



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 82 OF 2009

MOHAMMED ATHUMAN KOMBOAPPELLANT
VERSUS
MAUA MOHAMMEDRESPONDENT

RULING

Before court is the application of one **MAUA MOHAMED JUMA** (hereinafter referred to as ‘the applicant’) seeking to restrain the respondent **MOHAMMED ATHUMAN KOMBO** from overseeing and collecting rent from the two properties namely houses on plot numbers 2085/VI/MN and 2213/VI/MN. In addition the applicant seeks orders that a joint account be opened in the names of the two widows of the deceased one **ATHUMAN KOMBO** in which all the rental incomes from the two houses be deposited. The application was opposed. The applicant appeared in person whilst **MR. KHATIB** Advocate acted for the respondent.

The genesis of this dispute is the decision of the Kadhi’s Court made on 30/4/2009 respecting the distribution of the estate of the deceased Athuman Kombo. It is not disputed that the deceased had two wives. The first wife **MWATIME ATHMAN KOMBO** bore ten (10) children with the deceased and the respondent herein is their eldest child. The applicant is the second wife of the deceased with whom she bore three (3) children.

The Hon. Kadhi ruled that the two properties left behind by the deceased be sold and the proceeds be distributed amongst all the beneficiaries. The Respondent however being dissatisfied with this decision filed an appeal to the High Court and also obtained orders to stay the execution of the Kadhis decision. The Respondent argues that the properties in question do not form part of the estate of the deceased.

I have carefully considered the submissions made both by the applicant and by Mr. Khatib for the respondent. It is not my role to address the issues which will be raised during the appeal. The bone of contention clearly are the two properties of which the applicant argues she has been denied her fair share. This is a matter which is properly to be decided by the appeal court. By her application the applicant is seeking to circumvent the appeal. In her submissions the applicant relies on a will purportedly made by the deceased. In that will the deceased left to the applicant only one property i.e. Plot No.2213/VI/MN (which property as stated earlier the Respondents submits does not form part of the deceased’s estate). If the will she seeks to rely on left to her only one property then why does the applicant now come to court seeking orders in respect of the two properties. Secondly, the applicant claims that one of her children has been chased out of school due to lack of fees. She did not annex any proof that her child is indeed a student at High Achievers Secondary School as she alleges nor has she annexed any fee demand note. Whilst I do appreciate that the applicant is anxious to have this matter finalized and is probably impatient about the fact that the appeal has not been set down for hearing, this

court cannot at this stage pre-empt that intended appeal. The question as to exactly what share of the suit properties the applicant is entitled to can only be determined after a full hearing of the appeal. At this stage the orders sought by the applicant cannot be granted. However in order to expedite the appeal, I do direct that the Executive Officer Kadhi's Court ensure that the proceedings from the Kadhis court be typed, certified within the next 30 days. This application is dismissed in its entirety. No orders as to costs.

DATED and delivered in Mombasa this 9th day of September 2011.

M. ODERO
JUDGE

In the presence of
Mr. khatib for Appellant
Respondent in person.

M.ODERO
JUDGE
9/09/2011