



REPUBLIC OF KENYA



**In re JMI (Miscellaneous Civil Application E033 of 2024)
[2024] KEHC 15761 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E033 OF 2024
FN MUCHEMI, J
DECEMBER 5, 2024**

IN THE MATTER OF

MNM APPLICANT

RULING

Brief facts

1. The application dated 13th March 2023 seeks for orders of presumption of death in respect of James Muni Ichoho (JMI) and a certificate to issue pursuant to Section 118A of the *Evidence Act*.
2. The applicant avers that she is the wife of the missing person who hailed from Gathaite sub location Kiambu County. The applicant further avers that JMI disappeared from his home on 29th May 2005 and his whereabouts are not known to date.
3. The application was further supported by a Further Affidavit dated 14th August 2024 sworn by one Peter Ichoho Mburu, a nephew to the missing person. He deponed in his affidavit that JMI was a brother to his father, John P. Mburu who is deceased. The deponent states that the missing person disappeared from his home on 29th May 2005 and the family has never heard of him.
4. The main issue for determination is whether there should be a presumption of death made in respect of James Muni Ichoho.

The Law

5. The law governing the circumstances in which a person may be presumed dead is set out in Section 118A of the *Evidence Act* as follows:-

Where it is provided 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.



6. In the case of Re E.N.K [2017] eKLR, the court held that:-

The presumption of death is a rebuttable presumption which can be reversed if sufficient evidence is adduced to the contrary. Therefore, before this presumption is made, sufficient evidence has to be adduced in court to prove the presumption of death.

7. On perusal of the court record, the applicant has stated that JMI has been missing since 29th May 2005. In support of her contentions, she has annexed a letter from the chief dated 8th August 2023 stating the same. The applicant has filed a Further Affidavit by a nephew to the missing person indicating that JMI went missing on 29th May 2005 which is nineteen (19) years. However, I have noted that the applicant did not report the incident of the missing person to the police. Furthermore, the applicant has not provided any evidence that the news was circulated through the media of the missing person's whereabouts. The presumption of death is rebuttable. As such, the party seeking an order that the missing person be presumed dead must adduce sufficient evidence. The applicant has not shown satisfactorily that she adduced evidence by reporting at the police station or other close relatives of the missing person to confirm that the said missing person has not been seen or heard. The affidavit sworn by the nephew of the missing person is not sufficient to provide evidence that the missing person ought to be presumed dead. It would have been expected in an application of this nature, the applicant would have attached her marriage certificate or any other evidence to prove that she was married to the lost person. The birth certificate if any of the lost person's children were not attached.

8. It is my finding that there is no sufficient evidence to prove marriage of the applicant to the missing person. Neither has sufficient evidence been adduced to prove the loss or disappearance of the said person.

9. I find no merit in this application and I hereby dismiss it with no order as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF DECEMBER 2024.

F. MUCHEMI

JUDGE

