



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW 432 OF 2009

HUSSEIN RAJAB

MWANA HARUSI RAJAB RAJAB (Suing in their capacity as administrators of the Estate of the Late)

JUMA RAJAB
APPLICANTS

AND

KADHI'S COURT
RESPONDENT

AND

JUMA MOHAMMED RAJAB
INTERESTED PARTY

JUDGMENT

1. The applicant moves this court to exercise supervisory jurisdiction under **Article 165(6)** over certain proceedings of the Kadhis Court, to wit **Nairobi Kadhis Court Inheritance Case No. 137 of 2008 (Juma Mohamed Rajab v Juma Rajab)**.

2. I have heard the applicant and the interested party who both concede that there is a dispute as to the ownership of Plot No. 37 PUMWANI which is subject of the succession dispute. Both parties also concede that the Kadhi has called for evidence to confirm the ownership of the property before the estate of the deceased can be administered.

3. On 16th April 2009, the Kadhi made the following ruling in the matter;

“UPON HEARING the parties and upon reading the written submissions this is a succession case filed by the plaintiff against the defendant. The parties are nephew and uncle. There are disputes on the relationship between the deceased and the defendant which shall be determined afterwards, and there is a standing dispute and confusion on who owns the estate in question. Therefore the court is of the opinion to compel the parties and their counsels to furnish this court who is the lawful owner of the plot Number 27 Pumwani from relevant authorities before it determines other issues.

Dated this Thursday 16th April 2009

Al-Mahdur A-S- Hussein

Nairobi Kadhi

4. In my view the Kadhi properly directed himself when he acknowledged that he is to be “furnished” I believe evidence of who is the lawful owner of the plot from “relevant authorities.” He recognised that he had no jurisdiction to deal with the issue of ownership and that such proof could only come from “relevant authorities” which includes a determination by the court.

5. I have looked at the various depositions filed by the parties and it is clear that there is a dispute as to the ownership of the property. This dispute will have to be resolved in the manner provided by the law.

6. On my part, I do not find any misdirection by the Kadhi in his decision of 16th April 2009. In the result the applicant’s suit is dismissed with no order as to costs.

7. The ruling shall be forwarded to the Kadhi for his attention.

DATED and **DELIVERED** at **NAIROBI** this 15th day of October 2012

D.S. MAJANJA
JUDGE

Mr Munoko instructed by Nyandieka and Associates Advocates for the applicant.

Ms Odhiambo instructed by Mohammed and Lethome Advocates for the interested party.