



[2022] JMSC Civ. 249

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. SU2020CV04592**

**IN THE MATTER OF AN APPLICATION BY  
RITA BECKFORD FOR A DECLARATION OF  
PRESUMPTION OF DEATH OF **MICHAEL  
BECKFORD****

**RE: MICHAEL BECKFORD**

**IN CHAMBERS**

**Miss Kayann A. Balli, instructed by the Norman Manley Law School Legal Aid  
Clinic, on behalf of the Applicant.**

**Heard: May 12, 2022 and June 27, 2022**

**Presumption of Death - Law of Persons - Continuous absence for seven years -  
Exposure to special peril/danger - Discretion of the Court - Factors to be  
Considered.**

**MAXINE JACKSON, J (AG.)**

**INTRODUCTION**

**[1]** Michael Beckford went missing on Thursday, 27 July 2007. His wife, Rita Beckford, the applicant, now seeks a declaration that he be presumed dead.

**[2]** The only issue for this court to decide is whether to grant the order.

## The Evidence

- [3] The evidence supporting this application includes affidavits detailing Mr. Beckford's strong relationships and connections with the affiants. They collectively state that leaving without contact or communication with them is uncharacteristic of him. The court reproduces their account verbatim, even though some may breach the hearsay rule. The verbatim account serves to preserve the honour of his loved ones and associates while also protecting the dignity with which they choose to express such views. The hearsay aspect, in this court's view, provides relevant context.

Camille Beckford Morrison,

- [4] Camille Beckford Morrison, his daughter, was the last to see him. This is her account:

*"1....*

*2.... On or about July 26, 2007, sometime after 9:00 p.m., my father visited my house for one of his usual visits. We had dinner together and watched a movie. After the movie, he said he would head home to his house at 22 City View Road. That was about 1:00 a.m.*

*3... I tried to discourage my father from leaving at that time of night because a resident in the community had been shot and killed the day before, making the community tense. Given the circumstances, I did not feel it was safe for him to be out at that time. I told him he could stay at the house until morning, but he rejected my offer and decided to go home. He left for his house shortly afterwards.*

*4... That was the last time I saw my father. I have not seen or heard from him since.*

*5...On Saturday morning, July 28, I received a call from my stepmother, Miss Rita, asking whether I was with him. That was the first time I learned he had not made it home and was missing. After I received the call, I tried calling him directly, but there was no response. His phone rang without an answer. It was very unusual for my father not to be in touch with either me or Miss Rita, as he habitually told her where he would be. My father was not the type to stay away from his home or family and be out of touch with his community for any length of time. I have not seen or heard from him for over 13 years."*

*6...."*

*The Applicant*

**[5]** The Applicant fashioned her account as follows:

*"1....*

*2. My husband, Michael Beckford, was born on 23 August 1959 and was a plumber by trade. He had two children before we were married: Marvin Beckford and Camille Beckford-Morrison. I did not know Marvin, as he died before we got married. Camille is the only surviving child, and they shared a very close relationship. Up to the time he went missing, she was living in Jack's Hill, in a section called Top Road, which is about two miles from our home. Camille now lives in Portmore, Saint Catherine, having moved from the community after Michael went missing because she thought his disappearance was suspicious.*

*3....*

*4.... Michael had a habit of visiting her regularly, especially during the week when I was at work. It was like his second home. Even so, he would tell me when he was going to check on her and let me know when he got home.*

*5... The last time I heard from my husband was on Thursday, 26 July 2007. To my knowledge, he was working at a building site. When we spoke, he told me he was going to Camille. I am aware that he was there until very early on Friday morning, 27 July 2007.*

6... *Based on what I know of his work schedule, he was expected to visit another plumbing job in the country with my boss, Billy Brown, on the same Friday. I called him during Friday and received no reply. I am aware that he did not attend his job. Mr. Brown also contacted him but received no reply.*

7.... *When he did not come on the Saturday, which was the Sabbath, or make any contact, I grew worried. So, I called Camille to check if he was there. That's when she told me he had left her early on Friday morning, even though she had asked him not to go out because it was so late. She hadn't heard from him since.*

8.... *Michael also had family members living in Papine, Saint Andrew, and Saint Mary. I contacted them, but they have neither seen nor heard from him.*

