



Greetings!

Have you been wondering when one is considered well and truly dead in the UK? Would you like that odd, overgrown, neglected patch of land on your street to put a bit of extra money in your pocket? Do you need an update on the unclaimed asset legislation in Kenya?

We're happy to oblige.

As always, I would be happy to hear from you if you have any questions or comments.

Sincerely,

*Amanda*

Amanda Coffin  
editor@tpr.net

In this issue:

1. The Sometimes Imprecise Moment Known as 'Time of Death'
2. TPR Land: Earn a Commission!
3. Kenya: Is an Unclaimed Assets Framework in the Near Future?

## The Sometimes Imprecise Moment Known as 'Time of Death'

TPR's researchers and genealogists work to locate the legal owners of assets that have been listed as unclaimed. It's a happy day for them when they locate an owner alive and well, but things get more tangled when the owner appears to have died.

"Appears?" you say. "What do you mean? Either he's dead, or he's not." Well, no. We're only dead when the law says we are.

Administering the estate of a recently departed relative may well be a fraught experience under the best of circumstances, but in the absence of a death certificate, it veers from taxing to impossible. Lacking that one crucial document, your relative will be considered dead only when a court declares it. In the absence of concrete proof – say, a body – your relative may remain legally amongst the living for at least seven years, and often more, in England and Wales. The laws concerning presumption of death are different in Scotland and Northern Ireland, and they vary by state in the United States. Let us begin with the situation presently in England and Wales.

Family members of missing persons are often keen to obtain a legal declaration of death for simple financial reasons – they need to claim insurance policies or sell assets. The first question is, what are the presumed circumstances of the missing person's demise? People who vanished after the 2004 Indian Ocean tsunami or in the 2001 terror attacks in America, for example, were declared dead by courts within fairly short order, as are military personnel who have gone missing in combat. For those whose relatives have disappeared in a quieter fashion, however, the process is much more challenging. The burden of proof lies with the person petitioning the court to have his absent relative declared dead, as do the expenses involved – the court requires testimony from police following exhaustive searches which have failed to locate the missing person.

Complicating matters and exacerbating the anguish of the missing person's family, it's necessary to pursue separate legal processes in order to resolve different affairs – administering the estate, re-mortgaging the house, dissolving the marriage, etc.

To mitigate the woes of families in this state of legal limbo, NGOs in England have pressed Parliament to pass a Presumption of Death Bill, modelled after similar Acts in Scotland (1970) and Northern Ireland (2009). A person whose spouse had vanished would be able to petition the courts for a certificate of presumed death; the petition would have to include evidence to suggest that the person had in fact died. Petitions would be publicised, allowing anyone to step forward if he believed the missing person to be still alive. Once granted, however, the certificate would allow the petitioner to attend to all legal processes – probate, dissolution of marriage, insurance claims, and so forth.

The Presumption of Death Bill was presented to Parliament on 21 January 2009. There was no debate at that time; the Bill's sponsor dropped it, and there has been no further progress.

In the next issue of the newsletter, we will explore the implications of these laws for shareholders whose names have been mouldering on companies' books since the 1920s.



## **TPR Land: We're Offering a Commission on Unclaimed Land Cases**

As you drive about, perhaps you occasionally look at the odd, forlorn-looking bit of land and wonder what its story is. Your curiosity might earn you a bit of extra money!

One Londoner had been driving for years past an overgrown corner of land in High Street, Collier's Wood. It struck him as incongruous in the densely-settled London suburb. The seemingly orphaned parcel sprouted only weeds and the occasional billboard. He mentioned it to the researchers of TPR Land, who eventually determined that when an old farm had been sold and subdivided for housing development many decades ago, this odd-shaped lot – cut off from the rest by a culvert – had been set adrift. Now that TPR researchers have traced the great-great grandchildren of the original owner, the London driver who brought it to TPR's attention is in line for a very welcome Finders' Fee.

If you would like more information, please either contact Sabrina by e-mail ([sabrina@tpr.net](mailto:sabrina@tpr.net)) or ring our office at +44 (0) 203 303 0189.

