



In re Application for Presumption of Death of SCC (Miscellaneous Application 100 of 2019) [2025] KEHC 18098 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS APPLICATION 100 OF 2019**

TW OUYA, J

DECEMBER 4, 2025

IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF DEATH OF SCC

IN THE MATTER OF

AWM APPLICANT

RULING

1. This honourable court has been moved under Section 118 of the *Evidence Act*, Section 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules vide a Notice of Motion dated 28th August 2019. The Applicant seeks to have SCC to be presumed dead and that the Registrar of Births and Deaths to issue a certificate of death in respect of the said SCC.
2. The Application is supported by grounds on the face of the Application together with the affidavit of AWM of even date in support of the application.
3. It is averred that SCC went missing in 1990 and has not communicated with any family member since. That his disappearance was reported at Maragua Police Station in 2019 and that his whereabouts has not been traced despite diligent search.
4. By the directions of the court, this matter was disposed of by way of viva voce hearing where the applicant adduced evidence of four witnesses including herself. It was reported by Counsel, Ms. Murira who represented the Applicant that the intended 5th witness was one PM, brother to the late SCC who swore an affidavit but is since deceased.
5. PW1 the Applicant AWM testified that she swore an Affidavit on 23rd may 2022 which she wished to rely on in her application. She stated that SCC was her husband and that he got lost in May 1990 and that she reported him missing at Maragua police station. Further to that, she also made radio announcements at Kameme FM on 20th and 21st April 2022. In support of her evidence, she relied on a copy of police abstract dated 1st August 2019 marked AWM2 and a payment receipt to Mediamax



Nertwork Limited dated 20th April 2022 for the announcement with the actual words in Kikuyu language and English translation thereof which were annexed to her supporting affidavit.

6. PW2 Diana Wairimu Mwaniki testified that she is the Chief of Nginda Location where SCC hailed from and where PW1 resides. She relied on the evidence of a letter dated 1st August 2019 which she wrote in relation to one SCC confirming that he hailed from her location and had gone missing in 1990 and cannot be traced. The purpose of the letter was to support PW1 in the instant application to court.
7. PW3 Fredric Muiruri Mutugi testified that he is a village elder at Nginda Location, Gakoigo Sub Location, Ititu Village. He relies on his affidavit which he swore on 28th August 2019 regarding SCC who was well known to him and went missing since 1990. That he has never seen him or heard anybody talking about him. That he last saw him when he had come home with a bus and that he was a driver.
8. Pw4 KMC testified that SCC was his father. He relies on his Affidavit sworn on 28th August 2019 that his father went missing about 35 years ago when he was 8 months old and that he has never seen him or heard of him.
9. Based on the above evidence, the Applicant prays that an order of presumption of death be granted with regard to the said SCC.
10. Upon considering the Application, the supporting affidavit and the witness' testimony herein, the only issue commending, itself for determination is whether the Applicant has adduced sufficient evidence for this court to arrive at a decision that the subject is unlikely to be alive after having missing for over 35 years.
11. The primary legal basis for the presumption of death is provided under section 118 of the [Evidence Act](#) which provides that:

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.
12. The above principle was well espoused in Re Application for the presumption of Death of WMW Misc. Civil Application E008 of 2024 (2024) KEHC 5337 (KLR) (20 May 2024) (Ruling) held as follows: -

“The accepted view is that there is presumption of death in the event that very person known to have been physically present within his homestead, place of work, neighbourhood, village, sub-location, location, ward, constituency, county, region or the Republic at large during his/her lifetime but suddenly goes missing and the fact of it remains so for a period of seven years it is taken to be a rule of law that is equivalent to death. That is, in the absence of evidence to the contrary, the presumption compels a finding of the fact of a person's death once certain prescribed facts are established to the court's satisfaction. It is also true to bear in mind where a man disappears and is unheard of for a long period of time, he may or he may not be dead. That fact must remain alive to the court exercising discretion and the presumption of death. In *Bowden v Henderson* [1854] 2 SM. The court held that for presumption to arise there must be persons likely to have heard of the propositus who had not in fact heard. The reason for this requirement was explained thus:

The principle on which the court presumes the death of a person from whom no tidings have been received for a long time is this that if he were living he would probably have



communicated with some of his friends and relatives. It is a conclusion which the court draws from the probabilities of the case. It is quite clear that where no such probability exists, the presumption cannot arise.”

13. In making a determination of this application, this court needs to ascertain that the application meets the threshold under section 118 of the *Evidence Act*.
14. In the instant case the applicant has adduced the evidence of close relative being herself and her son, a person known to the subject being the village elder and a person in authority being the chief. She has also availed evidence of radio announcement through Kameme FM and an abstract of police records indicating that the matter was reported vide OB number 17/1/8/19 on 1st August 2019.
15. Based on the above evidence I find that there is no doubt that the subject, SCC has been missing for the last 35 years without a trace and has not been seen or heard neither has he contacted any of by those who would likely hear of him which raises a presumption of rebuttable death the absence of evidence to the contrary.
16. Accordingly, I hereby make ruling in favor of the applicant.
17. Based on the above, I find that this Application is merited and is granted. In effect, the following orders shall ensue
 - i. This court declares that SCC is presumed dead.
 - ii. The Registrar of births and deaths is hereby ordered to issue certificate of death in respect of SCC.
 - iii. No orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF DECEMBER, 2025.

HON. T. W. Ouya

JUDGE

For Applicant.....Ms Wacuka HB for Mrs Njihia

For Respondent.....Not Applicable.

Court Assistant.....Brian