9... *By Sunday, I was very worried. Camille, one of his cousins from Papine, and I went to the Papine Police Station to report it. A missing person advisory for my husband, along with a picture of him, was broadcast on Television Jamaica on 29 July 2007. I have not received any response to date from the advisory.*

“10... *No one has heard from Michael since July 2007. About three years later, family members are still contacting me asking about him, which tells me they have not heard from him either.*”

11.... *Members of the community and our church family at the Jacks Hill Seventh-Day Adventist church have not heard from him. He was well-loved in the community and highly involved in the church. He had a habit of always informing me of his whereabouts, and it was very unusual for him to go anywhere without letting me know.*

12... *It has been over ten years (10) since I or anyone else last heard from Michael. At the time of his disappearance, he was in a good relationship with me, and there is no reason why he wouldn't make contact to inform me of his whereabouts.*

13....”

Courtney Wright

- [6] Courtney Wright was a very close friend and associate of Mr. Beckford. His account records the following:

*"1....*

*2... I have known Michael since we were growing up in Jacks Hill. Even though he was older than me, we were good friends and had a close relationship throughout our adult years.*

*3... For over twenty years, he and I worked together. He was a plumber, and he would take me along with him on his plumbing jobs. We worked as a team. Given the amount of time we spent together, I came to know him well.*

*4.... Additionally, we have been members of the Jacks Hill Seventh Day Adventist Church and served on the Deacon Board. Michael was the head Deacon and was repeatedly elected to this position in the church for nearly 20 years. Due to his role, we also worked together on several church maintenance projects for which he was responsible over the years. I know him to be a man of faith and dedication.*

*5... Deacon Beckford was actively involved in church life and the community. Some of his responsibilities as head deacon included collecting the offering, helping with the maintenance of the church, preaching, and leading discussions in Sabbath School. He also assisted with the operational aspects of the Crusades in the community. The church held crusades at least twice a year.*

*6.... As head deacon, Michael was next in line after the pastor. He was reliable, and his words could be trusted. He was highly respected and regarded with respect in the community. Because of his involvement in church and community life, whenever there were flare-ups of violence in the area, he did not back down in fear. He carried on with his activities believing he was not in danger, as he had a good relationship with the community and was not involved with anyone.*

7.....

8.... *The day before he went missing, we had been scheduled for a job the next day. He packed his tools that day, and they remained on the site. It surprised me that he did not turn up for work. It was not his habit to leave without informing anyone.*

9... *When I didn't see him come to work, I thought that something must be wrong. As far as I could remember, it was the first time something like this had happened.*

*I do not know of him being ill when I last saw him. When he left work, he seemed fine from what I could tell; he just never showed up, and that had never happened before.*

11... *If Mr. Beckford is not working, he is usually at his home, so I went to his house to check on him. His shoes were there, and his clothes were well pressed and laid out on his bed in readiness for work the next morning, Friday. No one knew where he was.*

12... *When I contacted his wife, she said he did not come home on Friday and was not at church on Saturday. All of this was strange behaviour for him.*

13... *The only explanation for what happened was that he probably went to see his daughter, believing it was safe for him to do so since he and no one was involved in any dispute. He never made it back home, and since then, I have not seen or heard from him.*

14... *It has been over ten years since I last saw Michael, whether at church, in our community, at work, or elsewhere. Considering our relationship, there is no reason for him not to have made contact with me...*

15.....”

Wayne Silvera

[7] Mr Silvera is the stepson of Mr Beckford; his account includes the following:

“1...

2.... *It is said that men took Mr. Beckford away and killed him. I believe that is true because of the ongoing war in the community at the time... It is my honest opinion that that is what happened to Mr. Beckford; he probably encountered the wrong group of men that night, and they killed him.*

3.....

4... *When I heard about him going missing, I thought it looked like, when he was coming, he encountered men in a car who might have killed him. People heard a shot fired that night. I heard that shot too, so the theory is that those same men met up with him and took him away. Then I heard he was missing. I connected the dots, and it seemed that this is what happened.*

5.... *Mr. Beckford was not the sort of person to just get up and leave without telling anyone, especially when he had children and grandchildren. From what I understand, he wasn't a man who would get fed up and simply cut ties like that. Perhaps he met the wrong man, and they took him away and killed him. He had been warned not to go out late at night because the community was tense.*

6.... *It's a lot of people we hear about who go missing, and we cannot find their bodies.*

7....”

