



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS CAUSE NO 13 OF 2022**

**IN THE MATTER OF DEO MULINDWA [A MISSING PERSON]
AND
IN THE MATTER OF AN APPLICATION BY KYOMA TOM VICTOR FOR AN ORDER OF
PRESUMPTION OF DEATH OF DEO MULINDWA, A PERSON MISSING SINCE 1990.**

Before: Hon. Justice Nshimye Allan Paul. M.

RULING

BACKGROUND

This application is brought by Kyoma Tom Victor seeking for among others an order that Deo Mulindwa, a person missing since the 1990's be presumed dead. On the filed Notice of Motion, it is stated that the application is brought under section 47(1) and (2) of the Registration of Persons Act No 4 of 2015, Section 98 of the Civil Procedure Act Cap 71 and Order 52 Rules 1,2 & 3 of the civil procedure rules S.I 71-1.

GROUND

The grounds of the application are itemized in the application and supported by an affidavit by applicant, they are that;

1. That the applicant is a biological brother and relative of Deo Mulindwa.
2. That Deo Mulindwa was a resident of Rwentobo where he was a resident at their family home.
3. That the applicant and other known relatives last saw and heard from Deo Mulindwa in early 1990.
4. That in 1994 the family through a person who claimed to have been Mulindwa's friend at Makerere University did inform his mother that Deo Mulindwa got killed in the Rwanda patriotic front war wherein he was allegedly a combatant.
5. That since the early 1990's none of the next of kin, neither any relative nor other person with a duty under the law has seen or heard from the said Deo Mulindwa to date which is a period of over 31 years.

6. That recently, the family reported the matter of Deo mulindwa as a missing person at Ntungamo Police Station Vide CRB 497 of 2021 and the preliminary findings report confirmed that the said Mulindwa has been missing since 1990.
7. That the family also placed a notice in the newspaper hoping that the said Mulindwa would be found but all in vain.
8. That the said Deo Mulindwa owned Properties to wit FRV MBR43 Folio 4 Block 25 Plot 125 Measuring 0.2540 Hectares at Rwentobo – Kayonza as tenant in common and other properties all of which requires the appointment of an administrator for effective management under the law to prevent it from the risks of being put to waste.
9. That it is equitable, fair and in the interest of justice that the prayers herein be granted.

SUBMISSIONS

The applicant filed written submissions through M/S MNA advocates. They submitted that the law on declaration of presumption of death is stated in section 47 of the Registration of Person's Act. They contended that the applicant is a biological brother of Deo Mulindwa, that none of the family members has seen Deo Mulindwa since the 1990's, the lawyers then made reference to paragraph 3-5 of the affidavit in support. They further stated that the family reported the disappearance of the person to the police and made reference to paragraph 7-8 of the affidavit in support. They submitted that they put out adverts in the newspapers and prayed that in accordance to the precedent in **RE: Nkalubo Yekoyasi (a missing person since 1984) HCMA No 06 of 2017** court be pleased to issue an order of presumption of death of Deo Mulindwa and costs of the application be borne by the applicant.

DETERMINATION

Presumption of death.

It's trite law that a person can legally be presumed dead in some circumstances. The supreme court in **NALONGO NAZIWA JOSEPHINE vs UGANDA SC CRIMINAL APPEAL NO. 35 OF 2014** stated 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."

In Uganda, **the Registration of Persons Act No 4 of 2015** pegs presumption of death to disappearance of a person for period of seven years among other considerations, while **the Estates of Missing Persons (Management) Act cap 159** pegs presumption of death, to disappearance of a person for period of three years.

In this application, the applicant relied on the Registration of Persons Act No 4 of 2015, therefore that is the law that will be applied. It should thus be shown that a person has disappeared for a period of seven years among other considerations.

Proof of presumption of death.

The principle of law as contained in section 47 of the Registration of Persons Act No 4 of 2015, other laws and logical practice is that for one to prove presumption of death the following conditions must be fulfilled;

1. That a person has not been seen and has not been heard of for seven years by those who might be expected to have seen or heard of the person if the person were alive.
2. That the applicant seeking an order of presumption of death must be a next of kin, relative or person with knowledge of death.
3. That a report was made to police that a person is missing.
4. That an advert has been placed in a newspaper of the notice of the application to declare a missing person presumed dead.
5. That court from which the order is sought is of competent jurisdiction.

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

1. That a person has not been seen and has not been heard of for seven years by those who might be expected to have seen or heard of the person if the person were alive.

