



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MARSABIT

SUCCESSION CASE NO. 09 OF 2018

MOHAMED HASSAN MUSA.....1ST PETITIONER

FATUMA HASSAN MUSA.....2ND PETITIONER

VS

ABDI HASSAN MUSA.....RESPONDENT

JUDGMENT

This petition was filed on 14/5/2018 by the two petitioners male and female adults of sound minded petitioning for the recognition of lawful heirs, identification of estates left, lawful shares and the respondent to account for the rent collected from the estate against the respondent whom in his verbal response the respondent admitted the beneficiaries and heirs mentioned in the petition as well as the estate plot No. 122 at Marsabit and plot No. 3 of Korr both ones in the name of the deceased. The respondent also admitted that he has been collecting the rent since the death of their deceased mother and he can account for that.

This petition had an application under certificate of urgency on the collection of the rent of which was granted.

The plaintiff stated that the house rent is around Kshs. 35,000/= per month and that the respondent has got the documents of both estates. The plaintiff stated in the estate of Korr plot No. 3 there a big wholesale and stores and the plot is around 200 by 2000/=.

The respondent stated he used to pay the ration of his brothers Mohamed 1st plaintiff and Hussein from the rent. The respondent stated he started collecting rent from 29,000/= per month and that once he gave his sister Amra kshs. 100,000/= to help build her house.

Therefore this is a succession case where the points of determination are, the death of the deceased, lawful heirs, estate left, processes of sharing and in this case the accountability of the rent collected.

On the ascertainment of the death of the deceased Weris has been confirmed by the copy of the death certificate that deceased passed on 14/8/12 within Marsabit and the lawful heirs according to the Islamic law of inheritance are a widow, Hassan Musa who is deceased in the succession case No. 8 of 2018 and 4 sons and 6 daughters and the process of inheritance is as provided by CAP 4 Section 11 and 12 of Holy Quran but since the widow has also passed on and left behind almost same children of this deceased then the process of inheritance in this case will be simple at the ration of 2 to 1 sons to daughters of the whole estate.

The estate left by the deceased have been realized to be consisting of two plots plot No. 122 at Marsabit with a house of 12 rooms and a plot No. 3 at Korr around 200 by 200 ft occupied by buildings constructed by her husband Hassan Musa.

For that matter this Honourable court has decided the share of the widower Hassan Musa from the whole estate of the deceased his wife Weris to be the plot No. 3 of Korr since he has constructed buildings in it whereby the estate plot no. 122 of Marsabit remain exclusively for the children as stated earlier.

On the accountability of the rent collected from the estate plot No. 122, the respondent admitted from the death of the deceased that on 14/8/2012 up to 27/10/2016 when he handed over to his deceased father which is a period of 4 years out of which the respondent admitted to have collected between Kshs. 27,000/= up to Kshs. 31,000/= per month which is an average of Kshs. 29,000/= for 4 years comes to a total of Kshs. 1,392,000/=.

The respondent accounted for the rent he collected that he repaired the roof for Kshs. 90,000/=, latrines for Kshs. 40,000/= and the gate Kshs. 40,000/= and gave his sister Kshs. 100,000/= which comes to a total of Kshs. 270,000/=. The respondent also paid and clear ration bills for his brothers Mohamed 1st plaintiff and Hussein through their wives where the RW2 in the case No. 8 confirmed for around 1 ½ years the respondent used to pay between 6,000/= to 10,000/= an average of 8,000/= for the two of them comes to kshs. 16,000/= for 1 ½ years comes to a total of Kshs. 288,000/=.

Therefore Kshs. 270,000/= plus Kshs. 288,000/= comes to a total of Kshs. 558,000/= plus the rent balance at hand admitted by the respondent Kshs. 300,000/=. This would mean that the respondent has accounted for Kshs. 858,000/= out of the told rent collected estimated Kshs. 1,392,000/= the balance unaccounted for will be Kshs. 534,000/=.

This honourable court had to depend on estimation and admission of the respondent who has appeared to be open and honest enough to admitted that he did collect the rent otherwise it would have been very difficult to prove that.

In order for the court to be able to share the estate as wished by the heirs comparing to their lawful shares, the value of the estate has to be established or estimated. The plaintiffs, valued the plot No. 122 at Kshs. 5 Million while the respondent at 8 Million which will be an average of Kshs. 6.5 Million and when we add the unaccounted rent Kshs. 534,000/= and the balance at the hands of the respondent Kshs. 300,000/= comes to a total of Kshs. 7,334,000/=.

Before the plaintiff side estimated the plot No. 1 at Korr could be valued at round Kshs. 150,000/= and the respondent valued at the same rate. And the court asked Mohamed Hassan the person appointed to collect the estate rent who brought the bank statement with Kshs. 120,000/= out at hand.