### **Further Orders given by the Court**

- [8]** After reviewing the evidence, I concluded that the additional steps and those previously taken needed updating. The court ordered inquiries to be made with the Passport Immigration and Citizenship Agency, the Registrar General's Department, the University Hospital of the West Indies and Kingston Public Hospital, the Department of Correctional Services, and through publications in the print media.

- [9] These yielded no positive results. The Passport Immigration and Citizenship Agency's Border Management System revealed that the agency had no record of him leaving any ports within the island, and their office had never issued him a travel document. The Registrar General's Department stated that there were no records of anyone registering Mr. Beckford's death, nor was there any pending application for the registration of his death.
- [10] The University Hospital of the West Indies reported that its records show Mr. Beckford has never been admitted or treated there since his disappearance in July 2007. The Department of Correctional Services confirmed that its records indicate Mr. Beckford has not been incarcerated or detained at any of its facilities. A missing person's report concerning Mr. Beckford was published in the Gleaner on 6 June 2022, and there has been no response to the advertisement or contact from the applicant.
- [11] Having considered this additional information regarding the further efforts to investigate Mr. Beckford's whereabouts, the court is now better positioned to assess the evidence and exercise discretion on whether it is reasonable to grant the order.

## The Law

- [12] Rule 68.47 of the **Civil Procedure Rules 2002** sets out the procedure when making an application to swear to death. The party must, among other things, provide an outline of the evidence on which the court is to presume death.
- [13] In Jamaica, the court's authority to issue a presumption of death order is grounded in common law, which differs from most other common law and civil law jurisdictions. For instance, the United Kingdom enacted the **Presumption of Death Act** in 2013, which came into effect in 2014.



- [14] The common law presumes a person to be dead if they have not been seen or heard from continuously for seven years. The development of law was illustrated in **Eagle v. Emmet**, 4 Bradf NY 117 118, as follows:

*"The common law is in accordance with the civil law, in the adoption of the principle that the continuation of life is presumed until the contrary is shown. The statutes relative to bigamy, and to leases for life...[made] an inroad upon this doctrine, and established a rule which was ultimately adopted by way of analogy, in cases beyond the purview of the statutes. Accordingly, when a party has been absent for seven years since any intelligence of him, he is, in contemplation of law, presumed to be dead."*  
(My emphasis)

- [15] In **Re Watkins** [1953] 1 WLR 1323, at page 1330, the court explained how to handle these applications in the absence of a statutory framework. It was held as follows:

*"In the absence of a statute, there is no magic in the mere fact that a period of seven years elapses without there being positive evidence of a person being alive. It is generally speaking a matter in each case of taking the facts as a whole and balancing, as a jury would, the respective probabilities of life continuing or having ceased."*

- [16] Consideration has also been given to circumstances where a person has been missing for less than seven years. In the cases of **Davie v. Briggs** (97 U.S. Reports 628) and **Re Burgess**, 2004 BCSC, 62, the courts have granted applications where individuals have been declared missing for less than seven years. In **Davie v. Briggs**, the court formulated this guidance for judges as follows:

*"If it appears in evidence that the absent person within the seven years encountered some specific peril or within that period came within the range of some impending or imminent danger, which might reasonably be expected to destroy life, the Court, or jury, may infer that life ceased before the expiration of the seven years."*

- [17] Karen Nunez-Tesheira, in her text, "**Non-Contentious Probate Practice in the English-Speaking Caribbean**," contributes to this discourse by writing that:

*"The general rule is that where a person has not been seen or heard of for a period of seven years or more, such person may be presumed dead...however... leave may be obtained in a shorter period where there is cogent evidence to raise such presumption".*

- [18] In **Re Beagle Hole, 1908 TS, 49**, guidance on how a court should handle these applications was helpfully provided by Chief Justice Innes. The learned Chief Justice stated as follows:

