

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
HCCCMISC NO. E038 OF 2025
IN THE MATTER OF AN APPLICATION BY JOASH ODOYO OWITI
AND
IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF
DEATH OF JOASH OPUODHO OWUOR

BETWEEN

REPUBLIC
APPLICANT

VERSUS

JOASH ODOYO OWITI
APPLICANT

RULING

Vide Notice of Motion application dated 22³rd June 2025 the Applicant herein pursuant to Section 118 A of the Evidence Act, Order 50 Rule 1 of the Civil Procedure Rules of 2010, Section 3A of the Civil Procedure Act sought for orders presuming the subject herein Joash Opuodho Owuor dead by virtue of not having been seen or heard of to those who ordinarily would have heard of him had he been alive.

It was also sought that the Principal Registrar be ordered to issue a death certificate in that respect.

Costs of the application was also sought for.

The application was premised on the grounds that the subject herein had not been seen since 1971 and that the Applicant who is the closest

relative is entitled to inherit his land REG. No. Kamagambo/Kamwango/ 370 which is registered in the name of the said subject.

The application is also supported by the affidavit of the Applicant sworn on 23rd June 2025; the affidavit of Mary Achieng sworn on 23rd June 2025 and affidavit of Millicent Atieno Oywa sworn on 23rd June 2025.

This court has considered the application herein together with the supporting affidavits and submissions dated 6th October 2025 and find that there is no police abstract showing that the Applicant or any other person has ever reported that the subject is missing to warrant this court to believe that he cannot be traced and that this court should issue a certificate for his death.

It is therefore the finding of this court that it will be prudent that the Applicant files a report with the police for wide circulation before this court can make an order presuming his death.

Further the Senior Chief of North Kamagambo who wrote the letter identifying the Applicant should also swear an affidavit stating extent of his of the subject and why he believed he is dead.

This court hereby issues an order restricting transactions on L.R. NO. Kamagambo/Kamwango/370 until further orders of this court.

Orders Accordingly.

DATED, SIGNED, AND DELIVERED AT MIGORI THIS 4th Day of December, 2025.

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ANNE ONG'INJO
JUDGE