



In re Presumption of Death of Mzee Kuni Hele Halanka (Miscellaneous Civil Application E004 of 2025) [2026] KEHC 91 (KLR) (16 January 2026) (Ruling)

Neutral citation: [2026] KEHC 91 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
MISCELLANEOUS CIVIL APPLICATION E004 OF 2025
FR OLEL, J
JANUARY 16, 2026
IN THE MATTER OF SECTION 118A AND 119 OF THE
EVIDENCE ACT (CAP 80) LAWS OF KENYA
AND
IN THE MATTER OF RULE 10 OF THE PROBATE AND
ADMINISTRATION RULES
AND
IN THE MATTER OF SECTION 17 OF THE BIRTHS AND
DEATHS REGISTRATION ACT
AND
IN THE MATTER OF AN APPLICATION FOR PRESUMPTION
OF DEATH OF MZEE KUNI HELE HALANKA
APPLICATION BY
IN THE MATTER OF
ALEX ALI KUNI APPLICANT

RULING

A. Introduction

1. The Application before this court for determination is the Summons application dated 11th December 2025 brought pursuant to the provisions of Section 118A of the *Evidence Act*, Rule 10 of the probate and administration Rules and Section 17 of the *Births and Deaths Registration Act* and all other enabling provisions of law. The Applicant's seeks for orders that;



- a. Spent.
 - b. That this Honourable court be pleased to issue an order that Kuni Hele Halanka be and is hereby presumed dead.
 - c. That this Honourable court be pleased to order the Registrar of births and death to issue a certificate of death in respect of the said Kuni Hele Halanka
 - d. That this Honourable court be pleased to issue any other order that it may deem fit and expedient to grant in the circumstances of this case.
 - e. The costs of this Application be in the cause.
2. The Application is supported by the grounds on the face of the said application and the supporting affidavit of the Applicant, who depones that he was a son of Kuni Hele Halanka (hereinafter referred to as the subject/father) , and recalled that on 7th February 2022 at around 18.59hrs he did make a request to Bolt Taxi App, requesting them to pick his father from Weston Hotel, situated along Langata Road, within Nairobi City and further proceeded to provide the Bolt driver with his fathers phone Number 0714XXX to enable them communicate directly.
 3. A few minutes later, at about, 7.18pm on the material night, he received a call from the said Bolt driver, who informed him, that after picking his father, and while driving along Likoni road, his car had been blocked by some people posing as police officers, who had proceeded to drag out his father from his taxi and forcefully arrested him, whisking him away to an unknown destination. Alarmed by what had happened he immediately mobilize his family members and extended family to trace his father, reported the matter to the police and even filed an “habeas Corpus Application” before the high court to pressure the police to produce him dead or alive but no progress was made in finding him.
 4. They further escalated and reported the disappearance of their father, in the main/social media and made all efforts to trace him, to no avail. The police also despite being served with the “habeas Corpus ruling” to produce their father dead or alive, also failed to do so and on persistent probing became openly hostility thus dampening their spirit’s. Given the background leading to the disappearance of their father and considering the fact that over 3 years and 10 months had passed since his abduction by the police, it was unlikely that he was alive and/or his body would ever be recovered and that was a painful reality which they had to confront and leave with.
 5. Therefore under the explained circumstance, there was no need to wait for 7 years to presume that their father was dead, when there was no hope of ever tracing him. It was therefore in the interest of justice to grant the order sought to enable them take up letters of administration over his estate, to prevent the said estate from going into waste. For good measure the applicant also attached a consent signed by all family members giving him approval to file this application on behalf of their family.

B. Analysis & Determination

6. I have carefully considered the Application filed together with all its supporting documents supporting documents. Sections 118A and 119 of the *Evidence Act*, (Cap 80) Laws of Kenya provide for circumstances when one can be presumed dead.



Sec 118A of the Evidence Act states that;

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

7. Further Section 119 of the said Evidence Act, further provides that;

“The court may presume that the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.”

8. A reading of the pleading filed herein, the pleadings filed in the habeas corpus application (Nairobi HCCRMISC APP/E351/2022), the orders issued pursuant to the said application and newspaper articles published about the abduction of Kuni Hele Halanka leaves no doubt as to the circumstances under which the said person disappeared not to be seen again by his family and loved ones.

9. The “subject” herein was 70 years old, a prominent businessman with no known reason of wanting to abandon his family. Unfortunately for obvious reasons, the police investigations too have gone cold and 4 years on, nothing has changed. Considering the totality of the evidence adduced, especially the circumstances of the “Subject’s” forced disappearance, it is proper for the court to presume that he is dead.

10. The second question that arises is whether this court can issue the “death declaration” before the 7-year period as is provided for in law. In law it is usually stated that “Equity will not suffer a wrong without a remedy”, meaning that where a person has a legal right, the law will provide a means to enforce it and a remedy for its infringement. This principle is expressed by the Latin phrase *ubi jus ibi remedium* (“where there is a right, there is a remedy”).

11. It is clear beyond peradventure that the Applicant father was a victim of forced disappearance and it would be unfair and unconscionable to hold the family at bay, yet the circumstances reveal that by all means their father cannot be alive. No purpose will thus be served by waiting for the statutory period to elapse. This position has been confirmed in the persuasive authority of; In Miscellaneous Application E008 of 2024 KEHC 5537 (KLR), which cited with Approval the case of *Re; Osman Bachit (1997) 4 MLJ445*, where it was held that; “ where circumstantial evidence existed that may prove that the person is dead, the family or interested party cannot be forced to wait for seven agonizing years just for facility.”

Disposition

12. Having arrived at the above finding, I do find that the Summons Application dated 11.12. 2025 has merit and the same is allowed on the following terms;

- a. That “kuni Hele Halanka” be and is hereby presumed dead.
- b. That the Registrar of births and death, Marsabit County is hereby directed to forthwith issue to the Applicant with the “deceased” burial permit and death certificate bearing his date of death to be 7th February 2022, when he was abducted and last seen.

13. It is so ordered.

JUDGEMENT WRITTEN, DATED AND SIGNED AT MARSABIT THIS 16TH DAY OF JANUARY, 2026.



FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 16TH DAY OF JANUARY, 2026.

In the presence of;

N/Afor Applicant

N/Afor Respondent

Mr. JarsoCourt Assistant

