

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Miscellaneous Application 70 of 2010
IN THE MATTER OF IRIANKI MURUNGI AND THE MATTER OF EVIDENCE
ACT CAP 80 SECTION 118A
MARICELLA GAKII APPLICANT
JUDGMENT

Before court is an *ex parte* application made by Maricella Gakii seeking the court to presume that M'Irianki Murungi as dead. The applicant is the sister to Murungi. She has two other brothers who have given their consent to the present application. Their mother who is also alive has given her consent. The application is made on the basis that Murungi disappeared from their home Nkumari Village Mitunguu Location in 1977. By then, when he disappeared, he was not married and todate, they have not received any instructions to the contrary. She deponed in her affidavit that had Murungi been alive, she as his sister or his mother who is alive would have heard from him or seen him. In total, Murungi has been away from home for 33 years. Before he disappeared, he was the registered owner of parcel number *Nkuene/Nkumari/1150*. The applicant stated that she has since discovered that the said parcel of land had been transferred to another person in 1991 in circumstances that are not clear. It is because of that that she applies the court to presume Murungi has being dead so that she can pursue the issue of that land. The application was also supported by two other persons who swore affidavits confirming the depositions of Gakii. Those affidavits were sworn by Junius Mbijiwe and M'Mwobobia M'Muketha. The chief of Ndamene Location also gave a letter confirming those depositions. The application is brought under Section 118A of the Evidence Act. The application has merit and I therefore grant the following orders:-

1. ***The court does hereby presume M'Irianki Murungi as dead by virtue of having disappeared for more than 7 years.***
2. ***There shall be no orders as to costs in this action.***

Dated and delivered at Meru this 2nd day of July 2010.

MARY KASANGO
JUDGE