



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
FAMILY DIVISION
MISC. SUCC. CAUSE NO E014 OF 2025

JACINTA

WANJIKU

NDEGE.....APPLICANT

RULING

[1] By Summons dated 7th July, 2025, the Applicant seeks an order of the Court that the subject ***“Peter Gachoki Mucira be presumed dead and a death certificate be issued to that effect by the Registrar of Birth and Death, Kerugoya.”***

[2] The application is supported by an Affidavit by the applicant sworn on 7th July, 2025 indicating that the subject disappeared after leaving home to attend Court at Kerugoya on 24th November, 2021 as shown in the supporting affidavit:

1. ***THAT I am a female adult of sound mind and the Applicant herein hence competent to swear this Affidavit.***
2. ***THAT sometime in 2016 Peter Gacoki Mucira and I got married under Kikuyu customary Law where all the rites and rituals were performed.***
3. ***THAT we have two children with him one being his biological child (Annexed and marked JWN 1 is a copy of the Certificate of Birth)***
4. ***THAT in 2017 Peter Gacoki Mucira was allocated land by his now deceased father and we immediately moved into the said property and made significant developments.***
5. ***THAT however, on 24th November, 2021 Peter Gacoki Mucira proceeded to Kerugoya Law Courts to attend to court proceedings but he never returned home.***

6. *THAT on 28th November, 2021 I reported the matter to Kianyaga Police Station (annexed and marked JWN2 is a copy of the OB dated 28th November, 2021)*
7. *THAT the matter was referred to the DCI for further investigation but upon investigation it was reported that all efforts to trace him proved futile. (annexed and marked JWN 3 is a copy of the OB Extract and missing person report issued on 26th August, 2022)*
8. *THAT all and further efforts to locate and trace him have borne no fruits.*
9. *THAT following his sudden disappearance I have been handling and maintaining his assets and liabilities but they have since been in danger of interference.*
10. *THAT I make this application for his presumption of death to enable me properly seek a grant for his estate and to have proper authority to preserve and protect his estate*
11. *THAT I swear this Affidavit in support of this application*
12. *THAT what is deponed herein is true to the best of my knowledge, information and belief.”*

[3] A copy of Police Records on the report of his disappearance dated 28th November, 2021 is attached to the application. If he has not been seen or heard from since the date of disappearance it has been 4 years and 4 months to date.

[4] The need to seek a grant for the Estate of the subject to give the applicant proper authority to preserve and protect his Estate is urgent as the ground for the application for presumption of death and it is obvious that the applicant who is represented by counsel is aware of the 7 year requirement for presumption of death.

[5] The application has expressed to be brought under Rule 10 and 59(1) of the Probate and Administration Rules Legal Notice No. 104 of 1980, Section 3A and 63(c) of the Civil Procedure Act cap. 21 and Article 159 (2) of the Constitution and all other enacting provisions of law. Rule 10 of the Probate and Administration Rules requires a Summons for an order of presumption of death.

[6] However, Section 118A of the Evidence Act provides as follows:

“118A. Presumption of Death

Where it is proved that a person has not been heard 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.

[Act No. 14 of 1972, ninth sch.]”

- [7] While Rules 10 and 59 of the Probate and Administration Rules provide for the filing of an application for presumption of death by the procedure of a Summons, as one of the ways to approach the Court in succession matters, the substantive law on the presumption of death is what is set out in Section 118A of the Evidence Act.”
- [8] Presuming a person dead for any purpose is a serious matter and the Court does not consider that it can lightly make a determination for presumption of death before the period statutorily prescribed under the law is attained. It may open a flood-gate of such applications in many cases which may be undeserving in the ordinary cause of things in the life of humans.
- [9] The Court considers that in the period before such an order for presumption of death upon the expiry of the period of the seven (7) years prescribed, an applicant who has been in relationship with a person who has disappeared may deal and protect his property as a licensee, the Licence being implied from his/her relationship with the Subject, alleging such there may not be sufficient for purpose of succession.
- [10] The court is unable to grant the application for presumption of death of the Subject herein as prayed.
- [11] The consequence of this finding of the Court is that the Subject is considered to be still living and he must be taken, in his long absence, to have given his consent to the applicant to deal with the property while in her possession as a licensee.
- [12] The applicant shall proceed to deal with the named estate of the Subject until the Court may properly determine a presumption of death to have arisen on the lapse of stipulated time.

ORDER

- [13] Accordingly, for the reasons set out above, the application by Summons dated 7th July, 2025 is declined.
- [14] There shall be no orders as to costs.
- [15] File closed.

Order accordingly.

DATED AND DELIVERED THIS 16TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mogusu for Mrs. Magara for the Applicant.