



**In re Estate of bakari Keya Juma Akhonya (Deceased) (Succession Appeal E020 of 2023) [2025] KEHC 13000 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION APPEAL E020 OF 2023**

**AC BETT, J**

**SEPTEMBER 22, 2025**

**IN THE MATTER OF THE ESTATE OF BAKARI KEYA JUMA AKHONYA (DECEASED)**

**BETWEEN**

**ABDUL BAKARI JUMA ..... APPELLANT**

**AND**

**IBRAHIM LARRY BAKARI ..... RESPONDENT**

**RULING**

1. The Appellant filed an appeal dated 16<sup>th</sup> December 2023 in which he challenged the orders of distribution made by the Senior Resident Kadhi on 9<sup>th</sup> November 2023.
2. As I commenced the writing of the Judgement, I established that the Record of Appeal is incomplete as Minutes of the meetings held by the deceased family as they deliberated on the issue of distribution of the estate were excluded from the Record. Another crucial piece of evidence, which is in the form of a recording by the deceased in which he identified his assets and heirs was never transcribed although it was produced in the trial court. More importantly, it came to light that pursuant to Section 65 of the *Civil Procedure Act*, the court ought to engage the Chief Kadhi or two other Kadhis to sit as assessors in order to guide the court. Section 65 provides as follows:-

“(1)Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—

- a. ...
- b. ...
- c. from a decree or part of a decree of a Kadhi’s Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.”



3. In the case of *Zainab Mohammed Haji & 4 others v. Khadija Mohammed Ali & 3 Others* [2023] KECA 1120 (KLR) the Court of Appeal in emphasizing that the word “shall” in the Section 65 of the *Civil Procedure Act* should be construed as mandatory rather than permissive held as follows:-

“It was imperative that the first appellate court sits with the Chief Kadhi or two other Kadhis as assessor or assessors at the hearing of the appeal as mandated by section 65 of the Act. That statutory requirement is not permissive but compulsory.”

4. Being guided by the above decision and the law, I find that the fixing of the appeal for judgement to have been premature. I therefore review and set aside the order fixing the appeal for judgement and substitute therefore the following orders and directions:-
- i. The Appellant shall within 30 days file a Supplementary Record of Appeal to include all the Minutes of family meetings, a transcript of the recording and copies of the titles that were produced before the trial court.
  - ii. The Deputy Registrar shall write a letter requesting that the Chief Kadhi do assign two Kadhis to attend this court as assessors during hearing of the appeal or to attend court in person.
  - iii. The matter shall be mentioned for further directions on 5/11/2025.

5. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Mr. Mbetera holding brief for Ms. Andia for the Appellant

No appearance for the Respondent

Court Assistant: Polycap

