Grounds of Opposition to a Burial Stay with Mortuary Cost Safeguards

Educational sample 478 | Kakamega

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

GROUNDS OF OPPOSITION

1. The Respondent opposes the motion to the extent it seeks indefinite restraint or final burial rights through an interim stay application. The actual trial decree remains operative unless lawfully stayed or varied.

2. The Appellants must establish the requirements of Order 42 rule 6 on the true chronology and evidence. Filing a memorandum alone does not establish substantial loss, reasonable promptness or adequate security.

3. The Respondent recognises that burial may irreversibly alter the subject matter, but requests a precise, proportionate order with an identified duration and steps for expeditious determination of the appeal.

4. Any security and mortuary-charge arrangement must specify the amount, account holders, payment evidence and consequences of default. Disputed assertions about ability to pay or present mortuary status require a separate competent affidavit.

5. The merits of the alleged marriage and burial entitlement should remain for the proper appellate process. These grounds neither supply new testimony nor ask the Court to treat a contested fact as a pure preliminary objection.

6. If preservation is granted, the Respondent requests lawful notice to the mortuary, practical charge safeguards and appeal-management directions, with appropriate costs. The source stay was granted; these opposition grounds are not presented as a successful dismissal argument.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

These are grounds of opposition to the actual motion, not a fact-finding preliminary objection or a replying affidavit. Tie each ground to the proper test and admitted record. Supply a separate authorised affidavit for disputed factual evidence where needed. Check court directions on response and service.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

Following a Butali magistrate burial judgment between competing family positions, the appellants promptly sought a stay and restraint of removal or burial pending appeal. The application followed four days after judgment. Burial would make restoration of the subject matter impossible.

The Court granted stay and an injunction preserving the body in the mortuary, subject to the ordered KES 100,000 joint interest-earning security account for charges and due performance. Application costs awaited the appeal outcome. The ruling did not finally decide the contested marital or burial entitlement.

Order 42 rule 6 requires promptness, substantial loss and security. An irreversible burial needs precise preservation and workable mortuary arrangements. This historical interim order and later mention date are not proof that the body remains detained or that the order is still operative.

[2026] KEHC 8626 (KLR) - 17 June 2026. Source decision: https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/8626/eng@2026-06-17

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/sitawa-another-v-sikolia-2026-kehc-8626-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.