



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**Miscellaneous Civil Application 69 of 2009**

**IN THE MATTER OF BOSCO BONO**

**GRACE KHISA MALENYA.....APPLICANT**

**RULING**

By a Notice of Motion dated 16<sup>th</sup> September 2009, pursuant to the provisions of sections 118A of the Evidence Act, Sections 3 and 3A of the Civil Procedure Act, and Order L Rule 1 of the Civil Procedure Rules the applicant seeks orders:

1. That the court do make an order that Bosco Bono be presumed dead.
2. That there be no order as to costs.

The application is based on the grounds:

- (a) The said Bosco Bono has not been heard of or seen by his family since 1978.
- (b) The applicant has traveled most parts of the country even outside and unable to trace him.

The application is predicated upon the annexed affidavit of Grace Khisa Malenya and John David Sitati Kiberenge.

On behalf of the applicant it was argued that Bosco Bono is her husband with whom she sired three children who are all adults. The said children now have their own families.

In 1978 her husband went to Uganda in search of employment but has since then not communicated to any of his family members.

In the year 1980, she made a report of the disappearance of her said husband to the then area chief Ezekiel Wanyonyi, since deceased, subsequently she made a similar report to the area chief Andrew Rotich, since retired.

In the year 1981 the family sent John David Sitati Kiberenge to Mbale in Uganda to look for her said husband in vain. In the same year – 1981 she accompanied John David Sitati Kiberenge to Bumbo Uganda in pursuit of the whereabouts of her husband equally in vain. At Bumbo in Uganda some people told them that he had died while others said he had simply disappeared.

I have carefully considered the application and the evidence in support thereof. Section 118A of the Evidence Act (Cap 80) Laws of Kenya provides 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”.**

I have taken into full account the evidence by way of affidavit, of his lawful wife, I believe the same to be true. Accordingly, I order that the said Bosco Bono be presumed dead. His land parcel known as Plot No.96 Mito Mbili Settlement Scheme – Trans Nzoia District together with any of his earthly belongings, as on application, be distributed and in accordance with the Succession Act (Cap 160)

Laws of Kenya. Those are the orders, I am capable of making in this application.

Dated and delivered at Kitale this.....**30<sup>TH</sup>** .....day  
of.....**NOVEMBER**.....2009.

**N.R.O. OMBIJA**  
**JUDGE**