



REPUBLIC OF KENYA



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**Gube/Hussein v Hirbo (Civil Appeal E006 of 2022)  
[2025] KEHC 2885 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2885 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CIVIL APPEAL E006 OF 2022**

**JN NJAGI, J**

**MARCH 6, 2025**

**BETWEEN**

**AMINA SORA GUBE/ABDALLA SHARIFF HUSSEIN ..... APPELLANT**

**AND**

**FATUMA DIMA HIRBO ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. A.D.Wako,  
Principal Kadhi, in Moyale Kadhi's Court Succession Cause No.36  
of 2019 delivered on 31/8/2020 and ruling dated 20/7/2022)*

**JUDGMENT**

1. The The Honourable Kadhi in his judgment delivered on 31<sup>st</sup> August 2020 and a ruling delivered on 20<sup>th</sup> July 2022, made a finding that the paternal aunt of the deceased herein one Amina Sora Gube was not a beneficiary to the estate of the deceased herein, the late Kassim Abdalla Hussein and was thus not entitled to inherit from the estate of the deceased. The Kadhi also made a finding that Plot No. 861 Moyale formed part of the estate of the deceased against the protestations of Amina Sora that she was the owner of the plot.
2. The said Amina Sora was aggrieved by the decision of the Honourable Kadhi and lodged an appeal vide a memorandum of appeal dated 2<sup>nd</sup> May 2023. The grounds of appeal are, inter alia, that:
  1. That the learned Honourable Kadhi erred in law and in fact in failing to find that there was sufficient evidence on record to prove that Amina Sora was a beneficiary to the estate of the deceased.
  2. That the learned Honourable Kadhi erred in law and in fact by disregarding the contents of Service Record of the deceased which indicated that that Amina Sora was a successor to the estate of the deceased.



3. That the learned Honourable Kadhi misunderstood and misapplied the law.
  4. That the judgment of the learned Kadhi was against the weight of the evidence adduced in the case.
3. The appellant prayed that the judgment of the Kadhi be set aside and that Amina Sora be made one of the beneficiaries of the estate of the deceased.
  4. In the same judgment and ruling, the Honourable Kadhi made the Appellant herein, Abdalla Shariff Hussein, an administrator of the estate of the deceased and failed to make some pronouncements in some aspects of the case. The respondent herein, Fatuma Dima Hirbo, was aggrieved by the decision of the Kadhi and filed a separate appeal vide a memorandum of appeal dated 18<sup>th</sup> August 2022 based on the grounds that:
    1. The learned Kadhi erred in law and in fact by making the respondent an administrator of the estate of the deceased.
    2. The learned Kadhi erred in failing to determine the amount of money owed by the respondent to the estate as a result of his unlawfull deposit of the estate money in his personal account instead of the joint account.
    3. The learned Kadhi erred in law and in fact in determining that plot No. 861 Moyale formed part of the estate of the deceased despite it being registered in the name of the Appellant.
    4. The learned Kadhi erred in law and in fact in failing to pronounce himself on the orders sought by the appellant for release of documents and household items being kept by the respondent illegally.
    5. The learned Kadhi erred in law and in fact by failing to determine the appellant's personal contribution to the development of land parcel No. Ngong/Ole Kagasi Township/438.
    6. The learned Kadhi erred in law and in fact by failing to determine the method the deceased's mother who is a citizen of Ethiopia will receive her share of the estate.
    7. The learned Kadhi erred in law and in fact by failing to determine whether the share of the deceased's father who is now deceased survived him and if so the method of its distribution.
  5. Counsel for the Respondent asked the respondent's appeal to be treated as a counter appeal. In that case Abdalla Shariff will for the purposes of this appeal be referred to as the appellant while Fatuma Dima Hirbo will be referred to as the respondent.
  6. The appeal and the counter appeal were canvassed by way of written submissions.

### **Appellants` Submissions**

7. The Appellant submitted that the Honourable Kadhi ignored evidence that the deceased had indicated in his register with the National police Service that Amina Sora Gube would be the successor to his estate. It was submitted that though Amina Sora was ideally not a heir to the estate of the deceased because of the existence of the primary heirs as provided for in the Holy Quran, she was nevertheless a beneficiary to the estate of the deceased by dint of the records in the civil register which recognized her as a successor to the estate. Therefore, that the learned Kadhi erred by failing to recognize Amina Sora as a successor to the deceased's estate.



