



In re Estate of the Late Mohamed Mohamed Al Amin (Deceased) (Succession Cause E020 of 2023) [2024] KEKC 28 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEKC 28 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE E020 OF 2023**

IA HUSSEIN, PK

DECEMBER 13, 2024

**IN THE MATTER OF: THE ESTATE OF THE LATE
MOHAMED MOHAMED ALAMIN (DECEASED)**

BETWEEN

MARIAM FARAJI BAHERO APPLICANT

AND

FATMA MOHAMED AL AMIN 1ST RESPONDENT

ABDULRAHMAN MOHAMED AL AMIN 2ND RESPONDENT

FATMA MUNGANO 3RD RESPONDENT

RULING

1. This matter concerns the distribution of the estate of the late Mohamed Mohamed Alamin in accordance with Islamic Sharia Law. The Applicant, Mariam Faraji Bahero, is a widow of the deceased, seeking her rightful share of the estate.
2. On 6th July 2023, this court delivered a judgement establishing the beneficiaries' entitlements. Subsequently, the Applicant filed a Notice to Show Cause on 30th January 2024, leading to a Ruling and Decree dated 27th May 2024.
3. The Decree issued four principal orders: Valuation of two motor vehicles (KCL xxxx and KBX xxx) by a private valuer. Estate to bear valuation expenses. 2nd Respondent to file accounts from January 2024 regarding estate rental income. 3rd Respondent to refund the Applicant's share of rental amounts received from January 2021 to December 2023
4. Issues for Determination:



- a. What is the Applicant's rightful share of the estate rental income from January 2021 to December 2023?
- b. Whether the accounts statement for the year 2024 is factually correct?
- c. What is the Applicant's share in the motor vehicles and the 3rd Respondent's contribution thereof?

Analysis

The Applicant's Share of Rental Income

5. The Applicant claims entitlement to 6.25% of the rental income, being half of one-eighth as prescribed under Islamic Law (Surat An-Nisa, Verse 12). This percentage is not disputed by any party.
6. The contentious matter is the precise amount received. The Applicant contends that the estate received Kshs. 335,230 quarterly, making her entitled to Kshs. 20,951.88 per quarter from 2021 to 2023, totaling Kshs. 251,422.5.
7. The 3rd Respondent contests this claim, arguing that the proper accounts for 2021-2023 are not presented to the court. She further asserts that as a mere beneficiary during that period, she cannot be held liable for the administrator's acts or omissions.
8. In addressing this dispute, I am guided by the Court of Appeal decision in Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR, which established that mere non-denial of affidavit evidence does not render it true. However, in this case, we possess more than merely uncontested allegations. We have the following:
 - a. The 1st Respondent's Replying Affidavit dated 19.02.2024 confirming the amount
 - b. The 2nd Respondent's accounts showing consistent quarterly payments of Kshs. 335,230
 - c. The 3rd Respondent's own admission in open court on 28.02.2024 regarding receipt of rental income
9. Under Section 112 of the *Evidence Act*, Cap 80, when any fact is particularly within the knowledge of any person, the onus of proving that fact rests upon that person. The 3rd Respondent, having admitted receiving the funds, bears the burden of proving any different amount received.

Accuracy of 2024 Accounts

10. The accounts submitted by the 2nd Respondent for 2024 fail to meet the standard required under Order 44 Rule 3 of the Civil Procedure Rules, which mandates proper vouchers for all items of disbursement. The following deficiencies are noted:
 - a. Lack of supporting documentation for claimed expenses
 - b. Incomplete disclosure of rental income sources
 - c. Unexplained historical payments
 - d. Inadequate explanation of audit fees



Motor Vehicles Share

11. The valuation established is as follows: KBXxxxx (Toyota Hilux) - Kshs. 1,520,000
KCL xxxx (Probox) - Kshs. 520,000
12. The Applicant's 6.25% share amounts to:
KBXxxxx - Kshs. 95,000 (already settled)
KCL xxxx - Kshs. 32,500 (pending)

Orders

1. Having considered the submissions and evidence, I hereby order:
 - I. The 3rd Respondent shall pay the Applicant Kshs. 251,422.5 being her share of rental income from January 2021 to December 2023, within 60 days of this ruling.
 - II. The motor vehicle KCL xxxx shall be sold and proceeds distributed according to the beneficiaries' shares, unless any beneficiary exercises the option to buy out others' shares within 30 days of this ruling.
 - III. The 2nd Respondent shall file proper accounts for 2024 with supporting documentation within 30 days of this ruling.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF DECEMBER 2024

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AJ ISHAQ HUSSEIN

DEPUTY REGISTRAR/PRINCIPAL KADHI

