



**In re Estate of Abdulaziz Ahmed (Deceased) (Succession Cause
2 of 2015) [2025] KEKC 18 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEKC 18 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT NAKURU
SUCCESSION CAUSE 2 OF 2015
IN NYABOGA, SRK
MAY 15, 2025
IN THE MATTER OF THE ESTATE OF ABDULAZIZ AHMED (DECEASED)**

BETWEEN

FEISAL ABDULAZIZ AHMED APPLICANT

AND

FAIZ ABDULAZIZ AHMED 1ST CONTEMNOR

**SAMBURU COUNTY CHIEF OFFICER LANDS AND PHYSICAL
PLANNING 2ND CONTEMNOR**

RULING

1. Under articles 47, 48, 50 (1) and 159 of *the Constitution* of Kenya, 2010, Order 45 of the Civil Procedure Rules, Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of Law, the applicant herein, shortly before this Court delivered a ruling on contempt on 20th February 2025 arising from an application filed by the respondent/applicant against the first and second contemnor herein, the now applicant/first contemnor, filed an application for review of the Judgment and decree of this Honorable Court delivered on 29th June 2015 and 30th May 2016 respectively in which he sought inter alia for orders:
 - a. That this Honorable Court be pleased to stay the execution of the ruling delivered on 20th February 2025 pending the hearing and determination of this application.
 - b. That this Honorable Court be pleased to issue an order of stay of execution of the Decree dated 30th May 2016 pending the hearing and determination of this application.
 - c. That this Honorable Court be pleased to review and/or vary its judgment dated 29th June 2015 and its subsequent decree dated 30th May 2016 in respect to the properties that form part of the estate of the deceased.



- d. That the decree issued herein on 30th May 2016 be reviewed and/or varied to specify the manner in which the estate of the deceased is to be distributed in line with the realities of the beneficiaries' living conditions and ensure a balanced distribution of assets.
 - e. That the alleged rental income awarded to the respondent be reviewed and/or varied in accordance with Islamic inheritance principles, taking into account the context of the unique circumstances of each beneficiary over the past 25 years, from their father's demise.
 - f. That this Honorable Court be pleased to review and/or vary the decree issued herein taking into account the beneficiaries' individual needs, financial contribution, educational pursuits and other relevant factors over the past 25 years.
 - g. That this Honorable Court be pleased to order a fresh valuation of the deceased's estate and/or the rental income of the properties therein.
2. The grounds of the application as outlined are as follows:
- a. That the decree issued on 30th May 2016 as it stands, creates an unfair distribution of assets, necessitating a review to ensure equity and fairness.
 - b. That the decree in issue has not clearly related the percentages awarded to each beneficiary to the properties that form part of the estate of the deceased.
 - c. That the alleged rental income awarded to the respondent fails to take into account the expenses of the estate such as the beneficiaries' school fees, medical expenses, revenue fees and other basic needs as well as general upkeep of the family for the past 25 years.
 - d. That the decree issued herein erroneously computes the rental income collected from the time of demise of the deceased, to be approximately Kenya Shillings Twelve Million, Two Hundred and Four Thousand (12,204, 000) which fact is inaccurate as the occupancy of the properties was not constant.
 - e. That the sale of that piece of land Title No. SUGUTA MARMAR 'A'/X was irregular and amounts to intermeddling of the deceased estate by the late Abdallah Abdulaziz and the 1st respondent herein and should be deducted from the shares of the parties to that sale.
 - f. That the list of properties that form part of the estate of the deceased is inaccurate as it includes land whose ownership is vested on other individuals.
 - g. That this Honorable Court has not properly shown, by documentary evidence or otherwise, how and what factors it considered in arriving at the figure of Kenya Shilling Twelve Million, Two Hundred and Four Thousand (Kshs. 12,204,000).
 - h. That the decree extracted by this honorable Court, being an expression of the Judgment entered on 29th June 2015, is against the principles of natural justice and fails to serve the purpose it is intended.
 - i. That it is in the interest of justice that this Honorable Court reviews and/or varies the decree issued on 30th May, 2016 to fit the circumstances and to omit properties that do not materially form part of the estate of the deceased.
 - j. That Maralal Loikas No. 1X4 is said to form part of the deceased's estate but is registered to ZALFA LAUMWA, one of the beneficiaries herein.



