



**REPUBLIC OF KENYA**

**IN THE KADHIS COURT AT KISUMU**

**SUCCESSION CAUSE NO 10 OF 2015**

**IN THE MATTER OF THE ESTATE OMAR SWALEH DOSO (DECEASED)**

**LEAHA NYANGASI.....APPLICANT**

**MWANA HAMISI OMAR.....RESPONDENT**

**JUDGEMENT**

**LEAHA NYANGASI** of identity card number 1087475 referred herein as a petitioner filed a petition on 11th day of AUGUST 2015 the petitioner claimed that: She and the respondent are both widows left by the late Omar Swaleh Doso .was survived by the following .

Mwanahamis Omar	(widow)
Leaha Nyangasi	(widow)
Mariam Omar	(daughter)
Swaleh Omar	(son deceased)
Ramdhan Omar	(son deceased)
Mwanarabu Omar	(daughter)
Khadija Omar	(daughter)
Swaleh Omar	(son)
Mwanahawa Omar	(daughter)
Mohamed Omar	(son deceased)
Mwanaisha omar	(daughter)

The late omar swaleh Doso left two plots as follow:

- 1- KISUMU/MIGOSI/ 446
- 2- KALOLENI NO 89

The petitioner sought that the both plots ware developed and residential where as the Migosi Plot was being rented , and the Kaloleni one was being used by the first family for residential.

The petitioner stay with her16 years old son in a one room rental house paying rent of 2000/= per month.

The petitioner claimed that she has no income and was depending on her husband for her upkeep and the education for her son.

The respondent has refused to cooperate with the petitioner in the proceeds from any asset left by the husband, in addition to that the respondent has sold the Migosi plot without the consent of the whole family and has not shared the proceeds with anybody.

The petitioner stated that she has withdrawn her son from boarding school to day school because she cannot afford to pay his boarding fees yet.

On the other hand, the respondent denied the petitioner's allegation in respect of the Migosi plot and stated that the house at Migosi was not in their name; it is somebody's property bought from the late Omar Swaleh Dosa before his death. The only house they are collecting rent from is plot no 89 at Kaloleni for 12000/= per month. To support the issue, the respondent has a valid witness, namely John Wamboto.

The W.D.1 stated that Mr Lukoye introduced him to Omar Swaleh Dosa and his wife; they discussed and agreed to sell the house to him. Mr Wamboto has two houses at Arin and Migosi. He moved Dosa and his wife to stay at Arina. He bought block 6/253 which belongs to Dosa and his wife Mwanahamis; the house is in Mr Wamboto's name. He cannot remember if there is a sale document.

The respondent agreed that it is on her responsibility to pay school fees and house rent for the petitioner, unfortunately she has not paid rent for February and school fees for the last time in last year and first time in this year.

I have noted the issue clearly and I found that there is no plot in KISUMU Migosi in the name of the deceased (Omar Swaleh Dosa) as the petitioner alleged. This is because the house was sold by the deceased before his death.

Concerning the rent and school fees, the respondent agreed to pay them.

The issues for determination in this matter are as follows:

Under Islamic law, widows are entitled to one eighth (1/8) share if the deceased left a child. Each son is entitled to twice the share of the daughter under Qur'an: Nisa: 11-12.

In this matter, the honorable court gave the parties herein a chance to agree on one of the following options:

- (a) The Respondent to pay for the house
- (b) The petitioner to pay the Respondent for him to forgo his share.
- (c) The house to be sold and the proceeds shared.

(?????? ???? ?????? ??? ) feeler to the above court will finally decide

It is evident to this court that parties have refused to agree on either of the above options given to them; therefore, the decision of this court follows:

The legal heirs and mode of distribution of the estate of Omar Swaleh Dosa are:

legal heirs	relative	share fraction
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Leaha Nyangasi (widow)	room no 1	rented for 1500
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Swaleh Omar (son)	room no 2	rented for 1500 and the room at right side of the house
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Mwanahamis Omar (widow)	Room no 3	rented for 1500
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Swaleh Omar (son babuji)	room no 4	rented for 1300 and no 6 rented for 1000
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Mariam Omar (daughter)	room no 5	occupied by grand children shall devolve to Maryam because they are not direct beneficiaries.
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Khadija Omar (daughter)	Room no 7	occupied by brothers shall devolve to Khadija
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Mwanarabu Omar (daughter)	room no 8 and 9	each one rented for 500/=
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Mwanahawa Omar and Mwanaisha Omar (daughters)	room no 10 and 11	where the respondent stays devolve to them
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Concerning the school fees and house rent, I hereby order that:

- 1- the respondent to pay fees Ksh 11000/= within 7 days from today and it will no longer be her responsibility any more.

2- That the respondent to pay Sh 2000= rent for February as a house rent within 7 days from today and it will no longer be her responsibility any more.

3- Concerning municipal rats of 89152 all beneficiaries shall contribute to clear it as follow :

Each male shall contribute ksh 16210 before end of this year.

Each female shall contribute 8105 before end of this year.

the respondent mwanahamis omar shall be administrator of the estate to ensure that the court orders are followed .

these are orders of this court .

These are orders of this Court.

R/A- 30 Days

read and delivered this 11th day of FEBRUARY 2016 in the presence of Mursal. M . Sizi ----- Kadhi 11

court assistant----- Rahma Akidah

Petitioner