



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MOYALE

SUCCESSION CASE NO.1 OF 2019

IN THE MATTER OF THE ESTATE OF ADAN JIRMO BONBOO (DECEASED)

HUSSEIN ADAN JIRMA..... PETITIONER

VERSES

SADIA ALIKE1ST RESPONDENT

ASLI SORA.....2ND RESPONDENT

RULING

1. The petitioner filed a PETITION dated 10th Jan, 2019 under notice of motion for the following orders;-

- a) THAT, the application be certified urgent and heard in the first instance.
- b) THAT, the court distribute the plot No. 651 belonging to the petitioner's late father among the rightful heirs of the estate in accordance with Islamic law of succession.
- c) THAT, the cost be provided.

2. The Petition is grounded on the following grounds;

- i) That the deceased is the petitioner's father.
- ii) That, the deceased before his demise owned a residential plot no. 651 in Butiye of Moyale town.
- iii) That the deceased was survived by mother, widow and five sons.
- iv) That, the 1st Respondent herein is a sister to the late Mr. Adan Jirma.
- v) That the 1st Respondent has blocked or obstructed the heirs from inheriting the estate.
- vi) That the 2nd Respondent herein claims to have bought the said plot from 1st Respondent and started putting structure on it.

3. On 29th Jan 2019 the 1st Respondent filed her replying affidavit and stated that;

- a) That she the owner of the plot in question that she inherited the said plot from her late father (ALIKE)
- b) That the Petitioner is the son of her late brother whom they only share mother (BILACH) but from different father.
- c) That she the only biological child of the Deceased (ALIKE KOTOMA).
- d) That the Respondent requested the court not entertain the petitioner's pleading since it has no substantive claim to prove.
- e) Lastly she prayed for dismissal of the entire suit with cost.

4. The 2nd Respondent also stated that in her replying affidavit filed on 29th Jan, 2019, that on 5th April 2018 she bought a parcel of land from **Sadia Alike** the 1st Respondent at price of ksh, 200,000/= in presence of area chief and elders.

5. On 31st Jan. 2019 when the trial began the Petitioner stated that their late father left property plot No. 651 and registered in the 2008, the sister of their late father sold part of the said plot to one **Asili Sora** the 2nd Respondent.

6. Mrs. **Bilach Galgalo Mudale** stressed that the deceased is her son, the said plot belong to her because the late Alike father of 1st Respondent married her with four children among them the father of the petitioner, after their marriage she moved to the plot of late **Alike** with her children later they have blessed with one child the (1st Respondent).

7. The grandmother of the petitioner **Mrs. Bilach** also stated that after the demise of her husband late ALIKE father to 1st Respondent, plot was registered with the name of the deceased (Adan jirma) father to petitioner.

8. The 1st Respondent lamented during the trial that she the only child of late Alike Kotoma biologically the petitioner's father and other siblings was raised by my late father, the plot in question my mother and I are only beneficiaries.

9. Having given due consideration to the submission of both parties and beneficiaries to the estate, the question which therefore fall for my consideration is;

1. Whether the said plot belong to the petitioner's father or it belong to late Alike Kotoma.

2. The legal heirs of the said estate.

10. On the first issue for consideration it came out clearly at trial from the grandmother of the petitioner that the late **ALIKE** owned the said plot before he married her, she later moved to the said plot with her four children and was raised by her second husband the 1st Respondent father, no one disputed this fact, the area chief and elders echoed her statement, therefore I do find the said plot belong to late **ALIKE KOTOMA** the 1st Respondent's father.

11. On the second issue inheritance is considered as an integral part of sharia law, Muslims inherit from one another as stated in the Quran(4:7), hence, there is a legal share for relatives of the decedent in his/her estate and property. there is a clear rule for the children share of the estate **.(Allah ordains concerning your children that male shall have a share equivalent to that of two females.....)**

12. The evidence before the court did prove that the Petitioner's father and other siblings are not the late Alike's children, they were brought up by the Deceased after he married their mother. Even if they took care of the deceased during his life time, they should remember that the deceased (**Alike**) also brought them up and that does not make someone to be a lawful beneficiary, therefore I do find the only legal heirs are the 1st Respondent and her mother **Mrs. Bilach Galgalo** thus the petition/application herein lacks merit and is hereby dismissed.

Lastly it is hereby ordered:

1. That the part of plot no. 651 that was sold by the 1st respondent to the 2nd respondent is considered her share from the estate.

2. That the 2nd respondent the part of the plot no. 651 she bought from the 1st respondent be granted and earlier order of the court dated 11th Jan, 2019 is hereby vacated.

3. That the remaining part of the said plot be the share of the Mrs. BILACH GALGALLO the mother of the 1st respondent.

4. costs be in the cause.

orders accordingly.

Dated and delivered at MOYALE this 11th day of March 2019.

Hon. A. D. WAKO

SENIOR RESIDENT KADHI

MOYALE LAW COURTS.