

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

MISCELLANEOUS CIVIL APPLICATION NO. 11 OF 2014

PERIS WANJA MBUGUA.....APPLICANT

-VERSUS-

PIUS KAMAU KAHUNI.....RESPONDENT

R U L I N G.

1. The applicant, **Peris Wanja Mbugua** brings this application in her capacity as the lawful wife of **Pius Kamau Kahuni**, the subject. She seeks an order of this court to the effect that the said husband be presumed to be dead. She has sworn two affidavits and tendered several annextures in support of the application.
2. The gist of the affidavits is that there are 3 issues of the marriage between her and the subject. That on **10th March 2004** the said subject who worked as a teacher left home for work but never returned and that despite reports to police and efforts to trace him, the subject has todate not been found.
3. Tendered in support of the application are several documents including **the marriage certificate, an extract of the Occurrence Book Report No 23 of 11th June 2004** from **Cherengani Police Station, Kitale**, where the disappearance was reported by the brother of the subject, one **Edward N. Kahuni**, and a copy of a signal by the said police station to all police stations in Kenya circulating the report.

The signal is dated 25/8/04. There are also two letters from the office of the Chief Sumerwa location, Kitale, the last residence of the subject, dated 19/3/2005 and 30th August 2005 respectively.

4. The first is addressed to the manager of the bank where the subject held an account, and the second to the District Commissioner Trans-Nzoia. Both letters refer to the disappearance of the subject. **Section 118A of the Evidence Act) states:**

“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.”

5. From the material tendered before me by the applicant it does appear that nothing has been heard of the subject for about ten years by the applicant. This in my view appears a suitable case where a presumption can be made that the subject is dead. I do therefore allow the application.

Delivered and signed at **NAIVASHA** this **20th Day of January 2015** in the presence of:

Applicant in person

Cc: Stephen

C. MEOLI

JUDGE