8. The appellant submitted that the Hon. Kadhi erred in making a finding that Plot No. Moyale 861 formed part of the estate of the deceased when Amina Sora was making a claim to the property. It was submitted that the respondent did not prove that the said plot was the “free property” of the deceased. Reference was made to the meaning of the term “free property” of the deceased as defined in section 3 of the *Law of Succession Act* to mean the property of which that person was legally competent freely to dispose during his lifetime and in respect of which his interest has not been terminated by his death. The appellant in this respect relied on the case of *In re Estate of Job Ndunda Muthike (Deceased)* (2016) eKLR where Ogunga J. (as he then was) held that:

It is therefore clear that any property which the deceased was not legally competent freely to dispose during his lifetime, and in respect of which his interest had been terminated by his death cannot form part of his estate and cannot be the subject of an application for confirmation of grant.

9. It was submitted that the subject property was not free property as the appellant contested its ownership. Therefore, that the property ought not to have formed part of the estate of the deceased.

### **Respondent’s submissions**

10. The respondent submitted that the service record of the deceased cannot be taken as a will that the deceased appointed Amina Sora as her successor. It was submitted that a Muslim person cannot will his estate to his beneficiaries as the substantive law on the subject, the Holy Quran has already made pronouncement on the share of each beneficiary and the category of the beneficiary. In this respect, the respondent relied on the case of *In re Estate of Ramadhani Wambi Tirimisi (Deceased)* (2020) eKLR where Cherere J. stated that:

12. Further to the foregoing, under Islamic Sharia, a Muslim may not make a bequest in his will in favour of a legal heir. The basis of this is that Allah legislated fixed shares for legal heirs. Any Will that purports to exclude a legal heir or make a bequest to an heir is not valid under Islamic Sharia. Allah’s Prophet (SAWS) said:

“Allah has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir. (Abu Dawud). Similar hadith is narrated by Abu Umamah (RA) and reported by Ibn Majah, Ahmad and others”.

11. . It was submitted that the service register of the deceased that was made prior to his marriage and having children is inconsequential as the Holy Quran has already made provision for the heirs. It was argued that an aunt cannot inherit unless the will apportions a share which is less than a third of the estate as under Islamic law a muslim cannot by will dispose of more than a third of his estate. Reliance in this respect was made in the case of *Saifudean Mohamedali Noorbhai v Shehnaz Abdehusein Adamji* [2011] eKLR where the Court of Appeal opined that the limit on a Muslim’s testamentary freedom is up to one-third of one’s estate. Further reliance was made in the case of *Noorbanu Abdulrazak v Abdulkader Ismail Osman* (2017) eKLR where Justice Thande held that:

What does Muslim law say about testamentary freedom of Muslims? In the leading case of *Saifudean Mohamedali Noorbhai v Shehnaz Abdehusein Adamji* [2011] eKLR the Court of Appeal opined:

“The limit on a Muslim’s testamentary freedom, up to one-third of one’s estate, is seen in Islam as a means to ensuring balance between a Muslim’s freedom in this regard and responsibility to his or her heirs. Deriving sanction from a Prophetic tradition, it reflects



indications in the noble scripture that a Muslim may not “so dispose of his property by will as to leave his heirs destitute”. (Mulla, Ch, IX, Wills, p. 141).

A Muslim is barred by Islamic Sharia from disposing by will more than 1/3 of his estate to third parties who are not heirs. This is to ensure a balance between giving his property to whoever he wishes and his obligation to his heirs. The heirs of a Muslim are assured of a minimum of 2/3 of his estate and any bequest exceeding 1/3 of a Muslim’s estate to third parties is not valid.

