



REPUBLIC OF KENYA

IN THE KADHI'S COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE 10 OF 2018

IN THE MATTER OF THE ESTATE OF HASSAN HAMIS SAID \_\_\_\_\_ DECEASED

AND

AHMAD KHAMIS SAID..... PETITIONER

JUDGMENT

1. The deceased herein died intestate on 31<sup>st</sup> December, 2017 ( death cert. 0530686) leaving behind 0.08HA of land, a half shares (50%) of Redhat Restaurant – Bungoma and a total of ksh. 380,000/- in cash and in three Bank Accounts. At the time of his demise, he was survived by a mother, two brothers and one sister as bonafide heirs. The heirs are listed in P&A 5 and the petitioner's affidavit for confirmation of letters of administration dated 20<sup>th</sup> November, 2018.

2. It was the evidence of the petitioner that their elder brother one Said Khamis Said was sick and attended dialysis three times a week and therefore needed his share of funds for the process – AKS -1. He said that as a family they agreed that the estate of the deceased be distributed in accordance with Islamic law including 50% (a half) of the family shares at Red hat Restaurant – Bungoma. The Restaurant shares shall be distributed at an appropriate time after the sale of the business – AKS -2.

3. This court is seized with duty of determining shares of each heir in accordance with Islamic law. In determining this, we shall be guided by Art. 170(5) constitution of Kenya 2010 as read together with sec. (5) and (6) of the Kadhi's Court Act Cap 11 and Sec. 2 (3) and Sec. 48 (2) law of succession Act Cap 160.

a) **Art.170 (5);** “ The jurisdiction of a Kadhi's Court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties profess the Muslim Religion and submit to the jurisdiction of Kadhi's Courts.”

**b) Kadhi's Court Act Cap 11 Sec (5) and (6);**

- **Sec. (5):** “ The Kadhi's Court has been given jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce and inheritance in proceedings in which all parties profess the Muslim Religion.”

- **Sec. (6):** “ The law and the rules of evidence to be applied in a Kadhi's Court SHALL be those applicable under Muslim law.”

**c) Law of succession Cap 160.**

- **Sec. 2(3);** “Subject to subsection (4) the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the extent that in lieu of such provisions the devolution of any such person SHALL be governed by Muslim law.”

- **Sec. 48(2);** “ for the avoidance of doubt, it is hereby declared that the Kadhi's Court SHALL continue to have and exercise jurisdiction in relation to the estate of the deceased Muslim for the determination of questions relating to the inheritance in accordance with Muslim laws and of any other question arising under this Act in relation to such estates.”

4. As required under Islamic law and after payment of legacies from the estate as the deceased may have bequeathed or debts;

i) The mother is entitled to a sixth (1/6) share of the net property.

***QURAN:4:11; “ ..... for parents a sixth share of inheritance to each if the deceased left children. If no children and the parents are the only heirs, the mother has a third; if the deceased left BROTHERS (OR SISTERS), THE MOTHER HAS A SIXTH. (the distribution in all cases is) after the payment of legacies he may have bequeathed or debts .....”***

ii) The two brothers and one sister are entitled to the remaining, a share of male twice the share of female or two brothers to one sister at a ratio of 2:2:1 respectively. **QURAN:4:176; “..... if they are brothers and sisters the male will have twice the share of the female .....**”

5. Leaving aside the parcel of land, the only charge on the estate as identified and requested by the petitioner was legal costs of Ksh 35,000/-. The court in considering legal costs was left with a total balance of **ksh. 345,515.92** to be distributed among the four (4) beneficiaries in accordance with Islamic law as in (4) above.

#### **6. ORDERS:**

**1. L.R E. Bukusu/s. kanduyi/12904 – 0.08HA be jointly registered to:**

- |                       |            |       |
|-----------------------|------------|-------|
| a. Saud Khamis Said   |            | 16.7% |
| b. Said Khamis Said   | - ID: xxxx | 33.3% |
| c. Ahmad Khamis Said  | - ID: xxxx | 33.3% |
| d. Hamida Khamis Said | - ID: xxxx | 16.7% |

2. The following Banks subject to Bank levies to transfer or pay all monies held for the deceased in respective accounts to **SAID KHAMIS SAID ID: xxxx** or his **AC/ xxxx** at Barclays Bank – Bungoma:

- |                       |          |                  |
|-----------------------|----------|------------------|
| a. Gulf African Bank  | AC/ xxxx | - Ksh. 14,325.92 |
| b. Diamond Trust Bank | AC/ xxxx | - Ksh. 88,096.90 |
| c. Equity Bank        | AC/ xxxx | - Ksh. 3,325. 50 |

3. Beneficiaries be paid cash money as follows;

- |                       |          |                 |
|-----------------------|----------|-----------------|
| a. Saud khamis Said   |          | Ksh. 57,586.00  |
| b. Said Khamis Said   | ID: xxxx | Ksh. 9,456.00   |
| c. Ahmad Khamis Said  | ID: xxxx | Ksh. 115,172.00 |
| d. Hamida Khamis Said | ID: xxxx | Ksh. 57,586.00  |

4. 50% sale proceeds of shares at Redhat Restaurant- Bungoma be distributed to heirs herein in accordance with Islamic law and as per percentages in order (1) above.

5. Costs of Ksh 35,000.00 be borne by the estate.

**Delivered and signed at Bungoma this 24<sup>th</sup> day of December, 2018.**

In presence of:

1. CA – Okwaro
2. Petitioner and other beneficiaries.