

CHAPTER 5:14

MISSING PERSONS ACT

Acts 28/1978, 17/1979 (s. 17), 29/1981, 20/1991, 20/1994 (s. 16); 9/1997 (s. 10), 22/2001 (s. 4), S.I. 856/1981.

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AN ACT to provide for the presumption of death of a person who is missing, or for the care and administration of the estate of such a person; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 10th November, 1978.]

1 Short title

This Act may be cited as the Missing Persons Act [*Chapter 5:14*].

2 Interpretation

(1) In this Act—

“administrator” means an administrator appointed in terms of subsection (3) of section *twelve*;

“court” means a magistrates court;

“Estates Act” means the Administration of Estates Act [*Chapter 6:01*];

“inquiry” means an inquiry referred to in subsection (1) of section *four*;

“judge” means a judge of the High Court;

“magistrate” means a regional magistrate or a provincial magistrate;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“order” means an order in terms of subsection (1) of section *five*;

“Registrar” means the Registrar of the High Court;

“Registrar-General” means the Registrar-General of Births and Deaths referred to in section 3 of the Births and Deaths Registration Act [*Chapter 5:02*].

(2) Any reference in this Act to the Master in connection with anything done in relation to an order or the appointment of an administrator or anything else done in pursuance of an order shall be deemed to be a reference to—

- (a) if the person in respect of whom the order as made was ordinarily resident in that part of Zimbabwe defined in the First Schedule to the Estates Act, the Master as defined in that Act;
- (b) if the person in respect of whom the order was made was ordinarily resident in any part of Zimbabwe other than that defined in the First Schedule to the Estates Act, the assistant Master as defined in that Act.

3 Application for order

(1) Any person who wishes to apply for an order in respect of a missing person shall lodge with the clerk of the court of the province in which that person was ordinarily resident immediately before his disappearance an application in the prescribed form accompanied by such other documents as may be prescribed.

(2) Where the applicant for an order is not a person who is the nearest relative of the missing person, the clerk of the court shall cause such relative to be notified of the application.

(3) Subject to such directions as a magistrate may deem necessary or desirable, the clerk of the court with whom an application has been lodged in terms of subsection (1) shall as soon as possible publish at the expense of the applicant a notice in the prescribed form—

- (a) once in the *Gazette* and in a newspaper circulating in the area in which the person in respect of whom the order is applied for was ordinarily resident; and
- (b) in such other newspapers as the magistrate may direct.

(4) A magistrate may give directions in terms of subsection (3) that a notice be published in the journals referred to in that subsection such number of times, not exceeding three, as he may specify.

4 Holding of inquiry

(1) If, after considering the documents referred to in subsection (1) of section *three*, he considers it necessary or desirable to do so, a magistrate of the court at which an application in terms of that section has been lodged shall, not less than six weeks after the lodging of the application, hold an inquiry in terms of this section into the circumstances of the disappearance of the missing person:

Provided that the magistrate may, on good cause shown, hold an inquiry at any time after publication of the final notice in terms of subsection (3) of section *three*.

(2) A magistrate may summon any witness to give evidence at an inquiry by causing a notice in the prescribed form to be served in the manner prescribed on the person concerned and— (a) shall require a witness to take an oath or affirmation in the prescribed form;

- (b) may order that a witness be paid the same expenses as he would have received had he given evidence in criminal proceedings before a court.

(3) A magistrate holding an inquiry shall—

- (a) not be bound by any rules of evidence which relate to civil or criminal proceedings and may, subject to any regulations, receive any statement by way of affidavit or otherwise from any interested person or any person who has information relating to the subject of the inquiry:

Provided that a witness who objects to answering any question on the ground that it will tend to incriminate him shall not be required to answer the question or be liable to any penalty for refusing to answer the question;

- (b) cause a record of the proceedings of the inquiry to be kept.

(4) Section 3 of the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*] shall apply, *mutatis mutandis*, in relation to an inquiry.

5 Making of order

(1) If at the conclusion of the inquiry the magistrate is satisfied that the person concerned was ordinarily resident in the area under the jurisdiction of the court and is—

- (a) dead, he shall make an order presuming the person to have died; or
- (b) missing and it is necessary or expedient to do so, he shall make an order declaring that the person is a missing person and authorizing the appointment of an administrator for the care and administration of his estate.

(2) The magistrate may, in making an order in terms of paragraph (a) of subsection (1), specify the date or the date and time of death for the purposes of determining in terms of the law relating to testate or intestate succession the persons who shall succeed to the property of the person in respect of whom the order has been made.

