



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NUMBER 17 OF 2018

DOROTHY AKOTH NYAKWAKA OBUDHO.....APPLICANT

RULING

1. By way of notice of motion dated 12/10/2018, Dr. Dorothy Akoth Nyakwaka Obudho (Applicant) seeks orders;

1. **THAT MESHACK MAIRA OBUDHO be presumed dead.**

2. **THAT the Registrar of Death do issue a Certificate of Death in respect of the said MESHACK MAIRA OBUDHO.**

3. **THAT costs of this application be borne by the applicant.**

2. The application is supported by her affidavit and grounds as seen on the face of the application namely;

1. **THAT the said MESHACK MAIRA OBUDHO has not been seen or heard since 2nd December, 2006 and his whereabouts are completely unknown.**

2. **THAT it is now more than 7 years since his disappearance.**

3. **THAT the said disappearance was duly reported at Nakuru Central Police Station under OB No. 48/04/12/2006.**

4. **THAT the family of the said MESHACK MAIRA OBUDHO is desirous of commencing succession proceedings in respect of his estate.**

5. **THAT in spite of all efforts by the family and the relevant state agencies, it has not been possible to trace the subject or his remains.**

3. The gist of the application is that Meshack Maira Obudho, the applicant's husband disappeared on the 2/12/2006 and has not been seen or heard of since and his whereabouts are completely unknown.

4. The report of the missing person was made at Nakuru Central Police Station vide OB number 48/04/12/2006.

5. Efforts by the family and relevant agencies to trace the said Meshack Maira Obudho, have not borne fruit and it is now over seven (7) years since his disappearance.

6. Despite his mobile phone being traced at Sigowet in Kericho, efforts by the criminal investigations officers to trace the subject were unsuccessful and the subject remains missing.

7. **Section 118A** of the **Evidence Act** 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 our instant case, on the material before me, it has been proved that Meshack Maira Obudho has not been heard of for 12 years now by those who might be expected to have heard of him if he were alive.

9. In the circumstances, a rebuttable presumption that he is dead must be made.

10. I accordingly allow the notice of motion dated 12th October, 2018 in terms of prayers 1 and 2. The costs shall be in the cause.

Dated and Signed at Nakuru this 5th day of February, 2019.

A. K. NDUNG’U

JUDGE