- k. That the 1st respondent is transferring to himself and selling the properties awarded to him by the decree herein, which action will cause irreparable loss to the beneficiaries of this estate.
 - l. And lastly that this Honorable Court is duty bound to ensure the fair distribution of this estate in a manner that does not infringe upon the rights of the beneficiaries.
3. The application is supported by an affidavit dated 19th February 2025 and sworn by the applicant himself.
 4. The matter was certified urgent on 25th February and was fixed for mentioned on 13th March 2025 in which the Honorable Court directed that the matter be canvassed by way of written submissions and thus, parties to file the same by the 30th March 2025 in which they complied.
 5. The respondent/applicant filed a replying affidavit dated 12th March 2025 contending that the applicant/first contemnor is not intending to effect the decree of this Honorable Court which is dated 30th May 2016 deriving from its judgment entered on 29th June 2025 and upheld upon appeal vide the ruling serialized as NAKURU SUCCESSION APPEAL No. 1 of 2018 filed by the applicant on 10th July 2018.
 6. The respondent/applicant prayed that the applicant's /contemnor application not to be allowed.

Analysis And Determination.

7. In light of the application, replying affidavit and submissions by the parties, I find that the following are going to be the questions for determination in this ruling:
 - a. Legal Errors and misinterpretations in the judgment and decree of this Honorable Court dated 29th June 2015 and 30th May 2016 respectively.
 - b. Fairness and justification of the Kshs. 12,204,000 rental incomes.
 - c. Irregularity in the sale of piece of land title No. SUGUTA MARMAR 'A'/X.
 - d. Inaccuracy in list of properties forming the estate of the deceased.
 - e. Ownership of Land No. 1X4 at Maralal Loikas.
 - f. Whether the Court can grant stay of execution of its ruling dated 20th February 2025, the decree dated 30th May 2016 and issue temporary injunction against the respondent/applicant to cease any sale and transfer and sale of the suit properties.
8. First, the applicant/first contemnor alleges that the judgment dated 29th June 2015 did not consider accurately the properties that form the estate of the deceased. He states somewhere else that Land No. 1X4 at Maralal Loikas was owned by one Zulfa Laumwa even before the demise of the deceased. There was no documentary evidence filed to show ownership of this property by either party.
9. The respondent/applicant refuted the above applicant's claim and referred the Court to his annexed copy of evidence (FAA1) which was among the applicant's pleadings in Principal Magistrate Court at Maralal, SUCCESSION CAUSE No. E010 of 2021, a succession cause filed secretly by the applicant/first contemnor over the same estate. In this succession cause, the applicant/contemnor had included land No. 1X4 at Maralal Loikas to be among properties left behind by the deceased.
10. Assuming that there is a dispute over ownership of land in a succession matter before a kadhi's court, the court will not have jurisdiction to entertain the matter as that jurisdiction is exclusively conferred



to the Environment and Land Court (ELC) by the Section 13 of the *Environment and Land Court Act* No.19 of 2011 and Section 150 of the *Act No. 6 of 2012*.

