



**In re Ernest Wilhelm Rosener (Miscellaneous Civil Application
E11 of 2023) [2023] KEHC 3740 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E11 OF 2023
HK CHEMITEI, J
APRIL 27, 2023**

**IN THE MATTER OF
LUCY WANJIKU MWAI APPLICANT**

RULING

1. In her notice of motion dated February 9, 2023, the applicant prays for orders that this court declares Mr Ernest Wilhelm Rosener presumed dead.
2. The application is supported by the sworn affidavit of the applicant dated the same date and the grounds thereof.
3. The applicant avers that she underwent a kikuyu customary marriage ceremony with the said Ernest Wilhelm Rosener on August 7, 2010 otherwise known as ruracio as per the attached annexed copy of the family agreement.
4. They thereafter invested jointly in two parcels of land namely LR NO. 15165/16 and 15165/19 respectively. That the subject person kept on operating between Kenya and Germany and her last communication with him was in 2013. That to date all efforts to trace him have been futile.
5. Consequently, she prays that this court issues orders presuming him to be dead. The applicant has attached correspondences between her advocates and the Germany Embassy in Kenya
6. The court has perused the application together with the annexures thereto. The court has also perused section 118A of the Evidence Act which states that;

“Presumption of death.

Where it is proved that a person has not been heard of for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.”



7. In view of the relationship between the applicant and the subject especially after the said rurocio and the purchase of joint properties as per the attached title documents, unless otherwise rebutted as per the aforementioned section of the law, it is presumed first of all that the applicant and the subject were husband and wife for all intend and purposes.
8. Secondly in view of the fact that the subject has not been heard for the last over 7 years it is again backed by the aforementioned law that the subject has passed on.
9. In the premises, the application herein dated February 9, 2023 is allowed as prayed.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27TH DAY OF APRIL 2023.

H. K. CHEMITEI

JUDGE

