



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
MISC. APPLICATION NO. 137 OF 2019
IN THE MATTER OF SECTION 118A OF THE EVIDENCE AT
AND
IN THE MATTER OF AN APPLICATION FOR SALAR SHARE
BY
ABDISALAH SHIREAPPLICANT

RULING

1. Under **section 118A** of the **Evidence Act (Cap. 180)** –

“118A. 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.”

2. The facts of this application are that Salah Shire died on 4th November 1986 in Isiolo but a certificate of death was not issued or applied for. He was a muslim who was buried immediately without the death being registered. This application has been made by his son Abdisalah Shire for the court to order the Registrar of Deaths to issue a certificate of death in respect of the deceased. The application was made under **section 118A** of the **Act**. However, the **section** does not deal with the registration of deaths. It does not deal with a situation where the person in question is known to have died at a particular place, and time.

3. Under **section 7** of the **Births and Deaths Registration Act (Cap. 149)**, it shall be the duty of every registrar to keep a register of births and a register of deaths and to enter therein, respectively, the prescribed particulars of every birth and death notified to him. Under **section 8**, a registrar shall not enter a birth or death after expiration of six months from the date of such birth or death, except upon receiving the written authority of the Principal Registrar issued in accordance with the rules and upon payment of the prescribed fee.

4. There is no indication that, now that this is a case where registration is being sought after the expiry of six months, the applicant has sought the written authority of the Principal Registrar to have the registrar register the death of the deceased and issue a certificate.

5. The court would not have the jurisdiction to intervene and order the registration of the death of the deceased until the mechanism provided in **section 8** of the **Act** has been exhausted (**Narok County Council –v- Transmara County Council [2000]IEA 157 (CAK)**).

6. I dismiss the application.

DATED and SIGNED at NAIROBI this 6TH FEBRUARY 2020

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 13TH FEBRUARY 2020

A.N. ONGERI

JUDGE