



REPUBLIC OF KENYA



In re Estate of the Late Omar Awardh Mohamed (Deceased) (Succession Cause 315 of 2010) [2022] KEHC 11995 (KLR) (31 January 2022) (Ruling)

Neutral citation: [2022] KEHC 11995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 315 OF 2010**

JN ONYIEGO, J

JANUARY 31, 2022

**IN THE MATTER OF THE ESTATE OF THE LATE OMAR AWARDH
MOHAMED (DECEASED)**

AND

**IN THE MATTER OF AN APPLICATION FOR REVIEW OF ORDER OF
CONFIRMATION OF GRANT DATED 23RD JUNE 2015.**

RULING

1. The deceased herein died intestate on January 26, 2011. Among the assets listed in the petition for grant of letters of administration intestate as comprising the estate were plot Nos MN/II/3695,11651,12321,12296,12311,12312,12322. A grant of letters of administration intestate was issued to Mohamed Omar Awadhi and Baraka Omar Awadhi jointly on January 28, 2011. The same was confirmed on December 13, 2012. According to the confirmed grant, plot numbers 806 /11/MN title Number CR No,12894-1/3 share, plot No 11650 section 1 mainland title No CR 95912 share being 0.1125 hectares and plot No 11651 section 1 mainland title No CR 35913 share being 0.3482 hectares.
2. After confirmation, the court directed that the said assets be distributed in accordance with the Islamic law as follows;
 - a) Mohamed Omar..... 1/6 share
 - b) Munira Omar..... 1/2 share
 - c) Sofia Omar..... . 1/2 share
 - d) Shadya Omar..... 1/2 share
 - e) Fahima Omar.....1/2 share
 - f) Baraka Omar.....1/2 share



- g) Fatma Omar.....1/2 share
 - h) Salim Omar.....1/2 share
 - i) Awadh Omar.....1/2 share
3. *Vide* an application dated March 20, 2014 and filed on March 31, 2014 the petitioners sought to include plot No MN/II 3695 to the list of assets and to be distributed according to Islamic law. They also prayed for substitution of the deceased administrator one Mohamed Omar with Awadh Omar Awadh. The application was allowed on May 9, 2014 and an amended certificate of confirmation issued on June 9, 2014 adding the said plot.
 4. Although it is not clear from the record, the grant appears to have been rectified further on June 23, 2015 with the addition of plots numbers 14103 and 14102 and the number of administrators expanded to four thus reflecting Awadh Omar, Mbarak Hamid, Barka Omar and Swaleh Mohamed.
 5. By application dated December 9, 2021 the applicants sought to further review and amend the certificate of confirmation to have plot No 806 substituted with plot no 10945 being the distinct share due to the estate after sub-division by share- holders. Further, that plot numbers 13663 to 13693 be included being products of plot number 3695/II/MN whose titles one Salim Omar had withheld demanding refund of the expenses he had incurred in subdividing them. That plot No 11650 /I/MN be substituted with plots Nos with 12312,12321,1232,1296 which constitutes the deceased's share after severance with other co-owners.
 6. The application herein is supported by an affidavit sworn by Swaleh Omar one of the administrators with authority from his co-administrators. This court has the power to review its own orders under order 45 of the *civil rules* pursuant to rule 63 of the *P&A succession rules*. From the copies of titles annexed, the properties appear to be owned by one Omar Awadh Madesh. It is not clear whether this is another name to the deceased or completely another person. To that extent, there is need to correct the deceased's name before any amended certificate can issue.
 7. From the explanation advanced in support of the application, I must clarify that the four plots arising out of plot No 11650/I/MN held by the administrators is not theirs absolutely but held in trust for the estate to be shared amongst all beneficiaries in accordance with the Islamic law.
 8. Accordingly, I am satisfied that the properties sought to be included belong to the estate and that they are hereby included in the list of assets owned by the deceased. The administrators are directed to ensure completion of the administration of the estate within six months failure to which they shall be substituted as administrators. To that extent, the application is allowed as prayed on condition that there is a rectification on the deceased's name to reflect the names appearing in the title deeds.
 9. Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 31ST DAY OF JANUARY 2022

J.N.ONYIEGO

JUDGE