*"..... I am satisfied that it was not a hard and fast rule of the Roman-Dutch law that the court was bound to presume death after the lapse of any fixed period of years. Some writers did hold that view. And various terms were suggested, seven years, nine years, fifteen years, and so on. But the weight of authority seems to have been in favour of leaving the question in each case to the discretion of the judge. Schorer (Note 45) is of that opinion; and..... who discusses the subject at considerable length, says the matter is entirely one for the discretion of the judge. In coming to a conclusion, he adds the judge should take into consideration the age of the absent person at the date of disappearance his position in life; his occupation, whether he was exposed to any special risk or danger, and so on; and taking all these circumstances into consideration he should deal with each case upon its merits.... That was the rule of the Roman-Dutch law, and I think it was a sound, common-sense one. It left full discretion to the judge; it laid down the lines upon which that discretion should be exercised, and it gave him power to safeguard the interests of the absent person...."*

- [19] Decades later, Didcott J., in a decision originating from South Africa in **ex parte Govender**, 1993, 4 All SA 772 (D) Division, held that:

*"The court requested to presume the death of a person will not do so unless it is satisfied that such can rightly and should therefore be inferred on a preponderance of probability from the evidence adduced in the proceedings. Whether the inference can rightly be drawn in any given case is always a question of fact, the answer to which depends on its own particular circumstances. Over the years, judicial accord has developed, ... about the treatment of one set of facts. It consists simply of the disappearance of the person concerned and his subsequent absence from the scene. Those circumstances, standing alone, are generally regarded as insufficient to warrant the inference that the explanation from them lies in his death, even when he has been absent for a long time. Something more suggestive of the explanation is required in addition. That he disappeared in an intrinsically dangerous situation or area, for instance, will usually tip the scales once such is the case. So the fact that, although his disappearance remains an unsolved mystery, he can no longer be alive without having reached an age so great that it exceeds any span of life which is realistically imaginable with reference to him."*

- [20] Recently, in **Ex parte application of Anna Christina Bezuidenhoudt**, [2019] NAHCMB 374 (26 September 2019), Masuku J, opined that:

*“[14] ...In Ex parte Rookminia: In re Sardha, Caney AJP, after reference to relevant authorities, namely, In re: Widdicombe, opined that ‘there are two grounds upon which orders presuming death are granted: the one is based upon the time between the disappearance of the person concerned and the application to presume his death being so long as to raise the inference that he is dead. The other is based upon his disappearance in circumstances which would lead to the inference that he died at a particular time.*

*“[15] ... whether death should be presumed in any case, is a matter that has to be left to the judicial sagacity of the court seized with the therewith and in that connection, the court has a discretion which is to be exercised judicially, and in accordance with the circumstances and the dictates of the particular case at hand. The court has to answer the question by looking at the complete conspectus of the facts and the circumstances at hand and decide whether on a balance of probabilities, it can be said that the person in question is dead and should for that reason be presumed so.”*

#### **Application of the principles as established in law to the facts**

[21] Considering the valuable guidance and principles derived from the law, I must now review several factors relevant to this case. These include Mr. Beckford's age when he went missing, his age at the time the application was made, the nature of his relationship with the witnesses, the circumstances around his disappearance, any information on his behaviour or conversations before he went missing, media coverage about him, evidence of enquiries from the church he attended, whether he has unresolved debts, activity in his bank account, whether he applied for a pension, recent travel history, any social media activity since his disappearance, and whether media reports about his disappearance led to information about his whereabouts.

[22] I will also bear in mind the caution set out in ***Ex parte application of Anna Christina Bezuidenhoudt***, Masuku J, that:

*“[13] It must be stated that although mere absence for a considerable amount of time is not sufficient evidence for a court to grant a presumption of death order, the length of the person's absence is an important factor and may be decisive in whether or not a presumption of death order is appropriate to be granted. The same principle is applicable when regard is had to the age and health of the disappeared person. The fact that the missing person had already reached an advanced age at the*

*time when the application is made and the fact that the missing person was not in good health at the time of his or her disappearance may contribute towards the court leaning more readily towards the granting of a presumption of death order.”*