(3) The clerk of the court shall, as soon as possible after an order is made, send a copy thereof to the Master.

6 Powers of Master on making of order

(1) Notwithstanding section *nine*, immediately after receiving a copy of an order sent in terms of subsection

(3) of section *five*, the Master may—

(a) by notice in writing require—

- (i) the nearest relative or connection of the person in respect of whom the order was made who is available; or
- (ii) any person who resides at the place at which the person in respect of whom the order was made was ordinarily resident immediately before his disappearance;

to furnish him in writing with such information relating to the person who is the subject of the order or the relatives or property of such person as the Master may specify in that notice;

(b) if he considers it necessary or expedient, appoint a curator *bonis* to take custody and charge of the estate of the person who is the subject of the order until an executor or administrator, as the case may be, is appointed and takes the custody and charge thereof.

(2) The Estates Act shall apply, *mutatis mutandis*, in relation to a curator *bonis* appointed in terms of paragraph (b) of subsection (1) and to the appointment thereof as they apply in relation to a curator *bonis* appointed in terms of subsection (1) of section 22 of that Act.

(3) Any person who fails to furnish the Master with information required in terms of paragraph (a) of subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred dollars.

7 Review of order

(1) The clerk of the court shall, as soon as reasonably possible and in any event not later than twenty-eight days after the making of an order, forward to the Registrar the record of the inquiry together with such remarks, if any, as the magistrate may desire to append.

(2) The Registrar shall with all convenient speed lay the papers referred to in subsection (1) before a judge in chambers who may—

- (a) confirm the order; or
- (b) substitute an order in terms of paragraph (a) of subsection (1) of section *six* for an order in terms of paragraph (b) of that subsection or *vice versa*; or
- (c) set aside the order and remit the matter to the magistrate with such instructions relative to the further proceedings to be had in such matter; or
- (d) set aside the order; as the judge thinks fit and any substituted order in terms of paragraph (b) shall be deemed to be the order of the magistrate in terms of paragraph (a) or (b), as the case may be, of subsection (1) of section *five*.

8 Appeal against order

(1) Any person who is aggrieved by the making or the refusal of an order may, within one month of the making or refusal thereof, appeal to the High Court.

[Subsection as amended by s. 10 of Act No. 9 of 1997]

(2) The Supreme Court may, on an appeal in terms of subsection (1), exercise any of the powers set out in subsection (2) of section *seven* and any order made by the Supreme Court in the exercise of such powers shall be deemed to be the order of the magistrate in terms of paragraph (a) or (b), as the case may be, of subsection (1) of section *five*.

9 Effective date of order

No order, other than an order referred to in subsection (2) of section *eight* or paragraph (e) of subsection (3) of section *seventeen*, shall have any effect until—

- (a) the period referred to in subsection (1) of section *eight* has expired or, if an appeal is noted, until it is determined, abandoned or withdrawn or lapses for want of prosecution; and
- (b) except in the case of an order referred to in paragraph (b) of subsection (2) of section *seven*, it is confirmed in terms of paragraph (a) of subsection (2) of section *seven*.

10 Effect of presumption of death

(1) Where an order has been made in terms of paragraph (a) of subsection (1) of section *five*, the clerk of the court shall, within seven days of the date the order takes effect in terms of section *nine*, notify the Master accordingly and send a copy of the order to the Registrar-General and, notwithstanding the Births and Deaths Registration Act [Chapter 5:02], such copy shall be deemed to be a notice of death for the purposes of section 21 of that Act.

(2) Subject to section *seventeen*, a person in respect of whom an order in terms of paragraph (a) of subsection (1) of section *five* has been made shall be deemed for the purposes of any law to have died on the date the order takes effect in terms of section *nine*, and accordingly any subsisting marriage shall, with effect from that date, be dissolved:

Provided that—

(i) where the magistrate making the order has specified a date or a date and time for the purposes referred to in subsection (2) of section *five*, the person in respect of whom the order has been made shall, for the purposes of determining, in terms of the law relating to testate or intestate succession, the persons who shall succeed to his property, be deemed to have died on that date or at that time, as the case may be; (ii) notice of death shall be deemed to have been delivered in terms of section 5 of the Estates Act.

11 Cancellation of order for appointment of administrator

Where an order has been made in terms of paragraph (b) of subsection (1) of section *five*, a magistrate of the court of the province concerned or a judge may—

- (a) before an administrator is appointed, on good cause shown; or
- (b) at any time, if he is satisfied that the person in respect of whom the order is made has reappeared; cancel the order.

