

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 653 OF 2012

IN THE MATTER OF THE ESTATE OF CASSAM SULEIMAN SUMAR (DECEASED)

RULING

1. The deceased herein died on 30th October 2008.
2. Two causes were commenced with respect to his estate. The first in time was **Mombasa Kadhi's Court SC. No. 86 of 2010**, which is sought that the estate be distributed in accordance with Islamic law. The second in time is Nairobi **HCSC. No. 653 of 2012**, where it is alleged that the deceased died testate, and distribution is sought according to his will, allegedly made on 21st May 2008.
3. In both causes it is stated that the deceased died possessed of property situated at Kwa Shibu Road, Mombasa, and Pangani Road, Nairobi.
4. As a matter of law two causes ought not to be filed in respect of the same estate, especially with respect to the same property. There should be only one cause.
5. I note that in the Mombasa cause, it is stated that the estate is to be dealt with under Islamic law. It would appear that under the Nairobi cause it is designed that the same be handled in accordance with the Law of Succession Act. There is no doubt need to resolve the matter as to which of the two systems of law is to apply to the estate. Administration of the estate can only proceed once it is determined which of the two laws apply to the estate.
6. I note too that in the Nairobi matter objections have been raised to the petition for probate by a person who cross-petitions for appointment as administrator of the estate with the will annexed. No doubt the cross-petitioner does not challenge the validity of the will. The objection cannot be heard until after the conflict of laws matter has been resolved.
7. It is notorious that under strict Islamic law only a third of a Muslim's estate is available for distribution by will, while the rest is for division as per the Quranic precepts. An issue therefore arises in this cause as to whether the will made on 21st May 2008 disposes of one-third of the estate of the deceased. There is also the issue whether, if the will disposes of the entire estate, the will is valid to the extent that it does not conform to the Quranic principles, and whether the matter ought to be dealt with under Islamic law or under the Law of Succession Act.
8. The directions that I am disposed to make are –
 - a. That the two causes are to be handled together for the time being for the purpose of addressing the issue of conflict of laws;
 - b. That the parties in both causes shall in the next twenty-one (21) days file submissions on the question of which law applies to the estate of the deceased; and
 - c. That the matters shall be mentioned thereafter for the purpose of obtaining a date for the highlighting of the submissions.

DATED, SIGNED and DELIVERED at NAIROBI this 28th DAY OF November 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Kabiru advocate of the petitioner.