



In re Presumption of Death of Daniel Main Karanja (Miscellaneous Civil Case 42 of 2021) [2024] KEHC 13576 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL CASE 42 OF 2021**

JRA WANANDA, J

NOVEMBER 6, 2024

IN THE MATTER OF THE PRESEUMPTION OF DEATH OF DANIEL MAINA KARANJA

IN THE MATTER OF

ANNA NJOKI KARANJA APPLICANT

RULING

1. The background of this matter is that by the Application (Notice of Motion) dated 14/04/2021 and filed through Messrs Martim & Co. Advocates, the Applicant sought orders as follows:
 - i. That Daniel Maina Karanja be and is hereby pronounced dead.
 - ii. That the Registrar of Death do issue a certificate of death in respect of the said Daniel Maina Karanja.
2. The Application was made under the provisions of Section 118 of the *Evidence Act*, Cap. 80, Laws of Kenya.
3. In her Supporting Affidavit, the Applicant deponed that the subject, Daniel Maina Karanja, is her husband with whom they got married on 27/04/1996 and that they have 4 children. She deponed further that the subject used to work at the Department of Children Services at the Eldoret Remand Home, that the subject left home on 19/09/2012 to go to work but never returned and has never been heard of ever since. She also deponed that due to the prolonged disappearance, she reported the matter to the Kapsoya Police Post and also to the Assistant Chief's office at Kapsoya. In conclusion, she deponed that the subject had been a happy man and that they did not have any quarrel before he left.
4. Upon considering the Application, the Court was satisfied that the Application was merited and granted it vide the Ruling delivered on 30/04/2021 by Hon. Lady Justice O. Sewe.
5. Subsequently, more than 3 years later, on 16/07/2024, Mr. Rotich holding brief for Mr. Martim, the Applicant's Counsel, appeared before me and addressed the Court orally. The gist of his address was



that the Applicant's efforts to have the order of 28/04/2021 acted upon was experiencing challenges at the office of the Ministry of Labour and Social Protection because the Ministry was uncertain as to what date of death they should adopted. He had also filed a copy of a letter from the said Ministry, undated but received in this Court on 26/05/2024. The same is signed by one W.K. Cheptoo "for Principal Secretary" and is then addressed to the "Judge, Eldoret High Court". Its verbatim contents are as follows:

"Reference is made to the ruling by the Honorable Court ruling on 28th day of April, 2021 in respect to the matter of presumption of death of Daniel Maina Karanja.

In the ruling of the matter, it was ordered that:-

- i. Mr Daniel Maina Karanja be and thereby presumed dead;
- ii. The Registrar of death and Births issue a certificate of death in respect of the said Daniel Maina Karanja.

Taking cognizance that Daniel Maina Karanja was a Government employee, the Director of Pensions, National Treasury, has been unable to process the dependents benefits entitlement without citation of the effective date of presumption of the death.

In regard to the above, this office seeks the indulgence and guidance of the Honorable Court in determination of the actual date of presumption of death on one of the below dates:-

- a. The date the presumed deceased absented himself from duty without permission from his immediate supervisor i.e 5th November, 2012;
- b. The date the matter was reported to Police Station/Post or the local Administration officials; OR
- c. The date the Honourable Court ruled on 28th day of April, 2021 on the matter of presumption of death of Daniel Maina Karanja.

Your guidance on the same will enable the National Treasury commence immediately the processing of the dependents entitled benefit thereof."

6. It is therefore evident that the issue of the date of "death" has been necessitated by the need to process and compute the subject's Pension dues.
7. I had intended to direct the Applicant to move the Court formally but after considering the circumstances of the matter, I opted to determine the Application on the basis of the oral address. I however directed Counsel to file brief Submissions to assist the Court make a determination.
8. In his Submissions filed on 24/09/2024, Counsel reiterated the above matters and, in the end, proposed that the date of death to be adopted be the date when the Court gave the order of presumption of death, namely, 28/04/2021

Determination

9. The issue to be determined is therefore "whether this Court having already issued an order confirming presumption of the death of the subject, what date should be adopted as the actual date of presumption of the death of the deceased?"
10. In answering the above question, I note that in her Affidavit referred to hereinabove, the Applicant deponed that the deceased disappeared on 19/09/2012. From the Police (Occurrence Book) OB



Report, I can deduce that the disappearance was reported to the police on 12/10/2012. The Assistant Chief then by his letter dated 17/12/2012 also confirmed that the report of the disappearance had been made to his office.

11. Section 118A of the *Evidence Act* aforesaid 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.”

12. The upshot of the foregoing is that the date of presumption of the death must therefore be at least 7 years after the last sighting of the subject or of any communication with him. The date of presumption of the death cannot therefore be the date of the disappearance of the subject or the date that the formal report of the disappearance was made to the police since both dates fall “within”, and not after, the 7 years stipulated under Section 118 above.

13. In view thereof, I order as follows:

- i. In respect to the Order made herein on 28/04/2021, whereof a presumption of the death of the subject herein, Daniel Maina Karanja, was made, I order further that the date of presumption of the death of the said Daniel Maina Karanja shall be the date when the said Order was made, namely, 28/04/2021.
- ii. This Order is therefore a follow-up or consequential and/or supplementary to the earlier Order of presumption of death already made herein on 28/04/2021 in respect to the subject, Daniel Maina Karanja, as aforesaid,

DELIVERED, DATED AND SIGNED AT ELDORET THIS 6TH DAY OF NOVEMBER 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Kipnetich h/b for Martim

Court Assistant: Brian Kimathi

