



**In re Estate of Late Mude Keko (Deceased) (Succession Cause E018 of 2023) [2024] KEKC 29 (KLR) (1 November 2024) (Judgment)**

Neutral citation: [2024] KEKC 29 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOYALE  
SUCCESSION CAUSE E018 OF 2023  
A GALGALO, PK  
NOVEMBER 1, 2024  
IN THE MATTER OF ESTATE OF LATE MUDE KEKO (DECEASED)**

**BETWEEN**

**ALIO MUDE KEKO ..... PETITIONER**

**AND**

**JIBO KUNO ..... RESPONDENT**

**JUDGMENT**

1. This petition filed on 10<sup>th</sup> August 2023 seeking for declaration that the gift of and/or sale of the deceased' estate is null and void, determination of legal heirs, shares for each of them, and distribution of the same from the estate of the deceased hereinabove, cost of this petition should accrue to the estate, and any further and consequential orders as this court may lawfully grant.
2. The petition is accompanied with application brought under certificate urgency upon sworn supporting affidavit by the petitioner premise on grounds that the applicant is the son of the deceased mentioned above, who according to documentary evidence passed away on 4<sup>th</sup> June 2010, as shown in the death certificate serial no. 281618, issued at Moyale on 10<sup>th</sup> July 2012.
3. In the said affidavit, the applicant deponed that their deceased father left behind two widows, two sons and one daughter. He further deponed that he had left a developed plot and a farm both in Manyatta as his properties. He said, the respondent who is the second widow of the deceased enjoyed the estate properties of the deceased to the exclusion of the applicant and his mother (1<sup>st</sup> widow of the deceased).
4. He further deponed that she sold 32 plots. He states that the respondent denied him his rights to inheritance and will definitely disinherit his mother and him, without justifiable reasons, as she has occupied even the developed plot and left him in rental house. He avers to have intervened through elders but she become adamant, hence he required assistance of the court to determine this unfairness.



5. Upon considered the nature of application and further considered the grounds herein above, the court certified the matter as urgent and needs to be heard on priority bases. Wherefore, the court issued restrictive orders against the respondent preventing her from interfering with the said properties until the determination of the case, and she was directed to appear before the court and challenge this petition. She was served accordingly with the summons, petition, and orders from this court but never appear for the same, despite been notified of timeframe in which she was directed to do so, and hearing date for the hearing of application.
6. The hearing concluded on 1<sup>st</sup> November 2023, in which the petitioner (PW1) adduced that his father left behind him, the respondent as his only widow, and two others; a son and a daughter, who all are alive. He testified his mother had already been divorced by his late father before his death. Hence no other beneficiaries apart from the four mentioned. He confirmed he had one plot 50 feet by 100 feet in Manyatta next to fat-hul-bari Mosque, which the plot is developed with four rooms; two constructed with permanent materials and two with temporary. He also confirmed the farm is not yet registered father but belongs to the deceased father. He gave estimate of five acres of land, which he confirmed 37 plots as been sold by the said respondent and an estimate of 5 plots were remained not yet sold.
7. Pw2 testified in support of the petitioner, confirming his knowledge about this matter. He said that the deceased known to him left behind the petitioner and three other beneficiaries, who is the respondent and her two adult children. He admits that the petitioner did not been given his rightful shares from the estate of his father, he lives in rental house with his children, he confirmed the plot and farm at Manyatta. Pw3 testified in support of the petition confirming the petitioner as the son of the deceased. He also adduced that there been a plot and a farm at Manyatta belongs to the deceased.
8. Also, the pw1 presented a letter from town administrator proofing the ownership of the plot no. 102 of Manyatta for the deceased. Pw3 added that he was one of the witnesses, when the respondent sold part of the farm as plots to different persons, each plot at kshs 100000, during the time of Governor Ukur Yattani of Marsabit County. He further said that they were with the petitioner himself who was not willing a such the plots to be sold. He said she used some of the proceeds from the sale of the plots to construct two sizeable rooms in the same plot she is living in at Manyatta. Pw4 also gave the same evidences as other witnesses.
9. After due analysis of evidences adduced herein in court, I found that the deceased herein died a Muslim, and left behind two properties; the plot no. 102 at Manyatta, and unregistered farm at Manyatta. He had four legal heirs including the petitioner (son), the respondent (widow), another one son and a daughter. As per these heirs; the respondent shall have a share of 12.5%, every son will have 35%, and a daughter will inherit 17.5% from the estate mentioned.
10. It is also clear that the respondent together with the petitioner had already sold 7 plots, but she had not shared the proceeds of the sale with the petitioner, although it is adduced that she constructed two sizeable rooms in the plot at Manyatta using the proceeds of the sale. It is not clear how much she used in construction of the rooms. The size of the unregistered farm estimated to 5 acres.
11. Finally, I order for the respondent to be issued with the orders:
  1. That the deceased Mude Keko left behind the plot no. 102 of Manyatta and an unregistered land (farm) at Manyatta as his estate properties.
  2. That the deceased also had four beneficiaries of his estate,
  3. That their names indicated herein as follows along with their shares:
    - a. Jibo Kuno (Widow) – 12.5%



- b. Ali Mude Keko (son) – 35%
  - c. Keko Mude Keko (Son) – 35%
  - d. Shufe Mude Keko (Daughter) – 17.5%
4. That the respondent is then notified that the said properties is liable for distribution to the above beneficiaries according to Islamic law as in the mode indicated above.
  5. That she is also notified to furnish her security for her appearance in court,
  6. And that in default warrant of arrest may be issued as provided in section 73 of *Law of Succession Act*, Section 24(d) of *CPA* Cap 21and Section 3A of the same Act of the Laws of Kenya.

**DELIVERED AT MOYALE KADHI'S COURT ON 1<sup>ST</sup> NOVEMBER 2023, IN THE PRESENCE OF THE PETITIONER (ALI MUDE) AND THE COURT ASSISTANT (ADHO GODANA).**

**SIGNED ON 1<sup>ST</sup> DAY OF NOVEMBER 2024.**

**BY HON. GALGALO ADAN  
PRINCIPAL KADHI,  
MOYALE KADHI'S COURT.**

