



REPUBLIC OF KENYA



KENYA LAW
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**In re KAL (Miscellaneous Application E080 of 2024)
[2026] KEHC 3175 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E080 OF 2024
RN NYAKUNDI, J
MARCH 9, 2026
IN THE MATTER OF AN APPLICATION FOR A
DECLARATION OF PRESUMPTION OF DEATH BY PCL
AND
IN THE MATTER OF KAL
IN THE MATTER OF
PCL APPLICANT**

RULING

1. Before this Court is an Application dated 2nd February 2024. The Applicant seeks the following orders;
 - a. That this Honourable Court be pleased to declare and presume dead, one KAL, the applicant's husband who has disappeared and not been heard of continuously for the last Twelve (12) years.
 - b. That upon grant of prayer number 1 above, this Honourable Court do dissolve the marriage between the applicant and KAL
 - c. That costs of this application be on cause.
2. The Application is made on the following grounds;
 - i. That the applicant married KAL in the year 1965 under the Nandi Customary Law.
 - ii. That in the year 2012 to date the said KAL disappeared and efforts by the applicant and both families to trace him has bore no fruits.
 - iii. That it's now over 12 years and the said KAL has not been traced
 - iv. That it is only fair and just that this Honourable Court do declare and presume dead the said KAL and to dissolve their marriage.



- v. That further upon presumption of death of the said KAL, the marriage between the applicant and him be dissolved.

Decision

3. A person is generally presumed dead if they have been missing and unheard of for seven consecutive years by those who would normally hear from them. This is a rebuttable presumption, often established under evidentiary acts, allowing for legal, financial, and estate matters to be resolved in the absence of a body.
4. What is the Court expected to look for to rule in favor of the Applicant under Section 118(A) of the Evidence Act; First, is that there is sufficient evidence not on a balance of probability that the deceased is indeed dead given the kind of communication which has been shared with the relatives, the local administration and the public at large. In Re ENK [2017] eKLR the Court stated that;

“The presumption of death is rebuttable presumption which can be reversed if sufficient evidence has to be adduced to the contrary. Therefore, before this presumption is made, sufficient evidence has to be adduced in Court to prove the presumption of death”
5. In the same vein Section 17 of the Birth 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.”
6. The disappearance of a person leaving no trace behind gives rise to curious and baffling problems in various branches of the law. More prominently the Law of Succession. The statutory time limit to apply for an order of presumption of death in Kenya is seven years. Conversely it must be appreciated that the mere fact that the person has not been heard nor seen is not sufficient news of him/her that the Applicant has exercised reasonable diligence to declare the alleged person under the test set out in Section 118(A) of the Evidence Act. Therefore, it is a threshold issue by the Applicant who seeks to set up the presumption doctrine not to be bound to listen to in villages, village markets, towns without first exhausting the possible sources of reliable information as a condition precedent to move the Court for such a declaration of presumption of death. It is important to mind Kenyans and the intended Applicant to remember that not hearing of a person is only just a basic fact of the presumption of death. There are two ways of establishing the presumption of death under Section 118(A) of the Evidence Act. First by the evidence of the propositus did not communicate with those who would have been likely to hear from him/her during the seven years, or secondly by evidence that after seven years and independent search revealed no trace of him/her within the Republic of Kenya, in the East African Region or in the diaspora. See *in Re Liebeskind* (1952) *The Times Newspaper*, December 11 and *Doe D France v Andrews* (1850) 15 QB 756 cf. *Tweney v Tweney* [1946].



7. The Applicant in this case has sworn an Affidavit which satisfies the Requirement of Section 118(A) of the Evidence Act and at least it can be said with certainty that the presumption of death has been established to pronounce a Decree on the question of death of the subject in this matter on KAL is no longer in existence as known scientifically, legally or by the act of creation. The Application therefore succeeds and the Registrar of Births and Deaths of the Republic of Kenya do issue a Certificate of Death in favor of the Applicant

GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 9TH DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE

