



**In re Estate of Ali Hirey Abdi (Deceased) (Succession Cause
2 of 2018) [2025] KEKC 28 (KLR) (25 August 2025) (Judgment)**

Neutral citation: [2025] KEKC 28 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT GARISSA
SUCCESSION CAUSE 2 OF 2018
AD WAKO, PK
AUGUST 25, 2025
IN THE MATTER OF THE ESTATE OF ALI HIREY ABDI (DECEASED)**

BETWEEN

MAHBUB ALI HIREY PETITIONER

AND

MOHAMED ALI HIREY RESPONDENT

JUDGMENT

INtroduction

1. This case arises from the estate of the late Ali Hirey Abdi (hereinafter “the deceased”), who passed away on 31st February 2009. May Allah have mercy upon him and grant him Jannatul Firdaws. The deceased was survived by a widow, Halima Abdullahi, and ten children – five sons and five daughters – namely: Mohamud Ali, Omar Ali, Duale Ali, Mahbub Ali, Mohamed Ali, Zeinab Ali, Abdia Ali, Habiba Ali, Muhubo Ali, and Hawa Ali.
2. The estate under contention principally comprises Plot No. 1522B, Garissa Ndogo, Galbet Ward, Garissa, which contains nine rental units. Each unit is rented at Kshs. 3,000 per month. Since the demise of the deceased, the respondent, Mohamed Ali Hirey, has taken exclusive possession and control of the plot, enjoying all the rental income and excluding the other heirs.
3. The petitioner filed this matter on 12/01/2018 seeking distribution of the estate according to the rules of Islamic succession (fara'id). Interim orders were issued by Hon. Mohamed Hassan, then Principal Kadhi, on 11/04/2018, directing that the estate be sold and the proceeds distributed per Shariah. However, the respondent resisted compliance. The matter has remained in court corridors for over seven years.
4. The issue before this Court is whether the estate should be distributed among the heirs in accordance with Shariah, or whether the respondent may continue to occupy and benefit exclusively.



Procedural History

5. On 12/01/2018, the petitioner filed the present matter seeking orders for distribution. On 24/01/2018, service of summons was effected upon the respondent by licensed process server, John Kabugi.
6. On 11/04/2018, Hon. Mohamed Hassan ordered, with the consent of several heirs, that the estate be sold and proceeds shared according to Islamic law. On 09/08/2018, warrants were issued to enforce the order through the OCS Garissa Police Station, but execution was resisted by the respondent.
7. On 17/07/2023, the matter came before this Court Testimony was heard afresh from the petitioner and other beneficiaries. On 25/08/2023, the Court ordered valuation of the estate. A valuation report was filed estimating the property at approximately Kshs. 5.5 million.
8. On 18/01/2024, the petitioner filed a further application seeking enforcement, alleging obstruction by the respondent, including scaring away potential buyers. On 18/08/2025, the petitioner renewed his request for vacation of the respondent from the estate.
9. On 19/08/2025, the matter proceeded in the absence of the respondent despite due service. The applicant and other heirs testified under oath.

Issues For Determination

10. From the pleadings, evidence, and submissions, the Court frames the following issues:
 1. Who are the lawful heirs (waratha) of the deceased?
 2. Whether Plot No. 1522B forms part of the estate of the deceased?
 3. Whether the respondent is entitled to exclusive occupation and benefit of the estate?
 4. Whether the estate should be sold and the proceeds distributed according to Islamic law?
 5. What orders should this Court issue to bring this matter to a final conclusion?

The Petitioner's Case

11. The petitioner, Mahbub Ali Hirey, testified that: - The deceased left behind Plot 1522B with nine rental units. - Since 2009, the respondent has solely collected rent and occupied the property. The family has agreed (nine out of ten siblings and the widow) that the property should be sold and proceeds distributed. Despite court orders, the respondent has obstructed the sale and continues to frustrate implementation. The petitioner prays that the court enforce the sale and distribution under Shariah.
12. Supporting testimony was given by Duale Ali and Mohamud Ali, both confirming that most heirs consented to sale, and that the respondent alone resisted distribution. Mohamud Ali testified as the eldest son that the family has suffered prolonged disputes and urged the court to bring the matter to a close.

The Respondent's Case

13. The respondent, Mohamed Ali Hirey, testified earlier that: - He acknowledges the heirs as 10 children and a widow. He has been residing in the property with his children since 2015. He objects to sale of the suit property He stated that his siblings are independent and he alone has maintained the property. On later hearings, he absented himself despite service, thus the matter proceeded ex parte.



