



REPUBLIC OF KENYA



**In re Presumption of Death of John Muriithi Maina (Miscellaneous Civil Application E379 of 2023) [2023] KEHC 24078 (KLR) (Civ) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24078 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION E379 OF 2023**

**JN MULWA, J**

**OCTOBER 26, 2023**

**IN THE MATTER OF AN APPLICATION FOR  
PRESUMPTION OF DEATH OF JOHN MURIITHI MAINA**

**IN THE MATTER OF**

**ROSEBELL WAKIURU MAINA ..... 1<sup>ST</sup> APPLICANT**

**HILDA WAMBUI MAINA ..... 2<sup>ND</sup> APPLICANT**

**HUDSON WAIMIRI ..... 3<sup>RD</sup> APPLICANT**

**RULING**

1. Before the court for determination is the Notice of Motion dated May 30, 2023. The applicants being mother and sister to the subject seek that John Muriithi Maina be presumed dead and a death certificate be issued to that effect by the Registrar of Births and Deaths.
2. The Application is anchored on Section 118A of the *Evidence Act*, Section 3A of the *Civil Procedure Act* and Order 50 Rule (1) of the *Civil Procedure Rules* and all other enabling provisions of the law. It is supported by a supporting affidavit sworn by the Applicants Ms. Rosebell Wakiuru Maina, Ms. Hilda Wambui Maina and Mr. Hudson Waimiri all dated May 31, 2023.
3. I have considered the depositions made by the Applicants in the affidavits on record as well as the information contained in the annexures thereto.
4. The 1<sup>st</sup> Applicant contends that she is the mother of Mr. John Muriithi Maina (the subject) and that he was 24 years old at the time he went missing and was studying at Ashleys College Nairobi.. I was her averments that the last time she spoke with the subject was on October 20, 2006.
5. The 1<sup>st</sup> Applicant averred that the father had informed her that the subject had left with friends the day she had contacted him, and that he had left again early the following day with two more friends. Since



then, he had not returned, nor heard from him as his mobile phone unanswered for the whole week. She stated that she searched for him at his former place of study, Kenyatta National Hospital, but was unable to locate him after which she reported his disappearance to Kiamumbi Police Station and was given an OB, which was issued on March 11, 2023, which was given to his father, Patrick Maina John (Deceased), who passed away on October 10, 2019.

6. The 1<sup>st</sup> Applicant stated that the father of the subject, the Late Patrick Maina John designated his missing son as a beneficiary in his pension plan, and in order for her to get the money, a death certificate is required.
7. The 2<sup>nd</sup> Applicant stated that her brother was reported missing sometime in December 2006, when she returned home from Uganda, where she was doing her final A-level exams, and learned that he had not been seen or heard from since October.
8. The 3<sup>rd</sup> Applicant stated that the missing person was his brother, and he went missing sometime in October 2006. He was still in high school when he returned home from school during the midterm break, and when school ended in December 2006, he met with the missing person's friends, who informed him that they had not seen or heard from him.
9. I have considered the application, the two affidavits on record and the annexures thereto. The law governing the circumstances in which a person may be presumed dead is set out 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.”
10. In this case, the Applicants who are the subject's mother and his siblings namely Hilda Wambui Maina and Hudson Waimiri Maina who are people who are expected to see or hear from the subject almost on a daily basis or every so often have confirmed that they have not heard or seen the subject since October, 2006. I have confirmed from annexures to the affidavits filed by the Applicants that she went with the company of his aunty in search of him in Kamukunji and Central Police Stations as well. I have also confirmed that the subject's disappearance was reported to Kiamumbi Police Station by his late father Patrick Maina John who was in custody of the OB.
11. In view of the foregoing, I am satisfied that the Applicant has demonstrated by credible and reliable evidence that the subject disappeared on or about 20<sup>th</sup> October 2006 and has to date not been seen or in touch with his close family members. This means that the subject has been missing for the last about 17 years and all efforts to trace his whereabouts have been unsuccessful. If the subject was alive, it is expected that he would have attempted to contact at least some members of his nuclear family which he has not done to date.
12. Flowing from the above, it is my finding that the applicant has met the threshold set in Section 118A of the Evidence Act by providing evidence which raises a presumption that the subject is dead.
13. For the foregoing reasons, I find that it would be in the interest of justice to grant the applicants the orders sought in view of the circumstances necessitating filing of the motion. I therefore invoke the inherent powers of this court under Section 3A of the Civil Procedure Act and allow the application with no orders as to costs.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 26<sup>TH</sup> DAY OF OCTOBER 2023.**

**JANET MULWA**



**JUDGE**