# Kenya's Pending Legislation

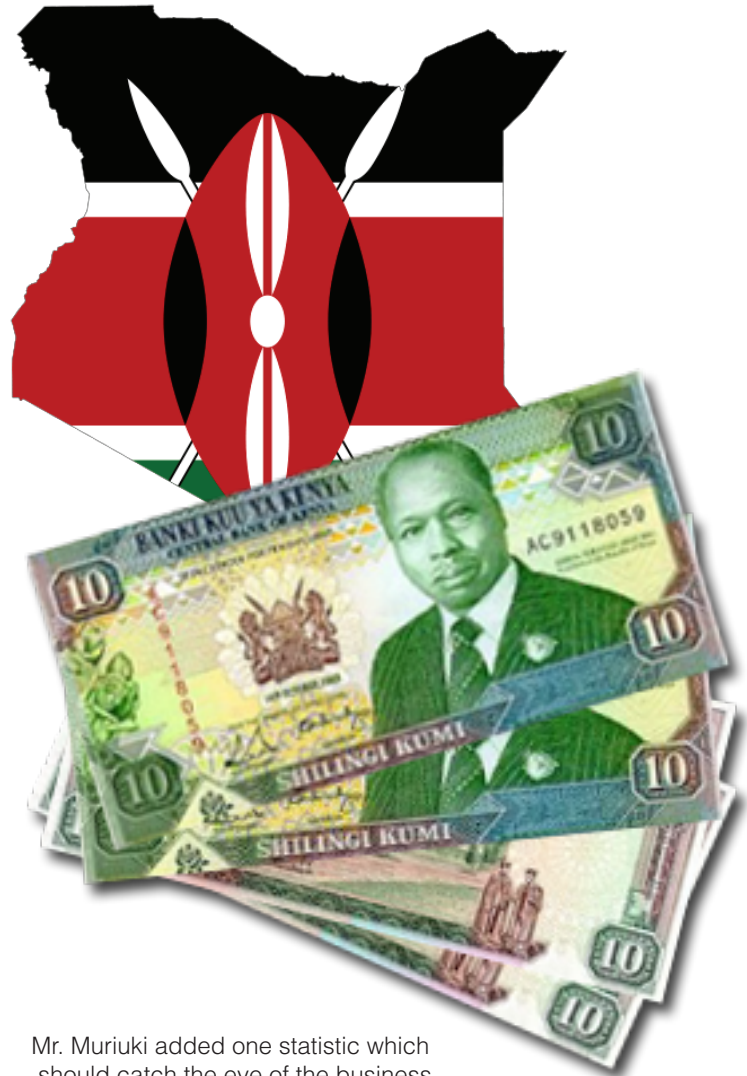
Many countries, including the US, Australia, Malaysia, and New Zealand, have established legal frameworks to address the issue of unclaimed assets. These assets might include bank deposits, dividends, insurance policies, retirement benefits, and so on. Although the laws vary from one country to the next, the governments or their appointed agents typically hold unclaimed assets in trust until owners come forward to claim them. Some countries publish gazettes with lists of unclaimed assets, allowing people to search for their names and perhaps find funds that they had not even realised they had misplaced. However, as the public only ever claims a small percentage of the moneys reported and advertised, that leaves a sizeable sum for governments to use for the general public benefit. (The UK has only the Dormant Bank and Building Society Act 2008 to address unclaimed deposits, as opposed to a more comprehensive framework.)

Kenya does not have such a framework but is trying to develop one. The Kenyan Ministry of Finance employed a consulting firm, Unclaimed Property Assets Register Limited (UPAR) to tackle the project.

Since there is no law requiring banks or companies to file official reports of unclaimed holdings, UPAR conducted a survey to gather some figures. UPAR estimates that 500 organisations are currently holding about KES 200 billion (GBP 1.6 billion). Commercial banks hold 45% of the total; insurance firms hold another 25%. There are about KES 34 million (GBP 272,000) in pension accounts presently unspoken for. Business Daily reported that Kenya Airways held KES 120 million (GBP 1 million) in unclaimed dividends at the end of 2009.

This is not to say that there is no means of addressing unclaimed assets in Kenya. In 2005, the Capital Markets Act was amended to set up an investor compensation fund in which all unclaimed dividends would be deposited. Unclaimed land falls under the Lands Ministry, and pensions under the Attorney General's office. There is no facility at present to address dormant bank deposits, which make up – according to the UPAR estimates cited above – 45% of the total. In other words, there is no comprehensive, inclusive programme. The Unclaimed Financial Assets Bill, drafted in 2008, proposes just such a framework, which would be regulated by a newly-formed Unclaimed Financial Assets Authority. The Bill, however, has made no progress towards passage through the Kenyan Parliament.

Why not? Albert Muriuki, writing for Ratio Magazine, which covers business in sub-Saharan Africa, commented in October 2008: "The bill is likely to attract a lot of debate and opposition from industry players who will see the suggested establishment of another state institution, the Unclaimed Financial Assets Authority, as another increase in red tape in a country with numerous and at times overlapping regulatory and licensing procedures. According to the World Bank 'Doing Business' index, the numerous regulatory and licensing bodies, and procedures in Kenya, are one of the great hindrances to investments."



Mr. Muriuki added one statistic which should catch the eye of the business community, though. Of the unclaimed/dormant financial assets held by banks, 99% are fixed deposit, corporate and business accounts. Only 1% is retail accounts. The owners of these accounts would, one presumes, appreciate a more rigorous law requiring transparent disclosure of unclaimed assets. Given the historic pace at which the Kenyan Parliament passes legislation, however, Mr. Muriuki predicts: "the earliest the Bill might see the light of day will be 2018."