



**In re Abbas Rajab Alli (Deceased) (Succession Cause
E360 of 2023) [2024] KEKC 8 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEKC 8 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE E360 OF 2023
AH ATHMAN, CK
MAY 2, 2024**

BETWEEN

NEEMA ABBAS RAJAB PETITIONER

AND

MARIAM RAJAB MUSA 1ST INTERESTED PARTY

FATUMA ALI MWAKATENGO 2ND INTERESTED PARTY

AND

MARIAM RAJAB MUSA INTERESTED PARTY

FATUMA ALI MWAKATENGO INTERESTED PARTY

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.
2. The petitioner deposed that the deceased was survived by mother, widow and two children, a son and a daughter and left death gratuity with his employer.
3. The late Abbas Rajabu Alli died on 2nd September, 2023 at Mombasa aged [55] years.
4. The 1st interested party, a sister to the deceased through Notice of Motion dated 8th January, 2024 prayed that the deceased daughter was born out of legal wedlock and therefore not a legal child or heir of the deceased and Wanza and Ramadhan who are not legal heirs received NSSF benefits of the deceased. The said notice of Motion had been filed after main proceedings had closed and the court had given a date for judgment. The judgment was arrested to pave way for hearing and determination of the application. In its ruling given on 29th February, 2024, the application was found to lack merit and was dismissed.



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 Kadbi's court Act, Cap 11, and Sections 2 (3) and 48 [2] of the Laws Of Succession Act, cap 160 and rules 164 (2) and (3) of the Kadhis' courts rules, 2020.
7. Upon consideration of the petition, depositions and annextures thereto and upon hearing the petitioner and witnesses the estate, heirs and their respective shares are as herein.
8. The deceased was an assistant Forman (gang Supervisor) with Kenya Ports Authority. His death gratuity and / or final benefits with his employer Kenya Ports Authority (KPA) constitute his estate.
9. The legal heirs of the late Abbas Rajab Alli are:
 - i. Mwanahamisi Rajab Salim mother
 - ii. Fatuma Ali Mwakatengo widow
 - iii. Neema Abbas Rajab daughter
 - iv. Ramadhan Abbas Rajab son
10. The mother is entitled to one-sixth of the estate, the widow to one-eighth, the son to twice the share of the daughter under Q.4.12 and 11.
The share of the mother = 16.67%
The share of the widow = 12.5%
The share of the son = 47.22%
The share of the daughter = 23.61%
11. The Manager / CEO KPA to remit death gratuity/ final benefits of the deceased herein to Judiciary – Mombasa Law courts deposit Account for distribution to heirs according to Islamic law.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 2ND MAY, 2024

HON. ABDULHALIM H. ATHMAN

CHIEF KADHI

In the presence of

Ms Khairat, Court assistant

Petitioner.

