



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Application for Presumption of Death of Habib Khadeyo Ismali Were (Miscellaneous Civil Application E205 of 2024) [2025] KEHC 1970 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CIVIL APPLICATION E205 OF 2024**

**REA OUGO, J**

**FEBRUARY 6, 2025**

**IN THE MATTER OF APPLICATION FOR PRESUMPTION OF DEATH OF  
HABIB KHADEYO ISMALI WER**

**IN THE MATTER OF**

**ISMALI WERE JUMA ..... 1<sup>ST</sup> APPLICANT**

**IDDI O. MUYONGA ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. This is an Exparte notice of motion brought Under Section 118 A of the *Evidence Act*, Cap 80, and Order 51 rule (1) of the *Civil Procedure Rules*. The applicant seeks the following orders:
  - i. That Habib Ismali Were be presumed dead and a death certificate be issued to that effect by the Principal Registrar of Births and Deaths.
  - ii. That the costs of this application be provided for
2. The application is based on the grounds and the supporting affidavit of Ismali Were Juma and Iddi O Muyonga, the applicants. The applicants are the parents and uncle of Habibi Khabeyo Ismali Were ( Habibi ), who has not been seen since 27.9.2017. Before the subject's disappearance, he worked with Al-kamar Trading Company Mombasa as a long-distance truck driver. The applicants received information about his disappearance from his employer on 28.9.2017. The Truck Habibi was driving had disappeared from the employer's Tracking System. The Applicants reported the matter to the area chief and Malakisi police station of the matter. Nobody has ever seen or heard from Habibi since then. The Applicant's made numerous inquiries of his whereabouts in conjunction with the Ugandan police and even involved the Interpol in Uganda. Despite all these, it is now over seven years since his disappearance. The applicants even made efforts for the DNA to be done using the blood samples found on the vehicle he was driving.



3. The applicants reiterate what is in their grounds in their joint supporting affidavit and further depones as follows; Before his disappearance, Habib Khadeyo Ismali Was married and he had two children. On receiving information on his disappearance from the employer, they reported the matter to our area Chief and Malakisi police station on 3.10.2017. They have made numerous efforts in search of him in Ugandan that involved both Ugandan police and even Interpol. Since they never heard from him for a long time, they decided to request for a DNA test to be done bearing in mind that there were blood stains in the vehicle he was driving. The DNA turned out to be positive. For Habibi's benefits to be redeemed from his place of work and insurance company, the presumption of death certificate ought to be provided.
4. The applicants produced a copy of the identity card of Habibi Khadeyo Were number 20877906, a letter from his employer AL- Kamar Trading Co. Ltd Transporter that states that he worked for the company as a truck driver and on 27<sup>th</sup> September 2017 he went missing while en-route to Kampala, an OB reference made at Malakisi police station on the 03/10/2017, a letter from the chief of Tamulega location dated 6.12.2024 confirming that Habibukhadeo Ismael Were was the son of Ismali Were and that he disappeared and the matter was reported to the police. The applicants have also exhibited a statement giving details of the missing person and also a letter to the Kenyan Embassy in Uganda on the same and a report from the Government Analyst which indicates that the DNA profiles generated from vehicle KBU 376Z showed a paternal relationship with the DNA profile generated from the buccal swab of Ismail Were Juma and that there are 99.99+% more chances that the DNA extracted from the blood swabs are from the biological father of Ismail Were Juma .
5. Section 118A of the *Evidence Act* Cap 80 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”.
6. Section 17 of the *Births and Deaths Registration Act* provides as follows:-

“Upon the death of any person the registration of whose death is compulsory, it shall be the duty of the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, and, in default of such relatives, of every other relative of the deceased dwelling or being in the same registration area as the deceased, and, in default of such other relatives, of each person present at the death and of the occupier of the house in which to his knowledge the death took place, and, in default of the persons hereinbefore in this section mentioned, of each inmate of such house, or of any person finding or taking charge of the body of such person or causing the body of such person to be buried or otherwise disposed of, to give notice within such time as may be prescribed to the registrar of the registration area in which the death took place.”
7. The applicants depone that Habibi Ismali Were went missing on the 27.09. 2017. They have not heard from him since then. They reported the matter to the police and also did a DNA test on blood that was found inside the vehicle he was driving. His employer too has not heard from him. The applicants are his father and uncle. Based on what has been produced in court it is evident that the applicants being family members of Habibi Khadeyo Ismali Were have not heard from him for the last seven years. The applicants have satisfied the requirements of the law.



8. Therefore, it can be presumed that Habib Khadeyo Ismali Were is not alive but dead. Habibi Khadeyo Ismali Were is thus presumed dead. A death certificate will be issued to that effect by the Principal Registrar of Births and Deaths. No order as to costs.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

**R.OUGO**

**JUDGE**

In the presence of:

Ismali Were Juma & Iddi O. Muyonga Applicants

Wilkister - C/A

