

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 71 OF 2019

IN THE MATTER OF STEPHEN MANG'IRA AGOLA

GAUDENSIA ANYONGA MANG'IRA.....APPLICANT

JUDGMENT

1. Gaudensia Nyonga Mang'ira, who is the wife of one Stephen Mang'ira Agola brought the summons dated 3rd May, 2019 seeking an order of presumption of death of her husband whom she has not heard from for the past seven years with effect from January, 2012.

2. The applicant deponed a supporting affidavit dated 3rd May, 2019. In the affidavit, she stated the efforts made in the search to find the whereabouts of her husband. She averred that Stephen Mang'ira Agola disappeared in the January, 2002. The disappearance was reported at Kilimani Police Station and was recorded in the Occurrence Book as No. 32/12/1/2012. The Assistant Chief of Jamhuri Sub Location, Woodley Location by his letter dated 14th March, 2018 confirmed the disappearance of Stephen Mang'ira Agola. The Applicant further deponed that she made contacts with the necessary law enforcement agencies and local administration in South Wanga Kakamega and Nairobi to help in the search but her efforts were fruitless. It was her prayer that due to her husband's long disappearance he should be declared dead.

3. The matter was disposed of by way of oral evidence. In her testimony, the applicant reiterated the contents of her supporting affidavit elaborating in detail the circumstances under which her husband went missing and her search efforts. PW2, Gaudancia Adhiambo Agola who is a sister to Stephen Mang'ira Agola associated herself with the evidence of her sister-in-law, the applicant herein. She confirmed that the parties had been in good terms before her brother disappeared and prayed for the orders sought to be granted.

4. I have heard the sworn testimony of the applicant and the evidence of Pw2 the sister to Stephen Mang'ira Agola. The application was anchored under section 118A of the Evidence Act which provides as follows:

“Where it is proved that a person has not been heard of or seen for seven years by those who might be expected to have heard of him if he was alive, there shall be a rebuttable presumption that he is dead.”

5. In this case the applicant swore and testified in detail on the circumstances under which Stephen Mang'ira Agola disappeared. As evidenced by the certificate of marriage serial no. 292328 he was married to the Applicant on 7th October, 2000. He was living with his wife and children when he became mentally ill and went missing in his confused state of mind. Since January 2012 Stephen Mang'ira Agola has never contacted any of his family members or sibling who testified. His absence has been continuous and in explicable. During the aforesaid period there has been a diligent but unsuccessful search for Stephen Mang'ira Agola's whereabouts in Nairobi, Mombasa, Busia and Iganga town in Uganda.

6. As above stated the presumption raised by the Evidence Act upon such proof is not mere presumption of death; but is also a presumption fixing the time of death at the expiration of the seven successive years of absence in which those who should have heard from the person had not.

7. In the light of the evidence, which I find credible that Stephen Mang'ira Agola has not been seen or heard from for the last seven years and ten months and the fact that the law presumes that in those circumstances he is dead, I hereby grant the applicant's prayers as prayed in the summons dated 3rd May, 2019. Stephen Mang'ira Agola is hereby declared dead in accordance with Section 118A of the Evidence Act. I make no orders as to costs.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 14TH DAY OF NOVEMBER, 2019.

L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicant