

Seychelles

## Presumption of Deaths Act

### Chapter 177

Legislation as at 1 June 2020

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## Presumption of Deaths Act

### Chapter 177

Commenced on 6 July 1907

*[This is the version of this document as it was at 1 June 2020 to 30 June 2021.]*

*[Act 10 of 1907; Act [13 of 1908](#); Act [9 of 1948](#); Act [41 of 1948](#); Act [3 of 1959](#); S.I. 95 of 1975; S.I. 13 of 1975; S.I. 72 of 1976; Act [23 of 1976](#)]*

#### 1. Short title

This Act may be cited as the Presumption of Deaths Act.

#### 2. Who may petition for enquiry into death

The Attorney General, the relatives of a person who has disappeared, or anyone interested in the property of the person who has disappeared,\* may, whenever he or any of them have reason to believe that such person is dead, but such death cannot be proved or registered because the dead body has not been found or else because it is not possible to give formal proof of such death, lodge a petition at the Registry of the Supreme Court requesting a Judge to order an enquiry in order to ascertain whether such person is dead.

#### 3. Form of enquiry

If the person has disappeared while residing in Seychelles a Judge shall, on receiving such petition, order a magistrate (whose selection shall be approved by the Minister), to hold a public enquiry into the circumstances under which the person alleged to be dead disappeared, and the Judge shall direct such magistrate to summon as a witness any person whose evidence he may think necessary. The evidence of the witness shall be taken on oath and taken down in writing. When each witness has given his evidence it shall be read over to him and he shall be asked if the same is correct. After the deposition has been corrected (if this shall be necessary) or after the witness has admitted that the same is correct, the witness shall sign or put his mark to the same. The magistrate shall countersign the deposition. When the enquiry has been completed, the magistrate shall state in writing the conclusion he has come to upon such evidence and forward the depositions so signed with such conclusion to the Registrar of the Supreme Court.

#### 4. Application to Supreme Court after enquiry

The person or persons who have lodged the petition, or other person interested in the deceased's property, may thereupon petition a Judge to declare the person the subject of the enquiry dead. If the applicant is not the Attorney General, then the Attorney General shall be served with a copy of the petition and made a party to such application and be furnished with a copy of the evidence proposed to be put before the Judge on the application.

#### 5. Procedure on application

A Judge may, after hearing the application in open court, declare the person who has disappeared to be dead, or if he is not satisfied that such person is dead, declare him to be absent. The Judge may, if he thinks it desirable at any time, from time to time adjourn the application for advertisements to be issued and further enquiry to be made. The Judge shall have power to rehear all or any of the witnesses heard by the magistrate and to receive any further evidence he may think desirable.

\* Note to official 1991 edition: See [section 18](#)

## 6. Form of declaration of death

If the Judge declares a person dead and is satisfied as to the time and date of such death, he shall state in his judgment when the person died; otherwise he shall simply declare such person's death.

## 7. Registration of declaration

A judgment declaring a death shall be sufficient authority to the officer of civil status to register the death. If the judgment states any time or date of the death, the record shall also state the exact date and time that such death has been declared to have taken place. The Registrar of the Supreme Court shall, on application of the applicant, furnish a copy of the judgment to the civil status officer for registration purposes.

## 8. Power to open will of person declared absent

When a person has been declared absent, the Attorney General, the relatives, or the persons pecuniarily interested in such person's estate may apply to have his will (if any) opened, and a Judge may thereupon order the same to be opened.

## 9. Power of Judge to allow person to take or keep possession of absentee's property

If the Judge has declared a person absent, he may, if he is of opinion that it is in the general interest of the parties interested in the succession that any particular person or persons should be allowed to take possession or to remain in possession of the absentee's property, allow such person or persons to have the possession thereof on giving absentee's security and complying with the provisions contained in [section 10](#) as to having a valuation and inventory made and any order of the court given thereunder, as to furnishing security.

In this section "possession" shall include physical control but so however that any person who takes or remains in possession under this section shall not, by reason only of such possession, acquire any legal right of ownership by prescription.

