean that it was not the deceased’s father who dictated but the deceased requested to be buried in Rubare, Rwampara. The question that would then remain unanswered is, “Did Nahurira Rebecca make that request or not?” The question is unanswered because there is no one to confirm that actually the deceased made such a request to her father.

One more question that I have to answer is “supposing the document was authentic, it was probated, and the late Rebecca Nahurira had actually requested her late father to be buried in Rubare- Rwampara, would it bind Mr. Emmanuel Wandera in the absence of any evidence that it was brought to his attention and he actually voluntarily agreed to waive his burial rights as a surviving spouse?

Mrs. Jovia Matsiko, Joab Twongirwe and Mr. Caleb Magara averred that when Mr. Emmanuel Wandera was introduced in the family he was informed of the wishes of the deceased’s father both privately and publicly during the introduction and giveaway ceremony, a condition he agreed to. As noted earlier, Mr. Emmanuel Wandera did not rebut this averment. However, that notwithstanding, it is the position of the law that whoever asserts must prove. Apart from the averments of Mrs. Jovia Matsiko and Caleb Magara that Mr. Emmanuel Wandera agreed to the condition, they did not adduce evidence in proof of that. Whereas it may be true that he was informed of that condition, no evidence has been adduced to prove that he



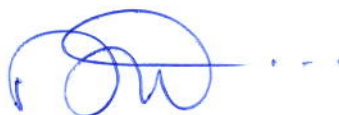
agreed to it. I believe that the giveaway ceremony was recorded and I would have expected the recording to have been produced in court to offer sufficient guidance. In the absence of any document and or recording where Mr. Emmanuel Wandera agreed to the burial condition of the deceased's family, I find it hard to make a finding that he actually agreed to that burial condition.

Article 31(1) of the Constitution provides that;

*“men and women of the age of eighteen years and above, have a right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution”*

This in my view means that, upon marriage, men and women have the right and are expected to live independently and exclusively of any other person (s) including their parents and or brothers and sisters and other relatives. I also find that this is in line with the Biblical principle in Genesis 2:18, 24. That portion of scripture states thus, “the Lord said ‘it is not good for man to be alone. I will make him a helper suitable for him’... For this reason, a man will **leave** his father and mother and **be united with his wife** and they will become **one flesh**”. This same principle was re-echoed by Jesus Christ in Matthew Chapter 19 verse five (Matthew 19:5).

Whereas I am mindful of the fact that Uganda is a secular nation and does not have a state religion, I am also alive to the fact that Christianity as one of the recognized religions in Uganda has the Bible as the major source of guiding principles, norms, values, and standards. In the instant case, Mr. Emmanuel Wandera and the deceased both practiced the Christian religion and chose to get married at Mbuya Catholic church. My considered view is that by doing this, they chose to be bound by the biblical principles which are taught in church. I, therefore, do not find it out of order to cite the Bible. Mrs. Jovia Matsiko averred in paragraph 15 of her affidavit that the





vows the respondent made with the late Rebecca in church were until death separated them. However, I do not agree with that averment because there are rights that accrue to a surviving spouse upon the death of one.

From the above constitutional provisions, marriage creates rights, duties, obligations and responsibilities among the married couple to the exclusion of others including parents and children. That provision of the constitution also anticipates dissolution and provides for equal rights at dissolution. That explains why even in divorce matters, it is a matter between a husband and wife and no one else is involved. The other may only come in as witnesses if they have any relevant information to the matter.

Article 31(2) of the Constitution further provides that;

“Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children”. This provision envisages the abuse of the rights of a surviving spouse upon the demise of another and that is why it calls for parliament to make laws that specifically protects the rights of a surviving spouse. It does not make mention of any other person(s).

Whereas parliament has not complied and or responded to the above provision by coming up with the law as provided, I am of a considered opinion that what is available in our succession laws is sufficient to resolve disputes of this nature.

Applying the marriage and the succession laws already alluded to in this ruling, I find that in the absence of a will by the deceased stipulating where she should be buried and having found that the purported WILL of her late father falls short, the next person in the order of priority to determine how the affairs of the deceased should be managed including where and how she should be buried is the widower



(respondent) as opposed to the mother or any other person. As already observed above, the intentions of the framers of the law were to ensure that the person who is closest to the deceased by law and in actual sense when they lived, should be given the first priority and the rest would follow.

In light of the above therefore, I find that in this case, the person who has burial rights over the deceased, the late Rebecca Nahurira is the widower, **Mr. Emmanuel Wandera as opposed to the mother and or any other relatives as this court has previously held in the case *Kyobe Julius Luseleka & 5 others* (relied on by counsel for the respondent).**

Having resolved the first issue, the second issue for determination is

**2. “*Whether there exists a justifiable reason to exhume the remains of the late Rebecca Nahurira from Aboke, Lira and have her reburied in Rubaare Rwampara*”**

Mr. Mujurizi, counsel for Mrs. Jovia Matsiko submitted that it is not automatic for the surviving spouse to have burial rights and there are other factors that should be considered. He invited me to depart from the earlier position of this court in the *Kyobe case* (supra). It has been averred by Mrs. Jovia Matsiko, Mr. Joab Twongirwe and Mr. Caleb Magara that at the time of her death, the deceased’s marital relationship with Mr. Emmanuel Wandera was strained due to his cruelty and marital infidelity. According to them, this information was given to them by the deceased herself and she was planning to leave her marital home and stay at her mother’s house which she was already renovating.

