



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS CAUSE NO. E. 125 OF 2021

IN THE MATTER OF PRESUMPTION OF DEATH OF NJOROGE MWANIKI GICHAMBA

MARGARET MUGERE WAWERU.....APPLICANT

RULING

(1) Before this Court is the Notice of Motion dated **21st June 2021** by which the Applicant seeks orders as follows:-

- 1. THAT NJOROGE MWANIKI GICHAMBA be presumed dead.**
- 2. THAT the Registrar of Death do issue a Death Certificate in respect of the said NJOROGE MWANIKI GICHAMBA.**
- 3. THAT costs be in the cause.**

(2) The Application which was premised upon **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 was supported by the Affidavit of even date sworn by the Applicant.

(3) The Applicant **MARGARET MUGERE WAWERU** who testified in open Court is the wife of the Subject **NJOROGE MWANIKI GICHAMBA**, the two having married under Kikuyu Customary Laws in **1953**. She told the Court that the Subject walked away from his homestead on or about **17th March 1997** and never returned. That at the time he disappeared the Subject was about **80 years old**. The Applicant told the Court that she has neither seen or heard from the Subject since his disappearance. That the matter was reported to the local chief and at **Kabete Police Station** vide OB No. **34** of **21st May 2021**.

(4) The Applicant stated that despite searches made at various hospitals and mortuaries the Subject was never traced either dead or alive. Since it has been **24 years** since the Subject disappeared from his home the Applicant prays that he be presumed dead.

(5) **PW2 CHRISTOPHER GICHUHI** and **PW3 ESTHER WANGUI GICHAMBA** are the son and daughter of the Subject. They both confirm that their father left the family homestead in **March 1997** and never returned. That searches made in various hospitals and mortuaries failed to yield fruit. That since **1997** to date the Subject has not been spotted anywhere. **PW2** and **PW3** both support this application that the Subject be presumed dead.

(6) The evidence from the **three (3)** witnesses is that the subject **NJOROGE MWANIKI GICHAMBA** who was an elderly gentleman left his homestead in **March 1997** and to date almost **twenty-four (24) years** later has never returned. The disappearance of the old man was reported to Police vide **OB Number 24** of **21ST May 2021**. Annexure **MMG-1** is a copy of the Police Abstract.

(7) Additionally a letter from the Chief **Kangemi Location** dated **17th May 2021** (Annexure **(MMG 1(a))**) confirms that the Subject disappeared from his area of residence in **Kangemi** on **17th March 1997** and was never seen again. The witnesses told the Court that searches conducted at various hospitals and mortuaries bore no fruit.

(8) **Section 118A** of the **Evidence Act, Cap 80, Laws of Kenya** 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.”

(9) The Subject was an elderly married man, who had a wife and children. The Applicant being the wife of the Subject with whom he had lived with for over **forty (40) years** would have been expected to see or hear from her husband on a daily basis. Likewise **PW2** and **PW3**,

the children of the Subject would also have been expected to hear from their father on a regular basis.

(10) It is manifest from the evidence on record that there exists credible and reliable evidence that the Subject was last seen alive on **17th March 1997**. The Subject disappeared from the family home and has been missing for the past **twenty-four (24) years**. Given that the Subject was aged about **eighty (80) years** when he disappeared, it is unlikely that he is still alive today. If he was still alive then the Subject would have been in contact with his wife and children.

(11) I find that the threshold set in **Section 118A** of the **Evidence Act** has been met and I find that in the circumstances there exists a strong presumption that the Subject is no longer alive. Accordingly this application is found to have merits and is allowed in terms of prayer (1) and (2) thereof. No orders on costs.

DATED IN NAIROBI THIS 30TH DAY OF JULY, 2021.

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MAUREEN A. ODERO

JUDGE