

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CIVIL APPLI. NO. 13 OF 2003 (O.S.)

IN THE MATTER OF AN APPLICATION BY MARGRET EUNICE ORIASO

AND

IN THE MATTER OF MICAH OUMA ORIASO AKA MICAH M. ORIASO (PRESUMED DECEASED)

R U L I N G

The applicant, MARGARET EUNICE ORIASO has applied Ex-parte by way of originating Summons for the issuance of an order under the provisions of Section 118A of the Evidence Act and Section 3A of the Civil Procedure Act and order 36 rule 7 to the effect that her husband MICAH OUMA ORIASO also known as MICAH M. ORIASO be presumed dead and a death certificate issued.

The application is supported by Affidavit sworn by Margaret Eunice Oriaso sworn on 27.1.2003. She has deponed that her Husband was working for Kenya Ports Authority as a Marine Pilot and his duties involved commanding vessels in the Indian Ocean to and from the Port of Mombasa. On the morning of 9th June, 1997 Mr. Oriaso was assigned to work on board "M.V. AMFAH 1" as the master with a crew of 11 others and the vessel left Mombasa for the Port of MASSAWA in ERITREA. According to a inquiry report into his disappearance carried out by the Mr. F.O. Wahutu an Assistant Merchant Shipping Superintendent employed by Kenya Ports Authority, Mr. Oriaso was reported as being unwell on the afternoon of 9.6.97. He is reported to have been suffering from stomach and malaria related illness. His Vision was blurring and he was being haunted by people only he could see. This state of affairs prevailed through the 10.6.92 and 11.6.92.

At midnight of the 11.6.97, Mr. Oriaso was relieved from his watch and he left the wheel house and was seen by Mr. Kombo M. Haji an Oiler at around 2.35 a.m. walking from the direction of his cabin and he failed to respond to greeting. Mr. Kombo then noticed that Mr. Oriaso instead of going to the direction of the officers mess, he walked out onto the starboard outboard alleyway and Kombo followed. He, Mr. Kombo enquired from Mr. Oriaso where he was going but received no reply. Kombo then held Oriaso by the arm and called for help from the Chief Officer at which point Oriaso pushed Kombo onto the deck and continued walking forward. Kombo got up and went to get help from the others in the wheel house but a search yielded no result and was called off at 2.00 p.m. on 12.6.96.

The results of the inquiry also show that crew members had admitted that they were aware Mr. Oriaso was diabetic and hypertensive and he carried his own medication and that he had alerted them to keep watch over him incase his condition in case he jumped overboard.

However Mr. Wahutu in conclusion blames the either crew and finds their behaviour unacceptable. He even suggests that records of entries in be heard from or about since his disappearance. Section 118A of the Evidence Act provides as follows:-

"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 reputable presumption that he is dead"

The applicant is the legal wife of Mr. Oriaso and neither she nor his employer have heard from or seen him since the 12.6.92. From the material before me, I am satisfied that Mr. Micah M. Oriaso has gone missing without trace in the Indian Ocean since 12.6.92 to date it is therefore to be presumed he is dead as a period of over 10 years has gone by. A certificate of Death is to be issued to the Applicant by the

relevant authorities. The costs of the application shall in the cause.

Dated and Delivered at Mombasa this 13th day of March, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE