



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**MISCELLANEOUS APPLICATION NO. 139 OF 2019**

**IN THE MATTER OF PRESUMPTION OF DEATH OF FRANCIS LUKAS MARAGIA**

**ANTHONY KINARA MARAGIA.....1<sup>ST</sup> APPLICANT**

**FLORENCE BOCHERE MARAGAI.....2<sup>ND</sup> APPLICANT**

**RULING**

1. Before this Court is the Originating Summons dated 23<sup>rd</sup> July 2019 by which ANTHONY KINARA MARAGIA (the “1<sup>st</sup> Applicant”) and FLORENCE BOCHERE MARAGIA (the “2<sup>nd</sup> Applicant”) sought the following orders:-

**“1. THAT FRANCIS LUKAS MARAGIA be and is hereby presumed dead.**

**2. THAT the Registrar of Death do issue a Certificate of Death in respect of FRANCIS LUKAS MARAGIA.**

**3. THAT cost of the application be in the cause.”**

2. The application is premised on **Section 118A** of the **Evidence Act** and is based on the grounds on the face of the Summons and supported by the affidavit of even date sworn by the Applicants.

3. The 1<sup>st</sup> Applicant **Anthony Kinara Maragia** told the Court that the Subject **Francis Lukas Maragia** who is his biological father left the family home in **Kileleshwa** on **1<sup>st</sup> February, 1989** and was never seen again. To date the subject has not been seen or heard from again.

4. **PW2 Josephine Maragia Nyamusi** a daughter of the Subject confirms that her father left the family home in the year **1989** and to date has never returned. **PW2** told the Court that they remained under the care of their mother who later passed away in the year **2008**.

5. **Section 118A** of the **Evidence Act, Cap 80, Laws of Kenya**, provides that:-

**“Where it is proved that a person has not been heard of for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.”**

6. The Applicants have told the Court that the subject left the family home in **Kileleshwa** on **1<sup>st</sup> February 1989** and never returned. The Subject was reported missing at **Kileleshwa Police Station** vide **OB Number 30** of **3<sup>rd</sup> February 1989**. The letter dated **23<sup>rd</sup> February 1989** written by the **OCS Kileleshwa Police Station** (Annexure **AMA ‘1’**) confirms that a report was made to the Police. Similarly the family reported the disappearance of the Subject to the Chief in their rural home at **Nyansiongo Location**. A letter from the Chief (Annexure **‘AM2’**) dated **11<sup>th</sup> May 2018** confirms this.

7. Despite efforts made to find the Subject he was never traced. It is averred that the family made searches in hospitals and mortuaries and even caused an Advert to be placed in the local dailies seeking information from the public on the whereabouts of the Subject. A copy of said Advert is annexed to the Summons (Annexure **AM’2’**).

8. The Applicants are the children of the Subject. The Subject’s wife (mother to the Applicants) passed away much later on **28<sup>th</sup> March 2008**. A copy of her Death Certificate Serial Number **0837012** (Annexure **‘MHN 1’**) is proof of her demise.

9. The Applicants are the persons who would reasonably be expected to hear from the Subject on a daily basis. They have not seen or heard from him since **1989**. Efforts made to trace the whereabouts of the Subject have borne no fruit. I find that there exists reliable and credible evidence that the Subject has been missing for the past **32 years**. In the circumstances it is reasonable to presume that the Subject is no longer alive.

10. In the circumstances, I find the present application to have merit. Accordingly I grant prayers (1) and (2) of the Originating Summons dated **23<sup>rd</sup> July 2019**. As this is an Ex-parte application I will make no orders on costs.

**Dated in Nairobi this 12<sup>th</sup> day of February, 2021.**

.....

**MAUREEN A. ODERO**

**JUDGE**