



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT 55 OF 2011**

IN THE MATTER OF: THE WAKF OF SAID BIN RASHID EL-MANDHRI

**-AND-**

IN THE MATTER OF: PLOT NO. 82 SECTION II M.N C.R. NO. 1304

**-AND-**

IN THE MATTER OF: AN APPLICATION FOR DISSOLUTION OF THE WAKF

**-BETWEEN-**

**1. ALI SAID MOHAMED**  
**2. SOUD SAID**  
**MOHAMED.....APPLICANTS**

**-VERSUS-**

**WAKF**  
**COMMISSIONERS.....RESPONDENTS**

**JUDGMENT**

The applicants Ali Said Mohamed and Soud Said Mohamed seek that the Wakf of Said Bin Rashid El-Mandhri (deceased) be declared as null and void and be dissolved. The applicants as directed by the court by its ruling of 10<sup>th</sup> August, 2011 joined Wakfcommissioners in this action as respondents. On being served with the originating summons the Wakf commissioners of Kenya by their letter dated 31<sup>st</sup> January, 2012 indicated that they do not object to the dissolution of the Wakf in this proceedings. The background of the Wakf is set out in the affidavit of Ali Said Mohamed dated 17<sup>th</sup> March, 2011. In that affidavit he stated:

***“ 1. That SOUD SAID MOHAMED and I are the Administrators of the Estate of NASSIR BIN SAID***

**RASHID was the registered proprietor of all that piece or parcel of land known as Plot No. 82 Section II M.N. (Annexed hereto is a copy of the Title Deed marked ASM 1).**

**2. That on 6<sup>th</sup> June 1924, the Late Nassir Bin Said Rashid pursuant to the wishes of the late SAID BIN RASHID EL MANDHRI consecrated the said property as a Wakf for the benefit of SAID, ABDULLA AND SALIMA the children of Mohamed Bin Ali Bin Rashid (Deceased). (Annexed hereto is a copy of the Wakf Deed marked ASM 2).**

**3. That the property is located at Kisauni and is all leased out to ground tenants paying a monthly rent of Ksh. 300/= per month.**

**4. That the ground tenants have constructed permanent and semi-permanent structures and considering the rent being received and the expenditure on the property the returns are not economical.**

**5. That the beneficiaries of the Wakf have therefore agreed to sub-divide the plot and sell the sub divisions to the ground tenants. The proceeds of sale shall be used to buy another property which shall be maintained as a Wakf.**

**6. That I am further informed by my Advocates which information I verily believe to be true that the Wakf Deed as drawn is a nullity as it does not confer any benefit to the poor.**

**7. That currently the Wakf has the following beneficiaries:-**

- (a) AMRIYAH SAID MOHAMED**
- (b) ZEINAB SAID MOHAMED**
- (c) JOKHA SAID MOHAMED**
- (d) SALIM SAID MOHAMED**
- (e) RASHID MOHAMED RASHID**
- (f) ROHILU MOHAMED RASHID**
- (g) SAADIYE MOHAMED RASHID**
- (h) ATHIYA MOHAMED RASHID**
- (i) ABDILLAHI MOHAMED ABDILLAHI**
- (j) FATMA ABDILLAHI MOHAMED**
- (k) NASSIR ABDILLAHI MOHAMED**
- (l) SALMA SAID MOHAMED**
- (m) SOUD SAID MOHAMED**
- (n) ALI SAID MOHAMED**

**8. That we have consulted all the beneficiaries who have no objection to the said Wakf to be dissolved.”**

The argument of the applicants are that the Wakf is a nullity on the grounds that it failed to provide for the ultimate gift to the poor or any other purpose recognized by Muslim law as being religious, pious and charitable. Section 4(1) (ii) of the Wakf Commissioners Act Cap 109 sets out what should be the ultimate benefit of a Wakf to render it valid. That section provides as follows:

**“4. (1) Every Wakf heretofore or hereafter made by any muslim which is made, either wholly or partly, for any of he following purposes –**

.....

