



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NUMBER 12 OF 2017

IN THE MATTER OF THE ESTATE OF

FRED ONDIEKI MAKORI.....(MISSING PERSON)

AND

DENNIS OSANO ONDIEKI.....APPLICANT

RULING

1. This ruling is in respect of the Notice of Motion dated 2/3/2017 Dennis Osano Ondieki (hereinafter the applicant) seeks orders that:

1. This Honourable Court be pleased to issue an order presuming FRED ONDIEKI MAKORI dead.

2. The cost of this application be costs in the cause.

2. The application is grounded on the affidavit of the applicant and on grounds that:

a) FRED ONDIEKI MAKORI was at all times the father of the Applicant.

b) FRED ONDIEKI MAKORI left the matrimonial home on 26th August, 2007 and since then he has not come back neither has he contacted any of his family member and/or friend of his whereabouts.

c) It is now more than seven years since FRED ONDIEKI MAKORI was heard of by those who might be expected to have heard of him if he was alive.

d) That there is a rebuttable presumption that FRED ONDIEKI MAKORI is dead.

e) It is in the interest of justice that this application be allowed.

3. The gist of the applicant's case is that he is a son to Fred Ondieki Makori. He has two siblings namely H O and E M O. The birth certificates are annexed.

4. Fred Ondieki Makori was at all material times an employee of the Kenya Police.

5. On the 30/1/2008 the said Fred Ondieki Makori was admitted at Mbagathi Hospital while suffering

from a psychiatric condition, upon admission, he escaped and disappeared from the hospital. He has neither been seen to date nor his whereabouts known.

6. Despite efforts by the family and police agencies, he has not been found.

7. A police abstract report dated November 2007 is exhibited.

8. All efforts to trace him have proved futile and the family is under the impression that he is dead.

9. Further reports at Nairobi Central Police Station bore no fruit and communication between the family and his employer (the Kenya Police) bore no fruit.

10. An advertisement for "missing person" was placed in a copy of the Daily Nation newspaper on the 6/3/2008. Same is annexed. Still no trace of the said Fred was made.

11. It is averred that Fred had shares with the Kenya Police Savings and Credit Co-operative Society Limited and he was a holder of a life policy with Jubilee Insurance Policy No. xxxxx.

12. He was also a member of Kenya Police Savings and Credit Cooperative Society Limited Pension Scheme.

13. It is now more than 7 years since Fred disappeared and all efforts to trace him have been in vain.

14. It is urged that the said Fred Ondieki Makori be presumed dead pursuant to Section 118A of the Evidence Act and that Letters of Administration ad Litem be granted to the applicant.

15. I have considered the application, the supporting grounds and the affidavit.

16. Specifically, I have placed alliance of the various police abstracts issued on reports of his missing, the various communication between family, Mbagathi Hospital and the police, as well as the advertisement of a missing person placed in the Daily Nation newspaper.

17. I take note that despite all the efforts to trace the said Fred Ondieki Makori, he has not been found or traced.

18. Accordingly, I am satisfied that it has been proved that Fred Ondieki Makori has not been heard of for over 7 years by those who might be expected to have heard of him if he were alive and I proceed to make the rebuttable presumption that he is dead.

19. The Notice of Motion dated 2nd March 2017 is allowed. Costs will be in the cause.

Dated and Signed at Kisii this 10th day of January, 2018.

A. K. NDUNG'U

JUDGE