



REPUBLIC OF KENYA



**In re Ndungu Nganga (Deceased) (Miscellaneous Application  
E036 of 2023) [2024] KEHC 4629 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4629 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION E036 OF 2023**

**DO CHEPKWONY, J**

**APRIL 12, 2024**

**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF  
DEATH OF NDUNGU NGANGA - DECEASED**

**RULING**

1. This ruling is in respect of a Notice of Motion dated 19<sup>th</sup> January, 2023 which seeks the following orders:-
  - a. That presumption of death order of Ndungu Nganga be issued.
  - b. That costs be in the cause.
2. The application is based on the grounds as set out on its face and the Supporting Affidavit of Damaris Wanjiru Nganga and Mwaura Nganga on 19<sup>th</sup> January, 2023.
3. The Applicant, Damaris Wanjiru Nganga holds that she resides in Gikambura in Kiambu County and is the registered proprietor of parcel of land No.Karai/Karai/7154 which she holds in trust of her two brothers, Ndungu Nganga and Mwaura Nganga.
4. She states that Ndungu Nganga who is her younger brother went missing within Naivasha in the year 1996. That despite going to Naivasha to try and trace him, she has not found him since then.
5. The Applicant holds that she reported the matter to Gikambura Police Post vide OB No.03 9:30 hrs on 2<sup>nd</sup> May 2016 and was issued with a police abstract. That thereafter, she reported to the area chief dated 20<sup>th</sup> June, 2016. According to the Applicant, they advertised “the missing person” report of Ndungu Nganga within the Media through Nation Media and Standard Media on 27<sup>th</sup> January, 2023.
6. The Applicant contends that she intends to petition to distribute the parcel in question being Karai/Karai/7154. The Applicants seek for the court to give orders of presumption of death to act as a Death Certificate in the Matter of The Estate of Ndungu Nganga who has not been traced.



## Analysis and Determination

7. In determining the application filed by the applicants, the court is guided by the Law of Presumption of Death, which is enshrined under Section 118A of the Evidence Act which states as follows:-

“[118A]. 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”.

8. The procedure for filing of such application is provided for under Rule 11 of the Probate and Administration Rules, 1980 developed in the Law of Succession Act as follows:-

“[11]. Application for order presuming death

An application for an order presuming the death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by Summons of the Court and shall be supported by an Affidavit setting out the grounds of the application.”

9. In this case, having read through the pleadings and annexures attached thereto, the Court finds that the Petitioners have complied with the law and procedure on filing of the application for Presumption of Death and is satisfied with the steps that have been taken by the Petitioners through the report to the police station, a letter from Chief of Karai Location where the said Ndungu Nganga was last seen and the two Newspaper Publications of “the missing person” report made in respect of Ndungu Nganga. It is clear that the efforts made to trace him since the year 1996 have been futile.

10. In the circumstances, the Notice of Motion application dated 19<sup>th</sup> January, 2023 be and is hereby allowed. Consequently, the following orders issue:-

- a. That Ndungu Nganga be and is hereby presumed dead.
- b. The Registrar of Births and Deaths to issue a Death Certificate in respect of Ndungu Nganga who is hereby presumed dead.
- c. Costs to be in the cause.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 12<sup>TH</sup> DAY OF APRIL, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

