



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 158 OF 2018

**IN THE MATTER OF AN APPLICATION FOR DECLARATION OF PRESUMPTION OF DEATH FOR 69359
SERGEANT JONATHAN KIPKOSKEI KANGOGO**

RULING

1. The Application coming for consideration in this Ruling is the one dated 8th November 2018 seeking the following orders;

(i) THAT this Court be pleased issue an order for presumption of death in respect of No. 69359 SERGEANT JONATHAN KIPKOSKEI KANGOGO.

(ii) THAT the costs of the Application be in the cause.

2. THAT Application is based on the grounds that the aforementioned No. 69359 Sergeant JONATHAN KIPKOSKEI KANGOGO who was a service member of the then Kenya Armed Forces went missing on 24.7.2011 while escorting stocks from Wajir to Liboi during operation Linda Inchi and it has been more than 7 years since he went missing.

3. The Application is supported by Affidavit of ROSE JEPKOECH KIGEN and MAJOR ANTONY MANYARA MWITI both sworn on 8th November, 2018.

4. It is deposed in the Affidavit by ROSE JEPKOECH KIGEN that she is the wife to SERGEANT JONATHAN KIPKOSKEI KANGOGO and that she had not seen or heard from him since 24.7.2011.

5. The Affidavit of MAJOR ANTONY MANYARA MWITI also states that the said SERGEANT JONATHAN KIPKOSKEI KANGOGO went missing on 24th July 2011 while escorting stores to Liboi during operation Linda Inchi.

6. Further it is deposed by MAJOR ANTONY MANYARA that the driver of the truck which SERGEANT JONATHAN KIPKOSKEI KANGOGO was aboard mistakenly took the route towards Diff, Somalia and efforts to trace him have borne no fruits due to the security situation in Somalia

7. I have considered Application filed herein. I find that the issue of presumption of death is one which only the Court can determine.

8. This application was brought under section 118 A of the Evidence Act (cap 80). Section 118A of the Evidence Act provides as follows:-

“118A 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.”

9. In the current case, there is evidence that the said Sergeant Jonathan Kipkoskei Kangogo has not been seen or heard from by those who are supposed to hear from him for more than 12 years.

10. The wife of the said Sergeant Kangogo and Major Antony Manyara who was working with him swore Affidavits which this Court has relied on. I find that there is evidence that it is now more than 7 years since the said SERGEANT JONATHAN KIPKOSKEI KANGOGO went missing.

11. I accordingly allow the Application dated 8.11.2018 and I order that the said 69359 Sergeant JONATHAN KIPKOSKEI KANGOGO be and is hereby presumed dead.

The costs of the Application be in the cause.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 18TH DAY OF DECEMBER 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

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