



REPUBLIC OF KENYA



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**In re Kennedy Ambaka Kegode (Miscellaneous Application Probate & Administration
E025 of 2024) [2025] KEHC 1966 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1966 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION E025 OF 2024

E OMINDE, J

FEBRUARY 19, 2025

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION
OF PRESUMPTION OF DEATH OF KENNEDY AMBAKA KEGODE**

IN THE MATTER OF

ROSE LOTUMIA OKUMU APPLICANT

RULING

1. The Applicant approached this court vide the Notice of Motion Application dated 28/03/2024 seeking the following orders;
 - i. That the honourable court be pleased to declare and presume dead one Kennedy Ambaka Kegode by virtue of not having been heard by those who ordinarily would have heard of him or from, him has he been alive for the last seven years.
 - ii. That upon grant of prayer 1, the honourable court be pleased to make an order that the order be served on the registrar of births and deaths for issuance of death certificate.
 - iii. Costs of the application be provided.
2. The Application is premised on the grounds on the face of it and the averments in the supporting affidavit to the application, sworn by the Applicant.
3. The Applicant deponed that she is the lawful wife to Kennedy Ambaka Kegode a resident of Nzoia location who went missing in the year 2017 and, has never been seen or heard from ever since. She annexed the copy of a letter from the area Chief whose contents reveal that he has been missing for seven years. She also annexed an affidavit of marriage and a copy of her identity card. She further deponed that at the time of the disappearance of Kennedy Ambaka Kegode, he was a teacher at St Joseph's Kogo Secondary school and she annexed a copy of a letter dated 24/07/2024 from the teachers' service commission as proof of the same. She stated that a report of a missing person was made at Matunda Police Station on 03/07/2017 and later reported to the DCI Lugari. She annexed a copy of the letter



from the SCCIO to the Directorate of Criminal Investigations as evidence of the same. She urged that she has looked for him to no avail and prayed the court allow the application as prayed.

Analysis & Determination

4. Section 118A of the *Evidence Act* states 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.”
5. In the case of *In Re ENK* [2017] eKLR, Njuguna, J held that: -

“The presumption of death is a rebuttable presumption which can be reversed if sufficient evidence is adduced to the contrary. Therefore, before this presumption is made, sufficient evidence has to be adduced in court to prove presumption of death.”
6. The Supporting Affidavit dated 28th October 2024 is sworn by one Rose Lotumia Okumu. She deposes that she is the lawful wife of Kennedy Ambaka Kegode who went missing in the year 2017. She annexed a copy of a letter from the Area Chief, an Affidavit of marriage which she swore on 19th June 2023 when she was seeking to access Kennedy Ambaka Kegode’s account and a copy of her Identity Card.
7. She further deposed that prior to his disappearance Kennedy Ambaka was a teacher at St. Joseph Kogo Secondary School. She annexed a letter from the Teacher’s Service Commission dated 24th July 2024 to this effect. That a report of missing person was made at Matunda Police Station on 3rd July 2017 vide OB No. 34/3/7/2017 and later reported at DCI Lugari. She annexed a copy of a letter from SCCIO to the DCI dated 15th July 2024.
8. Based on these depositions and annexures, she prays that the orders that she seeks in this application be granted. Having considered the depositions made as well as the annexures to the Affidavit in support, it is my considered opinion that the observations made by Njuguna J in the above cited case that before an order for presumption of death is made, sufficient evidence has to be adduced in court to prove the same then become very relevant to this case as I will demonstrate below.
9. First and foremost, as is provided under Section 118A of the *Evidence Act*, it must be demonstrated that the disappearance happened 7 years’ prior. In the instant case, the Court notes that all the documents that the Applicant seeks to rely on are dated either last year or this year. The court further notes that the basis of all the documents annexed is the report that the Applicant states she made at Matunda Police Station vide OB Number 34/3/7/2017.
10. Of significance however is that this document has not at all been availed to Court either as an annexure to the Supporting Affidavit or at all, yet, it is the primary document upon which this Application and all the annexures thereto is predicated. No explanation at all has been advanced as to why the said OB has not been or cannot be availed. It is also worth noting that there is no written communication from the said Matunda Police Station confirming that this particular OB does exist in their Police Station and that if does, such an entry was made.
11. The question the Court needs to answer is whether sufficient evidence has been adduced to warrant the orders sought. In my considered opinion, without the OB excerpt, the Court is not able to make a determination, even on a balance of probabilities, that the said Kennedy Ambaka went missing as alleged. The Court is also not able to determine when he went missing if at all he did. The date is critical



because it is that which will assist the Court determine whether sufficient time has passed to warrant a presumption of death to be made.

12. This may seem to be a mundane requirement. However, the reason for which the orders are sought in my view warrants that if the Court were to err, it errs on the side of caution. This is because the Applicant seeks these orders to enable her access the said Kennedy Ambaka's bank account. This in my considered opinion, is a key issue for consideration in making such a determination which has very far-reaching implications.
13. Over and above this, the Court also notes that the Affidavit of marriage produced cannot be said to be such in the strict sense of the word. This is because on the face of it, the said Affidavit clearly states that it was made for the purpose of accessing Kennedy Ambaka's bank account as is also the case with this Application. Based on the reason for which it was made therefore, this Affidavit cannot be said to have sufficiently demonstrated, that as is envisaged under Section 118A, the Applicant is a person who can be construed to be referred to as a person who might be expected to have heard of him if he were alive
14. In light of the foregoing, it is my finding that the Application lacks merit and the same is accordingly dismissed. The Applicant shall bear her own costs.

READ DATED AND SIGNED AT ELDORET ON 19TH FEBRUARY 2025

E. OMINDE

JUDGE

