



**In re George Harry Thuku (Presumed Deceased) (Miscellaneous Civil Application E017 of 2023) [2023] KEHC 18413 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CIVIL APPLICATION E017 OF 2023**

**PM MULWA, J**

**MAY 31, 2023**

**IN THE MATTER OF**

**AGNES WANJA THUKU ..... APPLICANT**

**RULING**

1. By a Notice of Motion dated February 8, 2023, and filed in court on February 14, 2023 the applicant seeks to have Geoffrey Harry Thuku be presumed dead and a death certificate be issued to that effect by the Registrar of Births and Deaths.
2. The application is anchored under sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and Section 118A of the *Evidence Act*. It is supported by the annexed affidavits of; Agnes Wanja Thuku, Samuel Ngatia Kenji, Maureen Wambui, Brian Kariaranja, Paulette Wangeci and Julia Wangari Ngotho.
3. The application was heard through affidavit evidence.
4. By the affidavit of the applicant Agnes Wanja Thuku sworn on February 8, 2023 she deposes she is the wife of Mr. George Harry Thuku (the subject) having married under Kikuyu Customary Law in 1982 and were blessed with 3 children namely Maureen Wambui Thuku, Brian Kariaranja Thuku and Paulette Wangeci Thuku. That the subject disappeared on or about June 2014 when he left their matrimonial home for errands in Kiambu and failed to return. Further that efforts to trace him through the local administration and police have been futile to date. The other affidavits are in support of the averment that the subject left the matrimonial home in June 2014 with no traces to date.
5. Having considered the application, the issue for determination is whether an order should be issued to declare the subject dead.
6. The law governing the circumstances in which a person may be presumed dead is provided in section 118A of the *Evidence Act* which states as follows: "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. The applicant is the wife of the subject and has attached affidavits of the children and her sister-in-law (wife to subject’s deceased brother Samson) and the applicant’s brother Samuel Ngatia Kenji as persons who are expected to hear from the missing person but have not done so for years.
8. From the record the applicant mentions reporting the disappearance of the subject to the local administration and the police at Ngewa Police Post but not sufficient evidence has been adduced to demonstrate the frantic efforts made in reporting or searching for the missing person. There is no Police Abstract adduced, evidence of report to police (OB number) or any form of advertisement.
9. The letter from the area chief dated June 2, 2022 only confirms that the subject left home and he has not been heard or seen, there are no efforts shown that there were attempts to trace the subject.
10. I further note from the annexed affidavits that the applicant has not made efforts to have a close family member of the subject swear an affidavit to confirm he has not been seen or heard from.
11. A person seeking an order for the presumption of death must adduce sufficient evidence to prove that due inquiry into the missing person has been made and the person cannot be traced.
12. In the instant case, my view is that there is insufficient evidence to sustain an order for the presumption of death. In the circumstances thereof, I find the application dated February 8, 2023 bereft of merit.
13. The Notice of Motion application is dismissed with no orders to costs.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 31ST DAY OF MAY, 2023**

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

Mr. Kinyua – Court Assistant

Mr. Gitonga – for Applicant