12. It was submitted that the Honourable Kadhi was right in declining to include Amina Sora as a beneficiary to the estate of the deceased herein when the children, widow and parents of the deceased are available to inherit him. That in the circumstances of this case the service register neither admits the aunt as a beneficiary nor grants her any share of the deceased’s estate. That her share having not been pronounced in the service register, the same is of no value under Islamic law and should be disregarded.
13. On the issue of Plot No. 861, the respondent submitted that the same should not form part of the estate of the deceased as it houses the matrimonial home of the respondent where she resides with all her children. More so that the same is registered in the name of the respondent, Fatuma Dima Hirbo as per the letter dated 5/2/2020. That by virtue of registration, the Kadhi should not have delved into determining whether the plot formed part of the estate of the deceased as the proper procedure was to refer the matter to the Environment and Land Court for determination of ownership. That it is only when the property was determined to belong to the estate of the deceased that the Kadhi’s court would have the jurisdiction to determine the beneficiaries thereof. The respondent in this respect relied on the case of *In re Estate of Kinogu Mukiria (Deceased) (2022) eKLR* where the court held that:

Pursuant to Article 165(5) of *the Constitution*, this court lacks jurisdiction in matters to do with the use and occupation of, and title to, land. It is also apparent that when a dispute regarding ownership in respect of the property of a deceased person arises, then the court can set aside the share in dispute to await the outcome of the resolution of the dispute from the court with jurisdiction. As such, the dispute as to ownership of land can only be determined by the Environment and Land Court. Once the ownership of the suit property is ascertained by the Environment and Land Court, the probate court may proceed to distribute the said property to the rightful dependants.

14. On the counter appeal dated 18<sup>th</sup> August 2022, the respondent submitted that the Kadhi’s court dismissed the claim by the appellant, Abdalla Shariff Hussein, that he was a beneficiary to the estate of the deceased but then the court proceeded to make him an administrator of the estate. It was submitted that the appellant is conflicted as he had posed as a beneficiary to the estate of the deceased and is now put in charge of an estate which the very court had denied him a share of. That he has shown inability to account for the money of the estate and continues to claim a personal stake from the estate despite the Kadhi’s court finding that he is not a beneficiary.
15. It was submitted that there are sufficient reasons to warrant removal of the deceased as administrator of the estate in that since the issuance of the court decree of October 2020, neither the widow nor the children of the deceased have been able to access monies in the joint account or other monies for their benefit. The court was urged to replace the appellant as administrator of the estate with the deceased’s daughter, Najma Hage Kassim.

### **Analysis and determination**

16. I have considered the grounds of appeal in the appeal and the counter appeal, the pleadings, the evidence adduced before the trial court and the submissions. This being a first appeal, the duty of the



court is as was stated in the case of *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR to be as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

17. The deceased in this case died a Muslim and under the *Law of Succession Act*, the law applicable in relation to his estate is Islamic Sharia law. Section 2(3) of the *Law of Succession Act* provides:

Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any 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.

18. The issues for determination in the appeals are:

1. Whether the trial court erred in declining to make Amina Sora a beneficiary of the estate of the deceased.
2. Whether the trial court erred in holding that Plot No.861 Moyale formed part of the estate of the deceased.
3. Whether the trial court erred in failing to remove Abdalla Shariff as administrator of the estate of the deceased.
4. Whether the trial court erred in failing to pronounce itself on other prayers sought by the respondent.

19. I will then proceed to consider the issues.

**Whether the trial court erred in declining to make Amina Sora a beneficiary to the estate of the deceased**

20. It was the contention of Amina Sora that she was a paternal aunt to the deceased. That the deceased was working with the National Police Service and had filled the civil service register of the National Police Service to the effect that she, Amina Sora, would be his successor to his estate. Therefore, that the trial court erred in failing to declare her a beneficiary to the estate of the deceased.
21. The respondent argued that the said form was filled before the deceased got married and got children. That the form cannot pass as a will as it does not conform with wills made under Islamic law. Therefore, that the same is of no consequence.
22. The Honourable Kadhi in his judgment held that it does not matter in Islamic law on whether or not one is declared as a next of kin as the right of every person is fixed by Quranic law. It was his holding that:

The heirs according to Islamic Law of succession is classified into three (3) categories namely:

SUBPARAGRAPH 1.

Dhawil - furudh (Quranic shares)

PARAGRAPH 2.

Asabah (Residuaries/Agnates)



PARA 3.

