



Oluoch v Registrar of Births and Deaths & another (Miscellaneous Application E088 of 2025) [2025] KEHC 5085 (KLR) (Civ) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E088 OF 2025

SN MUTUKU, J

APRIL 30, 2025

IN THE MATTER OF THE DECLARATION OF DEATH OF JOHN OLUOCH WASAMBA

**IN THE MATTER OF ARTICLES 2(5), 46(1), 48
AND 159 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTION 118A OF THE EVIDENCE ACT, CAP. 80 LAWS OF KENYA

AND

**IN THE MATTER OF SECTION 1A, 1B & 3A OF THE
CIVIL PROCEDURE ACT, CAP. 21 LAWS OF KENYA**

AND

IN THE MATTER OF ORDER 51 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

JULIUS OCHIENG OLUOCH APPLICANT

AND

REGISTRAR OF BIRTHS AND DEATHS 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

The Application

1. Julius Ochieng Oluoch, the Applicant, is a younger brother to John Oluoch Wasamba, the subject of these proceedings. John Oluoch Wasamba, is a Kenyan from Umala Sub-location, Central Ugenya



- Location, Ugunja. He was an employee of a Tanzanian Company called Techno Serve based in Arusha. The Company had offices in Dar es salaam, Tanzania and also Kigali, Rwanda. He always used to travel home for Christmas holidays.
2. On the Christmas of 2006, he did not travel home as was the custom. His family got concerned and started calling his friends and colleagues to find out about his whereabouts. No one seemed to have any idea as to where he could be. The Applicant travelled to Techno Serve offices in Arusha, Tanzania on 28th January 2007 where he was informed that John was last seen at the place of work early in December 2006 when his annual leave was supposed to commence.
 3. Techno Serve, the Employer reported the case of a missing person at Arusha Police Station where he obtained police reference number AR/RB/453/2007. The Applicant also reported the case of his brother's disappearance at the same police station and obtained reference number AR/RB/453/2008.
 4. The matter was also reported at area assistant chief of Umala Sub-location on 21st June 2008 and at Ugunja Police Station. The Applicant obtained a confirmation of a missing person and a Police Abstract marked "JOO1" and "JOO2" respectively. The Applicant has also annexed correspondence exchanged between him and Techno Serve marked as "JOO3".
 5. The Applicant has deposed in his supporting affidavit that the family has made thorough search of their kin without success. He has deposed that it has been 19 years since John went missing without trace and that it is only fair to presume him dead.
 6. The Respondents, though served with the application, did not file any response nor did they attend court to argue the case.
 7. On 2nd April 2025, I listened to brief oral submissions highlighting the written submissions filed in court and dated 5th March 2025. Mr. Nyauchi, Counsel for the Applicant, has cited the applicable law as section 118A of the *Evidence Act* Cap. 80 Laws of Kenya and Misc. Application No. E02 of 2022, re Declaration of the Death of Kipruto Arap Chebutayi to support his submissions. Counsel urged the court to allow the application.

Analysis and Determination

8. I have considered the application and the facts of the case. I have noted the documents tabled in support of the application. It is clear that the family made all efforts possible to try to find out the whereabouts of their kin. It has been 19 years since John went missing. No one has heard or seen him. There seems no trace of him from December 2006 when he is reported to have been seen last at his work station at Techno Serve Arusha. It is strange that in this day and age, a person can disappear without trace. It is an age of technology. Methods of tracing persons who are missing has been made easier, and yet, it has been impossible to trace John Oluoch Wasamba.
9. I am persuaded that there is only one issue for determination: whether there is sufficient evidence to persuade this court to presume the death of John Oluoch Wasamba.
10. Section 118A of the *Evidence Act* provides that:

118A. Presumption of death.

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



11. In my view, those who might be expected to have heard of him if he were alive are family members, friends, his employer and local authorities in both Kenya and Tanzania. None of these people seem to have any idea about his whereabouts. The time allowed by statute to presume a person dead is seven years by dint of section 118A of the *Evidence Act*. If seven years have elapsed and the person to be presumed dead has not been heard of by those who might be expected to have heard of him if he were alive, then a presumption of death of that person can be made.
12. In the case before me, 19 years have elapsed. Within that period, no one in the family, his friends or colleagues and workmates at Techno Serve have heard of John Oluoch Wasamba. The correspondence exchanged between the Applicant and the employer and the references from Arusha Police Station all point out to the efforts put in place to locate the whereabouts of John.
13. I am satisfied that there is ample evidence to demonstrate that it is safe for this court to presume the death of John Oluoch Wasamba as provided under Section 118A of the *Evidence Act*. This is a rebuttable presumption which is capable of being overturned should there emerge sufficient evidence to show that he is alive (see In *re ENK* [2017] eKLR).
14. The application before me is merited. I will and do hereby grant the following orders:
 - a. That John Oluoch Wasamba be and is hereby presumed dead.
 - b. That the Registrar of Births and Deaths is hereby directed by an order of this court to register the death of John Oluoch Wasamba in the Births and Deaths Register.
 - c. That the Registrar of Births and Deaths is hereby directed to issue a Death Certificate in respect of the death of John Oluoch Wasamba.
 - d. That the Applicant shall bear own costs of this Application.
15. Orders shall be issued accordingly.

DATED, SIGNED AND DELIVERED THIS 30TH APRIL 2025

S. N. MUTUKU

JUDGE

In the presence of:

1. Mr. Nyauchi for the Applicant.

