



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**MISCELLANEOUS APPLICATION NO. 49 OF 2020**

**IN THE MATTER OF PRESUMPTION OF DEATH OF PAUL KIMITA GATHONI**

**JANE GATHONI KIMITA.....APPLICANT**

**RULING**

1. Before Court is the Summons dated 23<sup>rd</sup> October 2020 by which the Applicant JANE GATHONI KIMITA 2019 seeks for orders:-

**“1.THAT PAUL KIMITA GATHONI be and is hereby presumed dead because the Applicant as his biological mother has not heard from him for the last seven (7) years with effect from 12<sup>th</sup> November 2013.**

**2. THAT the Registrar of Death do issue a Certificate of Death in respect of the said PAUL KIMITA GATHONI.**

**3. THAT the monies held in the Co-operative Bank Account No. 011xxxxxxxxxxx Coop House Branch of PAUL KIMITA GATHONI be released forthwith to his mother – JANE GATHONI KIMITA; or in the alternative, the monies to be held by Co-operative Bank Coop House Branch pending the issuance of Letters of Administration of the estate of PAUL KIMITA GATHONI.**

**4. THAT Co-operative Bank, Coop House Branch be stopped from releasing to the Unclaimed Financial Assets Authority the monies held in Account No. 011xxxxxxxxxxx of PAUL KIMITA GATHONI as the money in that Account forms part of the Estate of PAUL KIMITA GAHTONI.**

**5. THAT the Cost of this application be in the cause.”**

2. The Application was premised on the grounds on the face of the Summons as well as the Supporting Affidavits sworn by the Applicant.

3. The Applicant told the Court that her son PAUL KIMITA GATHONI went missing from the family home on 12<sup>th</sup> November 2013. At the time the Subject was aged 28 years. Todate the Applicant has not seen or heard from her son again.

4. The Applicant narrated the efforts she has made in the past eight (8) years. The matter was reported at Huruma Police Station vide OB Number 13 of 14<sup>th</sup> November 2013 and to the Chief of Chinga North West Location which is their rural home. (See Annexure ‘JGK-1’) letter dated 19<sup>th</sup> October 2020. The Applicant states that she searched at various hospitals and mortuaries but was not able to trace her son.

5. Section 118A of the Evidence Act Cap 80, Laws of Kenya provides that:-

**“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.”**

6. The Applicant told the Court that the Subject was not married and had no child. That he disappeared from the home which they shared in November 2013. The Subject’s employer Royal Media Services have by their letter dated 3<sup>rd</sup> February 2021 confirmed that he has not been seen at his place of work since 12<sup>th</sup> November 2013.

7. The Applicant being the mother of Paul Kimita Gathoni with whom he lived with, is the person who in the circumstances would have been expected to see or hear from the Subject on a daily basis.

8. I am satisfied from the statement of the Applicant, the Affidavits on record together with the annexures thereto that there is credible and

reliable evidence that the Subject was last seen alive on **12<sup>th</sup> November 2013**. From that date the Subject vanished from the family home and from his place of work. He has been missing for the past **eight (8) years**. If the Subject was still alive it would be expected that he would have contacted the Applicant who is his mother or his employer.

9. I find that the threshold set in **Section 118A** of the **Evidence Act** has been met and I find that there exists a presumption that the Subject is dead.

10. I therefore find that it would serve the interests of justice to allow this application. Relying on the inherent powers of the Court under **Section 3A** of the **Civil Procedure Act** I allow this application in terms of prayers (1), (2), (3) and (4). No orders on costs.

**Dated in Nairobi this 12<sup>th</sup> day of February, 2021.**

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**MAUREEN A. ODERO**

**JUDGE**