Therefore this is a succession case where the issue of determination on the ascertainment of the death of the deceased, the lawful heirs, and their respective shares according to the Islamic Laws of inheritance and the mode of distribution and this particular case the accountability of the income of the estate inform of rents.

The death of the deceased has been ascertained by a copy of the death certificate produced that she passed on 14/8/12 at Marsabit and buried there.

On the lawful heirs, the deceased survived with a widower Hassan Musa and 4 sons, Abdurahim, Mohamed Abdi and Hussein and 6 daughters Amina, Isir, Amran, Farhiya, Fauziya and Fatuma. And the deceased left two estates consisting of empty plot No. 3 at Korr which was developed by her husband the widower and a developed plot No. 122 at Shauri-moyo Marsabit. And since the Korr estate plot No. 3 has been developed by the widower and the parties have valued it at Kshs. 150,000/= this honourable court has decided the said estate to be exchanged with the value of Kshs. 200,000/= by the widower.

The processes of inheritance according to the Cap 4 Section 11 and 12 of Holy Quran where the widower gets 25.1% of the estate and every son 10.7% and every daughter 5.35%.

But the widower Hassan Musa passed on before the distribution of this estate whereby leaving behind his share 25.1% as a vested inheritance to be inherited in turn by his heirs he survived with a widower and 4 sons and 7 daughters excluding Abdiraman and Amina who are his step children. And since there is a succession case No. 8 of 2018 concerning this deceased widower then this honourable court has decided that this vested share 25.1% of the widower from this estate be transferred to and be included in his estate in the said case No. 8/2018 for easy distribution.

The estate plot No. 122 has been valued at Kshs. 6.5 according the valuation given by both parties, when you add the un accounted rent and the rents in the hands of the respondent a total of Kshs. 834,000/= and the recent rent collected Kshs. 120,000/= plus the value of the exchanged plot No. 3 of Korr Kshs. 200,000/= bring the total value to Kshs. 7,654,000/=. The widower gets 25.1% of 7,654,000/= which is Kshs. 1,921,154/= and every son gets 10.7% of 7,654,000/= which is Kshs. 818,978/= and every daughter gets half of that Kshs. 409,489/=.

And since the respondent failed to account for the rent he collected and that hands a total of Kshs. 834,000/= this amount should be deducted from his share where Kshs. 834,000/= less his share Kshs. 818,978/= the balance Kshs. 15,022/= .

It should be noted that the value of the estate can change depending on the valuation or the sale but the percentage shares of the heirs will remain constant.

And since the estate plot No. 122 of Marsabit cannot be distributed accordingly comparing the number of heirs, then either one or some of the heirs can take up the estate and settle the shares of the other heirs or since some of the heirs of this estate are also the heirs of the estate in succession case 8 of 2018 they can forfeit their shares of that estate in exchange of this, alternatively the estate can be auctioned and the proceeds to be distributed accordingly but the priority is given to the heirs first.

Therefore after careful consideration this honourable court has decided as follows:-

- 1) The lawful heirs of the deceased are the widower Hassan Musa and 4 sons Abdurahim, Mohamed, Abdi and Hussein and 6 daughters Amina, Isir, Amiran, Farhiya, Fauziya and Fatuma.
- 2) The shares of the heirs according to CAP 4 Section 11 and 12 of Holy Quran the **widow gets 25.1%** and every **son 10.7%** and **every daughter 5.35%** of the whole estate.
- 3) The estate of the deceased consists a developed plot No. 122 of Shauri yako Marsabit and the value of the plot No. 3 at Korr amounting to Kshs. 200,000/=.
- 4) The valuation of the above estate was Kshs. 6.5 plus the rent collected from it by respondent Kshs. 834,000/= and recent rent collected Kshs. 120,000/= which comes to a total of Kshs. 7,654,000/= out of which the widower gets 25% Kshs. 1,921,154/= and every son 10.7% is 818,978/= and every daughter Kshs. 409,439/=.

5) The respondent to account for the total rent he collected Kshs. 834,000/= from his share Kshs. 818,978/= whereby to clear the balance of Kshs. 15,022/=.

6) The balance of the vested share of the widow Kshs. 1,921,154/= less 200,000/= which came to Kshs. 1,721,154/= to be transferred and added to his estate in the succession case No.8/2018.

7) The estate plot No. 122 to be either taken by one or some of the heirs and settled the shares of other heirs or the same to be auctioned and the proceeds to be distributed according to respective shares of heirs.

8) Costs to be shared.

M.A MAHMOUD

19/11/2018

Respondent:-

Your honour I am not satisfied by the Judgment therefore I want to take appeal I ask for the proceedings.

M.A MAHMOUD

19/11/2018

Court:-

Upon the submission of the respondent for the appeal he should pay a deposit of Kshs.1000/= for the proceedings.

M.A MAHMOUD

19/11/2018