



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE NO. 467 OF 2013**

IN THE MATTER OF THE ESTATE OF FATUMA HASSAN (DECEASED)

ZOG'LLLO ZOLLEYN also known as ALI SAID AHMED.....PETITIONER

AND

ABDALLA SAID AHMED.....RESPONDENT

**RULING**

By way of this application dated 17<sup>th</sup> December, 2013 the applicant sought *inter alia* the following orders

**“3. THAT the administration and distribution of the estate of FATUMA HASSAN (Deceased) be administered and distributed as per the valid will of the deceased dated 23<sup>rd</sup> April, 2001 and that this case be determined according to the procedure and rules of probate.**

**4. THAT the costs of this application be paid out of the estate.”**

It is conceded by both parties that probate proceedings regarding the estate of the deceased **Fatuma Hassan** are already in progress before the Kadhi's Court. It is further conceded by both parties that the deceased was a Muslim. The applicant through his advocate Ms. Ndetto also confirms that they do not challenge the jurisdiction of the Kadhi's Court in this matter. That being the case in line with Article 170(5) of the Constitution I find that the matter is properly before the Kadhi's Court. If as the applicant alleges the deceased left a valid written will then said will may be presented before the Kadhi Court for proof. The fact that there may exist a written will does not of necessity remove this matter from the Kadhi's Court. The matter ought to proceed on the first instance before the Kadhi and only if any party is dissatisfied with the manner of probate in the Kadhi's Court, then the matter may move upon appeal to the High Court. I find no merit in the present application and hereby dismiss the same with costs to the respondent.

**Dated and delivered in Mombasa this 9<sup>th</sup> day of June, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

No Appearance by either party.