



In re Presumption of Death of MNO (Civil Miscellaneous Application E082 of 2025) [2025] KEHC 7733 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 7733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E082 OF 2025**

A MABEYA, J

JUNE 5, 2025

IN THE MATTER OF PRESUMPTION OF DEATH OF MNO

IN THE MATTER OF

MAO 1ST APPLICANT

WWO 2ND APPLICANT

RULING

1. MAO aged 73, is the mother of WWO and MNO . They are residents of Rweya village, Buoye Sublocation of Kisumu County.
2. Sometimes in August, 1985, MNO then aged 12 years old is said to have gone missing from their home in Rweya village aforesaid. He is said to have been suffering from a mental delusion at the time. The incident was reported to the local administration to try and trace him.
3. On 16/5/2025, MAO and WWO , mother and son took out a joint Motion on Notice under Articles 48 and 159 of *the Constitution* of Kenya, sections 118A of the *Evidence Act* and Section 17 of the Births and Death Registration Act for a declaration that the said MNO be presumed dead and the Registrar of Births and Deaths do issue a Certificate of Death accordingly.
4. Both mother and son swore affidavits on 16/5/2025 and reiterated the foregoing. They stated that despite the wait of 40 years, the said MNO had not gotten in touch with them. They therefore decided to make a report of the incident at Ragumo Police Station. They produced a letter from the Chief of East Kolwa Location dated 26/4/2025 and a Police Abstract dated 12/5/2025 from the said Police Station to attest to the foregoing.
5. On 3/6/2025, both the Mother and Son appeared in Court for the hearing of the Motion. The son, WWO testified on behalf of both, as they had both swore supporting affidavits. He reiterated the contents of the supporting affidavits and told the Court that MNO had not been heard from for a period of 40 years.



6. I have considered the application, the depositions on oath. I have also considered the testimony of WWO of National ID Card No. 3950355. The totality of the foregoing is that, a person by the name of MNO disappeared in or about 1985. His family constituted of MAO, her husband Petro Oguya (said to be deceased) and a brother WWO. They are said to be the close family members who are expected to have heard from him but have not.
7. Under section 118 of the Evidence Act, Cap 80 Laws of Kenya, a person is presumed dead if he disappears and is not heard from for a period of 7 years. The Section 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.”
8. In the present case, although there is averment that the incidence of disappearance was reported at the time, there was nothing to prove that fact. What was produced was a letter from the Chief of East Kolwa Location dated 26/4/2025 confirming the fact. The other document relied on is a Police Abstract from Ragumo Police Station dated 12/5/2025 showing that a report of a missing person was recorded at that Station as No. OB5/12/05/2025.
9. The provision cited above is to the effect that if a person disappears and is not heard of by those close to him/her and expected to hear from him for a period of 7 years, he/she is to be presumed dead. It is a matter of law and not fact.
10. In Re ENK [2017] eKLR, the Court stated 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 the presumption of death.”
11. On the evidence on record, this Court finds that MNO has not been heard from by his close relatives for a period of 40 years now. The Court is therefore satisfied that the provisions of section 118 of the Evidence Act have been met and the prayer for a declaration is allowed.
12. As regards the effect of death, section 17 of the Birth and Deaths Registration Act provides that: -

“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.”
13. Having declared MNO dead by operation of law, it is obvious and consequent that a certificate of his death be issued.
14. Accordingly, the application dated 16/5/2025 is found to be merited and is allowed as prayed.

It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

