



**In re Estate of Afya Awadh Ahmed alias Afya Awadh Bin Ahmed Bin Awadh Tarmam
(Deceased) (Succession Cause E258 of 2022) [2024] KEKC 6 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEKC 6 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE E258 OF 2022**

AH ATHMAN, CK

MAY 2, 2024

**IN THE MATTER OF THE ESTATE OF AFYA AWADH AHMED ALIAS
AFYA AWADH BIN AHMED BIN AWADH TARMAM (DECEASED)**

BETWEEN

**AHMED MOH'D ABDALLA 1ST PETITIONER
SALIM MOHAMED ABDALLA 2ND PETITIONER
ESHE KHAMISI 3RD PETITIONER
FARIDA HAMISI 4TH PETITIONER**

AND

**AWADH MOHAMED ABDALLA 1ST RESPONDENT
WARDA HAMISI 2ND RESPONDENT**

JUDGMENT

1. In this succession petition filed on 8th September, 2022 the petitioner deposed that the deceased left two properties, one in Majengo and one in Likoni in Mombasa within the Republic of Kenya and was survived by six adult children, three (3) sons and three (3) daughters. They claim the respondents have failed to distribute the estate, use it for their own benefit and have disinherited them from the estate.
2. They pray for determination of the shares of each beneficiary and distribution of the estate to the legal heirs in accordance to Islamic law. They further prayed for the order for the respondents to account for monies received on account of the estate properties.
3. In reply the first respondent filed statement of defense dated 28th September, 2022. He averred that the petitioners neglected their deceased mother at the time of her sickness prior to her death and that their mother did not trust them and had instructed him not to leave the properties to them. He



further deposed that the Likoni property is not part of the estate as it was built by funds from the 2nd respondent. He further claimed that all proceeds of the properties have used for payment of ground rents and renovations of the properties. He however, stated at para 10 of the defense statement that ‘the respondents are not opposing distribution but the same will only be done after honoring what the deceased instructed.’

4. The late Afya Awadh Ahmed alias Afia Awadh bin Ahmed bin Awadh Tarmam died at Al Farooq Hospital, Mombasa on 15th January, 2022 aged (79) years.
5. The matter was first referred for ADR by Sheikh Hammad Kassim Mazrui, retired Chief Kadhi. Mediation failed. At pre-trial, by consent the following issues were not disputed:
 - i. The legal heirs
 - ii. That property known as Mombasa /Block XV/525 belongs to the estate
6. The only dispute remaining for determination is whether or not the Likoni property known as Mombasa / Likoni / 6238 belongs to the estate.
7. The petitioner’s argued the Likoni property belonged to the deceased who had registered in four of the children’s names because there is a limit on the number names that can be registered. It is their evidence that the deceased had bought the property from proceeds of sale of her Vanga farm.
8. The 1st respondent claimed the Likoni property is registered in her name, that the deceased registered it in his (1st respondent’s) name. The 2nd respondent admits the Likoni house was bought by the deceased from one Samuel and Emmanuel Ambelsa but claims she had instructed it be given to the 1st Respondent. She claims to have contributed to its development and protection from grabbers.
9. Muna Salim (RW1), the deceased’s granddaughter was entrusted with title documents by the deceased. She took care of the deceased in her house in her last days. Her evidence is that the deceased instructed that her that the two houses constitute her and that they be distributed under Islamic law and had asked her to write a will but she declined due to the animosity of the children. She averred that ‘she was categorical the Likoni house was hers; and that she had registered four names in the Likoni house but it was for all her surviving children.
10. A letter dated 21st November, 2022 by S.A. Mchombo, County Land Adjudication & settlement officer – Mombasa replying to the Land Registrar stated that according to their records, the parcel No. Mombasa / Likoni/ 6238 was allocated to Awadit Mohamed Abdalla. However, the certificate of lease dated 8th January, 2016 indicate the property is registered under the following names: Awadit Mohamed Abdalla, Ahmed Mott D. Abdalla, Warda Hamisi and Fawda Hamisi. The letter cannot supersede the final entry of the certificate of lease of the property.
11. There is no credible evidence, contrary to respondents’ claims that the Likoni property belonged to the 1st respondent. Indeed, both respondents’ evidence admit that the property belonged to the deceased but claim that she had given it to the first respondent. Further any contribution or assistance to one’s parents in his or her project does not convert ownership of the property to the contributing or assisting child. RW1 evidence is strongest and most credible both on the ownership of the Likoni property and deceased wish and instructions on the same. She took care of her in her last days and trusted her with the title documents. Strictly under Islamic law and based on the strength and credibility of evidence adduced, the Likoni property Mombasa / Likoni / 6238 Belong to the estate of the deceased herein.
12. However, the deceased already commenced transfer process of the property to her children. According to the certificate of lease, four of the six children are registered as proprietors of the property.



The names in the certificate of lease resemble some of those of the legal heirs herein but are not accurate representation as per the national identification cards. There are clear mistakes in the correct registration of the names of the beneficiaries. Based on the evidence adduced in this court, the property belonged to the deceased and should be registered in all the six children of the deceased. We hereby order the County land adjudication & settlement officer – Mombasa to make corrections to the names of the beneficiaries and add the two other beneficiaries as joint proprietors of the property known as Mombasa / Likoni / 6238.

13. The estate of the deceased herein consists of:
 - i. Property known as Mombasa /Block XV/ 525
 - ii. Property known as Mombasa / Likoni / 6238
14. The legal heirs of the deceased and their respective shares under Islamic law are:
 - i. Ahmed Moh'd Abdalla son 22.22%
 - ii. Salim Mohamed Abdalla son 22.22%
 - iii. Awadh Mohamed Abdalla son 22.22%
 - iv. Eshe Khamisi daughter 11.11%
 - v. Farida Hamisi daughter 11.11%
 - vi. Warda Hamisi daughter 11.11%

Distribution

15. None of the heir(s) is able to buy the properties. They all agree for the sale of the property and distribution of proceeds thereof. The 1st respondent lives in two rooms of the Majengo property. From date of this judgment he shall pay rent of the said rooms or same shall be deducted from his share in the proceeds of sale of the property. The 2nd respondent's son who lives in the Likoni estate property, shall also pay for rent of the room(s) he lives in the Likoni property from date of this judgment.
16. The Majengo property be valued and leave to sale at market price is hereby granted subject to confirmation of valuation by court.
17. The Likoni property be valued and sold upon necessary correction of names in the register and certificate of lease of the property by the county land adjudication & settlement officer – Mombasa.
18. Meanwhile the properties be managed by estate agent and proceeds deposited in court for distribution to heirs at least biannually.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 2ND MAY, 2024.

HON. ABDULHALIM H. ATHMAN

CHIEF KADHI

In the presence of

Mr. Salim Kerrow, court assistant

Petitioners

Respondent

