

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISCELLANEOUS APPLICATION NO. 102 OF 2013

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT

CHAPTER 80 LAWS OF KENYA

AND IN THE MATTER OF APPLICATION BY MILLICENT NYAWIRA MWANGI

AND

IN THE MATTER OF STEPHEN KIMANI WAINAINA

RULING

The applicant made an application by way of an Originating Summons seeking for a certification for presumption of death of one Stephen Kimani Wainaina. The application was brought under **Section 118A** of the **Evidence Act and Order 37** of the **Civil Procedure Rules, 2010**.

The application was supported by the affidavit of Millicent Nyawira Mwangi sworn on 29th July, 2013 and a supplementary affidavit sworn on 11th February, 2014 by Miriam Njeri Muhoro. Millicent Nyawira Mwangi is the wife of Stephen Kimani Wainaina while Miriam Njeri Muhoro is his mother.

It is apparent from the affidavits filed in support of the application that sometimes in the year 2004, Stephen Kimani Wainaina who hailed from Muriranjias in Murang'a County disappeared while working at Kiambu. By then he used to live with his wife and children at Muriranjias hospital where his wife still works to date. A report of his disappearance was made to the police in February 2004 and was entered in the occurrence book as number 28/24/10/2004 at Kiambu police station. Apart from reporting to police, an announcement was also made in a local radio station asking whoever may have seen Stephen Kimani Wainaina to inform him to come back home.

Despite all the efforts to trace him, Stephen Kimani Wainaina has never been found nine years after he disappeared. The applicant and her mother in law now want this court to issue a certificate of the presumption death of the said Stephen Kimani Wainaina.

I have considered the applicant's application and the supporting affidavits thereof. I have also considered submissions by counsel for the applicant. **Section 118A** of the **Evidence Act** presupposes death of a person if that person has not been heard of for seven years by those who might be expected to have heard of him. In this case Stephen Kimani Wainaina has not been heard of for the last nine years and therefore it is legitimate to assume that he may be deceased. In the absence of any contrary evidence, I allow the applicant's application dated 29th July, 2013 and order that a certificate of the presumption of death of Stephen Kimani Wainaina do issue.

Signed dated and delivered in open court this 3rd March, 2014

Ngaah Jairus

JUDGE