



REPUBLIC OF KENYA



KENYA LAW
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**In re Wakf of Mohamed Bakari (Civil Case 17 of 2016)
[2016] KEKC 41 (KLR) (17 March 2016) (Ruling)**

In re Wakf of Mohamed Bakari [2016] eKLR

Neutral citation: [2016] KEKC 41 (KLR)

REPUBLIC OF KENYA

IN THE KADHIS COURT AT MOMBASA

CIVIL CASE 17 OF 2016

AH ATHMAN, PK

MARCH 17, 2016

IN THE MATTER OF THE WAKF OF MOHAMED BAKARI

AND

IN THE MATTER OF THE PROPERTY KNOWN AS LAMU ISLAND BLOCK IV/II

AND

**IN THE MATTER OF APPLICATION BY OMAR
MOHAMED BAKARI FOR DISSOLUTION OF THE WAKF**

IN THE MATTER OF

OMAR MOHAMED BAKARI APPLICANT

RULING

1. The applicant through his originating summons dated January 27, 2016 pray for orders:
 1. That the Wakf of Mohamed Bakari consecrated on the property known as Plot No. Lamu Island Block IV.II be dissolved.
 2. That Omar Mohamed Bakari the sole surviving 1st beneficiary be vested with the property with power to sale the same and distribute the proceeds to other beneficiaries of the wakf.
2. The applicant deponed that the deceased was survived by:
 1. Maamun Mohamed Bakari
 2. Omar Mohamed Bakari
 3. Khalifa Mohamed Bakari
 4. Ahmed Mohamed Bakari



5. Saada Mohamed Bakari
6. Ali Mohamed Bakari
3. He deponed that he is the only surviving beneficiary of the first generation, all others are deceased left no children except Maamun and Ali Bakari whose children agree to the dissolution of the wakf. He averred that the non of the beneficiaries reside in Lamu where the wakf situate and the property is not developed and is in danger of being wasted.
4. Mr. Khatib represented the applicant. he submitted that the wakf property is encroached by squatters and is in danger of being wasted and all beneficiaries have consented to the dissolution of the wakf .
5. I have read the wakf document by Mohamd Bakari dated 15th July 1931 and registered with the wakf Commission . He consecrated the property for benefit of his seven children. It is a Wakf Ahly.
6. Al Sharbiny al Khatib in al Mughny al Muhtaj defines wakf as detaining of corpus and setting free its usufruct for use in an available and legally permissible purpose" Al Mughny 2/372. Wakf is sadaqa charity fisabilillah in the cause of and to please of Allah.
7. There are two types of wakf: Wakf Kheiry [for Charity] and Dhurry or Ahly [for descendants]. The Egyptian law of endowment No 180 of 1952 and Syrian Law of 1949 abolished Wakf Ahly due to its complex problems. Ref 10/7607, Al Zuheily, Islamic Jurisprudence and its evidences.
8. There is no dispute on legality and validity of Wakf kheiry. It is in fact encouraged in Islam and most Wakfs done by the Companions is of this kind. There is no consensus on Wakf ahly or Dhurry but the preponderant opinion is that it is legal if it does not offend Islamic laws of inheritance.
9. Wakf is intended to be perpetual and last forever, however Islamic law envisages conditions under which wakf may be terminated.
10. Imam Shafi is of the view that distribution of wakf [in finality issuing each beneficiary his / her share of the wakf property] is not permissible because it offends the condition set up by the donor, but beneficiaries may only allocate parts of the wakf among themselves to benefit from the said parts for a specified period [not absolute ownership]. Other jurists are of the view that wakf may be distributed among different types of beneficiaries, but if there is only one type they concur with Shafii school on its non permissibility. Hanafi, Maliki, hanbali and some Shafi school are of the view that sale of a wakf is permissible if it is obsolete and can no longer be of benefit to beneficiaries provided the proceeds shall be used to purchase another property to replace it.
11. Ref; Encyclopaedia of Islamic jurisprudence, Ministry of Endowment - Kuwait Vol 44 pg 135 - 194.
12. In the instant case, the wakf property is in Lamu and all beneficiaries are resident in Mombasa, it is not developed, has been encroached by squatters and is in danger of waste. If it wastes the objectives of the Wakf would not be realised. The surviving beneficiaries have signed consent agreeing to its dissolution. This being a Wakf Ahly, in the circumstances, it is best for it be sold as proposed.
13. The wakf of Mohamed Bakari be and is hereby dissolved. The heirs are at liberty to purchase another property from the proceeds and create another wakf or distribute proceeds. The application is hereby granted as prayed.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 17TH MARCH 2016

ABDULHALIM H. ATHMAN



PRINCIPAL KADH I

In the presence of

Mr. Yusuf K. Abdulrahman, Court assistant

Mr. Khatib for applicant

