

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISC APPLICATION NO 20 OF 2014

IN THE MATTER OF ELIUD MUNGAI MBURE

AND

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT, CAP 80

LUCY MUGURE MUIGAI.....APPLICANT

R U L I N G

1. The subject of this ruling is one **Eliud Mungai Mbure (Mungai)** who is said to have disappeared in the year 2006 without trace. The Applicant **Lucy Mugure Muigai (Mugure)** has applied for an order under **section 118A** of the **Evidence Act, Cap 80** to presume Mungai to be dead.

2. In her supporting affidavit Mugure states, *inter alia*, that she is a daughter-in-law of Mungai; that Mungai was of sound mind when he left home in Ndunyu-Chege Location in the year 2006; that he never came back; that his wife, **Beatrice Watiri Mungai** (now deceased) and other relatives reported his disappearance to **Ol-Moran Police Station**; that the police were unable to trace him; and that since his disappearance he has not been seen or heard of by any family member, or any other person who would be expected to have seen or heard of him.

3. There is further supporting affidavit sworn by one **Johnson Kuria Mungai (Kuria)** filed on 14/07/2015. Kuria has stated, *inter alia*, that he is a son of Mungai; and that his father has not been seen or heard of by anyone who would ordinarily be expected to have seen or heard of him since he disappeared in the year 2006.

4. Section 118A of the Evidence Act provides –

“118A. 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 present case I am satisfied upon the evidence placed before the court in the two affidavits sworn in support of the application, that **Eliud Mungai Mbure** disappeared from his home in the year 2006, and that since that time (a period of well over seven (7) years) he has not been heard of by those who might be expected to have heard of him if he were alive. It is therefore presumed that he is dead.

5. In the event I will grant prayer 1 of the notice of motion dated 22nd May 2014 with no order as to costs. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015