

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Miscellaneous Application 36 of 2008

IN THE MATTER OF SECTION 118 OF THE EVIDENCE ACT CAP 80, LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY MARY NYOKABI GITHOGORI

AND

IN THE MATTER OF HARRISON MWICHARO GITHOGORI (PRESUMED DECEASED)

J U D G M E N T

Before me is an Originating Summons dated 5th June, 2008 filed by Ms Mwagambo & Okonjo advocates for the applicant. It was brought under section 118A of the Evidence Act (*Cap. 80*), Order XXXVI Rule 7 of the Civil Procedure Rules and section 3A of the Civil Procedure Act (*Cap. 21*). It was filed on behalf of the applicant **MARY NYOKABI GITHOGORI**.

The substantive order sought is that the husband of the applicant **MR. HARRISON MWICHARO GITHOGORI**, be presumed dead and a death certificate be issued.

I have considered the application, documents filed as well as what was stated by the applicant before me. There are reports from the police, one from Thika Police Station dated 28th January, 2001, one from Kikuyu Police Station dated 15th March, 2004, and one from Kikuyu Police Station dated 23rd June, 2009 confirming that the husband of the applicant disappeared in 2001. There is also a report of a missing person and photograph of the subject person herein advertised in the Daily Nation of 24th January, 2001.

The subject person has clearly been missing and has not been traced for more than seven (7) years. He can be presumed dead under our law. I will therefore grant the orders sought.

Consequently, I order as follows-

1. **MR. HARRISON MWICHARO GITHOGORI** be and is hereby presumed dead and a death certificate should be issued.
2. Costs in the cause.

Dated at Nairobi this 19th day of November, 2009.

George Dulu

Judge.