

REPUBLIC OF KENYA

IN THE KADHIS COURT

AT VOI

SUCCESSION CASE NO. 01 OF 2020

IN THE MATTER OF THE ESTATE OF HAMISI TORE KALELA (DECEASED)

1. ABBAS MALISO KALELA

2. SULEIMAN KIMBIO MWANYAMBO

3. HAMISI KALELA NYOKA.....PETITIONERS

VERSUS

1. RAMADHAN BAKARI ITAMBO.....RESPONDENT

RULING

The respondent/applicant lodged a preliminary objection to this case dated 28/01/2020 which as heard on 12/02/2020 in which the respondent said his reasons for objection that the plaintiff/respondent have no letter of administration and that they did not get the consent of the remaining heirs especially the 2 daughters of the deceased who are still alive and that this case is about the ownership in nature where this honourable court has no jurisdiction to hear.

In respond the plaintiff/respondent stated that according to the Islamic Sharia the letter of administration is not necessary and that they are grandchildren of the deceased whose parents have passed away whereby they have the right to follow up the vested inheritance on behalf of their parents and on the issue of ownership the plaintiff/respondent averred that the ownership of the said plot is among the heirs concerning inheritance.

Therefore this honourable court do agree that the plaintiff/respondent was the respondent/applicant was not sure whether according to the Islamic law the administration is a pre requirement in the inheritance or not whereby it is not in Islam the ownership directly change from the deceased to their heirs at the death of any deceased. And that since the plaintiff/respondent are the grandchildren of the deceased they have the right to follow the inheritance of their grandfather.

On the issue of ownership, it is among the heirs of the estate or between them and the third party which is not yet confirmed. Therefore, this honourable court has the jurisdiction to resolve the case where there is dispute over the ownership of the estate or part or it.

Therefore the respondent/applicant was not able to ground his application of which this honourable court after careful consideration has been left with no alternative same to dismiss this preliminary objection with cost whereby the case to proceeding for hearing on 26/2/2020 and the respondent/applicant to file his defence or reply to this case.

M.A MAHMOUD- KADHI

14/02/2020

Read before the plaintiff/respondent in the absence of the respondent/applicant at 11.20am.

M.A MAHMOUD- KADHI

14/02/2020