



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 74 OF 2017
IN THE MATTER OF THE ESTATE OF ABDI FARAH (DECEASED)
OMAR HAJI ABDI FARAH.....APPLICANT
VERSUS
SHUKRI ABDI FARAH.....RESPONDENT
RULING

1. The deceased Abdi Farah died intestate on 7th October 1961. He was survived by his widow Zainab Ahmed Jamah, daughter Shukri Haji Abdi Farah (the respondent) and sons Omar Haji Abdi Farah (the applicant), Mohamoud Haji Abdi Farah and the late Ibrahim Haji Abdi Farah. His estate comprised LR No. 36/11/292.

2. On 19th January 2017 the respondent petitioned the court for the grant of letters of administration intestate. The grant was issued on 24th April 2017, and confirmed on 24th July 2018. The widow and the respondent got 12.5% share each, and each son got 25% share each.

3. On 11th October 2018 the applicant applied to have the grant revoked and the respondent be made to account for the income and assets of the estate of the deceased. His case was that the five children of the late Ibrahim Haji Abdi Farah had not been provided for; that he was not included in the process leading to the grant; and that the signature attributed to him in the petition was not his, but was a forgery.

4. The respondent filed a response to oppose the application. She stated that the applicant was aware of the petition, and had consented to the same by signing it; that the applicant had attended the Deputy Chief Kadhi on 23rd May 2018 where he had consented to the mode of distribution under Islamic law, and it was that distribution that had been adopted in the distribution contained in the certificate of confirmation. The distribution, both before the Deputy Chief Kadhi and in the certificate of confirmation, she deposed, had taken care of all the children of the deceased, including the late Ibrahim Haji Abdi Farah; that the children of the late Ibrahim haji Abdi Farah could not benefit directly from the deceased, but were to benefit through their late father.

5. The applicant swore a further affidavit to counter the replying affidavit.

6. There is no dispute that following the filing of the petition and the grant of letters of administration, the court, at request of the advocate for the respondent, referred the matter to the Deputy Chief Kadhi to distribute the estate in accordance with Islamic law. All parties are muslims. Before the Deputy Chief Kadhi no party raised any issue. He distributed the estate. The shares were adopted by the court and are contained in the certificate of confirmation. In the applicant's further affidavit in paragraph 12, he admits to have been before the Deputy Chief Kadhi. He, however, claims that he was taken there by the respondent in the pretext that he was going to consent to the leasing of the property. He did not know that he was dealing with petition for grant of letters of administration.

7. I note that at the time the parties were going to the Deputy Chief Kadhi, the petition had been filed and grant issued to the respondent. They were, and the court record is clear, going to the Deputy Chief Kadhi to share the estate in accordance with Islamic law. The applicant does not say that the distribution by the Deputy Chief Kadhi offended Islamic law. At the time of going to the Deputy Chief Kadhi he was aware the petition had been filed. On the evidence, I find that the applicant signed the petition and appeared before the Deputy Chief Kadhi where the estate was distributed in accordance with Islamic law.

8. I also agree with the respondent that the five children of the late Ibrahim Haji Abdi Farah were to inherit their father's share of the estate of

the deceased. What is material is that the late Ibrahim Haji Abdi Farah got equal share with his brothers when the deceased's estate was distributed.

9. Consequently, I find no merit in the application which I dismiss.

10. This is a family dispute. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 23RD day of JULY, 2019.

A.O. MUCHELULE

JUDGE