



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Presumption of Death of Francis Mukiri Kaniu (Miscellaneous Application E021 of 2023) [2023] KEHC 20039 (KLR) (Family) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20039 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E021 OF 2023**  
**PM NYAUNDI, J**  
**JUNE 30, 2023**  
**IN THE MATTER OF PRESUMPTION OF DEATH OF**  
**FRANCIS MUKIRI KANIU**

**IN THE MATTER OF**

**JACKSON NGUKU KANIO ..... 1<sup>ST</sup> APPLICANT**  
**JOSPHAT NGUKU MUCHAI ..... 2<sup>ND</sup> APPLICANT**  
**LYDIA CHRISTINE NDATA ..... 3<sup>RD</sup> APPLICANT**  
**PURITY WANJIKU WAWERU ..... 4<sup>TH</sup> APPLICANT**  
**JANE NJERI MUTISO ..... 5<sup>TH</sup> APPLICANT**

**RULING**

1. Before this Court is the summons for declaration of presumption of death of Francis Mukiri Kaniu dated January 17, 2022 by which the Applicant seeks orders as follows: -
  - i. That Francis Mukiri Kaniu Be Presumed Dead.
  - ii. That The Registrar Of Deaths Do Issue A Certificate Of Death In Respect Of The Said Francis Mukiri Kaniu.
  - iii. That the Cost of this application be in the cause.
2. The Application is presented under Section 118A of the *Evidence Act* Cap 80 Laws of Kenya and Rule 10 of *Probate and Administration Rules* was supported by the annexed Affidavit sworn by the Applicants sworn on the January 17, 2022.



3. The Applicants, Jackson Nguku Kaniu, Josphat Nguku Muchai, Lydia Christine Nduta Kaniu, Purity Wanjiku Waweru, and Jane Njeri Mutiso state that Francis Mukiri Kaniu has not been heard of or from since March 20, 2014 by family, friends and or those who might be expected to have heard of or from him if he was alive. They further stated that efforts from family and friends to trace him have been fruitless. His whereabouts are unknown to date.
4. The Applicants stated that the family is made up of twenty-two siblings; That is, the subject, William Muchai Kaniu (Deceased), Susan Wanjiku Kanotha, Jane Njeri Mutiso, Boniface Njogu Kaniu, Marion Wairimu Kaniu(Deceased) Grace Ngendo Kaniu, Nancy Wangari Muchai, Jackson Nguku Kaniu, Mwicigi Kaniu, Dickson Wanene Kaniu, Lydia Nduta Kaniu, Alice Wanjiru Kaniu (stepmother) Purity Wanjiku Muinami, Josephat Nguku Kaniu, Elizabeth Wangari Gitonga, Francis Wanene Kaniu ( Deceased) Isaac Muigai Kaniu, Zipporah Nyambura Ndegwa, Michael Mukiri Kaniu, Ann Wairimu(Deceased).
5. He had a wife Roaline Nyambura Mukiri (Deceased) and a son Fredrick Maina Mukiri. They are the surviving relatives of Francis Mukiri Kaniu. The son has sworn an affidavit on June 10, 2023, confirming that he has not heard from or of his father since March 20, 2014. He consents to the Application.
6. They averred that the matter was reported at Makongeni Police Station vide OB No 31/20/3/2014.
7. They averred that they have engaged the local Administration and the Law enforcement officers to assist them in tracing their brother and their efforts have not borne any fruitful information.
8. They also caused a notice to be published in the Daily Nation Newspaper on October 16, 2014 inviting members of the public to notify then or the nearest police station in case anyone had knowledge of his whereabouts.
9. The Petitioners seek the orders as the subject matter Francis Mukiri Kaniu who they have not heard and/or seen their brother for the last seven years and it is only fair and just that he be presumed dead and a certificate of death be issued to that effect.

### **Issues for Determination**

10. Upon reading the application and supporting affidavit of Jackson Nguku Kaniu, Josphat Nguku Muchai, Lydia Christine Nduta Kaniu, Purity Wanjiku Waweru, and Jane Njeri Mutiso this court discerns that the issue for determination is;
  - i. Whether the Applicant has made out a case to be granted the order of declaration of presumption of death of Francis Mukiri Kaniu and the consequential orders arising therefrom
11. The Applicants depone that they are the sisters and brothers of the subject and filed the application on behalf of his son Fredrick Maina Mukiri, they claim that the subject had gone missing on March 20, 2014 and his mysterious disappearance had been reported to the police and the OB extract was annexed to the application;



12. On the presumption of death, the applicable law is found at Section 118A of the Evidence Act which provides 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.'

13. Before this presumption can be applicable the person has to have been unheard of for a period of seven years.

14. This court notes that the subject disappeared from home on March 20, 2014 and in the same year the applicants made a report to Makongeni Police Station and it was entered in the Occurrence Book as OB No 31/20/3/2014; a copy of the OB extract is annexed and marked JJLCJ-1 made on March 20, 2014.

15. There is also an extract of advert for a lost person placed in the Daily Nation Newspaper a copy marked JJLCJ-3.

16. Consequently, the subject has been missing for the statutory period of seven (7) years and the applicant has tendered sufficient material that is in compliance with the provisions of Section 118A of the Evidence Act to enable this court to decide on the presumption of the death of the subject.

17. Rule 10 and Section 51 of Law of Succession Act, Cap 160 provide that in an application for the grant of letters of administration, a copy of the death certificate is mandatory. It further provides

' Application for order presuming death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by summons to the court and shall be supported by an affidavit setting out the grounds of the application.'

18. In the circumstances, I find that there is sufficient evidence tendered by the Applicants in their Summons and supporting affidavit dated January 17, 2022 and order as follows:

- a. The subject herein Francis Mukiri Kaniu is presumed dead;
- b. The Registrar of Births and Deaths is to issue a certificate of Death in respect of Francis Mukiri Kaniu.
- c. There shall be no order as to costs.

19 It is so ordered

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 30<sup>TH</sup> DAY OF JUNE, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

**In the presence of:**

**Court Assistant Karani**