Legal Framework

14. The Qur'an is explicit on inheritance distribution: Surah An-Nisa 4:11 – "Allah commands you regarding your children: to the male a portion equal to that of two females..." This verse lays down the foundation of inheritance: sons receive double the share of daughters.
15. Surah An-Nisa 4:12 – "And for them (the wives) is one-eighth if you leave behind children..." The widow is entitled to one-eighth share in this case, since the deceased left children.
15. Surah An-Nisa 4:33 – "For everyone, We have appointed heirs to what parents and close relatives leave..." This verse emphasizes that heirs are divinely appointed, not subject to arbitrary exclusion.

Narrated Ibn Abbas: The Prophet # said: "Give the shares to those who are entitled to them, and whatever remains goes to the closest male heir." (Bukhari & Muslim). This hadith confirms distribution must follow Allah's apportioned shares.
15. The Prophet (PBUH) said in his Farewell Sermon: "Fear Allah concerning women and the weak." (Abu Dawud). It is unjust to deny daughters or widows their rightful inheritance.
15. Hanafi: An heir occupying estate property without consent of others is considered ghasib (usurper) and liable to restitution. Maliki: Delay or obstruction of inheritance distribution is sinful and may warrant judicial intervention.
15. Shafi'i: Distribution is obligatory; a single heir cannot block implementation (Al-Umm, Imam Shafi'i). Hanbali: A judge may order sale of indivisible estate and distribution of proceeds.
16. Section 45 of the *Law of Succession Act* (Cap 160, Laws of Kenya) prohibits intermeddling with estate property without authority of law. Courts have consistently held that no heir may appropriate estate property exclusively. (See *Re Estate of Mohamed Salim Mohamed* [2019] eKLR).

Analysis

15. Issue 1: Lawful Heirs. From evidence, the deceased was survived by ten children and a widow. All parties agree on this. The heirs are: Mohamud, Omar, Duale, Mahbub, Mohamed, Zeinab, Abdia, Habiba, Muhubo, Hawa, and widow Halima. Under Shariah, they are the lawful heirs.
16. Issue 2: Estate Property. Plot 1522B was left by the deceased, and is undisputedly part of the estate. The respondent has no legal basis to treat it as personal property.
17. Issue 3: Respondent's Exclusive Occupation. Islamic law prohibits one heir from usurping estate property to the exclusion of others. The Prophet # said: "Whoever wrongfully takes the property of a Muslim, Allah will make him swallow a piece of Hellfire." (Muslim). The respondent's occupation amounts to wrongful withholding.
18. Issue 4: Sale and Distribution. The majority of heirs have consented to sale. Jurists agree that if property is indivisible and common benefit is hindered, the judge may order sale and distribution. This prevents injustice and fulfils Qur'an 4:11–12.
19. Issue 5: Final Orders. Given the prolonged history, failure of earlier orders, and respondent's defiance, this Court must bring closure by enforcing distribution.



Determination And Conclusion

15. This estate matter has lingered since 2018. Justice delayed is justice denied. The Qur'an (4:135) commands: "O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, or your kin..." It is therefore the duty of this Court to enforce distribution in accordance with Allah's law, to ensure justice for all heirs and to end prolonged family wrangles.
16. Having considered the pleadings, testimonies, Qur'anic injunctions, Hadith, scholarly opinions, and Kenyan law, the Court finds:
 1. The lawful heirs of the deceased are his widow and ten children named above.
 2. Plot 1522B is part of the estate of the deceased.
 3. The respondent has unlawfully occupied and enjoyed proceeds of the estate to the exclusion of other heirs.
 4. The estate must be sold, and proceeds distributed according to Islamic law.

Orders

15. Accordingly, this Court issues the following orders:
 1. The respondent, Mohamed Ali Hirey, is hereby ordered to vacate Plot 1522B within 30 days.
 2. Upon failure, eviction shall be enforced by the Court Bailiff with assistance of the OCS Garissa Police Station.
 3. The estate property, Plot 1522B, shall be sold by the beneficiaries within 90 days. The Proceeds shall be distributed as follows under Shariah: Widow (Halima Abdullahi): 1/8 share and Balance to be divided among the children: each son receiving double the share of each daughter (Qur'an 4:11).
 4. Three administrators are appointed from among the heirs: Mahbub Ali Hirey, Omar Ali Hirey and Duale Ali to oversee sale and distribution.
 5. The respondent shall account for past rental income from 2009 to 2025, to be determined in separate proceedings.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT GARISSA THIS 25TH DAY OF AUGUST 2025.

HON.A.D.WAKO

PRINCIPAL KADHI

