



REPUBLIC OF KENYA



**In re Application for Presumption of Death of Richard Bisonga
Nyagwansa (Presumed Dead) (Miscellaneous Application E152 of 2022)
[2023] KEHC 17400 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS APPLICATION E152 OF 2022

MA ODERO, J

APRIL 28, 2023

**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 RICHARD BISONGA
NYAGWANSA (PRESUMED DEAD)**

IN THE MATTER OF

KAREN KEMUNTO NYAGWANSA 1ST APPLICANT

NEMWEL MBICHA NYAGWANSA 2ND APPLICANT

JUDGMENT

1. Before the court is the Notice of Motion dated 28th July 2022 by which the Applicants seek orders as follows:-
 1. Spent.
 2. That Richard Bisonga Nyagwansa be presumed dead.
 3. That the Registrar of Deaths be allowed and/or ordered to issue a Certificate of Death in respect of Richard Bisonga Nyagwansa.
 4. That costs be in the cause.



2. The Application which was premised upon Section 118A of the *Evidence Act*, Section 3A and 63 (e) of the *Civil Procedure Act* and Order 50 Rule (6) of the Civil Procedure Rules and all other enabling provisions of the law was supported by the Affidavits of even date sworn by the applicants.
3. The 1st Applicant Karen Kemunto Nyagwansa is the mother of the subject whilst the 2nd Applicant Nemwel Mbicha Nyagwansa is the brother of the subject. They both testified that the subject who was a police officer attached to Girgiri Police Station in Nairobi, disappeared in the year 2013. That to date no member of the family have seen the subject and his employer the Kenya Police Service have no idea of his whereabouts.
4. The Applicants told the court that they have searched in hospitals and mortuaries but have not been able to trace the subject. The 1st Applicant told the court that she last saw her son at the burial of his late father in the year 2010. The Applicants state that they have not seen or heard from the subject since the year 2013 [ten (10) years ago]. They pray that he now be presumed dead.
5. Section 118A of the *Evidence Act*, Cap 80, Laws of Kenya 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.”
6. The subject is said to have disappeared in the year 2013 whilst at work. The Chief of Mugerango Chache Location has written a letter dated 14th July 2022 confirming that the subject has not been seen in his rural home since March 2013.
7. His employer is unable to explain where he is. Despite the court having issued summons to the Kenya Police Service no officer came to court to explain the whereabouts of the subject.
8. The Applicants are the persons who would reasonably have been expected to hear from the subject on a regular basis. They have not seen or heard from him since 2013. Efforts to trace the whereabouts of the subject have borne no fruit. I find that there exists reliable and credible evidence that the subject has been missing for the past ten (10) years. In the circumstances it is reasonable to presume that the subject is no longer alive.
9. Based on the foregoing, I find the present application to have merit. Accordingly I grant prayers (2) and (3) of the Notice of Motion dated 28th July 2022. As this is an Ex-parte application I will make no orders on costs.

DATED IN NAIROBI THIS 28TH DAY OF APRIL, 2023.

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MAUREEN A. ODERO

JUDGE

