



**In re Estate of Hajir Maalim Ibrahim (Succession Cause
E091 of 2023) [2025] KEKC 27 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEKC 27 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT GARISSA
SUCCESSION CAUSE E091 OF 2023
AD WAKO, PK
JULY 28, 2025**

IN THE MATTER OF THE ESTATE OF: - HAJIR MAALIM IBRAHIM DECEASED.

BETWEEN

IBRAHIM HAJIR MAALIM PETITIONER

AND

AMINA HAJIR MAALIM 1ST RESPONDENT

AHMED HAJIR MAALIM 2ND RESPONDENT

JUDGMENT

In the Name of Allah, the Most Gracious, the Most Merciful.

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.” Surat An-Nisā’ 4:58

1. This court is tasked with the solemn responsibility of distributing the estate of the late Hajir Maalim Ibrahim, a Muslim male who passed away on 10th October 2002 in Garissa, in accordance with the sacred principles of Islamic law of succession (fara'id), as well as the applicable legal framework provided under the *Kadhis' Courts Act, the Constitution* of Kenya (Article 170(5)), and, where not in conflict with Shariah, the *Law of Succession Act*.
2. This cause was filed on 7th December 2023 by the petitioner, Ibrahim Hajir Maalim, a biological son of the deceased. He has sought distribution of the remaining estate to the rightful heirs.
3. The respondents, Amina Hajir Maalim (1st Respondent) and Ahmed Hajir Maalim (2nd Respondent), are also children of the deceased and have entered appearances and testified.



4. .It is not in dispute that the deceased was survived by nine children (6 males and 3 females and one widow at the time of his death. A pre-trial conference held on 7th February 2024 confirmed that only six children were alive as of that date. At the time of hearing, only five children (four males and one female) remain alive. The widow later passed away in May 2023.
5. .It is also uncontested that the only remaining estate under dispute is a residential plot located in Garissa, known as Plot No. GSA/B674 – Bula Punda, valued at Ksh. 9,300,000 as per the professional valuation conducted by Fortune Realtors Ltd and filed in court on 28th November 2024.

Petitioner's Case

6. .The petitioner, Ibrahim Hajir Maalim, testified under oath on 14th May 2025, confirming that he is a biological son of the deceased, a Muslim adult of sound mind. He stated that his father passed away on 10th October 2002, leaving behind nine children and a widow. However, as of today, only five of the children are alive - four males and one female.
7. The petitioner testified that the only remaining asset forming part of the deceased's estate is the residential plot in Garissa. He acknowledged that the plot has been occupied by his sister, the 1st Respondent, and their brother, Ali Hajir Maalim, since the death of their mother.
8. .He informed the court that the plot is residential in nature, and requested the honorable court to determine the shares of the heirs in accordance with Islamic law.
9. He further noted that two of their deceased siblings left children, the late Ismail Hajir Maalim was survived by two children (one male, one female) and the late Saadia Hajir Maalim was survived by three children (two males, one female). The remaining two siblings died childless. There was no cross-examination from the respondents, and the petitioner's testimony remained uncontroverted on record.

Respondents' Case (1st Respondent – Amina Hajir Maalim)

10. The 1st Respondent, an adult female of sound mind, filed a replying affidavit dated 15th January 2024 and later testified in open court. She agreed that the deceased left behind nine children and a widow. She confirmed that all beneficiaries received their respective shares from a previous plot in Wajir, which had been sold by mutual consent.
11. .She emphasized that the plot in Garissa is the only property left, and she does not claim ownership but considers it family property. She stated that the 2nd Respondent held the plot in trust for all beneficiaries. She has been residing in the property with her brother Ali Hajir Maalim since the passing of their mother.
12. Significantly, she claimed to have invested over Ksh. 4.7 million in improving the property, including construction of a perimeter wall, toilets, bathrooms, verandas, and an additional structure. She produced numerous receipts, although many were unverifiable. Nonetheless, no objection was raised by any of the other heirs against her occupation or improvements.
13. .She expressed her unwillingness to sell the plot, stating it has been the only home she has known since the death of their parents. Instead, she is willing to compensate the other heirs by paying them their rightful shares in accordance with Islamic Shariah.
14. She noted that some of her brothers own plots of their own and do not depend on this property for shelter, strengthening her argument for retention.



