



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 6 OF 2019 (O.S)

**IN THE MATTER OF AN APPLICATION FOR PRESUMPTION OF DEATH OF MILKA CHEPKOSGEY KIMINING
alias **MILKA JEPKOSGEI KOMEN****

BY

PAUL KOMEN KIROP.....APPLICANT

JUDGMENT

[1] The Applicant herein moved the Court by way of an Originating Motion on the 25 February 2019 for orders that:

[a] **Milka Jepkosgei Komen** of Identity No. xxxx be presumed dead.

[b] A Certificate of Death be accordingly issued by the issuing authority.

[c] Costs be in the cause.

[2] The application was premised on the grounds set out in the Supporting Affidavit of **Paul Komen Kirop**, sworn on **22 November 2018**, wherein it was averred that **Milka Chepkosgei Kimining** alias **Milka Jepkosgei Komen**, a teacher by profession, had worked as such from 5 September 1996 to **20 January 2011** when she disappeared and has never been traced to date. According to the Applicant, the subject, who was his wife with whom he had sired 5 children, left home at around 5.00 a.m. on **20 January 2011** for Eldoret Town to perform an undisclosed business and promised to come back home thereafter; and that in the course of that day, she sent **Kshs. 1,080** to the housegirl with neither instructions nor any message as to the purpose for which the money had been sent; after which her phone was switched off. That he thereafter searched for his wife by contacting family members, relatives, in-laws, friends and other well wishers, with no success.

[3] It was the averment of the Applicant that he found his wife's handwritten note in his coat pocket stating that "**...find these documents in your coat**" and that along with that note he found his wife's identity card and ATM Card; copies of which he annexed to his affidavit as Annexure PKK 3". At that point, he decided to have the matter reported to the police for their intervention. The Applicant further explained that prior to her disappearance, his wife had been sick and had been seen at Kuinet Dispensary and Moi Teaching and Referral Hospital for treatment and had been recommended for two weeks' off duty. Thereafter, a decision was taken by the **TSC** to place her on interdiction for desertion of duty with effect from **15 June 2011** as her whereabouts were unknown. The letter to that effect was annexed to the Supporting Affidavit as **Annexure "PKK7"**.

[4] As he continued with the search for his wife, the Applicant communicated with the Police, the area Chief, TSC and Kenya Commercial Bank, even as the press were involved in the search and dissemination of information about his missing wife. All the relevant documents were exhibited as annexures to the Supporting Affidavit. The Applicant also testified to these facts on **28 May 2019** reiterating all the facts deposed to in the Supporting Affidavit. He also adopted his witness statement dated **22 November 2018**.

[5] The Applicant has therefore demonstrated to the satisfaction of the Court that his wife went missing on **21 January 2011** and has been missing to date. He has also demonstrated the efforts he made to search for and ascertain the whereabouts of his wife; including the contacts he made with the relevant law enforcement agencies and the media. He similarly maintained contact with the TSC, as his wife's employer and was ultimately notified that her services had to be terminated because of desertion. It is therefore manifest that the subject has been missing for over 8 years; which absence has been not only continuous but also inexplicable.

[6] Section 118A of the **Evidence Act, Chapter 80** of the **Laws of Kenya** stipulates that:

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

[7] In the premises, I am satisfied that the application is meritorious and that the orders sought are warranted. Thus, it is hereby ordered that:

[a] **Milka Jepkosgei Komen of Identity** No. xxxx be and is hereby presumed dead.

[b] A Certificate of Death be accordingly issued to that effect by the issuing authority.

[c] Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF JUNE 2019

OLGA SEWE

JUDGE