



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MOYALE

SUCCESSION CAUSE NO. 28 OF 2019

IN THE MATTER OF THE ESTATE OF AHMED IBRO GOLICHA (DECEASED)

FARDOSA KOSI JARSO.....PETITIONER.

VS

ABDI IBRO GOLICHA.....1ST RESPONDENT.

HUSSEIN IBRO GOLICHA.....2ND RESPONDENT.

RULING

1. On 29th May, 2019 the Petitioner filed Notice of Motion and supporting affidavit in this court stating that ;

- a) That ,she is the Deceased widow.
- b) That, prior to the demise of her husband the Petitioner lived with other family members in a plot belonging to the Deceased's father who died sometime before the death of her husband (the Deceased herein).
- c) That the Deceased herein during his lifetime built for his family(the Petitioner herein and her two children) a residential house on his father's plot who predeceased him.
- d) That the family members want to disinherit the petitioner and her two children citing that grandchildren cannot inherit their grandfather.
- e) That, the properties put up by the her deceased husband on his late father's compound which is a residential house of two rooms be preserved and assigned to the orphan of the deceased.

2. On 13th June, 2019 the Respondents filed joint replying affidavit and they stated the following;

- a) That, they are well conversant with the facts of this matter hence competent to swear this affidavit.
- b) That they have read and understood the content of the Petition and the supporting affidavit dated 29th May, 2019.
- c) That, it is true as averred in the petition that their late brother, Mr. AHMED IBRO passed on 28th Dec 2018.
- d) That, it is true also the plot in question belong to their late father.
- e) That, after the demise of their father they sat down as beneficiaries shared out the cows locally.
- f) That, the sharing of the cows were long done in a transparent manner and the petitioner should not agitate for re-distribution again.
- g) That, after the demise of our father they agreed as beneficiaries to the estate of the deceased that the plot should not be distributed as they consider it a joint property will sustain the unity and togetherness of this family.
- h) That, some of the petitioner claims are untrue and the family to the best its ability is supporting the orphan of the deceased.

i) That, from the foregoing they request to this honorable court to uphold the family decision and preserve the plot.

3. On 20th June 2019 when the matter call for hearing, the petitioner stated that her deceased husband was survived by two children and 9 siblings, three among them are from his mother.

4. The petitioner also lamented that her deceased husband left behind two rooms house in the family plot, and the family of her deceased husband are on the verge of evacuating her from the said house.

5. The petitioner lastly prayed that this honorable court to intervene and determined the matter as per Islamic shariah .

6. The 1st Respondent lamented that the said house of the two rooms that was built in the family plot it is from the proceeds of the sold of cows that was given by their late father to their late brother not the property of their late brother as claimed by the petitioner.

7. The 1st Respondent also stated their late father confronted their late brother on the same together with elders and conclusion that was reached is that the said house was built with the property of their late father.

8. The 1st Respondent also stated the family is not ready for the subdivision of the estate until the beneficiaries attained age of maturity.

9. The 2nd Respondent also echoed the same statement that was submitted by 1st Respondent.

10. I have given consideration to the submissions by both parties, I have also considered the testimonies of the witnesses from both side, material placed before me. The main issue raised in is weather the said house was built from the proceeds of sold cows or was built by the petitioner's late husband property, before I dwell on that argument the fact that was not disputed by both parties the said house was built in the family plot where all the parties are the beneficiaries.

11. Having said that base on the Haadith of the Messenger of Allah, that narrated by Jaabir ibn abd -Allah said that a man said "***O Messenger of Allah, I have wealth and children, and my father wants to take all my wealth(to spend it on his own needs) and leave nothing.***" ***The Prophet (P.BUH) said " you and your wealth belong to your father ."***

12. From the above Haadith of the prophet any father has the right to take whatever he wants of his son's wealth and to take possession of it ,whether the son is an adult or a child, therefore said property was built in plot of late Ibro Golicha who is father to the parties thus the said property is considered as his estate.

13. Therefore both petitioner and her two children are beneficiaries of the said estate since the late Mzee Ibro Golicha predeceased the petitioner husband.

14. Lastly I do order the Plot in question together with the two rooms house be valued and valuation report be presented in this court for proper guidance and to render fair and also to met end justice to all beneficiaries in 2 months.

15. And until the said report be presented in court I find status quo be maintain.

It is so ordered.

Dated and delivered 5th day of AUGUST, 2019.

Hon. A. D. WAKO

SENIOR RESIDENT KADHI.

MOYALE LAW COURTS.