



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mohamed Ali Dida (Deceased) (Succession Cause
E001 of 2025) [2025] KEMC 188 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEMC 188 (KLR)

**REPUBLIC OF KENYA
IN THE MOYALE LAW COURTS
SUCCESSION CAUSE E001 OF 2025
A GALGALO, PK
JANUARY 27, 2025
IN THE MATTER OF THE ESTATE OF LATE MOHAMED ALI DIDA
(DECEASED)**

IN THE MATTER OF

ALIW ALI DIDA APPLICANT

JUDGMENT

1. The Applicant herein petition this court for distribution land to the beneficiaries according to Islamic law.
2. The deceased herein died On 6th December 2013 at Goromuda location of Moyale. He left behind a widow, three sons and one daughter. He had twenty-seven plots within Moyale in two different locations, 21 plots at Goromuda and six plots at Hellu location. The beneficiaries have agreed to that the applicant to pursue this matter on behalf of their deceased father and administer distribution of the estate [land] in accordance with Islamic law of inheritance.
3. The applicant is a brother to the deceased who assumed the role of the deceased's father in the upbringing of the children of the deceased and taking care of these plots up to this time. The adults' beneficiaries herein entered consent on the applicant to represent their deceased's father in pursuing this matter and obtaining mode of distribution of the estate. This appointment has been made voluntarily and in agreement by the beneficiaries. Therefore, this court also find the applicant as the best person to administer the estate of the deceased for the purpose of this representation and ensure fair distribution of the estate to the beneficiaries as per Islamic law of inheritance.
4. The said plots were not registered with any land authorities at the county level nor at the national level to anyone but as the knowledge of the family, community around and the chief's office there are no disputes so far as at the time of determination of the matter, on its ownership.



5. The issue of distribution of unregistered plots belongs to the deceased herein, falls under section 32 of the [Law of Succession Act](#) Cap 160 of the laws of Kenya. Section 32 of LSA on category of excluded property from intestate rules application in regard to agricultural land, crops and livestock in certain counties, among them Marsabit County. Further section 33 provides that the law applicable on such categories of properties is the law or custom applicable to the deceased's community or tribe.
6. The subject land is in Moyale within Marsabit County, since the land is unregistered the applicable law of transmission of the said land should therefore be according to the law or customary of the deceased's community or tribe. The deceased herein professes Islamic religion and belongs to Gabra community resides within Moyale Subcounty.
7. In the case of *Adan Chuda Sode v Madina Oshe Jira & others* [2021] eKLR, the Hon. J N Njagi, J stated, "There is no vacuum in law in dealing with transmission of unregistered land. Section 32 of the [Law of Succession Act](#) excludes the application of the rules of intestacy in relation to agricultural land, crops and livestock in certain counties named in the said section that includes Marsabit County. Section 33 provides that the law applicable to the distribution on intestacy of the categories of property specified in section 32 is the law or custom applicable to the deceased's community or tribe as the case may be. The subject land is in Marsabit county. Since the land is unregistered the applicable law of transmission is the customary law of the deceased. The transmission of the subject land should therefore be dealt with in accordance with the customary law of the deceased's community."
8. Customary law is based on a pattern or behaviour that is accepted as legal by the community. It is a normative order that can change and develop over time, and can be subject to other legal systems, such as religious law, international law, and state legal systems.
9. Since the deceased was a Muslim at the time of death, and the beneficiaries herein are Muslims and willingly embarrassed application law of inheritance to apply in the distribution of the estate instead of their customary practices which were known to be not favourable to women and girl child in such cases of distribution of estate. Because, as known in the past to the said Gabra community like other communities within the subcounty, where women and girls' children were not inheriting their father's estate, in the event that the widows especially when she is remarried outside the deceased's family, and for the case of girls if they are married. Therefore, their customary law in these cases is not favourable to the interest of justice and the said estate land is subject to Islamic law.
10. Another issue is on whether the said beneficiaries are all entitled to the estate and whether there will be other beneficiaries who were not captured herein. At the hearing of the application, it was not in disputes that the deceased had not left behind his two parents at the time of his demise, they have already passed on long before, and they agreed that the deceased had married another wife whom later she was divorced by the deceased before his demise. No claims of unsettled dowry raised during the process of hearing application. This claim is also attested to by two adult children of the divorced wife who confirmed to the court that their mother had already been divorced by their deceased's father, thus she will not be entitled to any part of the estate as further even her dowry was settled.
11. On mode of distribution of the estate, the deceased had one widow [Habiba Sharamo Chana], three sons [Mohamud Mohamed Alia, Mohamednoor Mohamed Ali, H.M.A.] and one daughter [M.M.A.]. H.M.A. and M.M.A. are minor children their shares will be held in trust under the care of the applicant. On the mode of distribution, the widow will inherit one-eighth [$\frac{1}{8}$] of the whole estate equivalent to 12.5% of the whole estate; each son and daughter will inherit from what remains after the share of the widow is inherited. The daughter will inherit half the share of the son, if the remaining shares are seven-eighth [$\frac{7}{8}$], equivalent to 87.5% of the whole estate, the share for the daughter is 12.5%, but each son inherits 25% of the estate.



