

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

CIVIL MISCELLANEOUS CASE NO. 14 OF 2019

IN THE MATTER OF AN APPLICATION FOR PRESUMPTION

OF DEATH OF MUGUNA M'MWERE

BY

ANDRIAN MUTHONI PAUL.....1ST APPLICANT

DAMARIS WANJA.....2ND APPLICANT

RULING

1. Before me for determination is the Notice of Motion dated 7th February 2019 seeking that Muguna M'Mwere (**hereinafter referred to as the subject**) be presumed dead and a death certificate be issued to that effect. The application is anchored on *Section 118A* of the *Evidence Act*, and all other enabling provisions of the law. It is supported by an affidavit sworn by Andrian Muthoni Paul, the 1st applicant, on even date whose gist is that being a sister to the subject she lost touch with the subject way back in the year 1970 and verily believe that he is dead.

2. On 3/3/2020, the 1st applicant was called to testify when she reiterated the facts in the affidavit in support to the effect that being sister to the subject had not seen him since 1970 yet her and co applicant needed to have a piece of land registered in the name of the subject, which he had partly shared out to siblings, administered and shared out between his children and the people he had gifted portions of the land.

3. Also called to testify was the area chief, Mr Guantai Eujenio, the chief of Kianjogu Location who told court that he last saw the subject in 1972. He further affirmed that he was not in any way related to him but confirmed that the subject left behind a wife and three children whose names he told the court.

4. Damaris Wanja, another sister to the subject testified that she last saw and/or heard about her brother in 1963. Her testimony was echoed by Caroline Karimi, a daughter to the subject. In totality the evidence was received that the people related to the deceased and expected to have contact with him had not had such contact for a period far in excess of seven years

5. I have considered the depositions made by the applicants in the affidavit on record as well as the information contained in 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.”

6. In this case, the applicants who are the subject's sisters and whose evidence is confirmed by an older sister and a daughter to the subject are people who are expected to see and/or hear from him almost on a daily basis or every so often, have all confirmed having not heard or seen the subject since 1972 or thereabouts. I am satisfied from the testimony of the area chief, in addition to that of the blood relatives that the presumption that the subject is dead has been established.

7. In view of the foregoing, I am satisfied that the applicants have demonstrated by credible and reliable evidence that the subject disappeared in 1972, and has to date not been in touch with his close family members and that all efforts to trace his whereabouts have been futile. Flowing from the above, it is my finding that the applicants have met the threshold set in *Section 118A* of the *Evidence Act*.

8. I find that it would be in the interest of justice to grant the applicants the orders that MUGUNA M'MWERE be presumed dead and a death certificate in that regard be issued to the applicants

DATED SIGNED DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 21ST OCTOBER, 2021.

PATRICK J.O OTIENO

JUDGE