## 10. Inventory of absentee's property

- (1) Any person in possession or put in possession of the property of a person declared absent shall, within such time as is fixed by the court (unless the court shall otherwise direct) have a valuation and inventory of the absent person's property made by a person approved by a Judge, when the property appears to the court to be under the value of one thousand rupees. The valuation and inventory shall be filed with a verifying affidavit in the Registry. Where the property is over one thousand rupees, the valuation and inventory shall be made by a notary appointed by the court, with the assistance, if necessary, of an expert. Where the court appoints or approves of a person to take a valuation and inventory, it shall have power to order a fee to be paid for the same.
- (2) The court may order the sale of the whole or any part of the property of the person declared absent under this Act, whether they consist of movables or immovables, and direct the proceeds of the sale or any money belonging to him or any rents and profits of the absent person's property to be invested in any manner it may approve or after having taken the opinion of the Curator of Vacant Estates in writing.
- (3) The court may direct any rents and profits to be paid to the persons who would have been entitled thereto if the absent person died at the date he is declared absent.
- (4) The court may require a report to be made by a notary or licensed land surveyor of the condition of the absent person's immovable property and order the cost of such report to be paid out of the absent person's property.
- (5) The person in possession of the property may also be required to give security for the proper fulfilment of his duties under [section 12](#).

## 11. Curator of Vacant Estates' duty

- (1) If the Judge, after declaring a person absent, shall not exercise the powers contained in [section 9](#) hereof then and until the exercise by him of such powers the effect of such declaration shall be ipso facto to entitle the Curator of Vacant Estates to enter into possession of such person's property, unless the person declared absent shall have given written authority to someone in Seychelles to act for him.
- (2) Should it appear to the Curator at any time that such agent is mismanaging the absent person's property or otherwise abusing his trust, he may apply to the Supreme Court to be put into possession of the said property, or ask that such agent should give him security for the proper fulfilment of his duties.
- (3) The Curator of Vacant Estates may make a similar application if it shall appear that a person given possession under [section 9](#) is mismanaging the absent person's property or abusing his trust.

## 12. Duties and remuneration of person in possession of absentee's property

- (1) A person in possession of the property of a person declared absent, whether as agent or because he has been placed or allowed to remain in possession by the court, shall be bound to take care of such property and keep and maintain it in good order and condition, but he shall not be liable for any damage caused by ordinary wear and tear of furniture or other household effects or of implements of agriculture. He shall be entitled to enjoy the rents and profits of the property for his services, unless the absent person has by any written agreement provided for his payment, or the court shall otherwise order.
- (2) If the person declared absent under this Act shall reappear the effect of such judgment shall cease, without prejudice to anything, however, done under any order of the court, or anything done by the Curator of Vacant Estates for the protection and preservation of his property or to the rights enjoyed under this Act.

## 13. When enquiry to be held by Judge

If the person has disappeared after a ship (whose port of registry is elsewhere than in Seychelles) has been lost, or from such ship, or after leaving Seychelles, the Judge shall, on receiving a petition from any of the persons mentioned in [section 2](#), hold the enquiry himself. The Attorney General shall be made a party thereto and shall be furnished (if not himself the petitioning party) with a copy of the evidence which the parties propose placing before the Judge and be entitled to adduce any other evidence he may think material.

## 14. Form of enquiry before Judge

The evidence shall be taken in the manner provided for under [section 3](#). After hearing the evidence the Judge shall, if any of the parties mentioned in [section 2](#) apply to him to have the person the subject of the enquiry declared dead, proceed in the manner provided for by [sections 5](#) and [6](#), and give judgment accordingly.

## 15. Effect of seven years' disappearance

If a person has not been heard of for seven years and a Judge after an enquiry has been held be of opinion that the circumstances point to his death, he may declare the said person dead.

## 16. Person reappearing - rights of

If it shall be proved to the court that the person declared dead has reappeared or is alive the effects of such judgment will cease, except that he or those claiming under him shall not be entitled to any income which may have accrued from any property during his absence and which has been enjoyed by the person

or persons who would have been entitled thereto in the event of his having actually died, or has been enjoyed by a person in possession under [section 12\(1\)](#). He or they shall be entitled to recover such property as may be in the hands of such person or persons but only in such state as he or they may find it upon his reappearance or being proved to be alive. If the property has been sold, then he or they shall only be entitled to recover from such person or persons the price of the property sold, or any property which represents the price of such property sold.

#### **17. Limitation of time within which heirs can bring an action for possession**

After the lapse of ten years from the time at which a person has been declared dead no action shall be brought by anyone claiming through the person declared dead to recover possession of such person's property from a person put, or allowed to remain, in possession of it by the court, or to recover possession from a person claiming under a person so put or allowed to remain in possession.

#### **18. Non-application of Act**

The procedure set out in this Act shall not apply in cases of a petition for presumption of death and dissolution of marriage made by a wife or husband under any law relating to matrimonial causes.