



In re Estate of the Late Yaslam Ahmed Omar (Succession Cause E057 of 2021) [2025] KEKC 11 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEKC 11 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE E057 OF 2021
IA HUSSEIN, PK
FEBRUARY 28, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE YASLAM AHMED OM
AR**

BETWEEN

**ALI YASLAM AHMED LUKMAN ALIAS ALI ISLAM AHMED (THROUGH HIS
LAWFUL ATTORNEY AHMED ALI ISLAM AHMED) PETITIONER**

AND

HASSAN ISLAM AHMED RESPONDENT

RULING

1. The matter came up for hearing yesterday, the 27th day of February, 2025, following the filing by the Petitioner of "Proposals for Distribution of the Estate" dated 20th February, 2025.

Background

2. This Honourable Court delivered judgement in this matter on 21st October, 2021, wherein it confirmed the estate of the deceased and the legal heirs.
3. The Court determined the estate consisted of the subsequent properties:
 - a. House No.L297 on Plot Number 105, Section XI.
 - b. House No. L741 on Plot Number 105 Section XI
 - c. House No. L750 on Plot Number 105, Section XI.
 - d. A residential house located in the Workers neighbourhood of Mukalla, in the unit of Galeb bin Rajeh, Yemen.



4. In the said judgement, this Court held at page 9 that: "Consequently, I am moved to declare that the Will made by the deceased is sinful, unjust and contradicts the Islamic Law but since the said Will was executed, some of the heirs had died and consequently their shares devolved to their heirs, I cannot revoke it."
5. The Petitioner has now filed proposals for distribution of the estate in line with the said judgement, seeking to put the matter to rest.

Petitioner's Proposals

5. The Petitioner proposes the following distribution: House No. L297 on Plot Number 105 Section XI to be retained by Khadija Islam Ahmed and Mina Islam Ahmed as bequeathed; House No. L741 on Plot Number 105 Section XI to continue being with Mina Islam Ahmed and the Respondent, with the Petitioner waiving his rights to the Respondent; House No. L750 on Plot Number 105 Section XI to be given to the Petitioner, with the Respondent waiving his rights; The residential house in Yemen to be distributed to all heirs using Yemen authorities; Beneficiaries currently occupying or in charge of any premises (shops) to provide accounts of funds collected from the estate; Compensation to be provided if any beneficiary has received more or less than their due share.

Analysis and Determination

6. I have thoroughly examined the previous judgment of this Court and the proposals now submitted by the Petitioner. This Court finds itself in a unique position which necessitates deeper analysis.
7. It is fitting at this juncture to comment on the previous judgment. Whilst this Court is *functus officio* regarding the judgment delivered on 21st October, 2021, I deem it necessary to address a concerning aspect of that decision. The learned Kadhi rightly concluded that the will of the deceased was "sinful, unjust and contradicts Islamic Law", yet refrained from revoking it.
8. This approach is fundamentally problematic. When a court of competent jurisdiction declares an instrument to be invalid in law, the logical consequence should be to revoke such an instrument. The act of acknowledging illegality while simultaneously allowing it to stand defeats the very essence of petitioner seeking justice in our courts.
9. If something is found to be contrary to the law, it must be so declared, and the court's actions must reflect this declaration. The problematic sections of the will should have been revoked. The effect of not revoking a will found to be contrary to Islamic law amounts to upholding it, which contradicts the court's own finding.
10. Courts are mandated to interpret the law as given by the lawgiver, not to legislate. The action of sanitising illegality, regardless of practical considerations, is foreign to the proper function of judicial authority.
11. However, despite these observations, I am bound by the final determination made in the judgment of 21st October, 2021. The principle of *res judicata* prevents me from revisiting or altering that decision.
12. Turning to the proposals before me, I note that they largely maintain the distribution as set out in the will which, while declared problematic, was nevertheless upheld by the previous judgment.
13. The proposals appear to be a pragmatic attempt to resolve the matter amicably, with parties waiving certain rights to avoid further contention.



Orders

14. In view of the foregoing, and in the interests of finality and family harmony, I hereby order as follows:

- a. The distribution proposal submitted by the Petitioner is hereby approved as follows:
 - i. House No. L297 on Plot Number 105 Section XI shall remain with Khadija Islam Ahmed and Mina Islam Ahmed as per the will.
 - ii. House No. L741 on Plot Number 105 Section XI shall remain with Mina Islam Ahmed and the Respondent, with the Petitioner's share waived in favour of the Respondent.
 - iii. House No. L750 on Plot Number 105 Section XI shall be assigned to the Petitioner, with the Respondent's share waived in favour of the Petitioner.
 - iv. The residential property in Yemen shall be distributed to all heirs in accordance with Islamic law, through the relevant authorities in Yemen.
- b. All beneficiaries currently occupying or in charge of any premises shall, within 60 days from the date of this ruling, provide full accounts of all funds collected from the estate from the date of death of the deceased to date.
- c. Upon receipt of the accounts ordered in (b) above, this Court shall determine if any compensation is required from beneficiaries who may have received more than their due share.

14. Each party shall bear their own costs.

These are the orders of this Court.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28TH DAY OF FEBRUARY, 2025.

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AJ ISHAQ

DEPUTY REGISTRAR/PRINCIPAL KADHI

Mr. Nelson - Court Assistant

H.A. Mwadzogo Advocates for the Petitioner

