



**In re Ngaulo Lemeru Mukire (Missing Person) (Miscellaneous Civil Application E357 of 2025) [2026] KEHC 5570 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5570 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION E357 OF 2025**

**RN NYAKUNDI, J**

**APRIL 28, 2026**

**IN THE MATTER OF THE LAW OF SUCCESSION ACT (CAP 160 LAWS OF  
KENYA)**

**AND**

**IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT (CAP 80  
LAWS OF KENYA)**

**AND**

**AN APPLICATION FOR PRESUMPTION OF THE DEATH OF NGAULO  
LEMERU MUKIRE (MISSING PERSON)**

**IN THE MATTER OF  
WILLIAM LAMAIYAN NGAULO ..... APPLICANT**

**RULING**

1. Before this Court is an application dated 5<sup>th</sup> September 2025, brought under Section 73 of the *Law of Succession Act*, Section 118A of the *Evidence Act* and all other enabling provisions of the law. The Applicant seeks the following orders:
  - a. Spent.
  - b. That this honorable Court be pleased to declare that Ngaulo Lemuru Mukire, who disappeared in the year 1990 at the age of 85 years has never been seen or heard of to date, is presumed dead in accordance with Section 118A of the *Evidence Act*.
  - c. That this honorable Court be pleased to make an order requiring the County Lands Registrar – Uasin Gishu County to issue a Death Certificate of Ngaulo Lemeru Mukire for purposes of instituting succession proceedings



- d. That the costs of this application be in this cause.
2. The application is based on the following orders:
    - a. The subject of this application, Ngaulo Lemeru Mukire disappeared in the year 1990 and has never been traced or heard from since.
    - b. Over 34 years have elapsed since he disappeared in the year 1990 at the age of 85 years and has never been traced or heard from since.
    - c. The Applicant William Lamaiyan Ngaulo is the only surviving son and next of kin of the said person.
    - d. The Applicant requires a death certificate in order to petition for letters of administration and carry out transmission in accordance with the *law of Succession Act*.
    - e. It is in the interest of justice that this honorable Court grants the orders sought.
  3. In support of the application is the annexed affidavit sworn by one William Lamaiyan Ngaulo who deponed as follows:
    - a. That Ngaulo Lemuru Mukire, who is the Applicant's father, disappeared in the year 1990 at the age of 85 years and to date has never been seen or heard of by family, relatives or friends.
    - b. That efforts to trace him has proved futile since the Applicant visited his ancestral home including Kipsogor in Baringo County and also Transmara, where his original home was but no one had seen him or heard of him.
    - c. That Applicant is the only surviving son and the next of kin of his missing father, his late sister died in the year 2011 and left 8 children.
    - d. That the Applicant's father was the registered proprietor of land of parcel number Tembilio/ Elgeyo Border Block 9 (Komba-emit)101.
    - e. That the Applicant requires death certificate for purposes of instituting succession proceedings.
    - f. That it is just and fair that the orders sought be granted.
  4. In support of the application is the further affidavit of the Applicant.
    - a. That pursuant to the directions of this honorable Court issued when the Applicant's application dated 5<sup>th</sup> September, 2025 came up for consideration, he was required to undertake the following:
      - a. Cause an advertisement of the disappearance of his father, Ngaulo Lemeru Mukire in a national daily newspaper.
      - b. Announce the disappearance on a local radio station
      - c. Obtain police abstract from the nearest Police Station
    - b. That in compliance with the said directions, the Applicant proceeded to the National Media Group PLC and caused a notice of the disappearance of his father to be published on the Daily Nation Newspaper and was issued with a receipt.



