



In re Estate of Hassan Abdalla Awale (Deceased) (Succession Cause E378 of 2021) [2024] KEKC 27 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEKC 27 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE E378 OF 2021
IA HUSSEIN, PK
DECEMBER 13, 2024**

IN THE MATTER OF THE ESTATE OF HASSAN ABDALLA AWALE - DECEASED

BETWEEN

MARIAM ABDALLAH ALI PETITIONER

AND

FATUMA ATHUMANI ALI 1ST RESPONDENT

ASHA SWALEH ABDALLA 2ND RESPONDENT

RULING

Background

1. The matter before this Honourable Court concerns the distribution of compensation received following the death of Hassan Abdalla Awale (hereinafter "the deceased") who passed away on 30th August 2021 in Qatar while in the employment of European Guarding and Security Services. The deceased left behind a widow (Fatuma Athumani Ali), a minor son (AHA), and his mother (Asha Swaleh Abdalla).
2. The deceased's employer, pursuant to Qatar Labour Law, paid compensation in two tranches:
 - a) An initial payment of Kshs.178,783/=
 - b) A subsequent payment of Qatar Riyals 200,000 (equivalent to Kshs.7,703,178.50/=)
3. On 9th November 2021, this Honourable Court (Hon. Al Muhdhar A.S. Hussein C.K) issued orders distributing the estate in accordance with Islamic law of inheritance as follows:
 - a) Wife (Fatuma Athumani Ali) - 12.5%
 - b) Mother (Asha Swaleh Abdalla) - 16.5%



- c) Son (AHA) - 71%
4. The Public Trustee, however, proceeded to distribute the funds differently, allocating:
 - a) 40% to the widow
 - b) 60% to the minor son
 - c) Nothing to the mother
5. The Public Trustee has now filed an application seeking review of the court's orders dated 9th November 2021 and 27th May 2024, contending that the compensation should be distributed under the [Work Injury Benefits Act](#) (WIBA) rather than Islamic law.

Submissions by the Parties

The Public Trustee's Arguments:

6. The Public Trustee contends that:
 - a) The funds received constitute accident compensation under the [Work Injury Benefits Act](#) (WIBA) and not death gratuity;
 - b) Such compensation does not form part of the deceased's estate;
 - c) The compensation should be apportioned between the widow and son only as dependants under WIBA;
 - d) The Public Trustee has already disbursed 40% to the widow and created a trust for the son's 60% share.

The Petitioner's and 2nd Respondent's Arguments:

7. The Petitioner and 2nd Respondent counter that:
 - a) WIBA does not apply as the deceased was employed outside Kenya;
 - b) The compensation was paid under Qatar Labour [Law No. 14 of 2004](#);
 - c) Qatar law requires distribution according to the deceased's personal law;
 - d) As a Muslim, the deceased's personal law is Islamic law of inheritance;
 - e) The court's original distribution order should stand.

Issues for Determination

8. From the foregoing, the following issues emerge for determination:
 - a) Whether the [Work Injury Benefits Act](#) applies to this case;
 - b) If not, what law governs the distribution of the compensation;
 - c) Whether the conditions for review of the court's orders have been met;
 - d) What orders should be made regarding the distribution of the compensation.



Analysis and Determination

Whether the *Work Injury Benefits Act* applies to this case

9. The Public Trustee's contention that the compensation should be distributed in accordance with WIBA necessitates a careful examination of the Act's jurisdiction and scope of application.
10. Section 5(3)(b) of WIBA explicitly states that the Act shall not regard as an employee "any person employed outside Kenya save as provided in section 11 of this Act." Furthermore, Section 11(3) provides that the Act does not apply to employees deployed outside Kenya for 12 months or longer.
11. The evidence before this Court establishes that the deceased was employed in Qatar by a Qatari company, and the employment was performed wholly in Qatar. There is no indication that the deceased was deployed from Kenya or was in any way subject to Kenyan employment laws.
12. In light of these provisions, I find that WIBA does not apply to the circumstances of this case. The deceased's employment fell outside the jurisdictional scope of WIBA, and consequently, the compensation received cannot be subject to distribution under WIBA.

What law governs the distribution of the compensation

13. Having found that WIBA does not apply, the next question is what law should govern the distribution of the compensation received.
14. Articles 55, 110, and 114 of Qatar Labour *Law No. 14 of 2004* provide that compensation for death should be distributed according to either Islamic Sharia or the personal law of the deceased's country of origin.
15. It is not disputed that the deceased was a Muslim and a Kenyan citizen. Section 2(3) of the *Law of Succession Act* (Cap 160) of Kenya provides:

"Subject to subsection (4), the provisions of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law."
13. Furthermore, Section 6 of the Kadhis' Courts Act (Cap 11) grants this Court jurisdiction in matters relating to personal status, marriage, divorce, and inheritance where all parties profess the Islamic faith.
14. It follows that the applicable law for distributing the compensation is Islamic law of inheritance, both by virtue of Qatar Labour Law referring to the deceased's personal law and Kenyan law providing for the application of Islamic law in matters of Muslim succession.

Whether the conditions for review of the court's orders have been met

18. The Public Trustee seeks review of this Court's orders of 9th November 2021 and 27th May 2024. Order 45 Rule 1 of the Civil Procedure Rules provides three grounds for review:
 - a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the decree was passed or the order made;
 - b) Mistake or error apparent on the face of the record;



- c) Any other sufficient reason.
18. Upon careful examination of the Public Trustee's application, I find no evidence of any new matter or evidence that was not available when the original orders were made. The Public Trustee's contention that WIBA should apply could have been raised at the initial hearing.
19. Furthermore, there is no mistake or error apparent on the face of the record. The Court correctly applied Islamic law of inheritance in determining the distribution shares.
20. The Public Trustee's argument that it has already distributed some of the funds contrary to the Court's orders cannot constitute "sufficient reason" for review. In fact, such action raises concerns about compliance with court orders.
21. I therefore find that the Public Trustee has not satisfied any of the conditions for review under Order 45 Rule 1 of the Civil Procedure Rules.

Conclusion and Orders

23. Based on the foregoing analysis, I make the following findings and orders:
- a) The *Work Injury Benefits Act* (WIBA) does not apply to this case as the deceased was employed outside Kenya.
 - b) The applicable law for distributing the compensation is Islamic law of inheritance as: i) Qatar law requires application of the deceased's personal law; ii) The deceased was a Muslim and Kenyan citizen; iii) Under Kenyan law, Muslim succession is governed by Islamic law.
 - c) The original distribution ordered by the Court (12.5% to widow, 16.5% to mother, 71% to son) was correct under Islamic law and shall stand.
 - d) The Public Trustee has not satisfied the conditions for review under Order 45 Rule 1 of the Civil Procedure Rules.
23. Accordingly, the Public Trustee's application for review dated 9th August 2024 is hereby Dismissed.
24. The Public Trustee is hereby directed To:
- a) Comply with this Court's distribution order dated 9th November 2021;
 - b) Provide an account of all funds received and disbursed to date within 14 days from the date of this ruling;
 - c) Remit the mother's share of 16.5% of the total compensation received within 30 days from the date of this ruling.
23. Each party shall bear their own costs.

These are the orders of this Court.

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

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AJ ISHAQ

DEPUTY REGISTRAR/PRINCIPAL KADHI

