

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Application 525 of 2005 (OS)

**IN THE MATTER OF: SEC.118 A OF THE EVIDENCE
ACT C.80 LAWS OF KENYA
AND
IN THE MATTER OF : APPLICATION BY CLEMENT
GITAHI WANJOHI
AND
IN THE MATTER OF: NICHOLAS MBURU WANJOHI
(PRESUMED DECEASED)**

R U L I N G

The application before me is based on the provisions of section 118 A Evidence Act Cap 80 Laws of Kenya which states “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”.

The applicant is an adult brother of the deceased.

The applicant has exhibited the birth certificate of his brother. The applicant states that the said brother sat for certificate of Primary Education in 1990 Sec. C.G.W2 and thereafter he came to Mombasa. Inquiries have been made. Exhibit “C G W 3” shows the brother was last seen on 27/1/1998. Also exhibit CGW 4 indicates that on 18/4/1998 a report was made of his disappearance on 10/2/1998.

Also a missing person advertisement was published in Newspaper see exhibit “C G W 5”.

It is sworn that the father is dead but mother is still alive. It is sworn also that since 1998 the said brother Nicholas Mburu Wanjohi has not made any contact with his brother and mother for all this time and for the last 7 years he has not been heard of by the family the last time he is reported to have been heard of or seen was 10/2/1998. It is therefore correct that seven years have lapsed since disappearance.

The applicant has no burden to prove the death but to raise a rebuttable presumption. There is no one who is asserting to the contrary.

I therefore allow the application and grant the orders sought. The applicant has been acting in person. No. Costs are awarded. Orders accordingly.

Delivered and dated at Mombasa this 16th day of September 2005.

J. KHAMINWA

J U D G E

Read in presence of applicant.

KHAMINWA, J