



**In re Kihagi (Family Miscellaneous Application E034 of 2025)
[2026] KEHC 3367 (KLR) (13 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS APPLICATION E034 OF 2025**

MA ODERO, J

MARCH 13, 2026

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT, CAP 80 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF DEATH OF JMK

IN THE MATTER OF

BKK 1ST APPLICANT

LMK 2ND APPLICANT

JUDGMENT

1. Before this Court is the Summons General dated 24th September 2025 by which the Applicants BKK and LMK seek the following orders:-
 - “ 1. That the Honourable Court be pleased to declare that JMK be presumed dead.
 2. That the Registrar of Births and Deaths be and is hereby directed to issue a certificate of Death in respect of the said JMK.
 3. That costs of this application be in the cause.”
2. The application was premised upon Section 118A of the *Evidence Act*, Rule 10 of the Probate and Administration Rules & Sections 16 & 17 of the Births and Registration Act Cap 149 Laws of Kenya and was supported by the affidavit of even date sworn by both Applicants.
3. The Applicants aver that they are both the brothers of JMK (hereinafter referred to as “The missing person). That the missing person was born on 28th December 1972 is was a Kenyan Citizen being the holder of National Identity Card No. 1XXXXXX8. A copy of the said identity card appears as Annexure 1 to the Supporting affidavit.



4. The applicants further aver that the subject missing person last seen at Ngangarithi area in Nyeri County on or about 19th September 2017. That he has not been seen or heard from ever since.
5. The Applicants state that they have searched for their brother all over in hospitals and mortuaries to no avail. That a Missing person report was made at Nyeri Police Station vide OB No. 3 of 26th September 2017 to no avail. (See Annexure 2). That attempts to trace the missing person through Facebook and other social media have also borne no fruit. The Applicants now seek to have the missing person declared dead.
6. The matter was heard by way of Vive Voce evidence. PW2 LW (mother to the subject) and PW4 MNK (a sister of the subject) and JGK (a brother to the subject) all testified and confirmed the evidence of the Applicants to the effect that the missing person disappeared sometime in September 2017 and has not been seen nor heard from by any of his family members to date.
7. The only issue which now arises for determination of this court is whether the Applicants have adduced sufficient evidence to warrant the conclusion that the missing person is no longer alive.
8. Section 118 of the Evidence Act Cap 60 Laws of Kenya provides 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 from him if he were alive, there shall be a rebuttable presumption that he is dead.”

9. In RE: ENK [2017] eKLR, the Court 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.”
10. In RE: Application for the presumption of Death of WMW [2024] eKLR, the Court in elaborating on Section 118 stated as follows:-

“The accepted view is that there is a presumption of death in the event that every person known to have been physically present within his homestead, place of work, neighbourhood, village, sub-location, location, ward, Constituency, County, region or the Republic at large during his/her lifetime but suddenly goes missing and the fact of it remains so for a period of seven years, it is taken to be a rule of law that is equivalent to death. That is in the absence of evidence to the contrary the presumption compels a finding of the fact of a person’s death, once certain prescribed facts are established to the court’s satisfaction. It is also true to bear in mind that where a man disappears and is unheard for a long period of time, he may or he may not be dead. That fact must remain alive to the court exercising discretion and the presumption of death. In *Bowden -vs- Henderson* [1854] 25M, the Court held that for presumption [of death] to arise there must be persons likely to have heard of the propositus who had in fact not heard. The reason for this requirement was explained thus

“The principle on which the court presumes the death of a person from whom no tidings have been received for a long time is thus, that if he were living he would probably have communicated with some of his friends and relatives. It is a conclusion which the court



draws from the probabilities of the case. It is quite clear that where no such probability exists the presumption cannot arise.”

11. In this case all the witnesses stated that they last saw their brother in September 2017 which is more than eight years ago. The missing person was said to have been engaged in the business of selling clothes in Nyeri Town. He was not married and had no children thus the persons who would reasonably have been expected to hear from the missing person or see him regularly would be his mother and/or his siblings. The mother PW2 told the Court that she has not seen or heard from her missing son since 2017.
12. The Applicants have detailed the efforts they have made to trace their missing brother including filing a report at Nyeri Police Station (copy of OB extract is Annexure 2). The family have searched in morgues and hospitals. They made announcements in churches and through Social medial all to no avail. A letter from the Chief Kirua Location dated 23rd September 2025 (Annexure 4) confirms that the subject has not been seen in his local home area since September 2017.
13. From the above I find that the subject has not been seen or heard from by his closest family members for a period of over eight (8) years. This fact raises a rebuttable presumption that the missing person is no longer alive. Accordingly I allow this summons and make the following orders:-
 - (1) That JMK is hereby presumed dead.
 - (2) The Registrar of Births and Deaths is directed to issue a certificate of Death in respect of the said JMK .
 - (3) No orders on costs.

DATED IN NYERI THIS 13TH DAY OF MARCH 2026

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MAUREEN A. ODERO

JUDGE

