



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

PETITION NO.5 OF 2014

IN THE MATTER OF ERIC KIPYEGON MUTAI - MISSING PERSON

AND

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF PRESUMPTION OF DEATH
OF ERIC KIPYEGON MUTAI – MISSING PERSON**

AND

**IN THE MATTER OF SECTIONS 118 A & 119 OF THE EVIDENCE ACT (CAP.80 LAWS OF
KENYA)**

AND

**IN THE MATTER OF THE LAW OF SUCCESSION ACT (CAP.160 LAWS OF KENYA) SS.47
2(1) & 2 AND S.4 (1) (A) AND THE PROBATE AND ADMINISTRATION RULES (10)**

AND

**IN THE MATTER OF THE CIVIL PROCEDURE ACT 2010 (CAP.21 LAWS OF KENYA) SS.1A,
1B, 3, 3A AND 5.**

AND

**IN THE MATTER OF THE INTERPRETATION AND GENERAL PROVISIONS ACT (CAP.2
LAWS OF KENYA) SS.72**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 –ARTICLES159 (A) (D) & (E),
165 (3) (A)**

EX PARTE SAMWEL KIMUTAI CHELUGET - PETITIONER

R U L I N G

Samwel Kimutai Cheluget, the Petitioner herein, took out the Petition dated 27th May 2014 in which he sought for the following orders:

- a. That Eric Kipyegon Mutai be presumed dead.

b. That a certificate of death of Eric Kipyegon Mutai be issued.

The Petition is supported by the affidavit sworn by the Petitioner. The Petition is said to be based on Sections 118A and 119 of the Evidence Act, Section 47 of the Law of Succession Act, Sections 1A, 1B, 3, 3A and 5 of the Civil Procedure Act, Section 72 of the Interpretation and General Provisions Act and Articles 159 and 165 of the Constitution of Kenya, 2010.

The application is *ex parte* in its nature. I have considered the grounds stated on the face of the Petition, the facts deponed in the supporting affidavit plus the oral submissions of Mr. Odhiambo, learned advocate for the Petitioner. I have further taken into account the past decisions of this court supplied by the Petitioner's learned advocate. I must commend Mr. Odhiambo for his industry in carrying out a thorough research on this grey area of the law. The facts outlined in support of the Petition appear to be short and straightforward. The Petitioner is the father of Eric Kipyegon Mutai, hereinafter referred to as Eric. It is said that Eric Kipyegon Mutai left Kenya for India for further studies in 1990 whereof he obtained a Bachelor of Commerce Degree in 1993 from D.A.V College and Kanpur and a Master of Commerce in 1997 from Madha College, Gwalior. Eric is said to have settled in North Dhelhi in the year 1998 or thereabouts. The Petitioner avers that Eric completely cut off communication with him and other members of the family from the month of October 1999 up to date – and that his whereabouts is unknown to them. It is now 15 years since Eric spoke to the Petitioner. Eric left Kenya without a spouse nor a child. The Petitioner has averred that by an arrangement between him and Eric, Eric was allotted the parcel of land known as L.R. No.7288/644 within Sotik Township. The Petitioner has further averred that a suit concerning the aforesaid parcel of land has been filed against him yet the parcel is registered in the name of Eric, who cannot be traced.

The relevant provisions of the law dealing with such applications are Sections 118A and 119 of the Evidence Act. The law expressly states that the court has the discretion to make and declare a presumption that a person is dead if evidence is laid to show that he or she has not been heard for seven years by those who might be expected to have heard from such a person if he or she was alive. The Petitioner is the father of Eric Kipyegon Mutai. He has expressly stated that he together with the family member have not heard from Eric for over fifteen (15) years.

I have no reason to doubt the averments of the Petitioner. The Petition therefore satisfies the conditions necessary to make such a declaration. The Petitioner has shown to this court the steps he took to trace Eric both in and outside Kenya with no avail. Having satisfied the conditions, I am convinced that the Petitioner is entitled to the orders sought. I hereby allow the Petition as prayed.

Dated, signed and delivered in open court this 13th day of June 2014.

J. K. SERGON

JUDGE

In the presence of:

- **N/A for Odhiambo for Petitione**