



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**SUCC. CAUSE NO. 57”B” OF 2009**

IN THE MATTER OF THE ESTATE OF – TOM OBUON OBUON – DECEASED  
**AND**

DANIEL OBUON OBUON &  
MONICA OCHOLA OBUON ::::::::::::::::::::::::::::::::::::::: PETITIONERS

**RULING:**

Before court is an application by way of summons brought under Rule 10 of the Probate And Administration Rules, Section 17 of the Births and Deaths Registration Act, Cap 148 of the Laws of Kenya, seeking for an order presuming death of one **Tom Obuon Obuon**, on account of his disappearance or absence for a continuous period of over 14 years since 10<sup>th</sup> August, 1995 and for issuance of a certificate of death. The application supported by the affidavit of **Daniel Obuon Obuon** the father of **Tom Obuon Obuon**.

The application is based on the ground that **Tom Obuon Obuon** was last seen alive on 10<sup>th</sup> August, 1995 and since then (14 years ago) he has not been heard of by people close to him including the applicants who are his parents. That all inquiries have been made without any results and therefore it would be expedient in the circumstances for an order to issue presuming death of the said **Tom Obuon Obuon**. The first applicant the father of **Tom Obuon Obuon**, **Mr. Daniel Obuon Obuon** gave evidence in support of the application. For determination before court is whether the court should presume **Tom Obuon Obuon** dead and issue a certificate of presumption of death.

Section 118A of the Evidence Act, Chapter 80 of the Laws of Kenya provides:-

**“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 was alive, there shall be a rebuttable presumption that he is dead.”**

From the closest relatives; the parents of the deceased, he was last seen alive at his place of residence Nairobi South B, on the 10<sup>th</sup> of August, 1995. His father first got information of his disappearance on the 18<sup>th</sup> of August, 1995 from one of his other sons **John Obuon**. The father has since the 20<sup>th</sup> of August, 1995 made efforts to trace his son but all in vain he visited Kenyatta National Hospital and City Mortuary on the 20<sup>th</sup> of August, 1995, reported to **Tom’s** supervisor’s at work and officially made a report to Langata Police Station on the 21<sup>st</sup> of August, 1995. On the 22<sup>nd</sup> of August, 1995, he formally reported the disappearance to the C.I.D Training School. He thereafter followed up the reports with the above institution as he also visited other private hospitals to see if his son was admitted in any one of them. On 27<sup>th</sup> of August, 1995 he went to the Police headquarters where he was given a police officer and in the Company of the said police officer, he visited city mortuary for a further search to no avail.

On the 25<sup>th</sup> of April, 2005 the 1<sup>st</sup> applicant appealed to the public to assist in tracing his son through the Standard Newspaper. All the above effort having failed, the applicants seek for an order presumption of death.

14 years is twice the period permissible in law for one to be presumed dead. From the evidence on record all due diligence has been conducted by the applicants in searching for their son and in view of the application and provision of the Law, the application dated 18<sup>th</sup> March, 2009 is granted in the following terms.

1. An order be and is hereby issued presuming one **Tom Obuon Obuon** dead.
2. A certificate of presumption of death of the said **Tom Obuon Obuon** do issue accordingly.
3. Costs in the cause.

**DATED AND DELIVERED THIS 26<sup>TH</sup> NOVEMBER, 2010.**

**ALI-ARONI**

**JUDGE**

**In the presence of:**

..... present for defendant/petitioner

..... present for objectors/applicant