



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MISC.APP.NO.1 OF 2017

**IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT, CAP.80 OF THE LAWS OF
KENYA**

AND

IN THE MATTER OF ORDER 37 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010

THOMAS MAINA MWANGI.....1ST APPLICANT

PETER GACHERU MWANGI.....2ND APPLICANT

R U L I N G

By the Originating Summons dated 21/3/2017 the two applicants **Thomas Maina Mwangi** and **Peter Gacheru Mwangi** moved this court, under Section 118A of the Evidence Act, Section 1A, 1B 3 and 3(a) Criminal Procedure Code and order 37 Criminal Procedure Rules 2010, seeking an orders:

1. That **Mwangi Maina Mbuguchi** be presumed dead by virtue of not having been seen or heard of for a duration of 7 years to those who ordinarily have heard of, him had he been alive;
2. That the Registrar of Persons be ordered to issue a death certificate in respect of **Mwangi Maina Mbuguchi**.

The application is supported by the affidavit of **Peter Gacheru Mwangi** and an authority signed by his siblings: **Lydia Wanjiru Wanjohi**, **John Kamau Mwangi**, **Mary Njeri Mwangi**, **Joyce Mwihaki Mwangi**, **Elizabeth Njoki Mwangi**, **Sarah Wanjiku Mwangi** and **Charles Mungara Mwangi**.

Peter Gacheru Mwangi deponed that his father **Mwangi Maina** lived with his family of wife, and 10 children in Umoja Village Rurii Sub-Location; that on 23/8/2009 he left his home to go visit his brother Kamane at Ituru Sub-Location in Gatundu but never returned and has never been seen or heard of since then. He further deponed that he reported the matter to Gatundu Police Station on 24/6/2009 vide O.B. No.11/24/8/2009 which copy he annexed 'MMM1'; that his brother Thomas Maina Mwangi made a radio announcement regarding the disappearance on Inoro Radio Station; that by the time of his disappearance, the father had lost his identity card and had made a report of the same vide O.B.20/11/2003 and had obtained a police abstract; from that despite numerous searches in police stations, mortuaries, it has yielded no fruits and since 8 years have gone by, there is need to collect and preserve his properties and hence the need for this application. The chief of Rurii Location, Mr. Simion Muita Warui, swore an affidavit dated 21/6/2017 in which he confirms having known of the disappearance of Mwangi Maina since 2009 and that the wife had earlier passed on in 2008 (SMW1) – death certificate.

I have considered the application. Section 118A of the Evidence Act provides as follows:

“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 the instant case, all the children of Mwangi support this application. They are in agreement that their father has been gone without a trace since 2009. The administration through the chief are aware of it. I am therefore satisfied that the said Mwangi Maina has been missing for over 7 years and the application is merited and I grant it.

I hereby grant prayer 1 and 2; that Mwangi Maina Mbuguchi be and is hereby presumed as dead. Secondly, the Registrar of Persons do issue a death certificate in respect of Mwangi Maina Mbuguchi.

It is so ordered.

Dated and Signed at NYAHURURU this 28th day of July, 2017.

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R.P.V. Wendoh

JUDGE

PRESENT:

Shiundu- Court Assistant

Applicants – present/absent