



**In re Julius Mutegi (Subject) (Miscellaneous Application
E002 of 2024) [2025] KEHC 10108 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 10108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS APPLICATION E002 OF 2024**

**RL KORIR, J
JUNE 30, 2025**

BETWEEN

BERNARD MURIUKI APPLICANT

AND

JULIUS MUTEGI SUBJECT

RULING

1. The Applicant Bernard Muriuki filed a home made Application dated 18th June 2024 seeking orders that:-
 - i. The Honourable court be pleased to presume Julius Mutegi dead.
 - ii. The Honourable court be pleaded to grant leave for the Applicant to administrate the estate of Julius Mutegi on LR Kiera/East Magutuni/221 and LR Kiera/Magutuni/676 as per the law.
 - iii. Costs of the Application be in the cause.
2. The Applicant raised the grounds that Julius Mutegi was his brother and disappeared from their home at Kiroo Sub-Location, Maara Location, of Maara Sub-County in Tharaka Nithi County in the year 1962 and no one had heard of him since. That the said Julius Mutegi had no wife and children that he jointly owned LR Kiera/East Magutuni/676 with the said Julius Mutegi.
3. The Applicant swore a Supporting Affidavit dated 18th June, 2024. He stated that he was the joint registered owner of LR Kiera/East Magutuni/676 and annexed copies of the official search. The Applicant further stated the he believed that his brother Julius Mutegi was no longer alive.
He annexed a letter by the Chief Maara Location which stated that Julius Mutegi disappeared in 1962 his whereabouts remained unknown.



4. The applicable law in this Application is Section 118A of the *Evidence Act* which states 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 of him if he were alive, there shall be a rebuttable presumption that he is dead.”
5. In the case of *In re ENK (2017) eKLR*, Njuguna J 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.”
6. When the Application came up for hearing on 8th May 2025, the Applicant was unable to express himself to prosecute his Application. Upon the request of the court, Mr. Muthomi advocate who was present in court, accepted to offer pro-bono assistance to the Applicant.
7. The Applicant Bernard Muriuki stated on oath that his brother disappeared in 1962. That none of his family members or relatives had heard of him since. He produced the letter he had obtained from the Chief (Exhibit 1) and asked the court to look at it. He also stated that the OCS Magutuni had written a letter dated 8th January 2025 (Exhibit 2). The Applicant further stated that he wished to succeed the shamba which he jointly owned with his brother.
8. The second witness was Jeremiah Mbae (PW2). He told the Court on oath that the Applicant was his father and that he had assisted him to make a new report at the Police Station as the old record could not be traced. He showed the Court the Police Extract noting the report made in respect of the missing person.
9. The Applicant called his sister Everlyne Mukwanyaga. She told the Court on oath that Bernard Muriuki was her elder brother and that they were three siblings being herself, the Applicant and the Subject. She also stated that she was aware that the family land was jointly registered between the Applicant and their missing brother.
10. I have considered the testimonies of the Applicant and that of the relatives as outlined above. I observed their demeanor and found them credible in their testimony. They were the closest relatives of the Subject and they had not heard of him for over 60 years. They were the persons expected to know of his whereabouts.
11. I have looked at the letter from the Chief [Exhibit 1] and the Abstract from Police Records [Exhibit 2]. They support the Applicant’s position that the subject had disappeared and that a report to the police had been made.
12. I am satisfied from the examination of the witnesses and the supporting documents that the Subject has not been heard of or seen by the persons expected to know of his whereabouts. This has been the case for six decades.
13. It is my finding that the prayer to presume the Subject dead is merited.
14. I observe that the Applicant did not ask the court to order the Registrar of Births and Deaths to issue a Death Certificate in respect of the Subject. This however would be a consequential order upon the court making a declaration of death. In view of the illiteracy of the Applicant (as earlier observed) and in the interest of justice I shall proceed to grant the consequential order.



15. The Applicant justified his Application on the ground that he wished to be the administrator of the estate of the subject. Such a prayer cannot be granted in an Application of this nature as the same properly belongs to a Succession Cause.
16. The Applicant told the court that he would like to succeed the shamba which was jointly registered in his name and that of the brother who has disappeared. He annexed to his Supporting Affidavit a certificate of official search for Title No. Kiera/East Magutuni/676 measuring 0.33 ha and of Title No. Kiera/E. Magutuni/221 measuring 1 ha both of which show Bernard Muriuki and Julius Mutegi as joint proprietors.
17. The Applicant's prayer to succeed or inherit the portion of the land which otherwise belonged to his brother cannot be granted by this court. The jurisdiction to change or confer title properly belongs to the Environment and Land Court as provided by law. Further, upon proof of joint ownership (which was not within the jurisdiction of this court) single proprietorship could devolve by operation of law.
18. In the end, I grant the following orders.
 - i. That Julius Mutegi be and is hereby presumed dead.
 - ii. The Registrar of Births and Deaths shall issue a Certificate of Death in respect of the said Julius Mutegi.
 - iii. There is no order on costs.Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF JUNE, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the virtual in presence of Applicant and Muriuki (Court Assistant).

