

## Ruling

In May 1998, Fiepoto Havea, the son of the deceased, applied to the Court to register the death of his father.

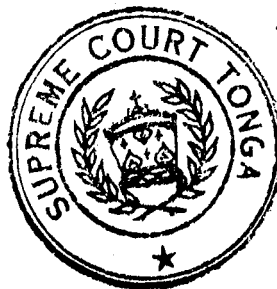
The circumstances were that his father was a fisherman and set out with others in a vessel, "Halatoamui", in windy conditions on 29 May 1985. They did not return. The vessel was seen submerged near Tau Island on 7 June 1985 and recovered the next day. None of the bodies of the fishermen have been recovered.

The family conducted traditional funeral ceremonies at that time. One year later, the family and relatives gathered at the father's residence to declare he was dead and to mourn his death.

The Court ordered that the death should be registered and the date of the death recorded as 8 June 1985. I have now been asked to consider whether that is correct.

Section 42 of the Evidence Act, cap 15, allows a presumption of death to be made after seven years if the missing person has not been heard of during that time. That has to be proved to the court and, if it is, the presumption shall be made. However, the section does not allow the court to make any presumption as to the actual time of death and, if any particular date is to be named, the person asserting that to be the date must prove it.

Thus, in this case, the application to register the death depended on the presumption of death being made. In order for that to be made, the court needed to be satisfied that the seven year period had elapsed but it did not allow it to make any further presumption. Therefore, no date of death can be recorded but for the purposes of any rights that others may acquire as a result of the death, the date at which the presumption is made should be taken as representing the death. In the present case, the date that presumption was made was the date of the judge's order which was the 18 June 1998 and the death certificate should record under date of death; "presumed dead by court, 18 June 1998". I order that it be corrected accordingly.



*H. W. ...*  
*Reg. Gen.*  
*3-11-99*