



REPUBLIC OF KENYA



**In re Presumption of death of Scholastica Wanjiku Nyoike (Miscellaneous Application E015 of 2025) [2025] KEHC 9588 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9588 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION E015 OF 2025  
DO CHEPKWONY, J  
MAY 28, 2025**

**IN THE MATTER OF AN APPLICATION BY TERESIA NUNGARI  
WANYOIKE, ALICE WAIRIMU WANYOIKE, AND SIMON WAKIA NYOIKE  
AND JOSEPH MACHATHA NYOIKE..... APPLICANTS  
IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF DEATH OF  
SCHOLASTICA WANJIKU NYOIKE.**

**IN THE MATTER OF  
TERESIA NUNGARI WANYOIKE ..... 1<sup>ST</sup> APPLICANT  
ALICE WAIRIMU WANYOIKE ..... 2<sup>ND</sup> APPLICANT  
SIMON WAKIA NYOIKE ..... 3<sup>RD</sup> APPLICANT  
JOSEPH MACHATHA NYOIKE ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. For determination before this Court is a Notice of Motion application date 25<sup>th</sup> March, 2025 brought under Order 41 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A all of the *Civil Procedure Act*, Section 118 A of the *Evidence Act*, Cap 80 of the Laws of Kenya and Articles 2(5), 46(1), 48 and 159, all of *the Constitution* of Kenya. Therein, the Applicants are seeking for orders that:-
  - a. Spent.
  - b. Scholastica Nungari Nyoike be and is hereby presumed dead.
  - c. The Honourable Court do order the Registrar of Birth and Death to issue a Death Certificate in respect of Scholastica Wanjiku Nyoike.



- d. Subsequent to the grant of the prayers above, the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders and or favour the cause of justice.
2. The application is founded upon nine (9) grounds as set out on its face and is supported by an affidavit sworn by Teresia Nungari Wanyoike, the mother of the subject, on the same date. In essence, the Applicants aver that Scholastica Wanjiku Nyoike (hereinafter referred to as "the missing person") disappeared in July, 1999 and has never been seen or heard from since. Notably, her National Identity Card was later recovered from her house in Gatundu Town.
  3. It is stated that at the time of her disappearance, the missing person was a single mother to a son, by the name James Nyoike Wanjiku, who was then five (5) years old and is now thirty-one (31) years of age. It is also deponed that she was suffering from mental health challenges which included dementia, at the time of her disappearance.
  4. The Applicants state that a report regarding her disappearance was made to the Chief of Mutate Location, Gatundu Sub-County. On 15<sup>th</sup> November, 2024. Subsequently, on 14<sup>th</sup> March, 2025, they reported the matter to the Officer Commanding Station (OCS), Gatundu Police Station, reiterating that the missing person had disappeared in 1999 and had not been seen since.
  5. The Applicants further submit that more than twenty-six (26) years have elapsed since the missing person was last seen or heard from by anyone who would ordinarily be expected to have heard from her if she were still alive and all efforts to trace her whereabouts have been unsuccessful.
  6. In support of the application, the Applicants have annexed a copy of her National Identity Card, an extract of the OB Entry No. 27/14/03/2025 from Gatundu Police Station, and a letter from the local Chief, Videlis W. Kagari.
  7. When the application was placed before the court for consideration, it was directed that the same be heard on 30<sup>th</sup> April, 2025. The Applicant who are basically mother and siblings to the said Scholastica Wanjiku Nyoike, "the missing person" attended court and were examined by court on the application.
  8. I have carefully considered the application, the supporting affidavit, and the annexed and documentation alongside the oral examination by the court to determine whether or not the Applicants have met the legal threshold required for grant of the orders they are seeking. Order 51 Rule 1 of the Civil

Procedure Rules states that:-

- (1) All applications to the court shall be by motion and shall be heard in open court unless the court directs the hearing to be conducted in chambers or unless the rules expressly provide.
9. Section 1A provides that:-
1. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
  2. The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
  3. A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.



10. Section 1B provides that:-

- (1) For the purpose of furthering the overriding objective specified in Section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
  - a. the just determination of the proceedings;
  - b. the efficient disposal of the business of the Court;
  - c. the efficient use of the available judicial and administrative resources;
  - d. the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and (e) the use of suitable technology.

11. Section 3A then states:-

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

12. Article 2(5) of *the Constitution* states:-

The general rules of international law shall form part of the law of Kenya.

13. Article 48 provides that:-

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

14. Then Section 118A of the *Evidence Act* provides as follows:-

“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.”

15. The presumption of death under Section 118A is a rebuttable legal presumption, and it is incumbent upon the party seeking such a declaration to adduce cogent, credible, and satisfactory evidence to support the claim. The law does not permit the court to merely rely on assertions or generalized claims of disappearance. Rather, the applicant must demonstrate that all reasonable steps and inquiries that a prudent person would have undertake in similar circumstances to locate the missing person, and that such efforts have yielded no results.

16. The legal burden is, therefore, two-fold: to establish prolonged absence and to show that diligent inquiries have been made, yet no credible trace of the person has been discovered.

17. In the present case, the Applicants have tendered evidence showing that the subject of the application, Scholastica Wanjiku Nyoike, was last seen alive by her biological mother and siblings in July, 1999. Since then a time spanning a period of over twenty-six (26) years, no member of her immediate or extended family, nor any other person who would reasonably be expected to have knowledge of her whereabouts; such as friends, neighbours, or community members, has seen or heard from her. Therefore, the court is persuaded that the prolonged absence is not speculative but supported by a consistent account from her family and corroborated by formal reports made to the area Chief and the local police station.



18. It is a well-established principle that the inquiry into the disappearance of a person must not be confined to a narrow or isolated perspective. Rather, the absence must be shown to persist among a broad range of individuals who, under normal circumstances, would likely have interacted with or received communication from the missing person. In this case, the Applicants have established that the missing person's prolonged absence extends beyond her immediate family and includes the local administrative authorities, being the Chief of Mutate Location and law enforcement, as evidenced by the police occurrence book (OB) extract. The fact that none of these individuals have had any contact with or information about the missing person for over two decades underscores the fact that the missing person cannot be traced.
19. A declaration that a person is presumed dead is not a routine procedural step; it is a solemn and consequential judicial determination. The court must approach such an application with caution and be satisfied that the facts before it justify the invocation of the presumption. It is not merely the passage of time that persuades the court, but the quality and nature of the efforts taken to ascertain the whereabouts of the person in question. In the instant matter, the Applicants have demonstrated sustained diligence through reporting the disappearance to the local administration and police authorities, as is evident in the Chief's letter, and the OB extract.
20. Having carefully reviewed the evidence and material placed before the court, I am satisfied that the Applicants have met the requisite legal threshold provided for under Section 118A of the *Evidence Act*. The missing person, Scholastica Wanjiku Nyoike, has not been seen or heard from for a period exceeding twenty-six (26) years. All reasonable and appropriate inquiries that a prudent person would have made in the circumstances have been made by the Applicants and other relevant authorities without yielding any fruitful results.
21. In the absence of any contrary evidence and having regard to the time that has elapsed and efforts undertaken, the court finds that the presumption of death is justified in this case.
22. Accordingly, the application is allowed and the following orders issue:-
  - a. That Scholastica Wanjiku Nyoike be and is hereby declared to be presumed dead pursuant to Section 118A of the *Evidence Act*.
  - b. That the Principal Registrar of Births and Deaths do issue a death certificate in respect of Scholastica Wanjiku Nyoike.
  - c. That the costs of this application shall be in the cause.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 28<sup>TH</sup> DAY OF MAY, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

