



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT 101 OF 2011

IN THE MATTER OF: THE ESTATE OF AKBAR MOHAMED HASSAN (DECEASED)

AND

IN THE MATTER OF: AN APPLICATION FOR THE ISSUANCE OF A VESTING ORDER IN  
FAVOUR OF NASRA MOHAMED ALI,

THE PETITIONER IN MOMBASA KADHI'S COURT SUCCESSION CAUSE NO. 92 OF 2011

AND

IN THE MATTER OF: LAND PARCEL NO. MSA BLOCK/XII/108

NASRA MOHAMED ALI.....APPLICANT

### RULING

1. Before me is an Exparte application dated 16<sup>th</sup> September 2011 in which the Applicant, Nasra Mohamed Ali seeks the following prayers;

***(a) That the Orders of the Kadhi's Court in Mombasa Succession Cause No. 92 of 2011 be confirmed and made absolute in favour of the Petitioner, Nasra Mohamed Ali as Trustee of SABRI AKBAL MOHAMED, BASMAH AKBAL MOHAMED, SUMAEYAH AKBAL MOHAMED proprietors of the parcel of land known as Plot No. Mombasa/Block/XII/108.***

***(b) That the parcel of land No. Mombasa/Block/XII/108 be vested absolutely in favour of Nasra Mohamed Ali."***

2. On 14<sup>th</sup> July 2012 the Applicant obtained the following orders before the Kadhi in Cause No. 92 of 2011 as is relevant;

***"2. That the property known as MSA/Block XII/108***

***be registered in the name of Nasra Mohamed Ali as Trustee for Sabri Akbal Mohamed ½ share, Basmah Akbal Mohamed ¼ share and Sumaeyah Akbal Mohamed ¼ share.***

**4. That the Land Registrar Mombasa to effect the registration of this Decree.”**

3. I am told by the Applicant that The District Land Registrar has refused to effect the changes in the registry to accord with the Decree hence this application. The stance taken by the Land Registrar is wholly unnecessary but borne out of practice and perhaps abundant caution. No one should begrudge the Registrar.

4. That stance however does not have the support of the law and on this I can do no better than restate the words of my brother Justice Muriithi when he was called upon to decide an application similar to this in **Mbsa HCC Misc. Application No. 736 of 2011 (Re: Estate of Said Abdalla)-**

***“The requirement of a vesting order or a confirmation of vesting order of the High Court to confirm or approve the determination of the Kadhis court on matters of Succession of Estate of deceased Muslims has no basis in law and is unconstitutional ...”***

5. I allow the application and direct the Land Registrar, Mombasa to give effect to the Kadhi’s Decree issued on 14<sup>th</sup> July 2011 in **Mbsa Succession No. 92 of 2011 RE The Estate of Akbal Mohammed Hassan.**

6. Costs in the cause.

***Dated and delivered at Mombasa this 27<sup>th</sup> day of June, 2012.***

**F. TUIYOTT  
JUDGE**

**Dated and delivered in open court in the presence of:-**

**Mwijuma for Applicant**

**No appearance for Respondent**

**Court clerk - Moriasi**

**F. TUIYOTT  
JUDGE**