- [23] This application is uncontested. It was not prompted by any need related to administering his estate or managing property, which would usually be the case under Rule 68.47 of the CPR. Based on the evidence, the loved one’s main goal is to achieve closure, bring dignity to the process, and obtain a death certificate.
- [24] Nonetheless, I must ensure that certain preliminary conditions are met. First and foremost, the applicant must have standing or a sufficient interest to bring these proceedings. The applicant is Mr. Beckford’s wife. They had been married and living together for a year before his disappearance. I am satisfied that she qualifies as a person with a sufficient interest.
- [25] Secondly, I remind myself of the burden and standard of proof. The applicant bears the burden of proof on a balance of probabilities. I also bear in mind that a presumption of death order is rebuttable, so a missing person is presumed dead until the contrary is proven.
- [26] Thirdly, deciding on the proceedings is a factual matter that is at my discretion after reviewing the evidence. I will consider the caution of Nunez-Tesheria, “that to satisfy the court that such a person may be presumed dead, all appropriate inquiries relevant to the circumstances of the case must be conducted before an order can be granted.”
- [27] Accordingly, I must therefore be satisfied that evidence from each family member and the applicant demonstrates to me, on a balance of probabilities, that they have made efforts and inquiries to locate Mr. Beckford in keeping with the law and that such efforts and inquiries are also appropriate to the circumstances of the case, notwithstanding that there are no objections from any third party. It is clear from the authorities that the presumption of a person’s death should not be taken lightly. This is a tall order. This is aptly stated by Masuku J in the *Ex parte application of Anna Christina Bezuidenhoudt* as follows:

*"[10] ... **Such an order will of course not be granted lightly.** There are various factors that need to be taken into account and met before an order, admittedly with far-reaching consequences, as aforementioned, can be issued by the court." (My emphasis)."*

- [28] I have distilled that two circumstances permit a court to make an order presuming death. The first occurs when a continuous period of seven years or more has elapsed, allowing the inference that the person is presumed dead. The second is based on circumstances indicating that the individual died at a specific time.
- [29] Mr. Beckford has been missing for nearly fifteen years. He was forty-six when he was last seen and heard from. If he were still alive, he would now be sixty-three, which is close to the retirement age for men in this jurisdiction. While this, *prima facie*, strongly suggests that Mr. Beckford is likely deceased, the authorities clarify that years alone may not be sufficient; something more will be necessary. I will, therefore, examine the evidence presented to me.
- [30] The family's efforts to find Mr. Beckford were extensive, quick, and persistent. In less than 24 hours, worries about his disappearance arose among family members and community friends; several calls were made to his phone, which went unanswered. Each witness confirmed that it was unlike him. He did not report for work; his friend Courtney Wright visited his house, and his clothes stayed untouched, in the same place as they were prepared for his new assignment outside Kingston. Within seventy-two hours of his disappearance, a missing person report was filed at the Papine Police Station. This was followed by an advertisement on Television Jamaica, the local station, and in the print media of the national newspaper. His picture and his wife's contact details were provided.
- [31] The entire family remained in close contact throughout the ordeal. With their communication channels kept open, community members also searched the area. The applicant personally contacted the University Hospital of the West Indies after being instructed by the police to do so, but she received no positive response. The applicant also informs the court that she did not receive any reply

to the publications sent for the audio and print advertisements, and the deceased himself has neither reached out to her nor contacted any member of her family.

- [32] The additional inquiries made in June 2022 to the Registrar General's Department, the Passport and Immigration Department, the Corrections Department, the Kingston Public Hospital, the University of the West Indies Hospital, and the print media also did not receive a positive response.
- [33] In this case, I bear in mind that, in addition to the nearly fifteen years during which Mr. Beckford has been missing and neither seen nor heard from, he was also caught up in and exposed to a dangerous situation due to the rise in violence in the community of Jack's Hill, where other persons have also gone missing.
- [34] Having thoroughly examined all the evidence presented, I find it reasonable to conclude on a balance of probabilities that Mr. Beckford can be presumed dead. I am also fortified in this view when I consider the evidence presented before the Lord Chief Justice in **Re Beagle's case**, and his ultimate pronouncement, which led him to refuse the application. These were his words:

