



**In re Estate of Hussein Galgalo Jillo (Deceased) (Succession Cause
21 of 2020) [2021] KEKC 4 (KLR) (16 November 2021) (Judgment)**

In re Estate of Hussein Galgalo Jillo (Deceased) [2021] eKLR

Neutral citation: [2021] KEKC 4 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT ISIOLO
SUCCESSION CAUSE 21 OF 2020
AH ATHMAN, SPK
NOVEMBER 16, 2021**

IN THE MATTER OF THE ESTATE OF HUSSEIN GALGALO JILLO.....DECEASED

BETWEEN

HABIBA SHARO JIRMA PETITIONER

AND

WAQO GALGALO JILLO RESPONDENT

JUDGMENT

1. The petitioner prays for orders declaring her the legal heir of the deceased herein and the respondent be restrained from getting in and using the suit property.
2. The petitioner deposed that the deceased was her husband, had died intestate, was survived by one widow and four children (three daughters and one son) and left property known as Plot No Isiolo / Maisha Bora /251 (hereinafter referred to as the suit property). She averred that the respondent has been living on the suit property and has been obstructing her enjoyment of (the proceeds) of the suit property.
3. The respondent through his statement of defence dated February 14, 2020 admitted the petitioner is a widow of the deceased and that the deceased was survived by four children but added that he was also survived by his siblings; the respondent and one Habiba Galgalo Jillo. He deposed that the deceased bought the suit property in 2008 for his parents and siblings long before he married the petitioner. He stated further that the petitioner has since been married to another husband and left the suit property with her children only to show up claiming rights to the property. He denied he obstructed the petitioner from enjoyment of the property.
3. The Galgalo Jillo family hailed from Marsabit, where the parents lived with their two daughters and two sons (Fatuma, Habiba, Hussein and Waqo). It was a poor Muslim Borana family without a



permanent house and depending on sale of firewood by the matriarch for survival. Fatuma, the elder daughter, got married and her husband helped educate her sibling, Hussein who later got employed as an administration officer. He bought a property in Isiolo where he relocated his parents and siblings. The property had rental houses that fetched income as well as a timber house that secured respectable accommodation for his parents. He married the petitioner in 2011 and also brought her to live on the suit property. The couple had four children together. One after the other Hussein's relatives passed away. His elder sister was the first to die, followed by his mother; then in 2018 about six months later, his father also died. He died a year later on February 3, 2020 at Kambi Odha – Isiolo aged (34) years old after a short illness. He was survived by his widow, children and two full siblings (Waqo and Habiba Galgalo Jillo). The late Hussein's wife, the petitioner herein, after completion of the legal edda waiting period, married another husband under Islamic law. Under Borana custom, the respondent being the deceased's brother, had first priority to marry (inherit) his brother's wife. In consultation with elders, though, he had no objection to her being married to another husband.

5. Upon reading of the parties' depositions and upon hearing the parties and their witnesses, the issues for determination in this matter are:
 - i. Whether or not the suit property belongs to the estate of the deceased herein
 - ii. The legal heirs, their respective shares
 - iii. Whether needy and vulnerable deceased's siblings may be ordered to vacate their brother's estate.
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 *Kadhi's court Act*, Cap 11, and Sections 2 (3) and 48 [2] of the *Laws of succession Act*, cap 160.
7. The petitioner relied on the agreement of sale dated September 17, 2008, Isiolo County government land rates payment request document and Kambi Odha Assistant chief's letter dated February 6, 2019. She contended the property was bought and is registered in the name of her late husband who was survived by a widow and children and therefore the respondent is not a beneficiary of the suit property.
8. The respondent called two witnesses. RW1's evidence was that the deceased bought the property in Isiolo for himself and his parents and that he intended to buy another one for his own family but he died before he accomplished his objective. He further testified that the parties had no problems until the respondent started to make developments to one of the houses on the suit property. He informed court that many orphans of the deceased's relatives rely on the property for their accommodation and have nowhere else to go. Under cross examination by petitioner's counsel, the witness testified the property was bought by the deceased through his own funds.
9. RW2's evidence is that the property originally belonged to his uncle who decided to sell it and asked him to look for buyers. He testified that the respondent and his late sister, Fatuma met him and showed interest to buy the property. He called his uncle who came and sold the house to them. The late Hussein Galgalo also arrived and he told him he will bring his parents from Marsabit to live on the property which he did. When asked under cross examination, whether he was present during the signing of the agreement, his reply was in the negative.
10. The evidence adduced in court show, the property was bought by the late Hussein Galgalo Jillo. The funds were entirely his as confirmed by RW1 and the sale agreement. There is no evidence his parents or siblings made any financial contribution to the purchase or development of the property. The respondent and his late sister assisted only in prospecting and identifying the property on the deceased's instructions. RW2 was not present during signing of the agreement of sale. RW1 was told by



the deceased that he bought the property for his parents and was going to buy another plot exclusively for his family. It is not disputed the deceased brought his parents and siblings from Marsabit to live with him and his family at the suit property in Isiolo.

