



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ismail Osman Adam (Deceased) (Succession Cause
121 of 1991) [2025] KEHC 8339 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 121 OF 1991**

G MUTAI, J

MAY 23, 2025

IN THE MATTER OF THE ESTATE OF ISMAIL OSMAN ADAM (DECEASED)

BETWEEN

NOORBHANU ABDULRAZAK ADMINISTRATOR

AND

**NURBANU ESMAIL OSMAN ALIAS MOHAMED HUSSEIN
ISMAIL ADMINISTRATOR**

RULING

1. In a ruling delivered by this court on 17th October 2023, I ordered as follows in paragraph 30:-

“ 30. In the circumstances, the orders that commend themselves to me are as follows:

1. I order that the deceased’s estate, that is, the 1/6 share in Title No. Mombasa/Block XVII/66, be sold. The applicant shall have the first right to buy the same within 30 days of the date of this ruling. When calculating the purchase price, her share, as determined by the Chief Kadhi, shall be considered;
2. In the event that she is unable or unwilling to buy out her co-beneficiaries, the respondent and or other beneficiaries shall have the right to buy out the applicant’s share at the best possible open market value, within 30 days of the date the applicant was deemed as unable or unwilling to exercise her right to purchase the same; and



3. If the applicant and the respondent cannot exercise their respective rights under orders 1 and 2 above, then 1/6 share of Title No. Mombasa/block XVII/66 shall be sold at the best possible open market value, and the proceeds therefrom distributed to the beneficiaries of the estate of the deceased in accordance with the advice of the Chief Kadhi dated 29th May 2017.”
2. The 2nd administrator/applicant was unable to exercise the said option. On 19 November 2023, she filed an application seeking an extension of time within which to comply. Upon consideration of her application on merit, I ruled as follows in paragraph 16 of my ruling of 8th March 2024:-

“The orders that therefore commend themselves are as follows: -

 1. The Chamber Summons application dated 15th November 2023 is dismissed with no orders as to costs;
 2. Pursuant to paragraph 30(2) of my ruling dated 17th October 2023, the Respondent and or other beneficiaries shall have 30 days from the date hereof to buy out the 2nd Administrator/Applicant. In the event that they fail to do so, the order given in paragraph 30(3) will be enforced.
3. The 1st administrator/respondent exercised the option and deposited the sum due to the 2nd administrator/applicant, per the ratio stated by the Chief Kadhi in the advice he made on 29th May 2017, in court on 4th April 2024.
4. On the 27th day of August 2014, the 2nd administrator/applicant filed the instant application. Vide the said application, he sought the following orders: -
 - a. That this honourable court be pleased to issue summons to all the beneficiaries herein to physically attend court and provide their payment details for the ultimate distribution of the estate;
 - b. That the share of any beneficiary who may fail to honour the summons be declared to have renounced his/her share, and such property be reverted to the estate for re-distribution;
 - c. The property forming the estate herein be sold at its current market price to facilitate smooth and complete distribution of the estate;
 - d. That the costs of this application be provided for; and
 - e. That the court be pleased to issue any further orders in the interest of justice.
5. Her grounds for doing so are that this matter is old and has been pending since 1991. She accused the administrators, presumably including herself, of not taking sufficient steps to administer the estate and wind it down by distributing the beneficiaries' lawful shares. She therefore sought the court's help to bring the matter to a close.
6. The application is opposed. The 1st administrator/respondent filed a replying affidavit, sworn on 23rd October 2024, in which she accused the 2nd administrator/applicant of engaging in mischief. The alleged mischief is that some of the beneficiaries are deceased and would therefore not attend court if summoned. If the shares of the deceased were deemed as renounced, there would be a conflict between the estate of the deceased herein and the estates of the deceased beneficiaries.



7. Although this court gave directions on the filing of the written submissions on 25th April 2025 in the presence of both parties' counsels, neither of them did so.
8. I have considered the application, the response thereto and also the record of the proceedings before this Court.
9. It is a common ground that the only property belonging to the estate is the 1/6 share, Title No. Mombasa /Block XVI/66. Having been bought out, the applicant no longer has a share in the property, and her only duty is to ensure that the administration is concluded.
10. I am, however, unconvinced that the application will bring forth the latter result. I agree with the 1st administrator/respondent that if all the beneficiaries are summoned, and presumed to have renounced their share if they don't attend court, there may well be a perverse result, as the beneficiaries of the deceased beneficiaries of this estate may be disinherited.
11. In my view, the application, though well-intended, is misguided. It is not at all clear whether the other beneficiaries want to have the property distributed as proposed by the 2nd administrator/applicant. In any case, having relinquished her share, the applicant may not claim to speak on behalf of the other beneficiaries, other than in her rump role as the administrator. In the circumstances, I dismiss the application with no orders as to costs.
12. Orders accordingly.

DATED AND SIGNED IN MOMBASA THIS 23RD DAY OF MAY 2025. DELIVERED THROUGH MICROSOFT TEAMS.

Gregory Mutai

JUDGE

In the presence of: -

Ms Iman, for the Respondent;

No appearance for the Applicant; and

Arthur – Court Assistant.