12 Appointment and removal of administrator

(1) Where an order has been made in terms of paragraph (b) of subsection (1) of section *five*, the clerk of the court shall, within seven days of the date the order takes effect in terms of section *nine*, notify the Master accordingly and the Master shall give notice in the *Gazette* and in such other manner as he thinks fit stating that such order has taken effect and calling upon the surviving spouse, the nearest relatives and the creditors of the deceased—

- (a) to attend a meeting at his office, at the time therein specified, to be held for the purpose of appointing an administrator of the estate of the missing person; or
- (b) where it appears to the Master necessary or expedient so to do, to attend a meeting before any magistrate, at such time and place as may be appointed, to be held for the purpose of proposing some person to be recommended by such magistrate to the Master as fit and proper to be appointed administrator of the estate of the missing person.

(2) On and after the date of publication of a notice in the *Gazette* in terms of subsection (1), no person claiming to represent the missing person shall exercise or have authority to exercise any control over any property of the missing person unless—

- (a) he is appointed as administrator of the estate of such missing person; or
- (b) he is duly authorized by the Master or administrator to do so; or (c) the order referred to in that subsection is cancelled.

(3) At the meeting referred to in paragraph (a) of subsection (1) or upon receiving the report of the magistrate referred to in paragraph (b) of subsection (1), the Master may, if he considers it necessary or expedient and the order referred to in subsection (1) has not been cancelled, appoint such person as to him seems fit and proper to be administrator of the estate of the missing person, unless it appears to him necessary or expedient to postpone such appointment and to call another meeting in terms of paragraph (a) or (b) of subsection (1): Provided that—

- (i) if it appears to the Master that the estate of the missing person is manifestly insolvent, it shall not be necessary for him to appoint an administrator;
- (ii) if the property of the missing person does not exceed in value such amount as may be prescribed or only isolated transactions involving amounts not exceeding in the aggregate such amount as may be prescribed are required, the Master may cause the estate of the missing person to be administered and distributed, or direct that such estate shall be administered and distributed, in such manner as he thinks fit.

(4) The Master shall at any time—

- (a) before an administrator has been furnished with a certificate in terms of subsection (6); or
- (b) after an administrator has been furnished with a certificate in terms of subsection (6), when he is ill, absent or for any other reason unable to perform his duties; have power to make any disbursements from the estate of the missing person which are necessary for the maintenance of any of his dependants or the safeguarding of his property.

(5) An administrator shall, unless the Master otherwise directs, furnish security to the satisfaction of the Master for the due and favourable care and administration of the estate and may for that purpose furnish a fidelity bond the premiums for which shall be payable out of the estate of the missing person.

(6) As soon as any security required in terms of subsection (5) has been furnished the Master shall furnish the administrator with a certificate in the prescribed form of his appointment and of his authority to have the custody and administration of the estate of the missing person.

(7) An administrator—

- (a) shall, subject to subsection (2) of section *fourteen*, have the same duties and obligations as an executor appointed for the administration of the estate of a deceased person in relation to the lodging with the Master of an inventory or additional inventory of the property of the missing person and of accounts of his administration, and in respect of any such inventory or accounts the same stamps and fees shall be payable as in the case of the estate of a deceased person; and

(b) shall be allowed the same remuneration, to be fixed by the Master, as in the case of an executor of the estate of a deceased person.

(8) Sections 116, 117 and 118 of the Estates Act shall apply, *mutatis mutandis*, in relation to an administrator.

(9) Where—

(a) an administrator dies, is absent or becomes incapable of so acting; or

(b) the certificate referred to in subsection (6) has, in terms of subsection (8), been revoked;

the Master may appoint a person in substitution of such administrator and such appointment shall be deemed to be an appointment in terms of subsection (3).

13 Appeal against decision of Master

Any person who is aggrieved by the decision of the Master in terms of section *twelve* or *fourteen* may, within one month of the making thereof, appeal against that decision to a judge who may—

(a) confirm or vary the decision of the Master; or

(b) give such other decision as in his opinion the Master ought to have given; and any administrator appointed by a judge in terms of this section, shall be deemed to have been appointed by the Master in terms of subsection (3) of section *twelve*.