Dhawil – Arham (Distant kindred)

The first rule of intestate succession is that the Quranic shares must first (before all other) be assigned their shares. The Quranic shares are the most important class of heirs who take primacy, they are entitled before all others the shares allocated to them either by the Holy Quran or by the tradition. Reference may be made to the Holy Quran Chap. 4:11 and 12. In this matter only the widow (petitioner), three children of the deceased and two parents of the deceased belong to the first class of heirs, none is superior to the deceased than the other, but the paternal aunt (Amina Sora Gube) and her son Abdalla Shariff Hussein (the respondent) belong to the third category (distant kindred) that they cannot inherit in the presence of any Quranic shares or residuary (asabah)

23. It was the opinion of the two Kadhis who sat with me in this appeal that in Islamic law, the primary heirs of the estate of a deceased person are husband, wife, mother, grandfather, grandmothers (paternal grandmother, maternal grandmother), daughter, son's maternal brother, father, and paternal grandfather, Wife, daughter, son's daughter, full sister, consanguine sister, uterine sister, uterine brother. That these heirs are entitled to their shares of the estate and if there is anything left of the estate, it is taken by the residual heirs. If there is nothing left for them, then they have no share. They cited the words of the Prophet: "Give the shares of inheritance to those who are entitled to them, and whatever is left goes to the closest male relatives." (Narrated by Al-Bukhari, 6732 and Muslim, 1615).
24. In view of the above, it is clear that Amina Sora Gube is a distant relative (Dhawul al-Arhaam) of the deceased and is not entitled to inheritance in the presence of the deceased's widow, children and parents. Besides that, the service record of the deceased with National police service does not pass out as a will of the deceased in Islamic law. In the premises, it is my conclusion that the trial court was right in holding that Amina Sora was not entitled to any inheritance in the estate of the deceased.

**Whether the trial court erred in failing to remove Abdalla Shariff as administrator of the estate of the deceased**

25. The respondent in her application dated 28<sup>th</sup> April 2021 sought to have Abdalla Shariff removed as administrator of the estate and be replaced with the deceased's daughter Najma Hage Kassim on the ground that he had mismanaged the estate. She averred in her affidavit sworn on the same date that the said Abdalla Shariff has conflict of interest in the estate of the deceased as he had personally claimed a portion of the estate for himself and was a witness in the case for his mother, Amina Sora, where she was claiming part of the estate of the deceased. It was the averment of the respondent that the trial court found the claims unsubstantiated. She submitted that a person claiming interest in an estate cannot be entrusted to justly administer the estate. That this is evidenced from the action of Abdalla Shariff of unilaterally diverting the proceeds of the estate to his personal account without consultation with other beneficiaries. That he has not accounted for the proceeds of the estate.
26. Abdalla Shariff on the other hand stated in his replying affidavit to the application to remove him as administrator of the estate that his mother (Amina Sora) was a sister to the deceased herein. That he raised the deceased, schooled him, procured him a job and married him off. That he took the deceased as his adopted son and the deceased took him as his father. That when the deceased was ailing before he died, he asked him to take care of his family. That the deceased put him as his next of kin and successor of his estate. That the deceased told some people named in his supporting affidavit that he, Abdalla should succeed part of his estate.



27. Abdalla further said in the replying affidavit that he and his mother were claiming part of the deceased's estate. That he has dealt with the estate in good faith by preserving it. That though the deceased's daughter is of age, he is better placed to administer the estate on behalf of all the beneficiaries. That there is no evidence adduced warranting his removal as an administrator.
28. The trial court in its ruling of 20<sup>th</sup> July 2022 appointed Abdalla Shariff and the respondent administrators of the estate until the children of the deceased attained the age of majority. The court did not give reasons for declining to remove Abdalla Shariff as administrator of the estate as sought by the respondent.
29. It is clear from the evidence that Abdalla Shariff was making a claim on the estate of the deceased as a beneficiary. He at the same time supported his mother in her claim of part of the estate of the deceased. His claim and that of his mother were dismissed by the trial court. I am in agreement with the assertion by the respondent that Abdalla Shariff was conflicted in the matter. It was untenable for a person whose claim to the estate had been dismissed by the court to be appointed an administrator of the same estate as conflict of interest could arise in the management of the estate.
30. Abdalla Shariff in his evidence before the trial court admitted that after the respondent remarried he opened a separate personal bank account for depositing the rent money of the estate, despite a court order for the money to be deposited in a joint account between him and the respondent. He never obtained an order of the court before diverting rent money of the estate into his own personal bank account. This was sufficient ground for removing him as an administrator of the estate. An administrator who acts contrary to the clear orders of the court has no business being an administrator. Had the Honourable Kadhi considered this aspect of the case, he would have seen reason to remove Abdalla Shariff as administrator of the deceased's estate. I find the counter appeal to be merited in this respect. I find Abdalla Shariff to have been conflicted as an administrator of the deceased's estate and has failed in his duties as such. I accordingly order that he be and is hereby removed as administrator of the deceased's estate and is replaced with Najma Hage Kassim.

