



In re Estate of Late Mude Keko Mude (Deceased) (Succession Cause E018 of 2023) [2024] KEKC 30 (KLR) (12 November 2024) (Ruling)

Neutral citation: [2024] KEKC 30 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
SUCCESSION CAUSE E018 OF 2023
A GALGALO, PK
NOVEMBER 12, 2024
IN THE MATTER OF THE ESTATE OF LATE MUDE KEKO MUDE (DECEASED)**

BETWEEN

ALIO MUDE KEKO PETITIONER

AND

JIBO KUNO RESPONDENT

RULING

1. The petitioner, Alio Mude Keko, requested for execution of the decree regarding the estate of the late Mude Keko. This request was made pursuant to Section 30 and 38(d) of the *Civil Procedure Act* CAP. 21, alongside Sections 88-90 of the *Kadhi's Courts Procedure and Practice Rules*. These statutory provisions ensure that the Kadhi's Court executes its decrees with transparency and in compliance with the principles of natural justice. The proceedings relate to the Islamic Law of inheritance, or Mirath, as interpreted in the jurisdiction of the Kadhi's Court, which applies both Islamic jurisprudence and Kenyan law.
2. The judgment dated 1st November 2023 was reviewed, and the orders were varied. The revised orders identified the beneficiaries of the deceased's estate as follows:
 1. Jibo Kuno (widow) - 12.5%
 2. Keko Mude Keko (son) - 43.66%
 3. Shufe Mude Keko (daughter) - 21.833%
 4. Ali Mude Keko (adopted son) - 22.007%
3. The estate comprised two key properties: plot 102 and an unregistered farm in Manyatta, Moyale.



4. The court arranged a site visit on 14th October 2024 to determine the number of plots that formed the unregistered farm. The attendance of all parties was required, along with the company of security officers provided by the Officer Commanding Station (OCS) Moyale Police Station. On the said date, the respondent failed to appear, prompting the court to issue a warrant of arrest for the respondent at their own expense. This order is in accordance with Section 88 of the [*Kadhi's Court Procedure and Practice Rules*](#), which empowers the court to take corrective actions against any party failing to comply with judicial directives.
5. On 16th October 2024, the court conducted a site visit, and it was revealed by the Subcounty Surveyor from the Moyale Subcounty Land Office that the unregistered farm consisted of 46 plots. The surveyor's findings indicated that: Seven plots were sold by the respondent with the knowledge of the petitioner, with a sale price of Kshs 100,000 per plot. A total of Kshs 700,000 was received, of which the petitioner received Kshs 200,000. Four plots were claimed to have been given to a third party, one Lucha Mamo, contrary to earlier statements made by the respondent. Twenty-three plots were sold by the respondent without involving the petitioner. However, the other beneficiaries, namely Keko Mude Keko and Shufe Mude Keko, were aware of these sales. Twelve plots remain unsold.
6. Islamic law emphasizes fairness and transparency in the distribution of an estate. Inheritance rights in Islam are governed by strict principles of Faraid, as derived from the Qur'an and Hadith. Under Qur'an 4:11-12, it is required that the estate be divided equitably among all eligible heirs. The widow, children, and other beneficiaries are entitled to their designated shares.
7. The court took note of the petitioner's rightful share of 22.007%, which corresponds to 10 plots from the unregistered farm of 46 plots. Since the petitioner had already received cash equivalent to two plots, the balance due to him was eight plots. Given the respondent's reluctance to cooperate in the valuation of plot 102, which is developed and has significant value, the court deemed it fair to allocate additional plots from the unregistered farm to ensure the petitioner received his full inheritance. Thus, 14 plots were allocated to the petitioner, including the value of the two plots already received, ensuring his rightful share of 22.007% from the entire estate.

Citations and Legal Precedents

8. The application of Islamic law in this matter is consistent with principles set forth in the Majallah al-Ahkam al-Adliyyah, an Ottoman codification of Islamic law which emphasizes equitable treatment of heirs. Further, the court adheres to the guidelines set forth in Kenya's [*Kadhi's Courts Act*](#), which recognizes the application of Islamic inheritance rules in matters involving Muslim estates.
9. The involvement of a surveyor to identify the property and determine its subdivision aligns with Section 38(d) of the [*Civil Procedure Act*](#), which empowers the court to issue orders necessary for ensuring justice between the parties. Moreover, in accordance with Section 89 of the [*Kadhi's Court Procedure and Practice Rules*](#), where a party obstructs the execution process, the court may take appropriate measures, including enforcement through local administrative authorities.
10. The ruling herein aims to ensure that justice is served in accordance with both Islamic principles of inheritance and Kenyan statutory law, preserving the rights of all beneficiaries and promoting equity in the distribution of the estate. The respondent's non-cooperation and unauthorized sale of portions of the estate are addressed in this ruling to maintain fairness and uphold the spirit of Shariah.



Orders

11. The court, having considered the surveyor's report and the respective shares of the parties, issues the following orders:
1. That the petitioner, Alio Mude Keko, shall be given 12 unsold plots as his rightful share of the deceased's estate.
 2. That the Moyale Subcounty Land Office shall register the said 12 unsold plots in the name of the petitioner to secure his right of inheritance from the property of the late Mude Keko (deceased).
 3. That the 12 unsold plots to be allocated to the petitioner shall be as indicated in the surveyor's report, with specific coordinates identified therein.
 4. That the Land office shall take through the process of registration of land.

DELIVERED AND DATED AT MOYALE ON THIS 12TH DAY OF NOVEMBER 2024.

GALGALO ADAN P.K

MOYALE KADHI'S COURT

In the Presence of:

Alio Mude Keko – Petitioner

Jattani Waqo – Court Assistant

In the absence of:

Jibo Kuno – Respondent