11. The applicant/first contemnor in his submission alleges that the judgment and its decree awarded the respondent/applicant Five (5) out the Six (6) assets recognized by the Court to form part of the estate as well as an additional Kenya Shillings Two Million, Six Hundred and Forty Thousand, Seven Hundred and Forty-Four and Eighty Cents (Kshs. 2,640,744.80) which he has been condemned to pay.
12. In analyzing the judgment and its decree therein after, I find that the Honorable Court did not award anyone any of the actual properties forming the estate of the deceased and instead, the Court distributed the percentage of shares each beneficiary is supposed to get from the estate in according to the Islamic principles of succession which I do agree with. For the additional amount of money in Kenyan Shillings, the Court followed the same principle. The Court, as indicated in the decree, calculated the total amount collected as rent from the time of the demise of the deceased until then, which is supposed to be Kenyan Shillings, 57,000 and not 56,500 per month has found which is Kenyan Shillings, 684,000 and not 678,000 per year multiplied from the time of the demise of the deceased which was 18 years and which comes to Kenyan Shillings, 12,312,000 and not 12,204,000 which the Court distributed among the beneficiaries in according to Islamic Law. After the wife of the deceased is awarded an eighth (1/8) of that total amount which should be Kenyan Shillings, 1,539,000 which is 12.5% of the total amount. The remaining 10,773,000 is divided amongst the children whereby a male is awarded twice the shares of a female. I find that one female should be awarded Kenyan Shillings, 718,200 while each male should be awarded Kenyan Shillings, 1,436,400 and not Kenyan Shillings, 2,640,744.80.
13. To put that into clarity, we have also to cite the authorities relied upon by the Court.
 - a. “Allah prescribes upon you in respect to your children’s inheritance that a male deserves a portion equal to that of two females...” and “... if there are brothers and sisters, the male will have twice the shares of a female...” Qur’an 4: 11 and 176 respectively.
 - b. “... Their share (wives) is a fourth if you leave behind no child; but if you leave behind a child, they get an eighth of that which you left behind (after death) ...” Qur’an 4:12.
14. There is nowhere either in the judgment nor the decree where there is a mention that a particular beneficiary was awarded a particular property forming the estate of the deceased and instead, all beneficiaries were awarded percentages of their shares from the total estate of the deceased.
15. The applicant/first contemnor has further alleged that the rent collected during that period could not be that much and furthermore, the same was used for maintenance of the family including the respondent/applicant, the estate, educational expenses for the children of the deceased etc. He submits that her mother did not consider keeping the records of income and expenditure and thus they cannot know exactly how much was collected and spent. The applicant/first contemnor has failed to even estimate what might have been collected and spent but he has asked for a setting aside of the question on rental income.
16. Since it seems that there is no dispute that there was rent collected, at least the applicant/first contemnor should have estimated the amount collected and the expenses incurred during that period to enable the Honorable Court do a review and comparison with the instant one so that it can understand and find out if there is a possibility to vary it since he acknowledges that the rental income was not always steady.
17. The applicant/first contemnor further alleges that the respondent/applicant and his deceased brother sold a piece of land title No. SUGUTA MARMAR ‘A’/X which formed part of the estate of the



- deceased and thus had intermeddled with the estate and therefore, the proceeds from the sale should be deducted from the shares of the respondent/applicant and his deceased brother. In support of the above, the applicant/contemnor attached a copy of a sale agreement (FAA-1).
18. It is evident vide the sale agreement that part of land title No. SUGUTA MARMAR 'A'/X was sold a year after the demise of the deceased herein and long before the succession cause was filed before this Court. Several people including the parties' deceased brother, who according to the agreement was a representative of the estate of the deceased then, are mentioned to have been involved in the sale. Furthermore, the agreement shows that the shares of the deceased from the sale of that part of land were to be paid to the estate of the deceased via its representative, the late brother to the parties herein. The applicant/first contemnor alleges that the proceeds from the sale were shared by the respondent/applicant together with the deceased brother while the respondent/applicant in his replying affidavit has contended that the proceeds were used by the family of the deceased. The respondent/applicant is not mentioned in the agreement. I find that this issue was not raised by either party then and thus was not addressed in the judgment nor the decree and I don't understand why it is now being raised in this application when in fact the parties were privy to this property.
 19. On whether the Court should stay its ruling dated 20th February, the decree dated 30th May 2016 and grant an injunction against the respondent/applicant, the applicant/contemnor submitted that the beneficiaries stand to suffer irreparable loss if the Court fails to grant the same.
 20. The respondent/applicant has refuted the applicant/contemnor's application in totality on grounds inter alia that the applicant/contemnor had responded to Nakuru Kadhi's Court Succession Cause NO. 2 OF 2015, participated in the proceeding and at no point of time did he raise a preliminary objection or file a notice of a notice of preliminary objection. He argues that the application fails to meet the minimum requirements for stay and review.
 21. The respondent/applicant invoked several provisions of law and case laws in respect to applications for stay and review and among that, the case of *James Wangalwa Another V Agnes Naliaka Cheseto 2012KEHC1094(KLR)* in paragraph 11, F. Gikonyo, J held that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal.”
 22. From the above position and similar others held by the courts, the law has established that in stay of execution applications, the applicant in any circumstances must prove that the execution will probably cause substantial loss, that is the cornerstone. The applicant/first contemnor has just averred but failed to substantiate that.
 23. After my analyzing of the application, replying affidavits, closing submissions, and laws relied upon by the parties, I conclude that the application fails in that the judgment of this Court dated June 29, 2015 and its decree dated June 30, 2016 did not err in law and the application be and is hereby dismissed with no cost.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF MAY 2025.

IDRIS N. NYABOGA



SENIOR RESIDENT KADHI

