



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. CIVIL APPLICATION NO. 12 OF 2014**

**WILFRED MAINGI.....APPLICANT**

**J U D G M E N T**

1. The applicant WILFRED KIRIMI MAINGI through a notice of motion dated 24<sup>th</sup> March, 2014 brought pursuant to Order 50 Rule 1 of the Civil Procedure Rules, Section 118 of the Evidence Act sought for orders to be issued presuming that one MAINGI M'MBOGORI is dead since he has not been heard of for a period of not less than 7 years and that costs of the application be in the cause. The application is based on the grounds on the face of the application being that the said MAINGI M'MBOGORI was of unstable mind and disappeared in the year 1992 and has never been heard of since then and none of his close relatives or his surviving children has ever seen him since he disappeared and his surviving children cannot deal with his properties without him being presumed dead and his Succession Cause filed. The application is further supported by the supporting affidavit dated 24<sup>th</sup> March, 2014.
2. On 26<sup>th</sup> March, 2014 the court gave directions that this matter be heard by way of oral evidence. The applicant in his evidence testified that the deceased MAINGI M'MBOGORI was his father. That the applicant has seven sisters from his mother and a step-mother. He averred that he saw his father last time in 1992 at their home who was by then aged 60 years. That since his disappearance they reported to chief and police and have searched for him without any trace to date. The applicant testified that he believes MAINGI M'MBOGORI cannot be traced and is not alive. He added that all his father's wives are dead and prayed that the orders sought be granted.
3. The application is premised under Section 118A of the Evidence Act which 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. The applicant being son to MAINGI MBOGORI is one of the persons who is expected to have heard from his father if he were alive. The applicant in his evidence has proved that for the last 22 years none of the members of the family of MAINGI M'MBOGORI has heard from him for the last 22 years which period is beyond the provided period of 7 years. In view of the overwhelming evidence that MAINGI M'MBOGORI has not been heard of or been seen for the last 7 years by those who might have been expected to have heard of him including the applicant herein if he were alive makes the court to come to the conclusion that there is a rebuttable presumption that he is dead.
4. In view of the evidence adduced before me I am satisfied that the applicant has proved his case on balance of probabilities. I therefore issue an order of presumption that one MAINGI M'MBOGORI is dead since he has not been heard of for a period of not less than 7 years. No order as to the costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 17<sup>TH</sup> DAY OF JULY, 2014.

**J. A. MAKAU**

**JUDGE**

**DELIVERD IN OPEN COURT IN PRESENCE OF:**

1. Mr. Gichunge for the applicant.

**J. A. MAKAU**

**JUDGE**