

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. P & A NO. 7 OF 2019

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF PRESUMPTION OF DEATH OF MARY WAIRIMU MWANGI

TONY KINYUA MWANGI.....APPLICANT

RULING

1. The applicant Tony Kinyua Mwangi has filed a Notice of Motion seeking an order that the court be pleased to declare and presume dead one Mary Wairimu Mwangi by virtue of not having been heard by those who ordinarily would have heard of her or from her had she been alive for the last Seven years. The background of this sad matter is that the said Mary Wairimu Mwangi was wedded to Martin Kasimi Kirema on 14/7/2012. On 17/7/12 they parted for Dar es-Salam en route to Zanzibar via road using Dar Express Bus Company. On 18/7/2012 a boat was reported to have capsized on the Indian Ocean en route to Zanzibar at around midday. Mary Wairimu Mwangi went missing on 18/7/12 and has never been seen or heard ever since. A report of missing person was made at Athi River Police Station on 26/7/2012 OC12/26/7/2012. A further report was made on 9/8/12 at Oyster Bay Police Station in Dar es-Salaam and booked as RB/14359/2012. She has not been seen or heard, hence this application.

2. I have considered the application. **Section 118A of the Evidence Act** makes provision for presumption of death it provides: -

“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.”

3. The law allows for presumption of death of a person who has not been seen or heard of by those who would have seen or heard of her if she was alive. In the circumstances of this case there is a presumption that she is dead as she went missing from the date when the boat capsized while sailing to Zanzibar where the deceased was heading for her honeymoon.

4. I therefore allow the application and order that Mary Wairimu Mwangi is presumed dead.

5. The order be served on the Registrar of Births and Deaths for issuance of a death certificate.

Dated at Kerugoya this 27th day of February 2020.

L. W. GITARI

JUDGE