

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISCELLANEOUS CIVIL APPLICATION NO. 24 OF 2017

RE A. N. NJENGA KIIRU

KAMAU NJOROGE.....APPLICANT

RULING

1. The applicant prays that *A. N. Njenga Kiiru* (hereafter *Njenga*) be presumed *dead*.

2. The *ex-parte* motion is dated 18th January 2017. It is predicated upon two affidavits sworn by Kamau Njoroge on 18th January 2017 and 3rd October 2017 respectively. He deposes that a period of 42 years has passed since Njenga was last seen or heard of.

3. Owing to the nature of the relief sought, I directed that the applicant; and, the local chief testify *under oath*.

4. I am satisfied from the evidence of Kamu Njoroge (PW1) that Njenga disappeared from *Gikindu* village in the year 1975. PW1 is his younger and sole brother. Njenga was aged 30 and unmarried at the time he vanished. All efforts to trace him have been fruitless. The search is well documented at paragraphs 6 to 8 of the supplementary affidavit.

5. That evidence was corroborated by Charles Muna Kimani, the Senior Chief, Muna location (PW2). He seemed to know the family very well although he never met Njenga.

6. Section 118A of the Evidence Act 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.”

7. I find on a balance of probabilities that Njenga has not been heard of for 42 years by those who might be expected to have heard of him if he were alive. I certify that *A. N. Njenga Kiiru* be and is hereby *presumed* to be *dead*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 27th day of September 2018.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Njoroge holding brief for Mr. Mbue the applicant instructed by Mbue Ndegwa & Company Advocates.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.