



REPUBLIC OF KENYA



In re Presumption of Death of George Harry Thuku (Miscellaneous Civil Application E017 of 2023) [2025] KEHC 1746 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E017 OF 2023**

A MSHILA, J

FEBRUARY 14, 2025

IN THE MATTER OF PRESUMPTION OF DEATH OF GEORGE HARRY THUKU

IN THE MATTER OF

AGNES WANJA THUKU APPLICANT

RULING

1. The application is brought under the provisions of Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and Section 118 A of the *Evidence Act*.
2. The application is supported by a Supporting Affidavit dated 8th February, 2023 and was made by Agnes Wanja Thuku; the deponent sought the following orders;
 - a. That George Harry Thuku be presumed dead.
 - b. That the Registrar of Births and deaths do issue a Certificate of Death in respect of the said George Harry Thuku .
3. At the hearing hereof the Applicant was represented by learned counsel Mr. Gitonga Kimani who made oral submissions; hereunder is a summary of the Applicant's case;

Applicant's Case

4. The Subject was the husband of the Applicant; and is duly authorized to make this affidavit on behalf of the family which is comprised of the Applicant and the three (3) issues of the union; the issues have consented to the application and the consent in the form of an Affidavit is annexed to the instant application and is dated the 8/02/2025.
5. The subject left home for an unknown destination in the year 2014 and has never contacted the Applicant nor family member or known friend; the subject's mysterious disappearance had been reported to Kimathi Police Post and Ngewa Police Station after the de-commissioning of the Kimathi Police Post.



6. The Applicant further depones that the disappearance of her husband from their home in 2014 was also reported to the area chief and a copy of the report was annexed to the instant application; which report confirms that the subject disappeared and has never been seen or heard from the year 2014 to date;
7. Her prayer was that the application be allowed as prayed.

Issues For Determination

8. After reading the application and the annexed affidavits this court has framed only one issue for determination; which is as follows;
 - i. Whether the Applicant has made out a case to be granted the orders sought.

Analysis

Whether the Applicant has made out a case to be granted the orders sought.

9. The Applicant deponed that she was the wife of the subject and brought this instant application on behalf of herself and the issues of the marriage; her claim is that the subject had gone missing in 2014 and his mysterious disappearance had been reported to the police and the OB abstract was in possession of the subject's late brother and referred to in the area chief's letter.
10. On the presumption of death the applicable law is found at Section 118A of the *Evidence Act* which provides as follows;

“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.”
11. Before this presumption can be applicable the person has to have been unheard of for a period seven (7) years; the presumption of death is a rebuttable presumption which can be reversed if sufficient evidence is adduced to the contrary; therefore before this assumption is made sufficient evidence has to be adduced in court to prove this presumption of death; reference is made to the case of *Re. E N K* [2017] eKLR;
12. This court notes that the subject disappeared from home in 2014 and in the same year the Applicant deposes to having made a report to Kimathi Police Post and Ngewa Police Station but no extract from the Occurrence Book is annexed.
13. The Applicant has annexed a Further Affidavit made by James Nyanjui Number 113727 an officer of the Directorate of Criminal Investigations Office attached to Githunguri DCI offices. Therein he deposes as to investigations he conducted and filed a Report dated 4/09/2024 in which he confirmed that the subject had disappeared from his home in 2014 and has never been seen or heard for Ten (10) years and two (2) months to date;
14. This Court has taken note that the officer carried out a diligent search and the investigations conducted into the disappearance of the subject led to an Investigation Report being prepared which was produced into court annexed to the officer's affidavit.
15. This Report read together with the chief's letter confirm that the subject has been missing for more than the statutory period of seven (7) years; and this court is satisfied that the application is meritorious on the presumption of the death of the subject.



Findings & Determination

16. In the light of the forgoing this court makes the following finding and determination;

- i. The application is found to have merit and it is hereby allowed;
- ii. George Harry Thuku the subject shall hereby be presumed dead.
- iii. The Registrar of Births and Deaths do issue a Certificate of Death in respect of the said George Harry Thuku .

It is so ordered accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 14TH DAY OF FEBRUARY, 2025.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

N/A – by parties

