



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Succession Cause 72 of 2010

IN THE MATTER OF: THE Estate OF KHATIJABAI d/o
GULAMHUSSEIN ESMAILJE KARACHIWALLA
also known as KHATIJABAI SAIFUDIN
MOHAMEDBHAI (deceased)

RULING

What has come up before the Court is a “Summons for the Immediate Issue of a confirmed Grant of Representation”, in the terms of s. 71(4) of the Law of Succession Act (Cap. 160, Laws of Kenya).

There is a practical reason justifying the prayer for a confirmed grant being issued on an *ex parte* basis and under certificate of urgency. As learned counsel **Mr. Kinyua** has explained, the property in question is a single unit, and it is a leasehold with only a couple years to run to its end; and so judicial orders relating to it will only give satisfaction to a party if they are promptly made.

But more important, s.71 (4) of the Law of Succession Act has expressly provided for the “immediate issue of a confirmed grant”.

The legal validity of such a grant goes back to the Kadhi’s Courts Act (Cap. 11, Laws of Kenya) – in particular s.5 thereof, as read together with s.66(2) and (5) of the Constitution. These relevant provisions of the Constitution have donated full powers to the Kadhi, to determine a succession question such as that which is now before the Court: where the deceased is a Muslim, and the beneficiary of the deceased’s estate is a Muslim. Strictly in law, in relation to property of such a kind, the Kadhi’s decision has finality, and can only be questioned by a normal process of appeal, on a relevant question of law.

On 27th January, 2010 the Chief Kadhi gave his ruling in Succession Cause No. 196 of 2009 (O.S), in relation to the Estate of Khatijabai d/o Gulamhussein Esmailje Karachiwalla also known as Khatijabai Saifudin Mohamedbhai (deceased), and his crucial decision was rendered as follows:

“This Court therefore hereby orders that the Leasehold No. L.R. 1149/XX/64...renumbered

Mombasa/Block XX/64 will be the property of Hussein Seifudin Hassanali Mohamedbhai and also that this Court has no objection to....the issuance of the Letters of Administration to the said Hussein Seifudin Hassanali Mohamedbhai”.

In law, therefore, the above-cited decision of the Chief Kadhi stands as a final decision.

This is the basis upon which I have now considered the application before me.

I will make orders as follows:

1. Prayer (1) is granted.
2. Prayer (2) is granted. I hereby order issuance of a confirmed Grant of Representation of the Estate of Khatijabhai d/o Gulamhussein Esmailje Karachiwalla also known as Khatijabhai Seifudin Mohamedbhai (Deceased) to Hussein Seifudin Hassanali Mohamedbhai of P. O. Box 84720, Mombasa.
3. The application shall be listed for *inter partes*

hearing on 19th April, 2010.
4. Costs shall be in the cause.

DATED and **DELIVERED** at **MOMBASA** this 18th day of March, 2010.

J. B. OJWANG

JUDGE

Coram: ***Ojwang, J***

Court Clerk: ***Ibrahim***

For the Petitioner/Applicant: ***Mr. Kinyua***