

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 23 OF 2012 (OS)

(CONSOLIDATED WITH MISCELLANEOUS CIVIL APPLICATION NO. 93 OF 2013)

IN THE MATTER OF AN APPLICATION BY MICHAEL MUNGAI KIMANI, STEPHEN NJUGUNAA KIMANI, ELIUD MBUGUA KIMANI, JOHN CHEGE KIMANI, JAMES WAITITU KIMANI, DENNIS MURIITHI KIMANI AND GEORGE NJOROGE KIMANI THE PETITIONER UNDER SECTION 18(A) OF EVIDNCE ACT AND RULE 10 OF THE PROBATE AND ADMINISTRATION RULES

JUDGMENT

1. The suit herein, by way of Originating Summons dated 13th February 2012, seeks two orders, a presumption of the death of Kimani Gituanja and preservation of Kabete/Nyathuna/53 pending further orders.
2. The affidavit in support is sworn jointly by the applicants, on 13th February 2012. They principally state that Kimani Gituanja has not been heard of since 15th December 1996, and that they have made reports to that effect to the police. They thereafter make averments on his assets and a pending suit, which are no altogether relevant to the proceedings before me.
3. Attached to the affidavit is a letter from the police dated 22nd December 1999, confirming that the said Kimani Gituanja was reported missing in 1996 and that as at the date they were writing his whereabouts were still unknown. It would appear that a second report of the disappearance of the said Kimani Gituanja was made to the police on 6th July 2004.
4. I have scrupulously perused through the file and I have not come across any opposition to the application.
5. I have also noted that when the matter came up for hearing on 15th March 2018, counsel on record for the parties who have been enjoined to the cause as interested parties stated from the bar, through counsel, that they were not opposed to the said application.
6. Consequently, I hereby allow the application dated 13th February 2012 in terms of prayer 1 thereof. Prayer 2 is not available as a suit founded on the provisions cited above can only be limited to the making of the presumption sought.
7. For the benefit of my successors in handling this file, I shall point out that the two causes in HC Misc. Civil Cases Nos. 23 of 2012 and 93 of 2013 are now exhausted. The suit that now pends determination is the Originating Summons dated 14th December 2010 in HC Misc. Civil Case No. 590 of 2010, which, in my very humble view, is strictly a land matter.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF JULY, 2018.

W. MUSYOKA

JUDGE