

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

SUCCESSION CAUSE NO. 17 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE ABDULLAHI AHMED ADOW (DECEASED)

AND

IN THE MATTER OF THE APPLICATION BY: ZEINAB ABDULLAHI MOHAMMED

RULING

1. Before me is a summons for confirmation of Letters of Administration Intestate issued by this court to the Public Trustee in the estate of the late Abdullahi Ahmed Adow on 26th February 2018.
2. In the application for confirmation of Letters of Administration, it is requested that distribution of assets be in accordance with Islamic Law of Inheritance and Succession. In oral submissions in court however, I Mr. Miyogo the Assistant Public Trustee stated that he had received a letter from the Hon. Kadhi of Mandera that the share of the minor children be deposited in the bank account of their mother, the widow Zeinab Adullahi Mohammed. I have seen a copy of the said letter dated 3rd May 2018, which was handed over to the court by the Assistant Public Trustee in the course of his submissions.
3. I decline to go by the contents of the letter for two reasons. The first, reason is that, court proceedings are not conducted by way of letters, but by way of pleadings filed and orders made in court. The Kadhi's Court not having conducted proceedings and made orders in the matter cannot and should not have issued the letter.
4. Secondly, once the Kadhi's Court made its order on 16th May 2017 regarding the distribution of the assets herein, the Kadhi's Court became *functus officio* or had no further powers to vary those orders unless the law allowed it to do so. I have not been referred to any law which allowed the Kadhi to vary its earlier orders, and in any event the same widow will have access to the money share of the minor children for necessities, if and when need arises, and there exist procedures and rules for that process.
5. I thus confirm the grant of Letters of Administration herein, and order that the distribution of the assets will be under Islamic Law of Succession and Inheritance, as determined by the Kadhi's Court in the Kadhi's Court order made on 16th May, 2017.

Certificate of confirmed grant to issue.

Dated and delivered at Garissa this 11th day of October, 2018.

.....

George Dulu

JUDGE