

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS APPLICATION NO.267 of 2023

**IN THE MATTER OF AN APPLICATION BY AYIKA REHEMA HUSSEIN
(DAUGHTER) FOR ORDER OF A PRESUMPTION OF THE DEATH OF
HUSSEIN SULAIMAN (MISING PERSON SINCE 1971)**

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

1. The Application is brought by AYIKA REHEMA HUSSEIN seeking that Hussein Sulaiman, a former resident of Wanyange Village Cell, Wanyange Ward, Northern Division be declared presumed dead, having been missing since 1971.
2. The grounds for the application are contained in the affidavit of the Applicant setting out the grounds in support of the Application, but briefly the grounds are that;
3. That the Applicant was recommended by her brother and sisters , Chombe Sunday, Olweny Hussein, Madinah Hussein and Zainabu Mustafa Doka to acquire the Letters of Administration to administer the property of their father , HUSSEIN SULAIMAN.
4. Hussein Sulaiman, the father of the Applicant disappeared on the 29th day of January 1971 during the coup which ushered in the late President Idi Amin and his family has since not heard from him.
5. On the 30th day of August 2023, the Applicant reported the disappearance of her father, Brigadier Hussein Suleiman at Wanyange Police Station. A copy of the police report is hereto attached and marked 'A'.
6. The Applicant averred that she instructed her lawyers to issue a public notice about the disappearance of her father, Brigadier Hussein Suleiman,, a former military officer serving in the Uganda army, but she has since not received any news about her father . A Public Notice attached and marked 'B'
7. She further averred that she has been advised by her lawyers, Kabayiza, Kavuma, Mugerwa & Ali (KMA) Advocates which advice she verily believes to be true that she needs a death certificate before applying for Letters of Administration.
8. She averred that she was recommended by the office of the President, Internal Security Organization, Office of the DISO Jinja City to process a death certificate for the father to enable her acquire Letters of Administration. As per copy marked annexure 'C'.

9. She further averred that she has been advised by her lawyers which information she verily believes to be true that this Honourable court has power to issue presumption of death order.
10. That it is in the interest of Justice that then Application is allowed so that she can applying for Letters of Administration to administer the property of her father, Brigadier Hussein Suleiman.
11. That whatever she has stated herein is true to the best of her knowledge save for the paragraphs whose sources are therein mentioned.

Representation

When this Application was put before me for hearing, counsel Herbert Kirundi Mugerwa of M/S Kabayiza, Kavuma, Mugerwa & Ali (KMA) Advocates represented the Applicant

At the hearing of this Application, Counsel for the Applicant made oral submissions which I have considered in the determination of this application.

It was submitted by Learned Counsel for the APPLICAY that the said Hussein Suleiman, the father of the Applicant disappeared on the 29th day of January, 1971 and he has not been seen or heard from. That the Applicant has notified the Public about the disappearance as per **paragraph 5 of the Affidavit** attached to the Notice of Motion. Furthermore, all the security organs have been notified to which counsel referred to **paragraph 7 of the Affidavit in support** and Annexature .

Counsel further submitted that the Applicant is the daughter of the said Sulaiman Hussein. And the matter was within the Jurisdiction of the Honourable Court. Counsel submitted further that the order was purposes of obtaining Letters of Administration to administer the Estate of her father, Brigadier Hussein Sulaiman and that the Applicant had complied with all the requirements, injunction orders of the deceased person and prayed that court grants the order.

THE LAW

Section 47 of the Registration of Persons Act No.4 of 2015, States that for one to prove presumption of death, the following condition must be fulfilled;-

1. That a person has not been seen or heard from of seven years by those who might be expected to have seen or heard from the person if the person were alive.
2. That the Applicant seeking an order of presumption of death must be next of Kin, relative or person with the knowledge of death.
3. That a report was made to Police that a person is missing

4. That an advert has been placed in the Newspaper of the notice of the Application to declare missing person presumed dead.
5. The court from which the order is sought is of competent Jurisdiction.

The Estate of Missing Persons (Management) Act, Cap 159, pegs the presumption of death, to disappearance of a person for more than three years.

The Supreme Court in ***Nalongo Nazziwa Josephine vs Uganda SCCA No.35 of 2014*** system that;

“...under common law, the presumption of death was one of the recognized presumptions... indeed under common law, a person who was absent for seven years without explanation and “gone to parts unknown “was presumed dead. However, the time period it takes for the presumption to arise has always been modified by Statute”.

