



In re Estate of Mohsen Mohamed Albeity (Deceased) (Succession Cause 171 of 2012) [2016] KEKC 38 (KLR) (20 January 2016) (Ruling)

Noor Mohsen Mohamed v Fatuma Ahmed Abdulrahman & 3 others [2016] eKLR

Neutral citation: [2016] KEKC 38 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE 171 OF 2012
AH ATHMAN, PK
JANUARY 20, 2016**

BETWEEN

NOOR MOHSEN MOHAMED PETITIONER

AND

FATUMA AHMED ABDULRAHMAN 1ST RESPONDENT

HUSSEIN MOHSEN MOHAMED 2ND RESPONDENT

MOHAMED MOHSEN MOHAMED 3RD RESPONDENT

AND

WARDA MOHSEN MOHAMED INTERESTED PARTY

RULING

1. This is a Notice to show cause why execution should not issue Warda Mohsen Mohamed against the petitioner. She claims she is one of the beneficiaries of the estate of the deceased herein that was distributed by court. She claims the petitioner has not given her share of the proceeds of the property on Plot No. 1749/VI/MN since June 2013 when distribution was finalised by court. She argues the property is rented and fetches KES 50,000.00 per month. She prays to be issued her share of the proceeds directly by the tenant.
2. The petitioner opposes the application. She is represented by Mr. Kimani. He submitted that the orders sought on the face of the application is civil jail on account of non-payment of applicant's share. He argues the original file was called by the High Court in Miscellaneous application No. 2 of 2015 between the parties herein, that the matter would be subjudice if it gave contrary orders to what the High court may give. He further submitted that the applicant is not the decree holder and the decree cannot be ordered piecemeal. He also argued that the applicant has not complied with orders of the



court with respect of KES 1,380,902.00 the respondents and herself were to pay the petitioner. He contends she is being used by the respondents to frustrate the petitioner, especially as her alleged share is far less than the amount she owes the petitioner.

3. The original file in this matter is not in our registry, it is in the High Court. The Notice to show cause application is filed in a skeleton file. The matter was decided on April 24, 2014. It determined the estate and shares of each heir. The court made two rulings, one on distribution on September 25, 2014 and another on accounts on February 12, 2015. Although the applicant is not a party to this suit, she is a heir and beneficiary to the estate allocated house B on Plot No. 1743/VI/MN together with Noor, Mufida, Fadhlun and Latifa all children of Mohsen Mohamed. The requirement for her enjoinder into the suit for her to demand her share is a technicality that should not bar her from being heard and addressing her issues regarding her entitlement. Being a heir and beneficiary to the estate and the property in this suit, under Islamic law she is entitled to demand her inheritance right. The court can, in the interest of ensuring the ends of justice, enjoin her suo moto, as an interested party, which we hereby do.
4. Regarding the issue of subjudice, there is no order of stay of proceeding of this case. Further the said application at the High court has not been annexed or produced to confirm the issues therein. It is speculative. It is not sufficient to stop these proceedings.
5. The last issue is whether the applicant is actually entitled to the orders sought in light of the claim that she owes the petitioner more than she is owed and demanding. In the ruling on accounts of the estate delivered on February 12, 2015, we found that the family was divided into two camps, which partly informed the actual distribution of the two properties. We found as follows:

" The respondents to refund the share of Noor, Mufida, Fadhlun and Swafaa Mohsen [Warda is clearly on the side of the sons] their share of the proceeds [68/288] equivalent to KES 1,380,902.80."

6. The upshot of this finding is that the Warda, the applicant herein, was not to be given her share by the respondents as she is in the same camp with them. It does not and should not be construed to mean she owes the petitioner and her other siblings the amount or part thereof. She is not one of the respondents. Therefore the non-payment of the amount due to the petitioner by the respondent, does not in any way, restrict the applicant to the enjoyment of her inheritance right to the property.
7. We however, appreciate, having had conduct of this matter, that the property had ground rates arrears and renovations and even legal issues regarding the tenancy of the land where it stands. The applicant is entitled to one fifth [1/5] share of the property. In my view, the prayer for committal to civil jail is drastic and unwarranted at this stage and the prayer for direct payment by the tenant is unreasonable. Only the net proceeds should be available for distribution among the five sisters, as they share the income and liabilities of the estate equally.

The petitioner should give account of the proceeds of the property from date of ruling on accounts [February 2015] to date. She shall henceforth pay the applicant her 20% of the net proceeds distributable after deduction of expenses of the property.

Orders accordingly.

DATED AND DELIVERED ON 20TH JANUARY 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI



In the presence of

Mr. Yusuf K. Abdulrahman, Court Assistant

Interested Party

Mr. Kimani for petitioner

