



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL SUIT 294 OF 2010

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT CHAPTER 80 LAWS OF KENYA

AND

IN THE MATTER OF PETER KARIUKI WAMBOGO (aka PETER KARIUKI WAMBUGU - A MISSING PERSON, PRESUMED DEAD)

JOSEPH WAWERU WAMBUGU.....APPLICANT

VERSUS

ATTORNEY-GENERAL.....RESPONDENT

R U L I N G

1. PETER KARIUKI WAMBOGO (also known as PETER KARIUKI WAMBUGU) (herein after called the **Subject**) is the younger brother and only sibling of the Applicant, JOSEPH WAWERU WAMBUGU. The Applicant seeks in the originating summons an order to declare the Subject dead, and a death certificate to be issued accordingly. The application is brought under **section 118A** of the **Evidence Act, Cap 80** (the Act).

2. The ground for the application is that the Subject has been missing since 1977 and that his whereabouts since then are unknown; and that therefore a rebuttable presumption has arisen that the Subject is dead.

3. The originating summons is supported by the Applicant's affidavit to which various documents are annexed.

4. The following facts emerged from the supporting affidavit -

- (i) The Subject was born in 1946 and would thus be 66 years old if still alive.
- (ii) The Subject graduated from the University of Nairobi with a bachelor's degree in Building Economics and worked thereafter as a quantity surveyor with the City Council of Nairobi, amongst other employers.
- (iii) In 1972 the Subject went to Great Britain for further studies and has not returned to the country since.
- (iv) The Subject wrote a letter to the Applicant dated 2nd January 1977 stating, *inter alia*, that he did not wish to communicate with any person (including the Applicant) until June of that year in order to get himself "reorganized and concentrate (his) energies on immediate and emergency matters".
- (v) A deportation order against the Subject was made by the British Government on 21st June 1977 but the same has never been implemented as the Subject could not be traced in the United Kingdom.
- (vi) It appeared that the Subject may have changed his name, religious denomination and residential address, apparently in an effort to evade British authorities.
- (vii) All efforts by the Applicant to trace the Subject have failed. Evidence of such efforts is annexed to the supporting affidavit.

5. It would appear that the Subject went underground in the United Kingdom in order to evade the deportation order issued against him by the British Government. In his own aforesaid letter dated 2nd January 1977 addressed to the Applicant, the Subject had indicated that he would make contact with the Applicant after June 1977. He did not, and it has now been nearly 35 years! That is a very long time.

6. From all the material before the court it does not appear that there was any bad blood between the Subject and the Applicant (his only sibling) that would have prevented the Subject from making contact if he were alive. When he left Kenya his parents were still alive. They have since died. He never once asked about them.

7. When he left Kenya the Subject was aged about 26 years. If he is still alive he would now be about 66 years old. Would he stay so long without enquiring about his parents, without making contact with his only sibling with whom apparently he was in perfectly good relations? Would he stay so long even if he went underground in order to avoid deportation from Great Britain, without making contact with his kith and kin in Kenya?

8. It has been proved to the satisfaction of the court that the Subject has not been heard of for 35 years now by the Applicant, his only sibling who would ordinarily be expected to have heard of him if he were still alive. There is thus a rebuttable presumption that he is dead.

9. In the circumstances I will allow the originating summons and order that the Subject, PETER KARIUKI WAMBOGO (also known as PETER KARIUKI WAMBUGU) be and hereby presumed to be dead.

10. There will be no orders to costs of this originating summons. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF JUNE 2012

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H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2012