11. Oral testimony is not sufficient to change the terms of a written agreement on ownership. The deceased further had the property registered in his name with the Isiolo County government. There is no written or oral will by the deceased providing for his parents and siblings in the event of his death. In the longest verse in the Holy Qur'an Muslims are commanded to write down any agreement on transactions. Q 2.282 provide:

"O you who believe, when you deal with each other, in transactions involving future obligations, I a fixed period of time, reduce them to writing."

12. Accordingly, I find and hold that the property known as Plot No Isiolo / Maisha Bora / 251 constitutes the estate of the late Hussein Galgalo Jillo.

13. The late Hussein Galgalo Jillo was survived by one widow, three daughters, one son and two full siblings, one male one female. Siblings are agnatic heirs and only inherit the residue, if any after allocation of Qur'anic shares to the primary heirs. In this case and due to the presence of the son, there is no residue left for agnates to inherit. Accordingly, the legal heirs of the late Hussein Gagalo Jillo are:

- i. Habiba Sharo JIrma widow
- ii. Hadija Hussein Galgalo daughter
- iii. Fatuma Hussein Galgalo daughter
- iv. Ramla Hussein Galgalo daughter
- v. Imran Hussein Galgalo son

14. The widow is entitled to one-eighth and each son to twice the share of the daughter under Q 4.12 and 11 respectively.

The share of the widow = 12.5%

The share of the son = 35%

The share of the daughter = 17.5%

15. The Chief Officer - Lands, Physical planning and urban planning, Isiolo County to transmit the estate herein to Habiba Sharo Jirma as administrator of the estate, on her own behalf and that of her children.

16. Having found the respondent has no legal inheritance share or interest in the suit property, the court notes he and his sisters' children have been living on the property since the deceased was alive. He brought them from Marsabit even before he had started his own family. Under Islamic law, they are not complete strangers to the suit property and cannot be termed as trespassers. He would not have wished them to be evicted and rendered destitute. Not being entitled to an inheritance share is not necessarily an invitation at mistreatment. Love of one's husband demands a love to his relatives, especially ones he went at great length to care for their welfare. Q 4.7-8 and Q 2.180 commands the heirs to treat deceased's distant kindred well and provide for them even though they are not entitled to specific shares of inheritance in the estate. It states:

"7. Form what is left by parents and those nearest related, there is a share for men and a share for women whether the property be small or large – a determinate share. 8. But if at the time of division, other relatives or orphans or poor are



present, feed them out of the property and speak to them words of kindness and justice."

Q 2.180 provides

"Prescribed for you when death approaches (any) one of you, if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous."

17. Muslims are allowed to donate through bequeath to non-heirs up to one third of their estate. Where a Muslim fail to make such a bequeath, and he left vulnerable relatives and the legal heirs fail or refuse to give them a portion of the estate, the above cited authorities confer on the court discretion to issue them such a portion through what is referred to as 'compulsory will'. This is a view of many eminent scholars including Saeed ibn Musa'ib, Al Hassan Al Basry, Ta'wus, Imam Ahmad, Al Tabary, Is-haq ibn Rahweh and ibn Hazm. The requirements to entitlement to such will is that the deceased must have left considerable wealth, the vulnerable relatives must not be legal heirs and have not received any gift or bequest from the deceased. They may be issued up to one-third of the estate provided it is not more than a share of any Qur'anic or residuary heir.
18. Accordingly, the estate property vests in the legal heirs but the respondent, Habiba Galgalo Jillo and their children and those of the late Fatuma Galgalo Jillo shall continue to live on the suit property, without paying rent, provided they shall not interfere with the petitioner's full enjoyment of the remainder of the property and shall not make any new developments, lease, sale, collect rent of any part of the estate property. The order of eviction of the respondent from the estate property is rejected. Should at any point the property be disposed, the respondent, on behalf of the deceased's siblings would be entitled to 30% of the proceeds thereof.

Orders accordingly.

Each party to bear its own costs.

DATED AND DELIVERED AT ISIOLO ON 16TH NOVEMBER, 2021

HON. ABDULHALIM H. ATHMAN

SENIOR PRINCIPAL KADHI

In the presence of

Mr. Guyo Adan, Court assistant

Mr. Jarso for Petitioner

Respondent

