



Pascal v Hyder (Petition 120 of 2015) [2016] KEKC 40 (KLR) (17 March 2016) (Judgment)

Birgette Pascal v Mohamed Hyder [2016] eKLR

Neutral citation: [2016] KEKC 40 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
PETITION 120 OF 2015
AH ATHMAN, PK
MARCH 17, 2016**

BETWEEN

BIRGETTE PASCAL PETITIONER

AND

MOHAMED HYDER RESPONDENT

JUDGMENT

1. The petitioner claimed the deceased , a brother to the respondent, was survived by her mother, one widow, one son and one daughter and had left the following properties :
 1. A Swahili house at Mkanyageni
 2. A shamba at Mtongwe
 3. A shamba at Kikambala
 4. A shamba at Diani
 5. A Swahili house at Kibokoni
2. She claimed the heirs of the deceased are entitled to the share of the estate of his late father but the deceased's siblings have the properties. She prays for:
 1. Determination of the deceased's share in the estate of his late father according to Islamic law
 2. Distribution of the estate to his legal heirs according to Islamic law.
 3. Any other relief the court may deem fit to grant.
3. The respondent denied the deceased died in Mombasa of Malaria as alleged by the petitioner . He denies the their father left the properties cited; he states the deceased had a share in a half share in two shambas at Mtongwe Plot No. Mombasa / Mainland South /II/126 and Mombasa / Mainland South / II/111.



He states he was appointed the administrator of the estate of the deceased herein by the High Court in Succession cause No 738 of 1994. He further states that he has been ready to give the petitioner her share but she has declined claiming she is entitled to a lot more than was calculated for her.

4. The late Aly Hyder died in 2006. He died in Iran although the death certificate processed by the petitioner reads he died in Mombasa. She admitted to the fact.
5. The issues for determination in this succession matter are what constitutes the estate of the late Aly Hyder , his legal heirs and their respective shares.

Estate

6. The respondent denied their father left any estate properties. He however stated the deceased was a joint owner with him in two parcels of land in Mtongwe. He obtained letters of administration and sold the properties. He admits the deceased estate consisted of the net half share of the proceeds of the sale.
7. The petitioner failed to produce evidence to support her claim the properties she cited belong to the estate of Hyder Mohamed Kindy. The respondent produced
 1. Copies of titles for Plot No Kwale / Diani beach Block/997
 2. Certificate of Title No. 13159 subdivision No 43/III/MN
8. The first one is a certificate of lease for [99 years] registered in the names of Mohamed Hyder Matano and Samirna Hyder Matano on June 28, 1996 and the second was transferred to Mohamed Hyder Matano for and Samira Hyder on February 26, 1976. The two are not part of the estate of Hyder Mohamed Kindy.
9. A half share in the following belong the estate of Hyder Mohamed Kindy,, who jointly owned it with his son, Hyder Mohamed , the respondent herein, in equal one half shares:
 1. Mombasa / MS/II/126
 2. Mombasa / MS/II/111
10. The respondent obtained certificate of confirmation a grant of administration from the High Court at Mombasa on August 31, 1999. It authorised him to sale the property and distribute proceeds under Islamic law. The heirs of Hyder Mohamed listed in the certificate of confirmation of grant are:
 1. Malkia Ali widow
 2. Mohamed Hyder Mohamed son
 3. Rehmat Hyder Mohamed daughter
 4. Umi Hyder Mohamed daughter
 5. Farida Hyder Mohamed daughter
 6. Munira Hyder Mohamed daughter
 7. Faiz Hyder Mohamed son
 8. Naseem Hyder Mohamed daughter
 9. Alhad Hyder Mohamed son
 10. Aisha Hyder Mohamed daughter
 11. Fatma Hyder Mohamed daughter



12. Ali Hyder Mohamed son
13. Asma Hyder Mohamed daughter
14. Alia Hyder Mohamed daughter

The two properties were valued at KES 10,000,000.00

11. The estate of Hyder Mohamed Kindy was 50% of the net sale proceeds of the two properties.

The share of the widow = 12.5%

The share of each daughter = 5.14%

The share of each son = 10.29%

12. A H M's share in the estate of his late father was therefore 10.29% of the 50% of the proceeds of sale of the two properties.

Heirs

The legal heirs of Aly Hyder Mohamed are:

1. Malkia Ali mother
2. Brigitte Pascal widow
3. H A H son
4. M A H daughter

13. The mother is entitled to one sixth of the estate and the son to twice the share of the daughter under Qur'an

'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. And for one's parents to each one of them is a sixth of his estate if he left children.

The widow is entitled to one eighth of the estate under Qur'an:4:12

And for them [i.e. the wives] is one fourth if you leave no child. But if you leave a child then for them is an eighth of what you leave after any bequest you [may have] made or debt.

The share of the mother = $12/72$ 16.66%

The share of the widow = $9/72$ 12.5%

The share of the son = $34/72$ 47.22%

The share of the daughter = $17/72$ 23.61%

Distribution

The estate properties were sold at KES 12,000,000.00

14. According to the statement and account by the respondent, following expenses were incurred in the transaction:

Balance for distribution to partners = 7,766,381.15

The share of each partner = 3,883,190.58

The share of Ali Hyder = 10.29% of 3,883,190.58



= 399,580.311

The share of the mother = 66,596.71

The share of the widow = 49,947.53

The share of the son = 188,690.70

The share of the daughter = 94,345.35

15. Mr. Oddiaga for the petitioner had argued in his submissions that the account of the respondent on the distribution was not correct. He submitted the expenses were only deducted from the estate of the deceased herein instead of being shared to both partners of the properties. Professor Mohamed Hyder, the respondent opined this was untrue and the expenses were attributed to all the estate. Upon careful analysis of the account and our own calculations, the professor is vindicated. In fact it seems he was a little bit more generous.
16. The joint share of the widow and the two children is KES 332,683.58. The respondent has already disbursed KES 192,835.00 to the respondent mainly towards school fees of the minor children. The balance to for the widow and the two children is therefore KES 139,848.58. Considering the balance due to the widow and children on A H and the age of the children, the entire balance be issued to the petitioner on her own behalf and behalf of the children.

No orders as to costs.

Orders accordingly .

DATED and delivered at Mombasa on 17th March 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of :

Mr. Yusuf K. Abdulrahman, Court assistant

Mr. Oddiaga for petitioner

The respondent