2nd Respondent – Ahmed Hajir Maalim

15. .The 2nd Respondent confirmed that the plot was registered in the name of their late father and that he has merely been acting as a custodian of the property on behalf of all beneficiaries. He confirmed the family composition and acknowledged that only five siblings remain alive.
16. .He supported the 1st Respondent's view that the plot should be treated as family property and distributed in accordance with Islamic law.
17. Issues for Determination is Who are the rightful heirs of the deceased and their shares? Are the children of the deceased children (i.e. grandchildren) entitled to inherit? Does the 1st Respondent's investment affect the distribution of the estate? Is the petitioner entitled to compel the sale of the property or to claim his share?

Legal and Shari'ah Analysis

18. Heirs and Shares Under Islamic Law, The Qur'an sets out fixed shares of inheritance in Surat An-Nisā' 4:11–12: "This is relevant provision is found in the Holy Qur'an which provides that: "Allah commands you regarding your children: for the male, a share equal to that of two females..."
19. Accordingly, in a situation where the heirs consist only of sons and daughters, the estate is to be divided such that each male receives twice the share of a female.
20. Calculation and Distribution, the total number of distributable shares is calculated by assigning each male two (2) shares and each female one (1) share. Thus: 6 sons × 2 shares = 12 shares, 3 daughters × 1 share = 3 shares and Total shares = 15, This distribution is in conformity with both Qur'anic command and the consensus (ijma) of Islamic scholars.
21. Therefore, the 4 children of the deceased who died later are entitled to their respective shares, and these must now be passed on to Their own children (if any), or Be distributed among their own heirs (if they died without children).
22. Inheritance by Grandchildren in Islam (Awlad al-Awlad), Under classical Sunni Islamic law, grandchildren do not inherit directly from their grandfather if their parent (the deceased's child) is alive, as closer heirs block more distant ones.
23. .However, if the parent is deceased, and there are no living male children (or where equity is necessary), some schools of Islamic jurisprudence — especially the Maliki and contemporary Hanafi positions in statutory frameworks — allow for grandchildren to inherit through the doctrine of Tawsiyah bil fardh (obligatory bequest).
24. But under strict classical Shariah, and especially in Kenyan Kadhi Courts following Sunni practice (majority Hanafi/Shafi'i), grandchildren do not inherit unless their parent was entitled to a share and died after the main deceased. In this case, that applies. "Let those who would leave behind weak offspring be concerned..." (Surah An-Nisa 4:9)
25. .Therefore The two children of the late Ismail and the three children of the late Saadia, will inherit their respective parent's share (as their parents had already secured their rights by being a live at the time of their grandfather's death).
26. .The other two deceased children left no heirs, so their shares will revert to the remaining heirs under the principle of Radd (return of residue).



