



**REPUBLIC OF KENYA**

**IN THE KADHI'S COURT AT GARSEN**

**CIVIL CASE NO 52 OF 2016**

**RULING**

**1. OMAR GALANA HIRIBAE.....APPLICANT**

**2. ALICE ADHIAMBO ALUCHO.....RESPONDENT**

This is a review of the earlier orders issued by this court where by the previous applicant (Agnes Ndware Balesa) has applied for distribution of the estate to heirs according to Islamic law. The matter was heard and determined by the previous kadhi Sheikh Rashid Kokonyo. It has been one year since the judgment was delivered.

The applicant filed his application dated 27 July 2017 and prayed for:

The honorable court to issue an order to the respondent to stop enjoying the deceased property and gratuity that the applicant to be the legal heir of the deceased.

His grounds being that:

- 1- He is the biological father of one Fumo Omar Hiribae who passed away on 2<sup>nd</sup> June 2013 at Taufiq Hospital Malindi.
- 2- The applicant support one Agnes Ndware Balesa (previous applicant) as the wife of the deceased who filed a succession case before this court which has lost in the case because she was not a Muslim.
- 3- The defendant here did not produce any document or witness to confirm that she was legally married to the deceased, neither did not stay Eddah period after the death of deceased as required by Islamic law.

On the other hand, the respondent through her affidavit dated 6<sup>th</sup> December 2016 stated that she was not in a position to be married under Islamic law as her father in- law refused and therefore they decided to perform their marriage customarily. On this basis, she alleged that she was the legal wife of the deceased after being married customarily and under Muslim faith.

Upon examining through the cross examination by the court, the respondent answered that, " her marriage was not under the Islamic law since it was under customary.

I have noted the issue clearly and I found that the respondent was not aware that marriage under custom law is not allowed in Islamic law and this Islamic court follow Islamic jurisprudence.

According to Islamic sharia, the marriage is the major condition for one to inherit from the deceased estate. In addition to that, it clearly appeared to court that the respondent admitted through the examination by the court. According to the Islamic jurisprudence: (?????? ???? ????? (fiqh sunnah) meaning: admitting is powerful evidence)

On this basis, I hereby order that:

- 1 – The respondent and her children are not entitled to inherit from the deceased property.
- 2 – The public trustee should cancel the respondent's name from the beneficiaries list.
- 3 – The applicant should not claim the previous distribution of the estate which was already done.

These are orders of this court. R/A 30 days.

**Delivered this on 24 the August 2017 In the present:**

**Mursal M Sizi Kadhi**

**C/A Guracho Abdallah**

**Applicant.**