

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
MISC. CIVIL APPLICATION NO. E075 OF 2025

**IN THE MATTER OF AN APPLICATION OF DECLARATION OF THE
DEATH OF JAMES OCHIENG AKETCH**

SELLA AUKO AKECH.....APPLICANT

RULING

1. By an application dated 3rd March, 2025 brought under section 118A of the Evidence Act, Rule 11 of the Probate and Administration Rules, the Applicant seeks the following orders:-

1) This Honourable Court do make a Presumption of death in respect of James Ochieng Akech holder of National Identity card number 0568249.

2) A death certificate be issued by the principal Registrar of Births and Deaths (or any other Registrar under him in respect to the said James Ochieng Akech).

2. Based on the grounds on the face of the application and the Supporting Affidavit sworn on 27th February, 2025, the Applicant states that James Ochieng Aketch, Holder of National Identity card Number 0568249, is her sibling and their first-born brother .

3. She states that their father is deceased but their mother is old and ailing. Her mother together with the Applicant's other siblings including; Mary Auma Nyongesa, Rose Akinyi Akech, Michael Dude Akech, Hellen Otiende Akech, Paul Ochino Aketch and William Milla Aketch, have given her authority to file and pursue this application on their behalf.

4. It is her case that her brother James Ochieng Akech, was working in Nakuru as the District Accountant when he disappeared on or about 17th July, 2009. A missing report was therefore filed at Central Police Station Nairobi on 3rd

August, 2009 and communication made to his employer on 11th August, 2009. On 22nd August, 2009, a notice of missing person was published in the newspaper followed with another publication made on 29th October, 2009.

5. She depones that her brother was not married at the time he went missing and efforts have been made by her family members to trace him but to no avail and therefore, they are desirous that an order be made on his presumption of death to settle the matter once and for all.

Determination

6. From the material before this Court, the only issue for determination, is whether James Ochieng Akech should be presumed dead.
7. The circumstances under which this Court can make such a presume is set out in Section 118A of the Evidence Act 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 sister of the missing person has produced documents showing that he disappeared on or about 17th July, 2009 and has not been seen or heard of by any member of his family or his employer and colleagues where he worked as District Accountant Nakuru.
9. The police abstract dated 3rd August, 2009 issued by the Central Police Station Nairobi shows that the subject herein was reported missing on 18th July, 2009 and was lastly seen at Pacific Hotel on the night of 17th July, 2009. The police therefore embarked on searching him.
10. The office of the Deputy Prime Minister and the Ministry of Finance published in the newspaper that the subject was missing. In addition, the Town Clerk, City Council of Nairobi published in the Newspapers about the disappearance.

11. Further his disappearance was reported in the Newspapers headed:-
“Mother’s grief for a son gone without a trace and the topic ‘Family’s Agony over accountant who vanished.”
12. The Applicant herein, her siblings together with her mother are people who are expected to see or hear from him almost on a daily basis or every so often, but they have all confirmed that they have not heard from him or seen him since 2009 which is about 16 years ago.
13. Based on the evidence tendered showing the efforts by the family and the missing person’s employer to trace him without success, this Court is satisfied that the Applicant has met the threshold set out under Section 118A of the Evidence Act to warrant a presumption that the Subject herein is dead. This Court therefore allows that prayer.
14. As to the prayer for directing the Principal Registrar of Births and Deaths to issue a Death Certificate, Section 17 of the Births and Deaths Registration Act provides that : -

“Upon the death of any person the registration of whose death is compulsory, it shall be the duty of the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, and, in default of such relatives, of every other relative of the deceased dwelling or being in the same registration area as the deceased, and, in default of such other relatives, of each person present at the death and of the occupier of the house in which to his knowledge the death took place, and, in default of the persons hereinbefore in this section mentioned, of each inmate of such house, or of any person finding or taking charge of the body of such person or causing the body of such person to be buried or otherwise disposed of, to give notice within such time as may be

prescribed to the registrar of the registration area in which the death took place.”

15. Having made a declaration of a presumption of death in this case, then by operation of law, the Registrar should therefore proceed and register the subject's death.

16. Consequently, the application dated 3rd March, 2025 is allowed as follows:-

- 1. An order be and is hereby issued by this court presuming that James Ochieng Akech of National Identity Card Number 0568249 is dead.**
- 2. The Registrar of Births and Deaths be and is hereby ordered to issue a Certificate of Death in respect of the said James Ochieng Aketch.**

Dated, signed and delivered at Nakuru this 11th Day of November , 2025.

**PATRICIA GICHOHI
JUDGE**

In the presence of:

**Mr Kamonjo for the Applicant
Kamau, Court Assistant**