

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION 78 OF 2012
IN THE MATTER OF THE ESTATE OF SAMMY MUIA (PRESUMED DEAD)

R U L I N G

This application is brought by way of a Chamber Summon dated 20th June, 2012. It seeks orders that the honourable court do make an order for presumption of death of Sammy Muia Mulawa, and that costs be in the cause.

The application is supported by the annexed affidavit of Nelly Kalau Mwikya, the wife of Sammy Muia, and the applicant herein. She deposes in that affidavit that on 6th June, 2005 her husband went with his work colleagues for games in Athi River but he never came back and nobody has ever seen him since that day. Her efforts to inquire from all sources including his employer have not yielded any fruits. She reported the matter to the Kenya Army Headquarters where he used to work, and they confirmed him missing since 6th June, 2005, thereby necessitating this application.

Section 118A of the **Evidence Act** states 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.”

It is now seven years since Sammy Muia Mulawa was last seen by his loved ones or by anyone else. If he were still alive, he would probably have been heard of by his family, relatives, workmates, or friends. Since none of those parties has heard of him since 2005, it is fair to presume that he is dead. However that presumption is rebuttable.

In the circumstances, I accordingly make an order to the effect that Sammy Muia Mulawa be and is hereby presumed to be dead as prayed. Costs will be in the cause.

DATED and **DELIVERED** at **NAIROBI** this 12th day of July, 2012

L. NJAGI
JUDGE