



REPUBLIC OF KENYA



Ngugi & another v Registrar of Births and Deaths Nairobi District & 2 others (Miscellaneous Civil Application 1 of 2024) [2024] KEHC 14355 (KLR) (Civ) (24 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 1 OF 2024
HK CHEMITEI, J
OCTOBER 24, 2024**

BETWEEN

PAULINE MUTHONI NGUGI 1ST APPLICANT

MARGARET NJOKI NGUGI 2ND APPLICANT

AND

**REGISTRAR OF BIRTHS AND DEATHS NAIROBI DISTRICT 1ST
RESPONDENT**

**DIRECTOR OF CIVIL REGISTRATION SERVICES NAIROBI 2ND
RESPONDENT**

HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. In their Amended Notice of Motion dated 18th April 2024 the Applicants pray for orders that;
 - (a) Peter Njuguna Ngugi be presumed dead.
 - (b) The court issue such orders necessary to give effect and the cause of justice.
2. The application is based on the grounds thereof and the sworn affidavit of the Applicants dated the same day.
3. In their affidavit the Applicants deponed that the said Peter Njuguna Ngugi was their brother and that he disappeared on 29th June 2000. They said that all efforts to trace him have been fruitless.
4. The Applicants attached copies of the Occurrence Book from Buruburu police station. They also attached a letter dated 30th January 2024 from the said police station.



5. They also attached a copy of the certificate of confirmation of grant issued on account of the estate of the late Lawrence Ngugi Njuguna their deceased father. This is Succession Cause No 1588 of 2001 Nairobi High Court. The said person is mentioned therein as a beneficiary.
6. One Milkha Nyende on behalf of the Respondents filed a replying affidavit sworn on 8th April 2024. The gist of her affidavit is an opposition to this court granting orders which will specify the details that are usually contained in a certificate of death.
7. In other words, my understanding of the said opposition is for this court in granting the orders of presumption of death not to include such details like the cause of death, the place and such other requirements as contained in a death certificate.
8. I have perused the application and I do agree with the Respondent that in an application for presumption of death it is not possible to indicate when, where and how the person met his death. What is crucial is an order from this court that the person is presumed death as per the provisions of Section 118 A of the Evidence Act.
9. This section in a nutshell though rebuttable presumes that once a person is not heard for seven years, he can be presumed to have died. It goes on to state that;

“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.”
10. The case at hand clearly is in tandem with the law. The said person has not been heard for the last 24 years and the only presumption is that he has since passed on.
11. In the premises I allow the application and find that Peter Njuguna Ngugi is hereby presumed dead.
12. Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 24TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