14 Powers of administrator

(1) The Master may from time to time authorize an administrator to do all or any of the following things— (a) sell any property belonging to the missing person;

(b) make exchange or partition of any property belonging to the missing person or in which the missing person is interested and give or receive any money for equality of exchange or partition;

(c) carry on or discontinue any trade or business of the missing person;

(d) grant leases of any property of the missing person;

(e) perform any contract relating to the property of the missing person entered into by the missing person before he disappeared;

(f) exercise any power or give any consent required for the exercise of any power where the power is vested in the missing person for his own benefit or the power is in the nature of a beneficial interest in the missing person;

(g) raise money on mortgage of the property of the missing person for payment of his debts or payment of any debt or expenditure incurred in respect of the maintenance of the dependants of the missing person;

(h) expend any money on the improvement of any property of the missing person or spouse of the missing person by way of building or otherwise;

(i) expend any moneys belonging to the missing person in the maintenance, education or advancement of the spouse of the missing person or of any relative of the missing person or of any person wholly or partially dependent on the missing person or continue such other charitable acts exercised or promised to be exercised by the missing person as the Master, having regard to the circumstances and the amount or value of the estate of the missing person, considers proper and reasonable;

(j) take such proceedings as are necessary in the interests of the missing person or the due and proper administration of his estate.

(2) The Master may from time to time direct an administrator to lodge with him such reports, inventories and accounts concerning the estate which is being administered as he may direct.

15 Failure of administrator to lodge accounts

(1) Subject to this section, if an administrator fails to lodge with the Master any report, inventory or account which he is required to lodge in terms of this Act, the Master or any person having an interest in the estate may summon him to show cause before a judge why the inventory or account has not been lodged as so required.

(2) The Master or interested person referred to in subsection (1) shall, not less than one month before giving out any summons in terms of that subsection, apply by letter to the administrator in default requiring him to lodge his report, inventory or account, failing which he shall be summoned in terms of subsection (1).

(3) An administrator who receives an application in terms of subsection (2) may furnish to the Master a statement setting out the grounds and reasons for his failure to lodge his report, inventory or account and if such grounds and reasons appear to the Master to be sufficient, he may grant the administrator such extension of time for the lodging of the report, inventory or account as appears to him in the circumstances to be reasonable:

Provided that, if such an extension is granted, any interested person may bring under review before a judge, by motion, the decision of the Master granting such extension.

(4) If an administrator who receives an application in terms of subsection (2) fails to satisfy the Master that an extension of time should be granted in the circumstances, he may apply to a judge, by motion, of which the Master or interested person making the application shall receive notice, for an order granting an extension of time in which to lodge the report, inventory or account.

(5) The costs of any proceedings in terms of this section shall be payable by the administrator in default in his individual capacity and he shall not charge such costs to the estate under his administration unless authorized to do so by the court.

16 Release of administrator

(1) If—

(a) the order in terms of which an administrator was appointed is cancelled in terms of section *eleven*;
or

(b) a notice of death is delivered or transmitted to the Master in terms of section 5 of the Estates Act in respect of the person whose estate is being administered or such person, in terms of subsection (2) of section *ten*, is deemed to have died; the Master shall, subject to subsection (2), by notice to the administrator, require him to lodge forthwith an account of his conservation of the estate and, on being satisfied that such conservation account is in order, the Master may release the estate from conservation and direct that the person whose estate is being administered or his executor be reinvested or invested, as the case may be, with the control of the property of the missing person.

(2) Where a person has died or is deemed to have died as referred to in paragraph (b) of subsection (1) and—

(a) the person concerned has died or is deemed to have died intestate; or

(b) there is no executor appointed or willing to act; the administrator shall, unless the Master otherwise directs, furnish security to the satisfaction of the Master for the due and favourable administration and distribution of the estate and shall assume the full duties and responsibilities of an executor.

(3) For the purpose of furnishing security in terms of subsection (2), the administrator may furnish a fidelity bond the premiums for which shall be payable out of the estate.

(4) Where a notice of death referred to in paragraph (b) of subsection (1) is delivered or transmitted to the Master, he shall notify the clerk of the court from which the order declaring the person concerned to be a missing person was sent to the Master.

17 Reappearance of person presumed dead

(1) If it appears to a judge that a person in respect of whom an order in terms of paragraph (a) of subsection (1) of section *five* has been made is not dead, he shall direct the clerk of the court concerned to cancel the order and the Registrar-General to cancel any entry in any register made in pursuance of subsection (1) of section *ten*.

(2) Subject to any direction, declaration or order made in terms of subsection (3), a direction in terms of subsection (1) shall not—

(a) revive any former marriage of the person concerned or any rights or duties arising therefrom or from any relationship between the person concerned and any child or other person or any other former rights or duties whatsoever of the person concerned; or

(b) affect any rights subsequently acquired by any other person:

Provided that if the name of the person concerned has been removed from a voters' roll in terms of any enactment solely on the ground that an order in terms of paragraph (a) of subsection (1) of section *five* was made, it shall be restored.