The Principle of the law provides that a person may be presumed dead if he or she has not been seen by persons who would have ordinary seen or heard from him for a



period of seven years. This is provided for in Section 47 (1) of the Registration of Persons Act No 4 of 2015 that;

"Where it is proved that a person has not been seen and has not been heard of for seven years by those who might be expected to have seen or heard of the person if the person were alive, there shall be a rebuttable presumption that the person is dead"

The evidence on court record in paragraph 7 of the affidavit in support is to the effect that no one has seen Deo Mulindwa since the early 1990's a period of over 31 years. I find that the evidence on court record shows that Deo Mulindwa has been missing for over seven years as no one has seen him since the 1990's. The first condition is therefore fulfilled.

2. That the applicant seeking an order of presumption of death must be a next of kin, relative or person with knowledge of death.

In principle the application for presumption of death can be made by a person who has a duty under section 43 of Registration of Persons Act to give notice of the death of the person being presumed dead as provided in Section 47 (2) of the Registration of Persons Act No 4 of 2015

The evidence on court record is to the effect that the applicant is a biological brother of Deo Mulindwa as stated in paragraph 2 of the affidavit in support. The further evidence in paragraph 3 of the affidavit in support is to the effect that The applicant and Deo Mulindwa were all a staying in the same family in Rwentobo. In the analysis of the evidence on record, court notes that section 43 (1) and (2) of the Registration of Persons Act No 4 of 2015 states that a next of kin or relative has a duty under that provision to report death. This means that the applicant being a biological brother who was residing with Deo Mulindwa in the family home at Rwentobo, fulfils the legal requirements in section 47 (2) of the Registration of Persons Act No 4 to present this application in court. The second condition is therefore also fulfilled.



3. That a report was made to police that a person is missing.

In principle, in a case of a missing person, it is imperative to report to the Uganda Police Force who charged with the protection of life under their functions in section 4 (1) (a) of the Police Act cap 303. This is so because disappearance of a person is a threat to that person's life.

The evidence on court record as contained in paragraph 7 of the affidavit in support is to the effect that the family reported to Ntungamo police station that Deo Mulindwa was a missing person and they were given reference number CRB 497 of 2021. A police report by D/ASP Twinamatsiko Godes, dated 30th April 2021 issued to the applicant Vide receipt No Y2281319 provides in its preliminary findings that no one has seen or heard from Deo Mulindwa since the 1990's. In my analysis of this evidence, the applicant has also fulfilled this condition of notifying the Uganda Police Force, who produced a report that confirms disappearance of Deo Mulindwa for more than 7 years.

4. That an advert has been placed in a newspaper of the notice of the application to declare a missing person presumed dead.

The principle of law is to the effect that the Burden of proving that person is alive who has not been heard of for seven years is on the person who affirms it, as provided in section 108 of the Evidence Act cap 6. In effect once the applicant has stated that the person is missing for more than 7 years and should be presumed dead. This means that any person with contrary information must be given an opportunity to rebut that assertion by the applicant. In essence the burden of proof shifts to anyone who may confirm otherwise as stipulated in section 108 of the evidence act which states that;

"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 best way the public can be notified so that they with information can come forward to prove the said person is alive is by way of an advert of the notice of the application in the media. The evidence on court record in paragraph 8 of the affidavit



in support is that the applicant advertised the notice of this application in both English and Runyakore in the Daily Monitor of Thursday May 5th and 6th, 2022, copies are attached as annexure C & D to the affidavit in support. In my analysis I find that notices of this application were advertised for the public to see and react with information that would point to the possibility of Deo Mulindwa being alive but none was forthcoming. In my view this condition is also proved.

5. That court from which the order is sought is of competent jurisdiction.

It is principle of the law that the order of presumption of death can only be granted by a court of competent jurisdiction as provided in section 47 (2) of the Registration of Persons Act. This application was made to the High court which is clothed with unlimited original jurisdiction in all matters as provided in Article 139 (1) of the Ugandan Constitution 1995 as amended, and section 14 (1) of the Judicature Act cap 13. I find that this court has competent jurisdiction to entertain this application and grant the order sought. This condition is also fulfilled.

In conclusion since all the five conditions have been fulfilled, I allow this application and order that;

1. Deo Mulindwa formerly of Rwentobo in Ntungamo district is presumed dead
2. This order shall be served on the National Identification and Registration Authority
3. The applicant shall bear the costs of this application.


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Nshimye Allan Paul M.
JUDGE
16-09-2022