



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC APPLICAITON NO. 262 OF 2011 (OS)
IN THE MATTER OF THE ESTATE OF PAMELA AKINYI OYUGI

R U L I N G

1. In this application (by **originating summons dated 26th April 2011**) the Applicant, **DUNCAN OUMA OYUGI**, seeks two main orders -

- (i) An order that one **PAMELA AKINYI OYUGI (Pamela)** be presumed dead.
- (ii) An order that the Applicant do “administer the personal estate of the said Pamela”.

However, at the hearing of the application only the first prayer was pursued.

2. The application is stated to be brought under **section 118A** of the **Evidence Act, Cap 80 (the Act)** and also under **Order 37, Rules 1 and 2 (a) & (b)** of the **Civil Procedure Rules, 2010 (the Rules)**.

3. The grounds for the application stated on the face thereof include –

- i. That Pamela “mysteriously disappeared from **Egerton University Hospital, Njoro** when admitted for treatment on 15th June 2000...over 11 years (ago)”.
- ii. That the Applicant, who was residing with Pamela, has not heard from her since that time.
- iii. That Pamela’s disappearance was reported to and recorded by the Chief, East Alego Location, being “the area where (Pamela) was last seen”.

4. The application is supported by an affidavit sworn by the Applicant. He depones, *inter alia* –

- i. That the Applicant is the only son of Pamela.
- ii. That the Applicant has not been able to make contact with Pamela despite efforts in that regard, including a “**Missing Person**” advertisement in a daily newspaper (which is annexed).

5. Also annexed to the affidavit is a copy of a letter dated 22nd May 2008 addressed to the **Deputy-Vice Chancellor, Administration and Finance, Egerton University** by the Chief, East Alego Location, Siaya District. The letter states that Pamela was an employee of the University; that she mysteriously disappeared from the university hospital when admitted for treatment in the year 2000; that she was

single; and that her dependants were the Applicant (her only child) and her mother, Janet Oyugi.

6. When the application initially came up for hearing the Court required that the Applicant do file a supplementary affidavit setting out the names of all close relatives of Pamela (parents, siblings, aunts, uncles, etc.). The court also required that the disappearance of Pamela be reported to the police station nearest to where Pamela was residing when she disappeared, and that evidence of such report be availed to court. All available close relatives were also to swear necessary affidavits about Pamela, and the same be filed in court.

7. A **supplementary affidavit** sworn by the Applicant was filed on 20th March 2012. He deponed –
- i. That he was the only son of Pamela.
 - ii. That Pamela was survived only by him and Pamela’s mother (his grandmother).
 - iii. That Pamela’s disappearance was reported to **Njoro Police Station** on 15th June 2000 who opened an inquiry file.
 - iv. That the police subsequently closed and destroyed the inquiry file over 10 years after the reported disappearance, and without any sighting of Pamela.

8. Section 118A of Cap 80 states –

“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. I am satisfied that Pamela Akinyi Oyugi has not been heard of, now for about thirteen (13) years, by her son Duncan Ouma Oyugi (the Applicant) and her mother Janet Oyugi. These are her closest surviving relatives and the only persons who might be expected to have heard of her if she were still alive. There is thus a presumption that has not been rebutted that she is dead.

10. In the circumstances I will grant the order sought. **Pamela Akinyi Oyugi is hereby presumed dead.** It is so ordered.

11. Costs of this application shall be paid from her estate.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF AUGUST 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 22ND DAY OF AUGUST 2013