



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAJIADO**  
**CIVIL MISCELLANEOUS CASE NO. 41 OF 2017**  
**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION**  
**OF DEATH OF DANSON MACHAGA MUTURI**  
**BY**  
**ROBERT MUTURI MACHAGA.....APPLICANT**

**RULING**

**ROBERT MUTURI MACHAGA**, who is the father of the presumed deceased person one Danson Machaga Muturi applied to this court by way of a notice of motion under section 118A of the Evidence Act for the following orders:

- (1) That Danson Machaga Muturi be and is hereby presumed death.**
- (2) That the Registrar of Death do issue a certificate of death in respect of the said Danson Machaga Muturi.**

In support of the application are grounds briefly stated as follows:

- (1) That Danson Machaga Muturi has not been seen or heard of from 20/11/2009 and his whereabouts are unknown.**
- (2) That it is now more than 7 years since his disappearance.**
- (3) That the disappearance had been reported at Kitengela police station vide OB No. 40/20/11/2009.**
- (4) That he was the son of the applicant and had not married at the time of disappearance.**

The applicant deponed in his supporting affidavit alluding to the efforts made to search and find the whereabouts of his son. He further deposes that he made contacts to the necessary law enforcement agencies and local administration. This engagement between the applicant and other agencies is supported by a letter from the chief marked as RMM2, the extract of the occurrence book annexed as RMM3 and the police abstract as RMM4. The applicant believes and has reason to presume that his son is dead.

The notice of motion is also supported with affidavits sworn by Grace Muthoni Muturi the mother to Danson Machaga Muturi, Thomas Muregi Muturi the brother, Mercy Wanjira Muturi the sister. The gist

of the affidavit evidence by the three relatives was to corroborate the testimony of the applicant gave before this court at the trial of this case. A summary of the evidence does go to show that Danson Machaga Muturi is still missing and his prospects of him being alive are remote.

I have heard the sworn testimony by the applicant, the evidence and further supporting affidavits from the mother and siblings of Danson Machaga Muturi.

An application of this nature is anchored under section 118A of the Evidence Act which provides as follows:

**“Where it is proved that a person has not been heard of or seen for seven years by those who might be expected to have heard of him if he was alive, there shall be a rebuttable presumption that he is dead.”**

In this case the appropriate family members have sworn affidavit detailing the circumstances of Danson Machaga Muturi disappearance. As evidenced by the identity card he was born on 7/2/1982. He was a bachelor with no family when he went missing. Since 20<sup>th</sup> November, 2009 Danson Machaga Muturi has never contacted any of his parents or siblings who have stated so in their affidavits.

In our legal system a person may be legally declared dead in absentia despite the absence of direct proof of his or her death. In the present case Danson Machaga Muturi has been missing for an all extended period of over 7 years as stipulated under section 118A of the Evidence Act. During the period of time there is no cogent evidence he is still alive. The applicant have demonstrated that Danson Machaga Muturi has been missing from their home and usual residence for more than 7 years. His absence has been continuous and in explicable. He has not communicated with any of the family members, friends or relatives. During the aforesaid period there has been a diligent but unsuccessful search of Danson Machaga Muturi into his whereabouts.

It is trite that the fact of death is a presumption of law. The death of Danson Machaga Muturi has come in question at the expiration of 7 years.

As above stated the presumption raised by the Evidence Act upon such proof is not mere presumption of death; but is also a presumption fixing the time of death at the expiration of the seven successful years of absence unheard from the person.

I am therefore of the conceded view that the applicants have brought themselves within the purview of section 118A of the Evidence Act to persuade this court declare coming into effect of the section on the presumption of law that he is dead.

In the premises the orders in notice of motion dated 11/10/2017 are hereby granted. I make no orders as to costs.

**Dated, signed and delivered in open court at Kajiado on 27/11/2017.**

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**R. NYAKUNDI**

**JUDGE**

**Representation:**

Applicant present

Mr. Mateli Court Assistant