On the 1st Respondent's Investment

27. .Although the 1st Respondent claimed to have invested Ksh. 4.7 million in the development of the property, she did not produce conclusive evidence that this was done with the prior consent of the other heirs. Moreover, Islamic inheritance law ('ilm al-farā'id) recognizes that: "The estate of the deceased belongs to all heirs collectively and none has the right to dispose of it unilaterally without the consent of the rest." *Fiqh al-Mu'āmalāt al-Māliyya* (Islamic Financial Transactions), Investment in Undivided Estate
26. If an heir develops a part of the estate without prior consent of the other heirs, such action is treated under the doctrine of "Tasarruf fi Mā Lā Yamlik" (disposition over what one does not solely own) But tempered by "Istihsān" (juristic preference) and Maslahah (public interest) if the act benefits the estate.
27. .Thus this court with its own discretion allows partial compensation, especially when the improvements increased the estate's value. However, full recovery of self-claimed costs is not guaranteed unless proven to be reasonable, necessary, and with benefit to all heirs.
28. . I am on the opinion that "An heir who invests or occupies part of the estate before distribution does so at their own risk and must account for rent, profits, and provide reasonable evidence of their expenditure."
29. .Similarly "One cannot use expenditure to assert proprietary rights over undivided estate. Equity and fairness dictate compensation be based on utility, necessity, and approval."
30. .Thus this Court finds that the Ksh. 4.7 million claimed is disproportionate, constituting 50.5% of the entire estate's value. While the receipts are noted, the Court is not bound to accept them at face value.
31. .The 1st Respondent has been in exclusive occupation and use of the land since demised of their parents, benefitting from the estate at the exclusion of the rest.
32. .No formal agreement or consent from the other heirs exists authorizing the developments or occupancy. The developments such as fencing and sanitation are basic improvements that may be considered beneficial to the entire estate, but not luxuries warranting full reimbursement.
33. .The Court rejects the full claim of Ksh. 4.7 million for lack of proportionality and absence of prior consent by co-heirs, The Court finds that a reasonable compensation of Ksh. 2 000 000/= is fair and equitable for the structural improvements, based on market estimates and the nature of the works.
34. The remaining Ksh. 2.7 million is treated as personal benefit or voluntary investment, not recoverable from the estate.
35. The 1st respondent is not entitled to preferential treatment or larger share in the estate as a result of these investments. "He who uses another's property without permission and builds on it, the building belongs to the landowner, unless otherwise agreed." Ibn Qudamah, *Al-Mughni*
36. .However, her willingness to compensate the other heirs in exchange for retaining the plot aligns with the principle of Sulh (amicable settlement), which is encouraged in Islam.

Right to Demand Sale vs Compensation

37. The petitioner seeks either sale of the plot or payment of his share. In Islamic law, an undivided property may be sold if co-owners are unable to agree. However, where one heir expresses readiness to compensate others fairly, this is permissible and even preferable to avoid family discord.



38. In this case, the 1st Respondent's proposal to pay off the other heirs should be honored, provided payment is made within a reasonable time.

6. Final Determination and Orders

39. Having considered the facts, testimony, applicable Shari'ah principles and Kenyan law:

- a) The residential Plot No. GSA/B674, located in Bula Punda – Garissa, forms part of the estate of the late Hajir Maalim Ibrahim. The property was initially valued at Ksh 9,300,000. However, prior to distribution, a sum of Ksh 2,000 000/= shall be deducted from the estate value as partial compensation for the expenditure incurred by the 1st Respondent.
- b) That the estate of the deceased after the deduction valued at Ksh 7,300,000 be divided into 15 equal shares of Ksh 486,666.67/= each.
- c) That each son receives Ksh 973,333.33/= (13.33%) and each daughter receives Ksh486,666.67/=(6.67%)
- d) That the shares of the deceased children shall vest in their estates and be distributed to their heirs in accordance with Islamic law, Specifically, the children of Late Ismail and Late Saadia shall benefit from their respective parents' shares as dictated.
- e) The 1st Respondent, Amina Hajir Maalim, is granted the first right of refusal (retain the plot) to pay the other heirs their shares based on the valuation.
- f) The 1st Respondent is given ninety (90) days from the date of this judgment to settle all shares due.
- g) Each party shall bear their own costs.

Give the shares to those who are entitled to them, and what remains goes to the closest male relative.”
Prophet Muhammad # (Sahih Muslim)

The court concludes by reminding all parties that inheritance is a divine obligation and not subject to personal preference or delay.

It is so ordered.

DATED AND DELIVERED 28TH DAY OF JULY, 2025.

HON. A. D. WAKO

PRINCIPAL KADHI.