**(ii) the ultimate benefit in the property the subject of the Wakf is expressly, or, in any case in which the personal law of the person making the Wakf so permits, impliedly, reserved for the poor or for any other purpose recognized by Muslim law as a religious, pious or charitable purpose of a permanent character.”**

In the case **ABDULLA BIN SAID BIN HASSAN –V- HALIMA BINTI SAID**[1957] E. A. 688 the Supreme Court of Kenya sitting in Mombasa dissolved a Wakf where it did not provide a gift in favour of the poor. The court in discussing the provisions of section 4(1)(ii) of Cap 109 stated thus:

***“.....this court is not entitled to hold that the use of the word ‘Wakf’ in itself gives rise to an implied ultimate gift in favour of the poor”.***

The Wakf in this matter was created on 7<sup>th</sup> June, 1924. It was created by Nassir Bin Said Bin Rashid (deceased). The instrument that created the Wakf provided as follows:

***“whereas Said bin Rashid El-Mandry who died on the twenty sixth day of November one thousand nine hundred and twenty one during his life time expressed a desire to make a Wakf under the Sheria in favour of Said, Abdulla and Salima the children of Mohamed bin Ali bin Rashid deceased, Mwana Baraka bintiHemed bin Abdulla, Rizikibinti Mohamed bin Said and Salimabinti Nassir bin Said in manner hereinafter prescribed and whereas I Nassir bin Said was granted Letters of Administration by the Supreme Court of Kenya in the estate of the said Said Bin Rashid deceased NOW I Nassir bin Said being registered as proprietor as representative of Said bin Rashid El-Mandry deceased of alo that piece or parcel of land containing eight point nine two acres or thereabouts being plot No. 82 Section II situate at N.E of Port Tudor in the district of Mombasa more particularly delineated and described on a plan No. 14012 attached to Certificate of Ownership No. 2501 and registered at the Mombasa Coast Registry as No. C.R.1304/1 in consideration of the premises do hereby transfer to Said, Abdulla and Salima the children of Mohamed bin Ali bin Rashid deceased, Mwana Baraka bintiHemed bin Abdulla, Rizikibinti Mohamed bin Said and Salimbinti, Nassir bin Said as tenants in common as a Wakf under the sheria for the benefit of themselves and their descendants all the right title and interest of the said deceased Said bin Rashid El-Mandry in the said piece of land which is valued at Shillings four thousands.***

***IN WITNESS WHEREOF I have hereunto subscribed my name this sixth day of June one thousand nine hundred and twenty four***

***Signed in the presence of:-  
Sd. P.E. Wolfee***

***Sd. Nassir bin Said bin Rashid”***

The Wakf as it can be seen fails to comply with the provisions of section 4(1) (ii) of Cap 109. It should also be noted that the Wakf commissioners of Kenya wrote a letter dated 31<sup>st</sup> January 2012 where they indicated that they did not object to the dissolution of the Wakf in this proceedings. It is for that reason that I grant the following orders:

***1. I hereby declare the Wakf of Said Bin Rashid El- Mandhri as null and void and the said Wakf is hereby dissolved.***

***2. I order that the plot No. 82 section II MN be distributed in accordance with the Islamic law of successions among the following beneficiaries:***

***(a) AMRIYAH SAID MOHAMED***

***(b) ZEINAB SAID MOHAMED***

***(c) JOKHA SAID MOHAMED***

***(d) SALIM SAID MOHAMED***

***(e) RASHID MOHAMED RASHID***

***(f) ROHILU MOHAMED RASHID***

***(g) SAADIYE MOHAMED RASHID***

***(h) ATHIYA MOHAMED RASHID***

***(i) ABDILLAHI MOHAMED ABDILLAHI***

***(j) FATMA ABDILLAHI MOHAMED***

***(k) NASSIR ABDILLAHI MOHAMED***

***(l) SALMA SAID MOHAMED***

***(m) SOUD SAID MOHAMED***

***(n) ALI SAID MOHAMED***

***3. There shall be no orders as to cost.***

**DATED and DELIVERED at MOMBASA this 5<sup>th</sup> day of July, 2012.**

***Mary Kasango***

**JUDGE**