

Burial disputes in Kenya: a case for legislation

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Date: 2006

Abstract:

This thesis offers a critical analysis of burial law in Kenya. There is no legislation on burial matters and the current law on the subject is uncertain and discriminatory especially against women. There is no consistency in court decisions on burial cases. Courts apply different criteria in determining burial cases and there are no well settled legal principles to fall back to. Courts appear to apply different regimes of law randomly. They choose either customary law, common law or marriage law. The application of the different regimes of law on the same subject matter has given rise to conflicting court decisions and lack of a harmonious rationale of determining burial disputes. The application of the different regimes of Law also poses an 'internal conflict of laws' situation in the adjudication process. Chapter One deals with general introduction and highlights the unsatisfactory nature of the current law on burial cases in Kenya, which includes uncertainty, discrimination against women and internal conflict of laws. In Chapter Two a critical analysis of burial law in Kenya is examined by considering various selected cases. The divergent criteria applied by the courts in determining different burial cases are discussed. In chapter Three the aspect of internal conflict of laws in burial cases is discussed. The sources of such conflicts are discussed. In Chapter Four recommendations for a Burial Act is made. Some crucial issues which ought to be addressed by such a legislation are discussed. It is hoped that Kenya's Parliament will soon see the need of legislating on burial matters. Death causes grief especially to the surviving spouse and a legal battle over the dead body only serves to exacerbate the grief.