



REPUBLIC OF KENYA

High Court at Machakos

Miscellaneous Application 162 of 2010

REGINA KALEE MUNYAO APPLICANT

RULING

Before me is an application dated 29th July 2010, by way of Summons filed under Part III Rule 10 of the Probate and Administration Rules – made under Law of Succession Act (Cap 160). The application has been brought by Regina Kalee Munyao, the wife of Boniface John Munyao. It seeks the following orders:-

- (a) THAT an order presuming the death of one BONIFACE JOHN MUNYAO be made.**
- (b) THAT costs (be) in the cause.**

The application has grounds on the face of the Summons. The grounds are that the applicant is the legal wife of the deceased (missing person Boniface John Munyao) who had gone missing since 11th October 1991 without trace.

The application was filed with an affidavit sworn by the applicant on 29th July 2010. In the affidavit, it was deponed that the applicant got married to the missing person on 2nd May 1970 at St Peters Cleaver Catholic Church; that the said Boniface John Munyao went missing on 11th October 1991 and that all efforts to trace him had failed to yield fruits; that the applicant and the missing person had five (5) children; and that it was 14 years since the said Boniface John Munyao had disappeared.

Filed also, is a letter dated 13th October 2010 from the chief of Mitaboni Location; a letter dated 14th February 2006 from Thika Police Station signed by the OCS G.N. Akodhe; a copy of a Marriage Certificate; a further affidavit sworn by the applicant; a consent by the five children dated 3rd September 2010; witness statements from Joseph Musiu Nzungi a family elder dated 28th February 2011; a statement from the brother of the missing person Patrick Nzioki Nzungi dated 3rd March 2011; and a further letter dated 10th June 2011 signed by the OCS Thika Police Station, G. Kivaa.

This application is not opposed. Under section 118A of the Evidence Act (Cap 80), it is provided 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.”

Rule 10 of Probate & Administration Rules (Cap 160) provides the procedure for making an application to court for the grant of orders for the presumption of death. This application was brought under the above

rule.

Having considered the application, the documents filed and the law, and the fact that this application is not opposed, I am satisfied that the application has merits. I find that the named person disappeared in October 1991. Reports on his disappearance were made to relevant authorities and the police. All efforts to trace him have been in vain. The applicant is his wife, who would be expected to know his whereabouts. She has not known his whereabouts from 1991 to date. In my view, the requirements of section 118A of the Evidence Act (Cap 80) for the presumption of death have been satisfied.

I therefore allow the application and order as follows:-

1. **That BONIFACE JOHN MUNYAO be and is hereby presumed dead.**
2. **Costs in the cause.**

Dated and delivered at Machakos this **16th** day of **August** 2012.

George Dulu
Judge

In presence of:-

Mutinda – Court clerk

Applicant/Regina present in person.