



REPUBLIC OF KENYA



In re Application for Presumption of Death of Enos Omondi Nyamanga (Miscellaneous Civil Application E062 of 2024) [2024] KEHC 8088 (KLR) (28 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E062 OF 2024**

RE ABURILI, J

JUNE 28, 2024

**IN THE MATTER OF AN APPLICATION BY RODA AUMA BANJA
[IN THE MATTER OF AN APPLICATION FOR PRESUMPTION
OF DEATH OF ENOS OMONDI NYAMANGA] APPLICANT**

RULING

1. Before me for determination is the Summons for Presumption of Death dated 13th June, 2024 seeking that Enos Omondi Nyamanga be presumed dead and a death certificate be issued to that effect by the Principal Registrar of Births and Deaths.
2. The application is premised on the Section 118A of the *Evidence Act*, Section 3A of the *Civil Procedure Act* and order 50 rule (1) of the *Civil Procedure Rules* and Section 17 of the *Births and Registration Act* as well as all other enabling provisions of the law. It is supported by a supporting and further affidavit sworn by the applicant Ms Roda Auma Banja sworn on 13th June, 2024.
3. The application was canvassed by way of oral submissions with the Court summoning all the children of the missing person who also filed their national identity cards as well as their mother's death Certificate.
4. According to the applicant and her siblings, their father lived in Mombasa and from 1993, he vanished without a trace. His disappearance was reported to the Police Station as per the OB number 41 of 22/3/1993 at Central Police Station Mombasa, given and that he was even reported in the newspapers but no information about him has been forthcoming to date, now covering a period of over 31 years.
5. That he owned land parcel number Kisumu/Koguta West/1981 which requires reconstruction of the lands register at Awasi which was destroyed by fire and that without a declaration as to whether the registered proprietor is alive or dead, the register cannot be reconstructed.



6. I have considered the application, the two affidavits on record and all the annexures thereto. The law governing the circumstances in which a person may be presumed dead is set out in Section 118A of the Evidence Act which 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.”
7. In this case, the applicant who is the subject’s daughter and 8 of her siblings namely, Inea odiwuor Omondi, Barack Ouma Omondi, Judith Akoth Omondi, Nehemia Odhiambo, Tonny Wilson Omondi, Teresa Aluoch Omondi, Paul Omondi and John Omondi Enos, who are people expected to see or hear from the subject almost on a daily basis or every so often have confirmed that they have not heard or seen the subject since 15th march, 1993. I have confirmed from annexures to the affidavits filed by the applicant that indeed, the subject’s disappearance was also reported to the chief of the home area Anding’o Kasaye Location, West Nyakach sub location and he has written a letter confirming the position and listing names of the family of the subject who is missing.
8. For the foregoing reasons, I am satisfied that the applicant has demonstrated by credible and reliable evidence that the subject disappeared on or about 15th Day of March, 1993 while at Mombasa and has to date not been in touch with his close family members. This means that the subject has been missing for the last about 31 years and all efforts to trace his whereabouts have been unsuccessful. If the subject was alive, it is expected that he would have attempted to contact at least members of his nuclear family which he has not done to date.
9. Accordingly, it is my finding that the applicant has met the threshold set out in Section 118A of the Evidence Act by providing evidence which raises a presumption that the subject is dead.
10. In the end, I find that it would be in the interest of justice to grant the applicant the orders sought given the circumstances necessitating filing of the summons for presumption of death. I therefore invoke the inherent powers of this court under Section 3A of the Civil Procedure Act and allow the application dated 13th June, 2024.
11. I hereby declare that Enos Omondi Nyamanga is hereby presumed dead as he had been missing and has never been seen or heard of from 15th March, 2024.
12. I direct the Registrar of Births and Deaths, Kisumu County to issue a death certificate in respect of the subject Enos Omondi Nyamanga.
13. As this was an ex parte application, I make no orders as to costs.
14. It is so ordered.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF JUNE, 2024

R.E. ABURILI

JUDGE

