



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Application for Presumption of Death of Ndungu Nganga - Deceased (Miscellaneous Civil Application E082 of 2023) [2024] KEHC 12459 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12459 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KIAMBU**  
**MISCELLANEOUS CIVIL APPLICATION E082 OF 2023**  
**DO CHEPKWONY, J**  
**OCTOBER 18, 2024**  
**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION**  
**OF DEATH OF NDUNGU NGANGA-DECEASED**

**RULING**

1. What is before the court is the Notice of Motion Application dated 29<sup>th</sup> May, 2023 which seeks the following orders:
  - a. That the Honourable court be pleased to issue an Order of presumption of death pursuant to Section 118A of the *Evidence Act* to enable the Applicant to apply for Grant of Letters of Administration Intestate to the estate of the said Peter Ndua Hinga.
  - b. That costs be in the cause.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavits of Paul Kariuki Hinga and Hellen Wakio Mwangi sworn on 29<sup>th</sup> May, 2023 respectively, wherein they have deponed that they are brother and sister to Peter Ndua Hinga who went to Zambia in the year 1963 and came back in 1966. That, he later travelled back and has never been seen since. According to the Applicants, the said Peter Ndua Hinga did not have a wife or children. It is also deponed by the Applicants that their father Titus Hinga Ndua died and left property which has to be administered by all his children. It is the Applicant's contention that they have waited for many years and therefore reported the matter to King'ero Police Station Number vide OB No. 34 of 17<sup>th</sup> December, 2021.
3. The 1<sup>st</sup> Applicant also filed another Supporting Affidavit sworn on 13<sup>th</sup> July, 2023 and attached a letter from the Kenya High Commission in Zambia dated 1<sup>st</sup> April, 1982 confirming that their brother Peter Ndua Hinga is late and this was after their request vid a letter dated 9<sup>th</sup> March, 1982.



## **Analysis and Determination**

4. In determining the application filed by the applicants, the court is guided by the Law on 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”.

5. The procedure for filing of such application is provided for under Rule 11 of the [Probate and Administration Rules](#), 1980 as 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.”

6. In this case, having read through the pleadings and annexures attached thereto, this Court finds that the Applicants have complied with the law and legal procedure set out on filing of the application for Presumption of Death and is satisfied with the steps that have been taken by the Applicant right from making a report to King’ero Police Station in 2021, writing to the Kenya High Commission in Zambia vide a letter dated March, 1982 requesting for information on Peter Ndua Hinga and a letter from the Kenya High Commission in Zambia dated 1<sup>st</sup> April, 1982 confirming that he was late. It is clear that since the year 1966, efforts to trace the said Peter Ndua Hinga have been futile.
7. In the circumstances, the Notice of Motion application dated 29<sup>th</sup> May, 2023 be and is hereby allowed. Consequently, the following orders issue:-
- a. That Peter Ndua Hinga be and is hereby presumed dead.
  - b. The Registrar of Births and Deaths to issue a Death Certificate in respect of Peter Ndua Hinga who is hereby presumed dead.
  - c. Costs to be in the cause.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

No appearance by and for either party

Court Assistant - Sanja

