

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 27 OF 2015

BETWEEN

MUSTAFA RAMADHAN.....APPELLANT

AND

KASIM RAMADHAN1ST RESPONDENT

SHABIR RAMADHAN2ND RESPONDENT

[Appeal from Original Judgment and Decree of Hon. Mursal M. Sizi dated 17th March 2015 from Kisumu Kadhi's Court Succession Cause No. 16B of 2014]

JUDGMENT

The petition in the Kadhis Court which is the subject of this appeal concerned the Estate of Haji Ramadhan Sale (deceased). Some of the issues the trial court concerned was whether the will was valid and if so or otherwise, how the property should be distributed. The appellant was dissatisfied with the judgment as the Kadhi distributed some of the properties that did not belong to the estate.

After reviewing the matter, and taking into account the opinion of the Chief Kadhi as an assessor, it is apparent that the Kadhi did not ascertain all the beneficiaries and properties of the deceased. Had he done so, this appeal would have been unnecessary. This court therefore directs a retrial of the matter on the following terms;

1. The Kadhi shall ascertain all the properties that belong to the deceased estate including confirming the title documents.
2. The Kadhi shall list and ascertain all beneficiaries of the estate. It is important that they all be given an opportunity to be heard before distribution is made.
3. The Kadhi shall proceed to hear the case including determining whether the will left by the deceased is valid.

The appeal is therefore allowed on the aforesaid terms and the matter remitted back to the Kadhi's Court for hearing and determination. The hearing of the case shall be concluded within **three (3) months** from the date hereof. As this is a family matter, each party to bear their costs.

DATED and DELIVERED at KISUMU on this 27th day of April 2017

D.S. MAJANJA

JUDGE