



REPUBLIC OF KENYA



In re Application for Presumption of Death of Simon Kagura Wambugu (Miscellaneous Civil Application E004 of 2023) [2023] KEHC 19125 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19125 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E004 OF 2023**

TA ODERA, J

JUNE 21, 2023

**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION
OF DEATH OF SIMON KAGURA WAMBUGU**

IN THE MATTER OF

AGNES NJERI MWANGI APPLICANT

RULING

1. The notice of motion dated November 3, 2022 filed in court on January 19, 2023 seeks that Simon Kagura Wambugu be presumed dead and a death certificate be issued to that effect by the Registrar of Births and Deaths.
2. The application is anchored on section 118A of the *Evidence Act*, section 3A and 63 (e) of the *Civil Procedure Act* and order 51 rule (1) of the *Civil Procedure Rules* and all other enabling provisions of the law. It is supported by a supporting and further affidavit sworn by the applicant Agnes Njeri Mwangi dated November 3, 2022.
3. Mr Mwenda presented the application before the court on behalf of the applicant.
4. I have considered the deposition made by the applicant in the affidavit on record as well as the information contained in the annexures thereto.
5. The applicant contends that she is the wife of Simon Kagura Wambugu (the subject) and that they got married under the Kikuyu Customary Law and that their union is blessed with 2 children and they established their matrimonial home in Gilgil. The applicant further deponed that before his disappearance, on 13.11.12 morning, the subject dropped off the children at a day care in Gilgil and paid for same. Also that the subject had business in Naivasha fly over area and her efforts to trace him there and in other places and also at his relatives homes were fruitless.



6. She reported the matter to their area chief and to Gilgil Police Station vide OB no. 12/15/11/and that since without any success. She said it has been over 7 years since the subject disappeared and has not been heard of.
7. I have considered the application, the affidavit of the applicant and all the annexures thereto. Section 118A of the Evidence Act which states 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.”
8. In this case, the applicant who is the subject’s wife of the deceased who is expected to see or hear from the subject almost on a daily basis or every so often have confirmed that they have not heard or seen the subject since 13.11.12 . I have confirmed from annexures to the affidavit filed by the applicant that she also reported his disappearance to the chief Gilgil Location. The area chief confirmed in his letter herein dated 3.1.23 that the subject’s disappearance was reported to Gilgil Police Station vide OB No. 12/15/11/2012.
9. In view of the foregoing, I am satisfied that the applicant has demonstrated by credible and reliable evidence that the subject disappeared on or about 13.11.12, and has to date not been heard of by his family members. The subject has been missing for the past about 11 years and all efforts to trace his whereabouts have been fruitless.
10. From the foregoing, it is my finding that the applicant has met the threshold set in section 118A of the Evidence Act by providing evidence which raises a presumption that the subject is dead.
11. For the foregoing reasons, I find that it would be in the interest of justice to grant the applicant the orders sought herein. I therefore invoke the inherent powers of this court under section 3A of the Civil Procedure Act and allow the application in terms of prayers 1 and 2.

RULING DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;

Mwenda for the Applicant.

Court Assistant; Bor.

T. A. ODERA - JUDGE

21/6/2023

