



In re an Application of Declaration of the Death of Felista Wambui Nyoike (Family Miscellaneous Application E005 of 2025) [2025] KEHC 15934 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS APPLICATION E005 OF 2025
PN GICHOHI, J
NOVEMBER 5, 2025
IN THE MATTER OF AN APPLICATION OF DECLARATION
OF THE DEATH OF FELISTA WAMBUI NYOIKE**

**IN THE MATTER OF
JOHN KARIUKI NYOIKE APPLICANT**

RULING

1. The Applicant approached this court vide an application dated 3rd February, 2025 and expressed under Sections 1A, 1B and 3A of the Civil Procedure Act and Section 118A of the Evidence Act seeking for the following orders;-
 1. Spent.
 2. Spent.
 3. The Court be pleased to declare and presume dead, one Felista Wambui Nyoike who has been missing since the year 1983 to date.
 4. Costs of this application be provided for.
2. The Application is supported by the grounds on the face of the application and the Supporting Affidavit of the Applicant sworn on even date.
3. He stated that Felista Wambui Nyoike is his biological mother and that she left home in the year 1983 together with two of his siblings when they were young. She has never returned home to date and efforts to trace her have proved futile. None of the family members has ever heard from her or seen her for over 40 years now.
4. He deponed that he reported the missing person to Subukia Police Station and was issued with Occurrence Book Number 24/22/02/23. Further that the Chief of Arash Location in Subukia Sub-



County, Mr. John Njaramba, confirmed in his letter dated 22nd November, 2023 that the subject herein has been missing for more than 40 years now.

5. Further, the Applicant stated that he swore an affidavit on 28th April, 2023 confirming that his mother, Felista Wambui Nyoike, has been missing since 1983 to date. He stated that save for his brother James Karanja Nyoike, the other two siblings Philip Maina Nyoike and Martha Wangari Nyoike passed on together with their father Philip Edward Nyoike, while his two younger siblings, Nduta Nyoike and Wairimu Nyoike went with their mother in 1983 and have not been traced also to date.
6. During hearing of this application on 14th July, 2025, the Applicant, John Kariuki Nyoike, his brother James Karanja Nyoike and their niece, Caroline Wambui Maina testified in support of the application herein.
7. The Applicant reiterated the contents of his application and stated that his brother Philip Maina Nyoike died in 2015 and that his wife took out the death certificate to that effect but has refused to give them a copy to present before this Court.
8. The Applicant's brother James Karanja Nyoike reiterated the Applicant's testimony confirming that indeed his mother went missing and that they reported a missing person at Subukia Police station.
9. He added that his sister Martha Wangare Nyoike died on 9th October, 2012 and that her only daughter Caroline Wambui Maina was issued a Death Certificate Serial Number 0671451.
10. In her testimony, Caroline Wambui Maina produced a copy of the death certificate of her late mother.

Determination

11. This Court has considered the material presented herein and the only issue for determination, is whether Felista Wambui Nyoike should be presumed dead as provided for under Section 118A of the [Evidence Act](#) that:-

“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. It is the Applicant's burden to avail evidence required in support of that application for such orders. The applicant is the son of the subject. The two witnesses who appeared before this court are the son and the granddaughter of the missing person respectively and they are said to be the only alive relative of the missing person.
13. They are the people who are expected to see or hear from the subject almost on a daily basis or every so often but they have confirmed that they have not heard or seen the subject since the year 1983. The annexures to the Affidavits filed by the Applicant confirm that he also reported this disappearance to Subukia Police Station and issued with OB Number 24/22/02/23 and to the Chief of the area in which they resided.
14. No doubt 43 years is a vey long time since Felista Wambui Nyoike disappeared from her family and with no communication from her whatsoever to date despite the efforts made to trace her. That justifies her family's believe that she is dead.
15. Even though the long-term disappearance is not a definite proof of her death, it may lead to the presumption of death where there is no evidence adduced contrary to what the witnesses herein have stated before this Court.



16. Indeed, this Court is persuaded by the case of *Re E N K* [2017] eKLR, where Njuguna, J 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 presumption of death.”

17. Based on the evidence tendered and the testimonies of the Applicant and the other two relatives, this Court is satisfied that the Applicant has met the threshold set in Section 118A of the *Evidence Act*. It is safe to presume that she is dead.

18. Consequently, 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.”

19. With this Court having declared Felista Wambui Nyoike dead by operation of law, then the Registrar is required by law to register this death and issue a Death Certificate accordingly.

20. Consequently, the application dated 3rd February, 2025 is allowed as follows:-

1. An order be and is hereby issued presuming Felista Wambui Nyoike as dead.
2. The Registrar of Births and Deaths to issue a Certificate of Death in respect of the said Felista Wambui Nyoike.
3. No Orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF NOVEMBER, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Applicant

Kamau, Court Assistant

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