#### **Whether plot No.861 Moyale formed part of the estate of the deceased**

31. Amina Sora in her replying affidavit sworn on 4<sup>th</sup> February 2020 stated that she was the owner of plot No.861 Moyale and only allowed the deceased to build residential houses thereon on agreement that after building the houses she would be collecting rental income throughout her life after which the plot would go to the deceased. That she never collected rent after the house was built nor was she compensated, hence she remained the owner of the plot.
32. The respondent on the other hand argued that the said plot houses her matrimonial house where she lives with her children. That the plot was registered at the county government offices Moyale in her name as per a letter dated 5<sup>th</sup> February 2020 (on page 31 of the supplementary record of appeal).
33. The trial court held that Plot No.861 Moyale belonged to the estate of the deceased and formed part of his estate
34. The respondent in her appeal argued that upon learning that the plot was registered in the name of the deceased, the Kadhi should not have delved into the issue of determining ownership of the plot but should instead have referred the matter to the Environment and Land Court for determination of the issue of ownership. That it is only when the property was determined to form part of the estate of the deceased would the Kadhi's court have jurisdiction to determine the beneficiaries thereof. The respondent in this respect relied on the holding in the case of *In re Estate of Kinogu Mukiria (Deceased)* as quoted above.



35. The jurisdiction of the Kadhi's court is derived from Article 170(5) of *the Constitution* which provides that:-

“The jurisdiction of a Kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.”

36. The same is repeated in section 5 of the Kadhi's Court Act in the following terms:

“5. A Kadhi's Court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion; but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it.”

37. A court may only exercise such jurisdiction as conferred upon it by *the Constitution*, statute or both. In *Samuel Kamau Macharia & Another –v- Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, the Supreme Court emphasized this point as follows -

“A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

38. The late Nyarangi JA in the “Owners of Motor Vessel “Lilian S” vs Caltex Oil (K) Ltd [1989] KLR 1 observed the following on the jurisdiction of a court:

“Jurisdiction is everything. Without it, a court of law has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the movement it holds the opinion that it is without jurisdiction.”

39. Section 13(1) of the *Environment and Land Court Act*, pursuant to the provisions of Article 165(2) (b) of *the Constitution* of Kenya 2010, vests the jurisdiction to hear and determine matters relating to the environment and the use and occupation of, and title to, land on the Environment and Land Court. It is clear to me that the dispute between Amina Sora and Fatuma Hirbo was over ownership of the plot in issue. Amina claimed to be the legal owner while Fatuma claimed that the same belonged to the estate of the deceased.

40. There is no provision in the Kadhi's Court Act giving the Kadhi's court the power to hear disputes related to land ownership. It is the Environment and Land Court that has power to hear and determine disputes related to land ownership. The trial Kadhi therefore erred in proceeding to hear the matter when he had no jurisdiction to do so. He should instead have referred the matter to the Land and Environment court once it was established that the dispute was over land ownership. The two Kadhis who were assessors in this appeal were also of similar view. It is only when the property was determined



to belong to the deceased would the Kadhi's court have jurisdiction to determine the beneficiaries thereof, as opined in the case of *In re Estate of Kinogu Mukiria (Deceased)* (supra). The finding of the Kadhi that Plot No.861 Moyale formed part of the estate of the deceased is therefore set aside.

