

SUSAN MASVINGE (nee SAKAROMBE)
and
BENARD SAKAROMBE
and
ANNAH MUKAMBACHAZA (nee SAKAROMBE)
and
JANE CHIREKA (nee SAKAROMBE)
and
BOTHWELL CHIKURUWO
and
MAKONI RURAL DISTRICT COUNCIL
and
ZIMBABWE REPUBLIC POLICE
and
COMMISSIONER GENERAL, ZIMBABWE REPUBLIC POLICE
and
MINISTER OF HOME AFFAIRS AND CULTURAL HERITAGE
and
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 27 February and 7 March 2025

C Muchichwa, for the applicant
G Kakome, for the 1st to 4th respondents
A Magunda, for 6th to 9th respondents

MAMBARA J: This is an application by the applicant, Ms *Susan Masvinge (nee Sakarombe)*, for leave to exhume the remains of her late mother, *Idah Sakarombe (nee Chikuruwo)*, who passed away on 25 November 2014 and was buried in a designated Catholic cemetery under Headman Chikuruwo, Chief Makoni, in Nyatito Village, Rusape. The applicant contends that her mother’s true wish—though never formally recorded—was to be buried beside her husband, the late *Enock Sakarombe*, who predeceased her during the war of liberation in 1976. She maintains that local family members prevented her from fulfilling that wish at the time of burial.

The first to fourth respondents, close relatives of the deceased, strongly oppose the application. The fifth to ninth respondents are cited as interested or statutory parties whose involvement is required in the event that exhumation and reburial are sanctioned. Initially, the

respondents argued that the application was fatally affected by prescription owing to the nearly ten-year delay. That point in limine was abandoned at the hearing as there is no strict statutory bar preventing an exhumation claim on the basis of time lapse alone, though the Court acknowledges that delay is always a critical factor in burial disputes.

At the heart of this matter lies a clash between the applicant's insistence on honouring her mother's alleged oral wish and the respondents' view that the deceased's burial was lawfully and properly undertaken in accordance with local practice and that disturbing a grave is both culturally taboo and legally unwarranted in the absence of compelling reasons.

At the hearing of this matter the applicant's counsel raised the issue that the affidavits of the first to fourth respondents were not signed and commissioned and that there was therefore no proper opposition to the application. Counsel for the applicant went further to withdraw the claims against the fifth to eighth respondents. The ninth respondent was not opposed to the prayer sought. Essentially the application remained unopposed and the applicant prayed for an order in terms of the draft order that was attached to the application.

The Cemeteries Act [*Chapter 5:04*] empowers local authorities, such as the fifth respondent, Makoni Rural District Council, to regulate the establishment, maintenance, and control of cemeteries, including matters of exhumation. The Traditional Leaders Act [*Chapter 29:17*] recognizes the role of chiefs, headmen, and village heads in enforcing local customs, which commonly regard exhumation as an extraordinary and deeply sensitive act. The Rural District Councils Act [*Chapter 29:13*] underpins the administrative framework for communal areas, including the management of burial sites in rural districts.

Against this statutory backdrop, our courts have elaborated principles that strictly limit the circumstances under which an exhumation may be permitted. Although each case must be decided on its facts, the following key decisions illustrate that, absent exceptional grounds or consensus, courts are loath to disturb a final resting place.

In *Katsande v Katsande* 2007 (2) ZLR 158 (H), the High Court underscored that the burial of the deceased “*must be accorded the highest measure of respect and finality.*” Where a proper burial has taken place according to either custom or law, subsequent intervention by courts to exhume the remains demands proof of genuinely extraordinary factors—such as misidentification of the deceased, a manifest administrative injustice, or undisputed evidence of a special directive left by the deceased.

In *Ncube v Ncube* 1993 (1) ZLR 39 (S), although focusing on inheritance, the Supreme Court reiterated that the courts must be acutely mindful of the “*cultural sensibilities and potential*

family disharmony” that can arise if a court ruling disrupts the settled expectations of relatives. While not directly on exhumation, it highlights the judiciary’s caution in intruding upon long-standing family or customary arrangements.

Maposa v Maposa & Ors HH 481-15, in a burial dispute scenario, the Court recognized that “*the expressed or implied wishes of the deceased, where verified, are critical,*” yet it also stressed the need for clear, compelling evidence. Even in that case—where disagreement arose about the exact resting place—an order for exhumation was ultimately refused in the absence of a conclusive demonstration that the deceased’s rights or dignity had been violated in the first burial.

Chimbwanda v Tafirenyika & Another HH 163-15 further illustrates that if there is contention among the immediate family or local authorities regarding disinterment, the Court will weigh the public interest, family unity, and local customs. The learned judge cautioned that frequent or lightly granted exhumations would “*reduce the solemn act of burial to a mere provisional step,*” undermining communal respect for the deceased.

These authorities collectively affirm that, while Zimbabwean law does not altogether forbid re-opening graves, exhumation remains a rare and last-resort remedy, heavily circumscribed by statutory requirements and family or communal consensus.

In the present application, the applicant’s case rests on an alleged oral wish of the deceased. This assertion is not corroborated by any formal documentation or testament, and it is contested by the 1st to 4th respondents, who were also close to the deceased. There is no contention that the wrong body was buried; nor is there evidence of an official mistake or procedural irregularity. Indeed, the deceased’s grave lies in a recognized community cemetery overseen by local religious and traditional authorities, who have not endorsed exhumation.

Moreover, the applicant lodged this application nearly a decade after the burial, during which period local practices, health regulations, and the general presumption of finality have become entrenched. As observed in *Katsande v Katsande supra*, “*the length of time between interment and an application for exhumation amplifies the need for caution,*” lest courts unwittingly violate cultural norms and open floodgates for disputed claims of unrecorded final wishes.

Although this Court is sensitive to the applicant’s emotional motivation, it finds no legal, factual, or customary basis strong enough to justify exhuming a deceased person who, according to the uncontested evidence, was buried lawfully and with knowledge of the majority

of her family. The local and national legal framework—set out in the Cemeteries Act, the Traditional Leaders Act, and the Rural District Councils Act—was observed.

Accordingly, the Court is compelled to deny the substantive relief. The finality of the deceased’s resting place should not be disturbed under circumstances lacking clear consensus or a compelling demonstration of the deceased’s wishes documented or otherwise incontrovertibly established.

DISPOSITION

1. The application for leave to exhume and rebury the remains of the late *Idah Sakarombe (nee Chikuruwo)* is dismissed.
2. Each party shall bear its own costs.

MAMBARA J:.....

Mushangwe & Company, applicant’s legal practitioners
Mavhiringidze & Mashanyare, first to fourth respondents’ legal practitioners.
Civil Division of The Attorney General’s Office, legal practitioners for sixth to ninth the respondents