

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 191 OF 2014

IN THE MATTER OF PETER MACHARIA MWANGI – MISSING PERSON

RUEL MWANGI WARURUA.....APPLICANT

RULING

1. The Applicant, Ruel Mwangi Warurua has brought Summons dated 24th November 2014 under **rule 10** of the **Probate and Administration Rules** and **Section 118A** of the **Evidence Act, CAP 80 Laws of Kenya**. He seeks for orders that Peter Macharia Mwangi (hereinafter Peter) be presumed dead and a certificate of his death be issued.

2. The application is based on grounds that Peter has been missing since November, 2005, when he disappeared mysteriously from their home in Buruburu Phase III; that he had suffered from mental illness prior to his disappearance and that his whereabouts are unknown because it is now nine years since he went missing and has never made any contact with his family. That the law provides that where a person has been missing for seven continuous years, there shall be a rebuttable presumption that he is dead. That Peter inherited Dagoretti/Riruta/T.106 together with his brother Simon Wang’ombe Mwangi from the Estate of Asaph Wang’ombe Kiarie, who was his grandfather and that the said parcel of land requires administration according to the laws of succession. The Applicant together with one Simon Wang’ombe Mwangi seeks the orders of the court to enable them take out grant of letters of administration with regard to the estate of Peter.

3. The Applicant in his supporting affidavit avers that he is the only surviving parent of Peter since his mother, Mary Nyambura Mwangi died after Peter’s disappearance. That Peter is the second born in a family of three children and would be 50 years at the time of filing this application if he were still alive, since he was born in the year 1964. That Peter disappeared from his home in Buruburu Phase III on or about November, 2005.

4. The Applicant deponed that prior to Peter’s disappearance, he suffered from mental illness and was admitted at Mathare Hospital for treatment vide hospital No. 26528. That on 17th December, 2008, the Applicant filed a report on a missing person at Buruburu Police Station vide Reference No. OB 39/17/12/2008, and every effort to trace his whereabouts were unsuccessful. A copy of the Police Abstract is attached. Since then the family has not heard from him. The Applicant further avers that Peter and his brother Simon Wang’ombe inherited Dagoretti/Riruta/T.106 from the Estate of their grandfather, Asaph Wang’ombe Kiarie in succession cause No. 3337 of 2007. That at the time of his disappearance, Peter was not married, he had no child and did not have a will.

5. This application is not opposed.

Section 118A of the Evidence Act (Cap 80), 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.”

Having considered the application, the documents filed and the law, and the fact that this application is

not opposed, Court should be satisfied that the application has merits.

It is now ten (10) years since **Peter Macharia Mwangi** was last seen by his loved ones or by anyone else. If he were still alive, he would probably have been heard of by his family, relatives, workmates, police, or friends. Since none of those parties has heard of him since November, 2005, and all efforts to trace him have been in vain, it would only be fair to presume that he is dead. However, that presumption is rebuttable.

6. In the circumstances, the Court accordingly makes an order to the effect that **Peter Macharia Mwangi** be and is hereby presumed to be dead as prayed and grants the orders sought.

SIGNED DATED and DELIVERED in open court this 28th day of July 2015.

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L. A. ACHODE

JUDGE