#### **Other grounds of appeal that the Kadhi did not make pronouncement on**

41. The respondent, Fatuma Hirbo, in her Notice of Motion dated 29<sup>th</sup> April 2021 sought for the court to review its judgment of 31<sup>st</sup> August 2020 by determining her personal contribution to the purchase of the Ongata Rongai plot and her contribution towards the construction of a house on the said plot. However, this was not an issue during the hearing of the main suit before the Kadhi. The respondent could not re-litigate the case by bringing up new issues in the pretext of a review. I find no basis on this ground of appeal.
42. The respondent in paragraph 23 of her affidavit sworn on 28<sup>th</sup> April 2021 sought to have Abdalla Shariff ordered to release to her some documents and furniture that were in his possession. In his reply Abdalla Shariff did not make any mention of the documents but stated that it is the respondent who willingly took the furniture to his home for safe custody and she was free to pick them from his store at her own cost. The trial court did not make any finding on the issue. Since Abdalla Shariff did not deny holding the documents stated by the respondent and he admitted the furniture to be in his custody, I order him to release the documents and furniture as stated in paragraph 23 of the respondent's affidavit sworn on 28<sup>th</sup> April 2021.
43. The respondent further stated that the trial Kadhi failed to determine the amount of money that Abdalla Shariff unlawfully deposited in his personal bank account from June 2019 to July 2020 instead of depositing it in the estate's joint account, which amount he ought to pay the beneficiaries. The respondent stated that a total of Ksh.866,500/= was unaccounted for. I however did not find clear record to prove how this figure was arrived at. That ground of appeal is therefore dismissed.
44. The respondent stated that the trial Kadhi erred in law in failing to determine whether under Islamic law the share of the deceased's estate given to the deceased's father (the late Hussein Shoge Siba) survives the deceased's father considering that he is also deceased. The Kadhi did not make any finding on the issue.
45. The learned Kadhi made a finding that the beneficiaries of the deceased's estate are the respondent, her three children, the deceased's father (now deceased) and the deceased's mother. The Kadhis who sat with me in this appeal were of the opinion that in view of the fact that the deceased's father is now deceased, his share which is one-sixth is to be re-distributed to the two granddaughters, the grand son and his wife (the deceased's mother) but the grandchildren will only inherit what remains after the share of one-quarter of his wife (widow) is deducted. The three children will share for each son two times the share of two daughters.
46. The above mode of distribution is guided by verse 11 of Surah Nisa'a, where Allah says:

“Allah decrees a will for your children; the male gets twice the share of the female. If the heirs are women, more than two, they receive two thirds of the estate. If only one daughter is left, she gets one half. The parents of the deceased are each entitled to one sixth if he has left offspring. If he left no children and his parents are the only heirs, his mother gets one third. If he has siblings, then his mother gets one sixth after the fulfilment of any will the deceased has left and after the payment of all debts. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.”



47. I find the above to be the Islamic law as regards the share of the father to the deceased in this matter. His share will therefore be re-distributed as stated above.

### **Disposition**

The outcome of the appeal is therefore as follows:

1. The court upholds the finding of the trial Kadhi that Amina Sora Gube is not a beneficiary to the estate of the deceased herein.
  2. The court finds that plot No. 861 Moyale does not form part of the estate of the deceased until the issue is resolved by a court of competent jurisdiction.
  3. The court finds that the appointment of Abdalla Shariff Hussein as administrator of the estate of the deceased was conflicted and he is thereby removed as administrator and replaced with Najma Hage Hussein.
  4. There was no evidence that Fatuma Dima Hirbo made any contribution to the purchase and development of the deceased's Ongata Rongai plot.
  5. Abdalla Shariff Hussein is hereby ordered to release the respondent's documents and furniture as particularized in paragraph 23 of the respondent's affidavit sworn on 28<sup>th</sup> April 2021. The same to be complied with within 30 days of the date hereof. The respondent to meet the costs of transporting the furniture.
  6. The share of the deceased's father to be re-distributed to his widow and grandchildren as stated above.
48. Orders accordingly. Each party to bear its own costs to the appeal.

**DELIVERED VIRTUALLY, DATED AND SIGNED AT MALINDI THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**J. N. NJAGI**

**JUDGE**

In the presence of:

Miss Alexandra HB for Mr. Yusuf for Appellant Abdalla Shariff and Amina Sora

Mr. Behailu for the Respondent - Fatuma Hirbo

Court Assistant- Jarso