- c. That further, the Applicant visited Tembelio Police Station to officially report the disappearance and he was issued with Police Abstract OB NO. 14/06/11/2025, evidencing the report.
- d. That in addition, the Applicant caused an announcement to be made through Kass FM Radio, being a local station widely listened to within their community. The Applicant was issued with a receipt confirming payment of the said announcement.
- e. That the Applicant verily state that he has fully complied with the directions of this honorable Court and taken all reasonable and necessary steps to trace the whereabouts of his father, who disappeared in 1990 and has never been heard from since.
- f. That over thirty-four (34) years have elapsed since his disappearance and to date, no information has ever been received confirming his whereabouts of fate.
- g. That the Applicant is the only surviving son and urgently require a death certificate for purposes of commencing succession proceedings to protect the estate from potential intermeddling.
- h. That it is in the interest of justice that this honorable Court grants the orders sought in the notice of motion dated 5<sup>th</sup> September 2025

### Decision

5. This case is based on the concept of a missing person. Throughout the world hundreds of people have lost track of a relative during an armed conflict or in a situation of violence. Their relatives may have been killed in mass execution and their bodies drawn into unmarked graves. This necessitated the development of numerous provisions of International Law to help avert cases of disappearance and to support when relatives of theirs goes missing. A missing person in Kenya is provided for under Section 118A of the *Evidence Act*. Under this law if a person simply vanishes or disappears without being heard for seven years then such a person could be classified as a missing person who should be presumed dead. When a missing person is presumed dead then the property would be dealt with under the Succession Act and such assets can be distributed within the scope of the intestate estate.
6. In this respect the Applicant William Lamaiyan Ngaulo was granted leave to swear to the death of the deceased Ngaulo Lemeru Mukire. Kenya is not the only country which has legislated on presumption of death which involves the seven-year rule, where a person missing and unheard from that period is presumed dead. We share that common law heritage with the Caribbean State as can be deduced from the case law herein referred to with regard to the principles on the matter. Thus in *Nelson, Tivy Austin v Nelson, Melva Evadne* Jamaica Supreme Court, 2015/2013), it is a crucial case regarding the setting aside of a Presumption of Death Order (PDF) due to fraudulent representation, highlighting that such orders can be contested if the "deceased" reappears. Whereas in *Baumgartner-Marik, Gilian* (Executrix of the estate of Joscelyn Elliot) v Elliot, Agnes (Jamaica Supreme Court, 2013), the court Examined the evidence required for presumption of death, focusing on the absence of communication for several years and management of property. In addition, the court in *re Michael Beckford* (Jamaica Supreme Court, 2022), It Deals with the petition for the presumption of death due to continued absence for over seven years. Finally, in *re John Adral Thorne* (Trinidad and Tobago High Court, 2021), it is a case detailing the application for leave to swear the death of a missing person and the subsequent issuance of a death certificate (PDF).
7. The legal principles applicable under Section 118A of the *Evidence Act* include the following: Seven Years Absent: The standard common law presumption requires the person to be unheard of for seven



years by those who would likely have heard from them. Leave to Swear Death: The court typically allows the Applicant to "swear to the death" of the missing person. Rebuttable Presumption: These orders are not absolute and can be set aside if evidence emerges that the person is alive. Property and Marriage: Such orders are often initiated to manage estates or remarry, as seen in the Nelson v Nelson case. Legal Determination: This doctrine allows legal actions such as property transfer and ending marriages to proceed, even when nobody has been recovered. Proof: While generally requiring a set period of unexplained absence, the doctrine can be applied sooner if the individual was last seen in a specific, unavoidable catastrophe e.g., plane crash. Simultaneous Death: In cases where it cannot be determined who died first e.g., a common disaster, the court may infer that individuals died simultaneously based on legal principles. Medical vs. Legal: This is distinct from medical definitions of death, which focus on the irreversible cessation of circulatory, respiratory, or brain-stem functions.

8. I have carefully reviewed the evidence adduced by the Applicant on behalf of the estate of the deceased and there is no dispute that Ngaulo Lemeru Mukire went missing and is now over 7 years he has not been seen or traced within the Republic of Kenya. The presumption of death shall therefore be granted in favour of the Applicant as per the law established. I make no orders as to costs.

**DELIVERED, DATED AND SIGNED IN ELDORET THIS 28<sup>TH</sup> DAY OF APRIL 2026.**

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**R. NYAKUNDI**

**JUDGE**

