



REPUBLIC OF KENYA



KENYA LAW
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**In re Samuel Karanja Mungai (Miscellaneous Civil Application
E167 of 2021) [2022] KEHC 17266 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 17266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E167 OF 2021**

RB NGETICH, J

NOVEMBER 24, 2022

**N THE MATTER OF AN APPLICATION FOR PRESUMPTION
OF DEATH OF SAMUEL KARANJA MUNGAI**

IN THE MATTER OF

MARGARET WANJIRU KARANJA APPLICANT

RULING

1. Before this court for determination is the summons application dated July 26, 2021.
 - a. That Samuel Karanja Mungai be presumed dead.
 - b. That the Registrar of Births and Deaths do issue a Certificate of Death in respect of Samuel Karanja Mungai.
 - c. That there be no orders as to costs.
2. The application is brought under Section 118A of the *Evidence Act*, Section 3A of the *Civil Procedure Act*. The grounds for the application are that Samuel Karanja went missing from the year 1970 and has not been traced.
3. The Applicant Margaret Wanjiru Karanja testified that she is the wife to the subject Samuel Karanja Mungai and the last time she saw the subject was in 1970 when he left home on his business to Uganda and has never come back and his whereabouts are unknown.
4. PW2 Arthur Kafaria Njau informed the court that the subject is his cousin and that he last saw him in the year 1973 and despite numerous searches, the subject has not been found.
5. PW3 Onesmus Mungai Mwangi a cousin to the subject confirmed that the subject went missing at the age of 33 years and he should be 61years old now.



6. The Chief's letter dated July 22, 2022 indicate that the subject hailed from Kiambaa village and confirmed that he went missing without any trace since 1977 and that the Applicant as the only wife of the subject.

Analysis and determination

7. The provision governing the process and circumstances under which a person can be presumed dead is Section 118A of the Evidence Act, Cap 80, Laws of Kenya 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.”

8. From the averments herein, the subject Samuel Karanja Mungai went missing from his home in the 1970s and since then, he has never been traced. The Applicant is the wife who was living with the subject prior to his last business trip to Uganda. PW2 and PW3 who are both cousins of the subject confirmed that the subject has not been traced since 1973 a period of 49 years. This has been supported by the area Chief who confirmed the relationship of the Applicant to the subject and also confirmed that indeed the subject has not been seen since 1970s.

9. From the foregoing, I see merit in the application dated July 26, 2021 and hereby +invoke Section 118A of the Evidence Act.

10.

Final orders:-

1. Application dated July 26, 2021 is hereby allowed.
2. Samuel Karanja Mungai is hereby presumed dead.
3. No orders as to costs.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 24TH DAY OF NOVEMBER, 2022.

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua/Martin – Court Assistant

No Appearance by Parties

For Applicant – Absent