It is also contended by Mrs. Jovia Matsiko that the deceased was not given a decent burial because she was buried in an isolated place and not a home and that the land where she was buried belongs to a missionary father who raised Mr. Emmanuel





Wandera because he is an orphan having lost his parents in the Lords Resistance Army War. It was further argued for Mrs. Jovia Matsiko that there is land in Rubaare Rwampara where the deceased should be given a decent burial next to her late father and that the grave was already dug.

It was also averred by Mrs. Jovia Matsiko that since the burial of the deceased in Aboke, Lira, she has not had peace because the spirits of the deceased and her late father have haunted her accusing her of not enforcing their wishes.

On the other hand, Mr. Isaac Semakadde submits that no reasons have been advanced as to why this court should depart from its earlier position in the case of *Kyobe (supra)* regarding the superior rights of the surviving spouse.

He also contends that the fact that Mr. Emmanuel Wandera is truly an orphan and may also be of a lower economic and social status, it does not take away his rights to determine where his deceased wife would be buried.

Article 31(1) of the Constitution earlier cited gives men and women of the age of 18 years and above the right to found a family. It is important to point out that whereas we do not choose who our parents should be, when it comes to spouses, we make our own choices. That is why the constitution recognizes only marriages of people aged 18 years and above, capable of making informed decisions and choices.

In the instant case, the deceased's choice of a spouse was Mr. Emmanuel Wandera who she was well aware was an orphan having lost his parents in the war and with no known relatives. I believe she made a choice to live with him with that history for which I highly commend her even in her death. It would therefore, not be right for anyone to deny Mr. Emmanuel Wandera the opportunity to bury the deceased on account of being an orphan, a status he had no control or choice over. Besides, it is argued for Mrs. Jovia Matsiko that the land on which the deceased was buried

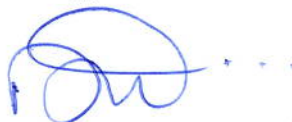


belongs to the missionary father who raised Mr. Emmanuel Wandera, therefore, my view therefore means that that place qualifies to be his home since that is where he was raised from and he could also be allowed to bury his deceased wife. Whereas it may be true that the marriage relationship between the deceased and Mr. Emmanuel Wandera may have been strained, the same was still subsisting at the time of the deceased's death. Mrs. Jovia Matsiko, Mr. Joab Twongirwe and Mr. Caleb Magara all confirm in their affidavits that the deceased was married to Mr. Emmanuel Wandera until her death.

There was also a lot of emphasis on the fact that Mr. Emmanuel Wandera enjoyed the benefit of not paying the bride price for his late wife and he should therefore bear the burden of waiving the rights to bury her. Whereas it was argued that nonpayment of bride price was dictated by the deceased late father in the purported WILL, upon reading the WILL, I find that the aspect of bride price related to other daughters Peninah and Edith and not Rebecca. Be that as it may, I believe that nonpayment of bride price was a choice of the deceased's family as opposed to the inability of Mr. Emmanuel Wandera to pay the bride price. I also do not believe that nonpayment of bride price was in exchange of the burial rights and if it was, it would in my view be extremely unfortunate.

In light of the above therefore, I have not found any justifiable reason as to why this court should depart from its earlier position in the case of Kyobe (*supra*). I therefore find that there is no justifiable reason as to why the remains of the late Rebecca Nahurira should be exhumed from Aboke, Lira where she was buried by her husband to be reburied in Rubaare, Rwampara.


Miscellaneous Cause No. 141 of 2021 is therefore disallowed while Miscellaneous Application No. 652 of 2021 is allowed on the following orders:





- 1) The late Rebecca Nahurira shall not be exhumed from Aboke- Lira where she was buried by her husband Mr. Emmanuel Wandera;
- 2) Since the land where the late Rebecca Nahurira was buried is said to belong to the missionary father who raised Mr. Emmanuel Wandera, he shall facilitate Mrs. Jovia Matsiko or anyone acting on her behalf to access the grave should she desire to do so;
- 3) Mr. Emmanuel Wandera or anyone acting on his behalf shall not prohibit or resist Mrs. Jovia Matsiko and or any one acting on her behalf from visiting the grave of the late Nahurira should she desire to do so;
- 4) Mr. Emmanuel Wandera shall reveal the whereabouts of the child of the late Rebecca Nahurira to Mrs. Jovia Matsiko and or any one acting on her behalf and permit her to see the child should she desire to see her; and
- 5) Each party shall bear its own costs of this application.

**Dated at Kampala this 6<sup>th</sup> day of June 2022.**



Alice Komuhangi Khaukha

**Judge.**

**6/6/2022.**