



**In re Estate of Mohamed Kassim (Deceased) (Succession Cause 117 of 2007) [2017] KEKC 19 (KLR) (18 August 2017) (Ruling)**

*Mohamed Hassan Mohamed v Mariam Mohamed & 4 others [2017] eKLR*

Neutral citation: [2017] KEKC 19 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
SUCCESSION CAUSE 117 OF 2007  
AH ATHMAN, PK  
AUGUST 18, 2017  
IN THE ESTATE OF MOHAMED KASSIM (DECEASED)**

**BETWEEN**

**MOHAMED HASSAN MOHAMED ..... PETITIONER**

**AND**

**MARIAM MOHAMED ..... 1<sup>ST</sup> RESPONDENT**

**KHADIJA MOHAMED ..... 2<sup>ND</sup> RESPONDENT**

**HANIFA MOHAMED ..... 3<sup>RD</sup> RESPONDENT**

**AMIR MOHAMED ..... 4<sup>TH</sup> RESPONDENT**

**MAJID HUSSEIN ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This is a ruling on two applications, one dated April 27, 2016 and another dated April 26, 2016.
2. The Notice of Motion application dated April 27, 2016 by the respondents seeks review of the judgment delivered on January 29, 2015 on the grounds that the court found Leilah Gasana was wife to Hassan Mohamed Kassim but failed to include her as a beneficiary and that the court found Kassim Hassan Mohamed as a beneficiary while he was born in 1975, four [4] years before the marriage of his 'parents'.
3. Mr Oddiaga for the petitioner did not oppose the application for review.
4. Upon perusal of the judgment in this matter delivered on 27th April 2016 we did hold and find that Leilah Gasana was married to Hassan Mohamed in 1979. Mohamed Hassan was born in 1981 while Kassim Hassan Mohamed was born in 1975. We had not examined the birth certificate of Kassim



Hassan Mohamed. The issue was however framed as an issue for determination. Having been born before the marriage of his putative parents, for purpose of inheritance, Kassim Hassan Mohamed is not a legal heir of Hassan Mohamed Kassim and therefore cannot inherit him. The omission of the widow of Hassan Mohamed in the list of his beneficiaries was an oversight and a clear error on the face of the record. The errors are hereby corrected.

5. The 2/9 [Kes 5,555,555.56] share of Hassan Mohamed Kassim devolve as follows:
  1. Leilah Gasana widow 1/8 694,444.44
  2. Mohamed Hassan Mohamed son 7/8 4,861,111.12
6. The Notice of Motion application dated April 26, 2016 by the petitioner for orders that one Anwar Hussein Mohamed Kassim be added in the list of heirs of Hussein Mohamed Kassim and his share be apportioned and for orders for sale of the estate properties to pay the shares of the petitioner, Nazir and Anwar Hussein Mohamed Kassim on the grounds that the respondents are not willing to pay their shares and Anwar was inadvertently left out in the final list of heirs although his name appears in the petition.
7. The addition of Anwar as a heir of Hussein Mohamed Kassim was not contested. It is hereby granted. Anwar Hussein Mohamed Hussein is a legal heir and beneficiary of the estate of Hussein Mohamed Hussein. His 2/9 [Kes 5,555,555.56] share devolve to his heirs as follows:
  1. Amir Hussein Mohamed son 2/11 1,010,101.00 [Kes]
  2. Nazir Hussein Mohamed son " "
  3. Abdulrasul Hussein Mohamed son " "
  4. Anwar Hussein Mohamed son " "
  5. Sharifa Hussein Mohamed daughter 1/11 505.050.50 [Kes]
  6. Mariam Hussein Mohamed daughter " "
  7. Zubeda Hussein Mohamed daughter " "
8. In the judgment delivered on January 29, 2015 the court considered the best option for distribution of the estate in this matter. We directed the payment of the shares of the estate of Hassan Mohamed Kassim upon valuation of the estate failure to which, as a final resort, the estate could be sold and proceeds distributed to all heirs. The valuation of the estate was confirmed and adopted and share of each heir determined on March 17, 2016. Each heir is entitled to their respective shares. Mr Hassan for the respondents submitted the respondents are willing to pay but did not know who and how much to pay and the court had not given an ultimatum. They are requesting reasonable time to pay. The petitioner and his mother [the widow of Hassan Mohamed], Nazir and Anwar Hussein Mohamed have demanded their shares.
9. The widow of Hassan Mohamed has given authority for her share to be paid to the petitioner on her behalf. Accordingly the petitioner be paid Kes 5,555,555.56
10. Nazir and Anwar Hussein Mohamed each be paid Kes 1,010,101.00. In total the respondents to pay the petitioner, Nazir and Anwar Hussein Mohamed Kes 7,575,757.56 within six [6] months from date hereof.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA ON 18TH AUGUST 2016.**



**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

**In the presence of :**

Mr Yusuf K. Abdulrahman, Court Assistant

Mr Oddiaga for petitioner

Mr Hassan for Respondent

