



REPUBLIC OF KENYA



In re Presumption of Death of Cyrus Kamiri Kuria (Miscellaneous Application 9 of 2023) [2025] KEHC 14013 (KLR) (Family) (2 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

MISCELLANEOUS APPLICATION 9 OF 2023

PM NYAUNDI, J

OCTOBER 2, 2025

IN THE MATTER OF

DAVID MWANGI KURIA APPLICANT

JUDGMENT

1. Before this Court is the Notice of Motion dated 29th November, 2022 presented under Section 118A of the *Evidence Act*, Section 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, seeking for an Order:
 - i. That Cyrus Kamiri Kuriabe presumed dead.
2. The Applicant. is a brother to Cyrus Kamiri Kuria. He depones that he was last seen on 28th June, 2012 when he left their home in Kamirithu Village Limuru Location, within Kiambu County.
3. He and his family have searched for him in hospitals and morgues to no avail. He has also made reports to the Police and local administration within his locality. He has also placed advertisements in radio stations announcing the disappearance of his brother to no avail.
4. The Subject has not been in touch with family members whom he is close to and whom it is expected he would have contacted. These include Daniel Ngari Kuria, his brother and Johnson Mwangi Kamau his Cousin both of whom have sworn affidavits in support of this Application. t is close to 13 years since the Subject was last seen.

Issues for Determination

5. Upon reading the application and supporting affidavits of the Applicants this Court discerns that the issue for determination is;
 - i. Whether the Applicant has made out a case to be granted the order of declaration of presumption of death of Cyrus Kamiri Kuriaand the consequential orders arising therefrom



6. The Applicant is the brother of the Subject, he has been missing since 28th June, 2012, his mysterious disappearance was reported to the police and the OB extract is annexed to the application;
7. On the presumption of death, the applicable law is found at Section 118A of the
8. Evidence Act which 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.”
9. Before this presumption can be applicable the person has to have been unheard of for a period of seven years.
10. This Court notes that the subject disappeared from home on 28th June, 2012 and in the same year the Applicant made a report to Tigoni Police Station and it was entered in the Occurrence Book as OB No.10/10/6/2012.
11. Consequently, the subject has been missing for the statutory period of seven (7) years and the Applicant has tendered sufficient material in compliance with the provisions of Section 118A of the Evidence Act to enable this Court to decide whether the subject should be presumed dead.
12. Rule 10 and Section 51 of Law of Succession Act, Cap 160 provide that in an application for the Grant of Letters of Administration, a copy of the death certificate is mandatory. It further provides

“Application for order presuming death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by summons to the court and shall be supported by an affidavit setting out the grounds of the application.”
13. In the circumstances, I find that there is sufficient evidence tendered by the Applicants and order as follows:
 - a. The subject herein Cyrus Kamiri Kuria is presumed dead;
 - b. The Registrar of Births and Deaths is to issue a certificate of Death in respect of Cyrus Kamiri Kuria
 - c. There shall be no order as to costs.

It is so ordered

SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 2ND DAY OF OCTOBER, 2025.

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M. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Court Assistant- Fardosa

Gachichio for Applicant

Judgment

