

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Prob & Admin 151 of 1994

IN THE MATTER OF THE ESTATE OF ALI SHITALO IBRAHIM

RULING

The Applicant/Petitioner in this matter wish to have this dispute resolved under the provisions of Islamic Law since the deceased was a Muslim who died intestate. The Interested party on the other hand wishes to have this matter deceased under the provision of the Laws of Succession Act.

The Law is clear on this question: Section 3 (3) and (4) of the Laws of succession act provides :-

“ 4.....

(3) Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the Estate of an person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim Law.

(4) Notwithstanding the provisions of subsection (3), the provisions of part VII relating to the administration of estates shall where they are inconsistent with those of Muslim Law apply in case of any Muslim dying before on or after 1st January,1991.”

From the foregoing, Muslim Law shall be applicable in the determination of this matter especially with regard to distribution.

The Kadhi's court has been given jurisdiction to determine questions of Muslim Law relating to personal status, marriage, divorce and inheritance in proceedings in which all parties profers the Muslim religion, but nothing limits the jurisdiction of the High Court or of any subordinate court in any proceedings which come before it.

In this matter it is clear that all the beneficiaries of the Estate of the deceased bear Muslim names and unless it is declared otherwise I will deem it that they are all muslims. In the circumstances I am of the view that this matter ought to be heard and determined by the Kadhi's court at Eldoret. This is a special court set up to specifically deal with this situation.

In exercise of this court's jurisdiction under the Laws of Succession Act and Section 18 of the Civil Procedure Act, if it applies, I do hereby order that this succession cause be and is hereby transferred to the Kadhi's court at Eldoret for hearing and disposal.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF JULY,2006.

M.K. IBRAHIM

JUDGE

29/07/2006

Coram – Ibrahim J.

C/C - Chelang'a

Mr. Chemitei for the Petitioners

Mr. Keter for the interested parties.

Ruling delivered in their presence.

This matter shall be mentioned before the Kadhi's Court at Eldoret on 22nd August,2006 at 9:30 a.m.

M.K. IBRAHIM

JUDGE