



**In re Estate of the Late Make Salehe (Deceased) (Succession Cause E068 of 2025) [2025] KEKC 15 (KLR) (17 April 2025) (Judgment)**

Neutral citation: [2025] KEKC 15 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
SUCCESSION CAUSE E068 OF 2025**

**AH ATHMAN, CK**

**APRIL 17, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE MAKE SALEHE...(DECEASED)**

**IN THE MATTER OF**

**ABDULGHAFUR HEMED SWALEH BUSAIDY ..... PETITIONER**

**JUDGMENT**

1. The petitioner prays for determination of estate and legal heirs of the deceased and distribution of estate to heirs according to Islamic law and to be declared administrator/ Trustee of the estate of the deceased herein.
2. The petitioner deposed that the deceased is survived by great grandchildren and left a parcel of land portion No. 600 Kilifi district at Mambui.
3. The late Make Salehe died in 1910 at Mombasa.
4. The matter is not contested.
5. The issues for determination in this matter are:
  - i. What constitutes the estate of the deceased herein
  - ii. The legal heirs, their respective shares
6. The jurisdiction of this court in succession matters of estates of deceased Muslims is conferred by the Constitution of Kenya [2010] Article 170 [5], Section 5 of the Kadhi's court Act, Cap 11, and Sections 2 (3) and 48 [2] of the Laws of Succession Act, cap 160.
7. Constitution of Kenya [2010], Article 170 (5) provides:

The jurisdiction of a Kadhis' court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.



8. Section 2 (3) of the *Laws of Succession Act* Cap 160 provides:  
'Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law'.
9. Section 48(2) of the *Laws of Succession Act*, Cap 160 provide:  
For the avoidance of doubt, it is hereby declared that the Kadhi's court shall continue to have and exercise jurisdiction in relation to the estates of a deceased Muslim for the determination of inheritance in accordance with Muslim law and any other question arising under this Act in relation to such estates.
10. Upon consideration of the petition, depositions and annexures thereto and upon hearing the petitioner and all the heirs; the estate, heirs and their respective shares are as herein.
11. The parcel of land Portion No. 600 measuring 1.376 acres in Kilifi District at Mambrui constitute the estate of the late Make Salehe.
12. The land originally belonged to Swaleh bin Hemed who was survived by the following, now all deceased:
  - i. Mohamed bin Swaleh son
  - ii. Suleiman bin Swaleh son
  - iii. Hemed bin Swaleh son
  - iv. Make Salehe mother
13. Make Salehe entitled to 1/6 (16.66%) of the estate was survived by only one child Ali bin Amman, which devolved entirely to him as her sole and only heir. However, Ali Amman and the other heirs by consent had agreed that since he had protected the land from grabbing by squatters, they should share it equally. The estate therefore vested in the primary heirs in equal ¼ (25%) shares.
14. The late Mohamed bin Swaleh was survived by only one son, Swaleh bin Mohamed bin Swaleh who was survived by only one daughter Khadija bint Swaleh bin Mohamed. She was entitled to one-half of her father's (1/2 of 25%) share i.e 12.5% of the estate. The remaining 12.5% devolved to Hemed Bin Swaleh and thereafter to his children, Suleiman bin Hemed bin Swaleh having predeceased him. Hemed bin Swaleh was survived by three (3) widows, twenty-one (21) children, ten (10) sons and eleven (11) daughters. They are:
  - i. Swaleh bin Hemed bin Swaleh son
  - ii. Abdulghafur bin Hemed bin Swaleh son
  - iii. Abdulrahman bin Hemed bin Swaleh son
  - iv. Jaid bin Hemed bin Swaleh son
  - v. Seif bin Hemed bin Swaleh son
  - vi. Qassim Hemed Swaleh son
  - vii. Abdallah Hemed Swaleh son
  - viii. Ali Hemed Swaleh son
  - ix. Hafidh Hemed Swaleh son



- x. Mohamed Hemed Swaleh son
  - xi. Aisha Hemed Swaleh daughter
  - xii. Asia Hemed Swaleh daughter
  - xiii. Sheikha Hemed Swaleh daughter
  - xiv. Khola Hemed Swaleh daughter
  - xv. Ruqiya Hemed Swaleh daughter
  - xvi. Saada Hemed Swaleh daughter
  - xvii. Halima Hemed Swaleh daughter
  - xviii. Hamida Hemed Swaleh daughter
  - xix. Aziza Hemed Swaleh daughter
  - xx. Swalha Hemed Swaleh daughter
  - xxi. Twalha Hemed Swaleh daughter
  - xxii. Salma bint Athman widow
  - xxiii. Zeinab bint Ismail widow
  - xxiv. Maryam bint Ali widow
15. Suleiman bin Swaleh was survived by one daughter, Khadija bint Suleiman bin Swaleh. She is entitled to one-half of her father's share (1/2 of 25%) 12.5%. The other half devolve to the five children of Hemed bin Swaleh.
16. Khadija bint Suleiman bin Swaleh is now deceased. Her 12.5% share of the estate devolve to her legal heirs. Her legal heirs and their respective shares are:
- i. Said Bin Masoud son 3.57%
  - ii. Fatma bint Masoud daughter 1.79%
  - iii. Hemed bin Masoud son 3.57%
  - iv. Mohamed bin Masoud son 3.57%
17. Hemed bin Swaleh is entitled to 25% plus 25%; 12.5% share remainder from each of the shares of Mohamed bin Swaleh and Suleiman bin Swaleh who were survived by a daughter each who under Islamic law of inheritance are entitled to a maximum of 50 % of their father's estate under Q.4.11. Hemed bin Swaleh was survived by twenty-four (24) heirs; three (3) widows, ten (10) sons and (11) daughters. They are entitled to 50% of the estate in shares as follows:
- The share of widows = 6.2496%
- The share of each widow = 2.085%
- The share of each daughter = 1.41%
- The share of each son = 2.8235%
- The share of the deceased heir devolves to their respective heirs, the son getting twice the share of the female.



18. The 25% of Ali bin Amman devolve to his legal heirs as follows:
- i. Ali bin Abdulrahman bin Ali son 10%
  - ii. Swaleh bin Abdulrahman bin Ali son 10%
  - iii. Sa'da bint Abdulrahman bin Ali daughter 5%
19. The estate devolves to heirs in the shares indicated hereinabove.
20. Abdulghafur bin Hemed bin Swaleh is hereby appointed Trustee / administrator of the estate of Make Salehe.
21. The Land Registrar – Kilifi to effect transmission of the estate to Abdulghafur bin Hemed as Trustee / administrator of the estate of Make Salehe accordingly.
- Orders accordingly.

**DATED AND DELIVERED AT MOMBASA ON 17<sup>TH</sup> APRIL, 2025**

**HON. ABDULHALIM H. ATHMAN**

**CHIEF KADHI**

In the presence of

Mr. Salim Kerrow, Court assistant

Petitioner.

