



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISC CIVIL APPLICATION NO. 6 OF 2017

**IN THE MATTER OF PRESUMPTION OF DEATH OF JOHN WACHIURU *alias* WACHIURI
GITAHU**

AND

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT (CAP 80 L.O.K)

LYDIA WAIHUINI WACHIURI APPLICANT

JUDGMENT

1. **LYDIA WAIHUINI WACHIURI** has brought the summons dated 6th April 2017 seeking the order that this court do make an order of presumption of death of **WACHIURI GITAHU** *alias* **JOHN WACHIURI** *alias* **JOHN WACHIURI GITAHU**.

2. Lydiah is the wife of John Wachiuri Gitahi. In her affidavit she stated that said Wachiuri disappeared in the year 2007 and his disappearance was reported at Matanya Police Post and was recorded in the occurrence book as O.B. No. 8 of 21/1/2008. The Chief of Tigithi by his letter dated 20th June 2016 confirmed the disappearance of Gichiuri. It is in view of that long disappearance of Gitahi that his wife seeks that he be declared dead.

3. Section 118A of the Evidence Act provides:-

“Where it is proved that a person has not been heard of for 7 years by those who might be expected to have heard of him if he were alive, there shall be a rebuttal presumption that he is dead.”

4. In my view the applicant has shown that she being the wife and also her children would have been the persons Wachiuru would have been expected to hear from him. He has not been in contact with any of them since the year 2007. That being so there is a rebuttal presumption that he is dead.

5. In view of the above this court finds there is sufficient evidence to lead this court to find that there is presumption of death of John Wachiuri Gitahi. He is therefore hereby presumed dead and a certificate of his death shall issue.

DATED AND DELIVERED AT NANYUKI THIS 29TH DAY OF JUNE 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Applicant: Lydia Waihuini Wachiuri

For Applicant

For Respondents:

COURT

Ruling on sentence delivered in open court.

MARY KASANGO

JUDGE