



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION 3 OF 2012

IN THE MATTER OF THE ESTATE OF GEORGE ODONGO (PRESUMED DEAD)

R U L I N G

This application is brought by a Notice of Motion dated 24th November, 2011 and taken out under **Order L Rule 1** of the **Civil Procedure Rules; Section 3A** of the **Civil Procedure Act**, and **Section 118A** of the **Evidence Act (Cap.80)**. By the application, the Applicant seeks for an order that one George Odongo be presumed dead. The application is supported by the annexed affidavit of Agnes Akinyi Odongo, the Applicant herself, and is based on the grounds that no member of the family has heard from the said George Odongo for the last 7 years and the search for his whereabouts has not borne any fruits.

In her supporting affidavit sworn on 24th November, 2011 the Applicant deposes that George Odongo was last seen on 11th August, 2003 at Makongeni, Nairobi and has never been seen or heard of since then. On the day he disappeared, he had said he would leave for his rural home at Rapogi. The Applicant and her children have tried in vain to search for him at Makongeni, Central Police Station, Kamiti Prison, the City Mortuary, but their efforts were unsuccessful. They visited the “Provincial Commissioner of police officers” (sic) Nairobi Province, and requested the officer-in-charge of road accidents for records of road accidents from 11th August, 2003 in fear that her husband might have been involved in a road accident, but official records did not have any such person. She was finally informed by the police both at Central Police Station and Industrial Area Police Station that all efforts to trace her husband or his whereabouts had failed. From the foregoing account, she verily believes that her husband is dead as he has never been seen or heard of by his family members or those close to him. It is now well over 7 years since he disappeared and it would be in the interests of justice to presume him dead.

In a supplementary affidavit sworn and filed on 28th February, 2012 the Applicant adds that she had been married to George Odongo since 1976 and the couple were blessed with 7 children. Her husband was an employee of the Kenya Railways Corporation for whom he had worked for over 33 years. She reiterates that her husband was last seen on 11th August, 2003 at around 3.00 p.m. at Makongeni Estate, Nairobi, where he was staying and has never been seen or heard of since then. On the day of his disappearance, he became confused and said he would leave for his rural home, Rapogi in Migori District.

The family reported his disappearance to the police, searched for him at all police stations in Nairobi, and

even looked for him at Kenyatta National Hospital and all the hospitals in Nairobi including Mathare Mental Hospital, but all was in vain. From the foregoing, the Applicant believes that her husband is dead as he has never been seen or heard of by his family members or those close to him since the year 2003. She avers that it is now over 8 years since her husband disappeared and it would be in the interest of justice to presume him dead.

In her sworn evidence in Court, she reiterated these averments and prayed for a finding that her husband was dead.

Section 118A of the **Evidence Act (Cap.80)** is relevant to this matter. It states 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.”

The subject matter of this application, George Odongo, was last seen by members of his family in August, 2003. If he was still alive, it would be prudent to expect that his loved ones would have heard of him or from him. None of that has happened. In the circumstances, and in fidelity to **Section 118A** of the **Evidence Act**, it is fair and proper to find that a rebuttable presumption of death has been established and that an order to that effect should be made accordingly.

I therefore direct that George Odongo be and is hereby presumed to be dead as prayed.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 21st day of May, 2012.

L. NJAGI

JUDGE