



**REPUBLIC OF KENYA  
IN THE HIGH COURT  
AT KITALE  
Miscellaneous Civil Application 70 of 2009\_**

**IN THE MATTER OF AN APPLICATION BY LILY CHEPKEMOI MAIYWA AND IN THE MATTER OF PATRICK MAIYWA  
BARASA.**

**AND**

**LILY CHEPKEMOI MAIYWA.....APPLICANT.**

**R U L I N G.**

By a Notice of Motion dated 18<sup>th</sup> September, 2009, pursuant to the provisions of section 118 A of the Evidence Act and order 2 Rule 1 of the Civil Procedure Rules the applicant seeks orders:-

1. That one Patrick Maiywa Barasa be presumed dead.

The application is based on the grounds:-

- (i) She is the next of kin and one, who is expected to have heard of him if he were alive for now over seven years since 8<sup>th</sup> December, 1998.
- (ii) She is the only surviving wife to the said PATRICK MAIYWA BARASA with whom they have four (4) children.

The application is predicated upon the annexed affidavit of Lily Chepkemoi Maiywa sworn on the 18<sup>th</sup> day of September, 2009.

On behalf of the applicant it was argued that he is the lawful wife of Patrick Maiywa Barasa who was an employee of Kenya Police force attached to Kakamega Police Station as a constable.

That he came home in December, 1998 to visit his family at Machewa location in Saboti Division. He left home on 5<sup>th</sup> December, 1998 but did not disclose his destination to his lawful wife or his children.

In the year 1999 an enquiry file was opened regarding his disappearance. In this connection is exhibited and marked

“PMB1” is an affidavit by chief Inspector Joseph Kioko of CID MT. ELGON. Since his disappearance all efforts to trace him have come to nought. It is now about 10 years since he disappeared without trace. For those reasons the applicant sought orders that he be presumed dead.

I have carefully considered the application. Section 118A of the Evidence Act (Cap 80) 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 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 Patrick M. Barasa be presumed dead. His service benefits if any, be computed and together with other earthly belongings be, on application, distributed and in accordance with the Succession Act (Cap 160) Laws of Kenya. Those are the orders, I am capable of making on this application.

Dated and delivered at Kitale this 30<sup>th</sup> day of November 2009.

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