*"...This man has been absent for fifteen years. He was thirty-one years old when last heard of, so that if alive now, he would only be forty-six. He was exposed to no special peril;; he did not follow a dangerous occupation. He was a miller, living somewhere in the south of England; but for fifteen years he has not communicated with his relatives. What strikes me is that it would have been possible to have made more accurate inquiries as to what had become of him. It is not as if he went away to a foreign country. He was last heard of next door to where he had formerly lived. If he was a miller, surely it would have been easy to ascertain from the persons who employed him what became of him, and when and where he was last heard of. Information on those points should have been laid before the Court; but it is not forthcoming, and I do not think, in the exercise of my discretion, that I should make any order. True, the period of absence has been considerable, and the amount in dispute is not large. But if I make this order, it will be used as a precedent in some cases in which probably the amount in dispute is very large, and I think we should be careful before we divide the estates of absent persons. There will be no order on the application".*

- [35] Before concluding, I would like to briefly address the issue of violence within the community, which the witness genuinely expressed concern about. While this discussion might be purely academic, the court considers it worthwhile. In brief, the main question is whether the court could have been asked to make this order years ago, specifically in 2007, around the time he went missing, in accordance with the authorities of **Davie v Biggs** and **Re Burgess**.
- [36] I would answer this affirmatively. Both his daughter and stepson testified before this court about the crime in the community. Mr. Beckford left his daughter's house early in the morning despite being urged not to go out. He never arrived home, even though he lived just two miles away. His stepson also told the court he heard a gunshot and mentioned several people who had gone missing similarly. I linked that fact with the swift responses from his family to find him, which were unsuccessful, as convincing evidence that he was in danger that early morning and supported the court's conclusion that he may have been killed in 2007.
- [37] Although the evidence from his stepson can be classified as hearsay, I find the decision in **Re Burgess** persuasive. In **Re Burgess**, the court was called upon to make an order presuming death before the seven years had elapsed. The disappeared, Rick Burgess, had not been heard from or seen for 22 months. He had connections with the Hells Angels Motorcycle Club and attended a meeting on the day he disappeared. Mr. Burgess's wife received confidential information from the police, informing her that the Hells Angels likely killed her husband, based on that hearsay evidence. Crawford J granted the application and held as follows:

*"[34]. The Supreme Court of Canada has widened the scope for the acceptance of hearsay evidence in the "hearsay trilogy of R. v. Khan, 1990 CanLii 77(SCC), 1990 CanLii 77 (SCC) 2 S. C.R 531, R. v. Smith, 1992 CanLii 79 (SCC), 1992, 2 S.C.R 915 70 and R. v. B. (K.G.), 1993 CanLii 116 (SCC), [1993] 1 S.C.R. 740. The circumstances are such that I consider the police information to be reasonably trustworthy, the police officers would be disinterested, and the statements would not be made with the thought of litigation in mind. The sources are possessed of a*

*peculiar or special means of knowledge. And there is some consistency in the reported statements of both the police and the members of the motorcycle gang. The underpinnings of the admission of the comments of the police and the Hells Angels Club member are a necessity, which is plainly the case here, and reliability, which I find may reasonably be inferred”.*

*“[35]. The evidence satisfies me that no person has seen Rick Burgess since January 7, 2002. The last recorded activity appears to have been on his telephone at midday that day. While the evidence of events after Mr. Burgess' disappearance are by their nature hearsay, they are in the circumstances the best evidence available and can only lead to the conclusion, that the "dark side" of Mr. Burgess' life caught up with him and the only reasonable inference is that his life has been ended by "person unknown”.*

*“[36]. I am satisfied on the balance of probabilities that Mr. Burgess died by misadventure”.*

## **Disposition**

**[38]** In conclusion, when I assess the circumstances of the case both collectively and individually—specifically, the duration of his disappearance, which exceeds the seven-year requirement set by law; and the fact that he faced a perilous situation—I find the applicant’s case sufficiently persuasive for the order sought to be granted.

**[39]** The order of this court, therefore, as prayed, and is granted as follows:

- a) Michael Beckford, born on August 23, 1959, is hereby presumed to be dead, not having been seen or heard from since July 27, 2007.
- b) The Applicant’s attorney at law is to prepare, file and serve this order on the Registrar General’s Department and any other interested parties.