12. Based on these modes of distribution, the said plots are in two different locations and thus their value and sizes have been measured and valued locally by the agreement, this has been done to get fair and equal distribution as per the Islamic law of inheritance. The family and the beneficiaries have agreed on measurement of the plots and valuation with the assistance of the surveyor and brought reports to the court on time for the purpose of distribution and transmission.
13. After distribution three plots left unassigned, shall be determined by the family on what to do with remaining plots.

Orders:

14. I have analyzed all the evidences and make determination as follows:
 - a. That the applicant is hereby appointed administrator on the estate of the deceased herein.
 - b. That the deceased left behind a widow, three sons and one daughter, namely: Habiba Sharamo [widow], Mohamud Mohamed Ali [son], Mohamednoor Mohamed Ali [son], H.M.A. [son] and M.M.A. [daughter].
 - c. That the shares for two minors shall remain with applicant held in trust with him as their care taker until such other time changes may arise.
 - d. That the mode of distribution is the Islamic law of inheritance and should reflect as follows

S/N	Names of the beneficiaries	Relation & Share in %	Value [KSHS]	Location & No. of plots
1.	Mohamud Mohamed Ali	Son – 25 %	4,200,000	4 plots Hellu, 1 plot Goromuda
2.	Mohamednoor Mohamed Ali	Son – 25 %	4,200,000	4 plots Arosa 1 plot Hellu 1 plot Goromuda
3.	H.M.A.	Son – 25 %	4,200,000	7 plots Arosa 1 plot Hellu
4.	M.M.A.	Daughter 12.5 %	2,275,000	5 plots Arosa
5.	Habiba Sharamo Chana	Widow 12.5 %	2,275,000	1 plot Goromuda with matrimonial home 1 plot Arosa
			16,250,000	



- e. That the administrator [the applicant] shall ensure transition and registration of the plots under the names of the assigned heirs through land registration process.
- f. That the residue plots [2] of Arosa, may be shared among other relatives with the approval of legal beneficiaries as the verse of Quran 4 : 8, "And when [other] relatives and orphans and the needy are present at the [time of] division, then provide for them [something] out of the estate and speak to them words of appropriate kindness."

JUDGMENT DELIVERED AND SIGNED AT MOYALE ON THIS 27TH DAY OF JANUARY 2025.

BY GALGALO ADAN PRINCIPAL KADHI

In the presence of the applicant Mr Aliow Ali Dida

The beneficiaries and other family members present are:

Habiba Sharamo Chana – widow

Mohamud Mohamed Ali – Son [Adult]

Mohamednoor Mohamed Ali – Son [adult]

Isack Mamo Dida – deceased brother

Abdullah Adano Dida – deceased brother

