



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 842 OF 2012**  
**IN THE MATTER OF THE ESTATE OF THE LATE TIMIRO**  
**ABDI ELMI ADAD (DECEASED)**

**ISMAIL MOHAMED ..... 1<sup>ST</sup>**  
**ADMINISTRATOR/APPLICANT**

**HASSAN OMAR AHMED ..... 2<sup>ND</sup>**  
**ADMINISTRATOR/APPLICANT**

**VERSES**

**ALI AHMED ABDULLAHI ..... 1<sup>ST</sup>**  
**OBJECTOR**

**YUSUF MEIN ..... 2<sup>ND</sup>**  
**OBJECTOR**

**JUDGEMENT**

1. The Applicants herein were granted letters of administration dated 19<sup>th</sup> February 2013 jointly with the late Asha Elmi.
2. The Objectors through their application dated 4<sup>th</sup> December 2020 objected and asked the court to revoke the grant on various grounds including the death of the 1<sup>st</sup>

Administrator. The court, Mutuku J, on 22<sup>nd</sup> November 2021 denied them the orders.

3. What remains therefore for consideration is the application for confirmation of grant dated **20<sup>th</sup> February 2015** in which they sought the aforesaid grant to be confirmed.
4. The same is supported by a joint affidavit by the Administrators dated the same day. There are also annexures based on some proceedings before the Kadhis court dated 26<sup>th</sup> May 2014.
5. The Objectors have opposed the same by an affidavit of protest sworn by Yusuf Mein dated 23<sup>rd</sup> February 2023 in which among others he has deponed that the application for the confirmation of grant is defective since it has not taken into account some other beneficiaries of the estate.
6. That the rest of the beneficiaries have no confidence in the way the estate was being managed by the administrators and that in their family meeting they had appointed them to be enjoined as administrators.
7. The 1<sup>st</sup> Administrator Ismail Mohamed in his replying affidavit dated 15<sup>th</sup> June 2023 opposed the affidavit of protest stating that there was no evidence of any family meeting in which they had discussed his ouster.
8. That there was no evidence that the estate was to be distributed equally but as per the Islamic law. Further that what was contained in the decision of the Kadhi was for

purposes only of getting guidance on the mode of distribution and that there was no substantive petition before the Kadhi.

9. He went on to state that as found by Mutuku J there was no vacuum in the administration of the estate to warrant adding the applicants.

### **Analysis and determination.**

10. The court has perused the pleadings herein, the history of the matter as well as the parties rival written submissions on record. For want of time I need not reproduce them here.
11. The issues before me are clear simple and straightforward. There is no doubt in the first instance that all the parties herein are beneficiaries to the estate and if I am correct, they are all grandchildren to the deceased. The late Asha Elmi was the deceased surviving daughter.
12. Secondly and as clearly found by my sister Mutuku J there is no vacuum in the administration of the estate. The two remaining Administrators are able to perform their roles.
13. Thirdly and as submitted by the Applicants there is no basis for confirming the grant using the findings by the Kadhi attached to the affidavit in support of the application. There were no directives from this court.

14. This was nonetheless admitted by the Administrators, namely, that it was for getting pure guidance under the Islamic law on distribution.
15. Having stated these facts, I do not see any reason why the grant cannot be confirmed. As a matter of fact, the Administrator has deponed that those persons in whom the Applicants claim were not added as beneficiaries were already on board and they will be taken care of during distribution.
16. In view of the fact that the deceased was a Muslim and died a Muslim, the mode of distribution consequently will be done in line with the Mohamedan laws. The best suited court for now is the Kadhis court. The administrators were right in seeking the Kadhis perspective only that they put the cart before the horse.
17. All the beneficiaries including the Objectors shall present themselves before the honorable Kadhi where they will agitate their rights in line with Sharia law and thereafter once the Kadhi makes his decision the same shall be brought back before this court for final sealing.
18. I do not see any loss or prejudice that any of the parties stand to suffer. They all have equal opportunity before the Honorable Kadhi and should there be any legal *laguna* then this court is clothed with constitutional authority to intervene if moved.
19. All that I find disturbing is the manner this cause has unnecessarily taken time and toll on the parties' courtesy of various applications. The estate must be brought to

closure. I am certain that there are silent majority who wish to see this least of all this court.

**20. For the above reasons and so as to stop any further shenanigans in the estate I direct that:-**

- (a) This matter is hereby referred to the Honorable Kadhi Milimani Court Family Division for distribution of the deceased estate herein as proposed by the Applicants in the application dated 20<sup>th</sup> February 2015.**
- (b) The Honorable Kadhi shall not rely on the earlier ruling or decision dated 26<sup>th</sup> May 2014 as the same had no sanction from this court.**
- (c) All the beneficiaries shall be at liberty to present themselves before the Honorable Kadhi on the date and time demanded without fail.**
- (d) The above exercise shall be undertaken within sixty (60) days from the date herein.**
- (e) Pending the determination by the Honorable Kadhi no other application shall be filed without the leave of this court.**
- (f) Costs in the cause.**

**Dated signed and delivered at Nairobi via video link**

**this**

**9<sup>th</sup> day of October 2025.**

**H K CHEMITEI  
JUDGE**