The court will now consider the evidence on court record under each of the conditions that the Applicant ought to fulfil as listed above;-

- a) **That a person has not been seen or heard from of seven years by those who might be expected to have seen or heard from the person if the person were alive.**

In paragraph 3 of the Affidavit in support of the Application, the Applicant avers that her father , Hussein Sulaiman disappeared on the 29th day of January 1971 during the Coup that ushered in the late President Idi Amin and his family has since not heard from him.

I find that the evidence on court record, that Hussein Suleiman has been missing for over 52 years and no one has seen him since the 1971. The first condition is therefore fulfilled.

- b. **That the Applicant seeking an order of presumption of death must be next of Kin, relative or person with the knowledge of death.**

The evidence on record shows that in paragraph 2 & 3 of the Affidavit in support shows that the Applicant is the biological daughter of Hussein Sulaiman who was nominated by her siblings to Obtain Letters of Administration to Administer the Estate of Hussein Sulaiman. This means that the Applicant being a biological daughter fulfils the requirements in Section 47(2) of the Registration of Persons Act No. 4 to present this Application in court. The second condition is therefore fulfilled.

- c) **That a report was made to Police that a person is missing.**

In cases of missing Persons, it is imperative to report to the Uganda a Police Force who are charged with protection of life under their functions in **Section 4**

(1)(a) of the Police Act, Cap 303. This is because the disappearance of an individual is a threat to their life.

The evidence on court record in paragraph 4 of the Affidavit in support of the Application shows that the Applicant reported the disappearance of her father Brigadier Hussein Sulaiman at Wanyange Police Station and the Police Report was compiled a report of disappearance was registered Under SD O6/10/07/2023 and therein in Kakira CRB 380/2023 . The police concluded in its report that Brigadier Hussein Suleiman was just kidnapped as narrated by his wife Faida who was the wife to King Sulaiman a biological brother to the victim and was taken by the soldiers of the Late Idi Amin and that he did not disappear. That since then in January, 1971 he has never been seen or heard from and he is presumed to be dead as per **Annexure 'A'** to the Application.

In my analysis of this evidence the applicant has fulfilled this condition of notifying the Uganda Police Act, who produced the report that Hussein Sulaiman disappeared in January 1971.

d) That an advert has been placed in the Newspaper of the notice of the Application to declare missing person presumed dead.

The principle of law is that that the burden of proving is dead who had not been heard from or seen for a period of more than seven years is on the person who affirms it as per section 108 of the Evidence Act., Cap 6. Therefore any person who may be having contrary information must be given an opportunity to rebut the Applicant's assertion.

Section 108 of Evidence Act provides, cap 6;-

Burden of proving that person is alive who has not been heard of for seven years. It states;-

“When the question is whether a person is alive or dead, and it is proved that he or she has not been heard of for seven years by those who would naturally have heard of him or her if he or she had been alive, the burden of proving that he or she is alive is shifted to the person who affirms it.”

The evidence in paragraph 5 of the Affidavit in support is that the Applicant instructed her lawyers to issue a public notice about the disappearance of her father, Brigadier Hussein Suleiman, a former military officer serving in the Uganda army, but she has since not received any news about her father as attached as Annexure B'. A Public Notice advertised in Daily Monitor Newspaper of Tuesday, August 15th, 2023. I find that this advert was meant for the Public who could have known the whereabouts of the Applicant to point to the

possibility of Hassan Sulaiman being alive however none has been forthcoming. In my view, this requirement has also been fulfilled by the Applicant.

d) The court from which the order is sought is of competent Jurisdiction

It is the principle of the law that that the order of presumption of death can only be granted by a court of competent Jurisdiction as provided under S. 47(2) of the Registration of Persons Act.

Jurisdiction of this court is provided for **under Article 139(1) of the constitution** and **Section 13 of the Judicature Act, Cap 13** that the court is clothed with competent Jurisdiction to hear the Application. I hold that this condition is also fulfilled by the Applicant.

The Application is allowed with orders that;-

Hussein Sulaiman, a former resident of Wanyange Village Cell, Wanyange Ward, Northern Division is presumed dead.

This order shall be served on National Identification and Registration Authority.

The Applicant shall bear the costs to this Application.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
22/11/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
18/11/2023

