



**THE REPUBLIC OF KENYA**

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

**MLIMANI COMMERCIAL COURTS**

**CIVIL CASE NO. 42 OF 2016**

**IN THE MATTER OF THE ESTATE OF ISHAK KAHUGA FARSY CHANZU AND**

**BAHATI KHADIJA KABURA ..... APPLICANT**

**R U L I N G**

In her application filed in this court on the 7th March 2016 BAHATI KHADIJA KABURA (hereinafter referred to as the Applicant) sought orders of this court for declaration that the property NAIROBI/BLOCK 101/208 NEW KITISURU ESTATE as a joint property between the deceased and the applicant. She also prayed for declaration that the property NAIROBI/BLOCK 101/208 NEW KITISURU ESTATE as a matrimonial property for the benefit of Bahati Khadija Kabura and her children Alween Arividza Chanzu, Makhtoum Lihansy Chanzu and Adilla Nyakinyua Chanzu. Lastly she prayed that the property NAIROBI/BLOCK 101/208 NEW KITISURU ESTATE to be held in trust by her for her children Alween Arividza Chanzu, Makhtoum Lihansy Chanzu and Adilla Nyakinyua Chanzu..

The application was based on the ground that the applicant Bahati Khadija Kabura is a widow of the late Ishak Ahuga Farsy Chanzu who died on 19th August 2015. On 4th October 2004, the deceased entered into a Tenant Purchase Agreement with NSSF Board of Trustees to purchase Nairobi/Block 101/208 New Kitusuru Estate as it appears in BKK1.

On 11th September 2014, the deceased wrote a letter to NSSF Board of Trustees to incorporate the Applicant's in the property as it appears in BKK 2

The application is also premise on the ground that Bahati Khadija Kabura made contributions towards the purchase of the said property which included Kshs. 130,000/- on 8th September 2014, Kshs. 63,000/- on 12th September 2014, Kshs. 11,000/- on 1st October 2014, and Kshs. 16,000 on 17th October 2014. The applicant further testified that she made other contribution towards the purchase of the said property improvements towards the said property as it appears in NSSF statement marked as BKK6 &7.

I have carefully considered the testimony of the Applicant. I have scrutinized into the allege grounds raised by the Applicant as contained in her Pleadings.

It could be clearly evinced and gauged from ex-parte evidence of the applicant that she indeed contributed directly and indirectly towards the purchase of the said property.

It is the view of this court, In Islamic Law, a Muslim woman who marries a man, still possesses the power of ownership on any property and may continue to own the property she acquired before her marriage and may still do so after her marriage either receiving it as inherited property, as a gift from the living (hibah), through her own efforts and the likes and consequently she is responsible upon the property where she can lay a claim in Court . In Haji Ramah v Alpha & Ors (1924) 4 FMSLR 179

The Wife claimed her share-faraid- a further half share in the 2 pieces of land because she helped her Husband in opening and cultivating them. The Ct applied Islamic law and held on the expert evidence. The widow was entitled to one-quarter of the value of land which she had helped to cultivate as compensation for work done in addition to her quarter share in the estate.

In conclusion , I make the following orders:-

- (1) That the property NAIROBI/BLOCK101/208 NEW KITUSURU ESTATE be and is hereby declared as a joint and/or matrimonial property between the deceased and the applicant herein.
- (2) That the applicant shall retain 50% of the entire NAIROBI/BLOCK101/208 NEW KITUSURU ESTATE as her share in the matrimonial property.
- (3) That the other 50% of the NAIROBI/BLOCK101/208 NEW KITUSURU ESTATE shall be held in trust by the Applicant for the legal heirs of the deceased.

No order as to costs

It is so ordered.

Dated, Signed and Delivered in Nairobi this 7th day of March, 2016.

**Hon. A.I. Hussein**

Kadhi II