



**In re Estate of Mwijuma Bin Mwichande (Deceased) (Succession Cause
122 of 2014) [2016] KEKC 31 (KLR) (4 February 2016) (Judgment)**

Asba Mwijuma Mnyombwe v Hamisi Mwijuma [2016] eKLR

Neutral citation: [2016] KEKC 31 (KLR)

REPUBLIC OF KENYA

IN THE KADHIS COURT AT MOMBASA

SUCCESSION CAUSE 122 OF 2014

AH ATHMAN, PK

FEBRUARY 4, 2016

IN THE MATTER OF THE ESTATE OF MWIJUMA BIN MWICHANDE (DECEASED)

BETWEEN

ASHA MWIJUMA MNYOMBWE PETITIONER

AND

HAMISI MWIJUMA RESPONDENT

JUDGMENT

1. The petitioner prays for:
 1. Determination of the heirs and their shares according to Islamic law.
 2. Remittance of accounts of the proceeds of sale and rent [of the estate property]
 3. Deposit of documents of ownership to court
 4. The heirs to have fresh agreement with the tenant
 5. Any other relief the court deems fit to grant.
2. The petitioner claimed the deceased left a parcel of land Plot No 98/II/MS at Mtongwe - Likoni and was survived by two daughters but the respondent has rented the plot to a tenant who has built a school on the land without consulting them heirs, that he has refused to release the original title for the property and to distribute any proceeds of the transaction on the estate property.
3. The late Mwijuma bin Mwichande died in 1965 of stroke at Mtongwe aged [55] years. He was Royal Navy driver.



4. The respondent was served with the petition, summons and hearing notice. He neither filed a reply nor appeared to present his case. The case proceeded ex parte.
5. The issues for determination in this matter are:
 1. What constitutes the estate of the deceased
 2. The legal heirs and their respective shares
 3. Distribution of the estate

Estate

6. Upon hearing the petitioner and examination of the official search of the property, the parcel of land Plot No MSA/ Block II/MS/98 constitutes the estate of the late Majuma Bin Mwishande alias Mwijuma bin Mwichande, the deceased herein.

Heirs

7. The deceased in this matter was survived by his daughters. He had no sons. Daughters are entitled to a maximum two thirds share under Islamic law. Q:4:11.

'Allah instructs you concerning your children [i.e. their portions of inheritance]: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half.

8. The remainder goes to the closest agnatic heir, in this case, his sister Bibi Mwichande. She is also deceased and was survived by an only child, a son one Hamisi Mwijuma, the respondent herein. He is entitled to her share, the one third of the estate.
9. The legal heir of the late Mwijuma Mwichande are:
 1. Asha Mwijuma Mnyombwe daughter 1/3
 2. Mwananyota Kombo Mwinyiombue daughter 1/3
 3. Hamsi Mwijuma grandchild 1/3
10. The estate is hereby vested to the beneficiaries in the shares indicated.
The Registrar to effect transmission accordingly.

Distribution

11. The respondent is not entitled to the entire estate in this matter. He has to consult his co heirs in entering any transaction on the estate property more so since together, they have a larger share of the estate. Any transaction entered by him is subject to his co heirs' confirmation. Any proceeds thereof are to be shared equally among the three heirs. The prayers for the respondent to give accounts and deposit of title of the property to court are hereby granted.
12. The prayers for a new agreement with the tenant is left to heirs and the tenant. It is not up to court to direct on such agreements.
Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 4TH FEBRUARY 2016



ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of:

Mr. Yusuf K. Abdulrahman, Court assistant

Ms. Maina for Petitioner.