(3) Where a judge has given a direction in terms of subsection (1), he may do all or any of the following— (a) declare that any marriage subsisting immediately before the order was made is still valid:

Provided that the judge shall not make a declaration in terms of this paragraph if the spouse of the person concerned has remarried;

(b) make an order relating to the custody, guardianship and maintenance of any children of the person concerned;

(c) direct that any person who has been enriched by property distributed by an executor appointed after the making of the order shall, subject to such conditions as he thinks fit, return the property to the person concerned or pay that person the amount by which he has been enriched;

(d) where an executor has been appointed but not yet discharged, give such directions to the executor as he thinks fit;

(e) make an order declaring that the person concerned is a missing person and authorize the appointment of an administrator;

(f) make such other order as he thinks fit.

(4) Two copies of any order in terms of paragraph (e) of subsection (3) shall be transmitted to the clerk of the court of the province in which the person in respect of whom it was made was ordinarily resident and the order shall, for the purposes of this Act other than section *seven*, be deemed to be the order of a magistrate in terms of paragraph (b) of subsection (1) of section *five*.

(5) In any proceedings in terms of this section the judge may order that the costs shall be paid from the Consolidated Revenue Fund.

18 Further application for order

A fresh application in terms of subsection (1) of section *three* for an appropriate order may be made on evidence other than that relied upon by the magistrate where an order has been—

- (a) refused; or
- (b) made in terms of paragraph (b) of subsection (1) of section *five*; or
- (c) made but not confirmed; or
- (d) made but set aside on appeal.

19 Duty of police officers

A magistrate holding an inquiry may direct a police officer to render such assistance and carry out such investigation as may be practicable in the circumstances and the police officer shall comply with such direction.

20 Witnesses failing to attend or refusing to be sworn or to give evidence

(1) If any person who has been subpoenaed to give evidence or to produce any book or document at an inquiry fails to attend or to remain in attendance until duly excused by the magistrate from further attendance, the magistrate may, if he is satisfied upon oath or by the return of the person charged with the service of the subpoena that the subpoena was duly served upon such person, and if no sufficient cause for such failure seems to him to exist, issue a warrant, signed by him, for the apprehension of such person, and such person shall thereupon be apprehended by any police officer to whom such warrant is delivered and shall be brought before the magistrate to give his evidence or to produce the book or document.

(2) If any person who has been subpoenaed to give evidence or to produce any book or document at an inquiry refuses without sufficient cause, the onus of proof whereof shall rest upon him, to be sworn as a witness or, having been sworn, to answer fully and satisfactorily a question lawfully put to him, or to produce any such book or document, the magistrate may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the termination of the inquiry or until he sooner consents to do what is required of him.

(3) Nothing in this section contained shall prevent the magistrate from giving judgment in any inquiry or otherwise disposing of the same in the meantime according to any other sufficient evidence taken but, if such judgment be given or the inquiry be otherwise disposed of, any person committed to prison in terms of subsection (2) shall thereupon be released.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it at the inquiry.

(5) Every person who refuses or fails to comply with subsection (1) or (2) shall be liable, in addition to being committed to prison in terms of subsection (2), to be sentenced summarily by the magistrate to a fine not exceeding level five or to imprisonment for a period not exceeding six months.

[Subsection as amended by section 4 of Act 22 of 2001]

(6) Any person who, for the purposes of an inquiry, makes a statement of fact material to any question under investigation at the inquiry which he knows to be false or which he does not know or reasonably believe to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

21 Contempt of court

(1) If any person wilfully insults the magistrate during an inquiry or wilfully interrupts the proceedings of the inquiry or otherwise wilfully disturbs the peace or order of such proceedings, the magistrate may order that person to be removed and detained in custody until the termination of the inquiry and such person shall be liable, in addition to such removal and detention, to be sentenced summarily by the magistrate to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(2) Where a magistrate commits or fines any person in terms of subsection (1), he shall without delay transmit to the Registrar for the consideration of a judge in chambers a statement certified by him to be true and correct of the grounds and reasons for his actions, and shall also furnish the person convicted with a copy of such statement so certified.

(3) The judge may confirm, vary or set aside any committal or fine referred to in subsection (2).

22 Regulations

(1) The Minister may make regulations providing for matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations in terms of subsection (1) may provide for the rules of procedure and evidence which shall apply in respect of an inquiry.

23 Savings

Nothing in this Act contained shall derogate from any other law relating to the proof of death or a presumption of death and this Act shall be additional to and not in substitution for any such law.