



REPUBLIC OF KENYA



KENYA LAW
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**In re estate of Khadija Mzee Khamis (Deceased) (Succession Cause
207 of 2015) [2016] KEKC 39 (KLR) (7 March 2016) (Judgment)**

In re estate of Khadija Mzee Khamis [2016] eKLR

Neutral citation: [2016] KEKC 39 (KLR)

REPUBLIC OF KENYA

IN THE KADHIS COURT AT MOMBASA

SUCCESSION CAUSE 207 OF 2015

AH ATHMAN, PK

MARCH 7, 2016

IN THE MATTER OF ABDALLA HAJI IDDI CHAUREMBO

IN THE MATTER OF

ABDALLA HAJI IDDI CHAUREMBO PETITIONER

JUDGMENT

1. The petitioner deponed that the late Khadija Mzee Khamis was survived by a widower, three sons and four daughters and left shares in [7] properties in Kenyan [2] houses without land in Mtopanga and Kongowea - Mombasa Kenya and [6] houses and [2] shambas in Tanzania. He prays for:

1. Determination of estate, heirs and their respective shares
2. Distribution of the estate among the heirs
3. Vesting of the estate to heirs
4. Any other relief the court deem just to grant.

The matter is not contested.

2. The late Khadija Mzee Khamis is a Kenyan lady married to a Tanzanian. She died in Sinza Hospital Tanzania on 22nd September 2014 of severe hypertension. She had properties in Kenya and Tanzania. Most of the heirs are Tanzanian, some propose the properties in Tanzania be distributed separately from those in Kenya.

The issues for determination are her heirs:

1. What constitutes the estate
2. the legal heirs and their respective shares



3. Distribution

Estate

3. Rehema Haji informed court the deceased had given her, her share in Plot No Kwale / Ng'ombeni/ 662. The same has already been transmitted to her by the Kadhi's court at Kwale in Succession Cause No 151 of 2013. She however admits and wants it to be considered part of the estate.
4. The deceased's father, Mzee Khamis had share in several properties in the estate of Mohamed bin Mambo Mdigo, Tatu binti Mambo [succession case Nos 159,158 & 161 of 2007] The name of the deceased is not on the face of the titles. It could be because there were many heirs and the names only captured the Trustees on behalf of the other beneficiaries. The judgment and / or rulings would confirm if she had shares in the same. Her share in these plots devolve to her heirs. However I am not able to cite the properties as part of her estate for lack of sufficient documentary evidence.

The properties of the estate in Kenya are:

1. a [8] room Swahili house without land at Kongowea - Mombasa
 2. A [10] room Swahili house without land at Magongo - Mombasa
 3. a share in a Swahili house without land at Mtopanga - Mombasa
 4. A share in Plot No Kwale / Ng'ombeni/ 662
5. The widower confirmed to court that the deceased left six [6] houses and [2] farms in Tanzania as follows:
 1. [2] houses in Kijito nyama - Kinondoni Daresalaam
 2. [2] houses at Mtoni, Temeke Daresalam
 3. [1] house in Chamazi, Temeke - Daresalam
 4. [2] farms in Mkurunga - wilaya ya pwani 'coast Province'.
 5. [1] house in one of the farms in Mkurunga, wilaya ya pwani.

They are part of the estate of the deceased herein.

Heirs

The legal heirs of the late Khadija Mzee Khamis are:

1. Ally Abdalla Maringo widower
2. Abdalla Haji Iddi Chaurembo son
3. Issa Ally Abdalla Maringo son
4. Mzee Ally Abdalla Maringo son
5. Rehema Haji iddi daughter
6. Ziada Haji Chaurembo daughter
7. Zainabu Ally Maringo daughter
8. Zamlatta Ally Maringo daughter

A widower, three [3] sons and four [4] daughters.



6. The widower is entitled to one fourth [1/4] of the estate under Qur'an:4:12

'And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have made] or debt.

7. Each son is entitled to twice the share of each daughter under Qur'an: 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.

The share of the widower = $10/40$ 25%

The share of each son = $6/40$ 15%

The share of each daughter = $3/40$ 7.5%

Distribution

8. The beneficiaries talked of a will of the deceased. It was not produced. All the beneficiaries were present in court. They all agreed the estate be distributed under Islamic law and not through the will. The widower opined this was because the family sat and discussed the distribution of the estate and the will and found it offended Islamic law. Some of the heirs would however prefer the distribution of the properties in Tanzania be handled and done in Tanzania.

9. Distribution of estate of deceased Muslims should ideally be done at once upon determination of the estate, clearance of all liabilities and settlement of accounts. It should not be done in piecemeal. National boundaries are immaterial for purpose of distribution under Islamic law. However challenges occur during enforcement and execution of decrees in other areas outside the jurisdiction of this court. Fortunately Most countries, especially Islamic countries respect and recognize the findings of this court.

10. The heirs can use the findings herein on application in the Tanzania court to help them finalize distribution of the properties in Tanzania as we lack jurisdiction to enforce our decree in that Country. The estate in Kenya is not complete in this matter. The deceased's share in other succession matters is not captured herein yet for lack of sufficient evidence. I invite the petitioner to present required evidence and direct beneficiaries to deliberate on valuation of the deceased's estate [including shares in the estate of her relatives] and give proposal on distribution commensurate with their respective shares.

Orders accordingly.

DATED AT MOMBASA ON 7TH MARCH 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of

Mr. Yusuf K. Abdulrahman, court assistant Petitioner

