



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

MISC.SUCC.3 OF 2019

PAUL NDUNGU NGATIA.....APPLICANT

(In the matter of an Application for presumption of Death of Ngatia Kanja)

RULING

The summons dated 29/5/2019 was brought pursuant to Section 47 of the Laws of Succession Act, Rule 10 of the Probate and Administration Rules, Section 17 of the Births and Deaths Registration Act and Section 118A of the Evidence Act.

The applicant Paul Ndungu Ngatia seeks the following orders:

(1) That an order be issued by this Hon. Court presuming Ngatia Kanja Wahome dead;

(2) That the Registrar of Births and Deaths be ordered to issue a Certificate of Death in respect of the said Ngatia Kanja Wahome.

The application is premised on the grounds in the body of the application and the affidavit of the applicant dated 27/8/2019.

The applicant is the son of one Ngatia Kanja Wahome; that the said Ngatia Kanja went missing in 1998 when he allegedly travelled to Nanyuki and has never returned; that the matter was reported to the area Chief in Shamata Location a fact confirmed by the area Chief's letter of 1/3/2019 (PNM a & b); that efforts to trace him since then have been fruitless and it is now 21 years since the disappearance. Hopes of tracing him have faded away.

The appellant further depones that the family lives on Plot.No.142 Muruai Scheme was given to Ngatia Kanja by the Settlement Fund Trustee and they have paid up all monies due to the said fund and it has become difficult to have the land discharged for purposes of obtaining a title so that the said land can be distributed to Ngatia's beneficiaries.

The letter dated 12/2/2019 from the Land and Settlement Office Nyandarua North Sub-County, confirms the fact that the said land belongs to the subject, Ngatia Kanja and they have a discharge of charge. PW1 Magdaline Nyaguthi, a sister to the applicant was called by the court to confirm the documents of the applicant. She confirmed that their father Ngatia Kanja disappeared long time ago and the siblings are in agreement that the court grants the prayers sought.

The court also summoned the Area Chief, Eunice Wanjiru who is aware of Ngatia Kanja's disappearance many years ago and she is the one who signed the letter dated 1/3/2019 introducing the applicant to the court.

Section 118A of the Evidence Act 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.

In this respect, the subject has been missing for over 21 years and it is only proper that he be presumed dead as prayed.

Section 17 of the Births and Deaths require that the Registrar be informed of all deaths and it is therefore ordered that the Registrar of Births and Deaths in respect of Ngatia Kanja Wahome as prayed.

It is so ordered.

Dated, Signed and Delivered at Nyahururu this 12th day of March, 2020.

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R.V.P Wendoh

JUDGE

Present:

Mr. Kiharo holding brief for Mr. Mathea for applicant

Eric – Court Assistant