



**In re Estate of Haitham Said (Deceased) (Succession Cause
177 of 2015) [2016] KEKC 15 (KLR) (14 April 2016) (Judgment)**

In re estate of Haitham Said (Deceased) [2016] eKLR

Neutral citation: [2016] KEKC 15 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA**

SUCCESSION CAUSE 177 OF 2015

AH ATHMAN, PK

APRIL 14, 2016

IN THE MATTER OF THE ESTATE OF HAITHAM SAID (DECEASED)

BETWEEN

SAID HAITHAM SAID PETITIONER

AND

SWABAHA HAITHAM SAID 1ST RESPONDENT

NURU HAITHAM SAID 2ND RESPONDENT

JUDGMENT

1. The petitioner prays for orders for determination of estate, heirs and their shares; distribution of the estate to heirs according to Islamic Shariah and the respondents to be ordered to give accounts of the estate. He deponed that the deceased left A Swahili house at Sparki, a Swahili house at Kisimani and a plot at Kisimani. He states the 1st respondent collects rent of the Sparki house and the 2nd respondent occupies the Kisimani house and have possession of the documents of the estate. He claims the respondents threaten to evict him from the estate house.
2. The respondent admit only one property, the Sparki house, belongs to the estate. they state The Swahili house at Kisimani and the plot belonged to their mother who has since transferred it to her daughters and the plot to her sons although it is registered in the name of Ahmed Haitham [deceased]. They do not oppose to the distribution of the estate.
3. The late Haitham Said Abdalla died on 8th January 2004 at Maweni of High blood pressure aged [74].
4. The issues for determination in this matter are:
 1. What constitutes the estate



2. The legal heirs and their respective shares
3. Distribution of the estate

Estate

The Swahili house at Kisimani

5. The respondent produced sale agreement dated 18th July 2012. It provides Sheikha Haitham Said sold Plot No 326 / Ziwa la Nog'mbe squatter settlement scheme [0.02 Ha] to Noor, Saadia and Swabah Haitham Said in consideration of Kshs 500,000.00 duly paid and received. It was witnessed by K.M. Karimbhai advocates. Sheikha, the parties mother [RW1] testified in the matter. Her evidence is that the house and the plot at Kisimani belonged to hers and she decided to give the house to her daughter and the plot to her sons. Title for Mombasa/Ziwa la Ng'ombe scheme/ 258 [0.0258 Ha] is in the name of Sheikha Haitham Said.
6. The petitioner did not produce any evidence to rebut the respondents evidence. There is no evidence the property belonged to the deceased. It belonged to their mother who is old but still alive and fairly distributed it to her children. It is still in her name despite the sale agreement [which incidentally relates to another plot]. This property is not part of the estate of the deceased herein.

The Plot No Mombasa/Ziwa la Ng'ombe/262 [0.0133 Ha]: the Plot at Kisimani

7. This property is registered in the name of Ahmed Haitham Said Abdalla. The parties' mother testified it belonged to her and was registered in the name of Ahmed as Trustee on behalf of her male siblings because he was the one present during registration of the plots for the scheme. This property was never allocated or registered in the name of the deceased. It does not belong to his estate. It belongs to the male children of Sheikha and the deceased herein.

House known as Mombasa / Block XI/915 [0.0161 Ha]

8. This property is registered in the name of Haitham Said Abdalla. It constitutes the estate of the deceased herein. It is the only property of the estate.

Heirs

9. The legal heirs of the late Haitham Said Abdalla are:
 1. Sheikha Abdulrahman widow
 2. Ahmed Haitham Said son deceased
 3. Ali Haitham Said son
 4. Said Haitham Said snr son
 5. Abdulrahman Haitham Said son
 6. Said Haitham Said jnr son
 7. Fatma Haitham Said daughter
 8. Swabah Haytham Said daughter
 9. Nuru Haitham Said daughter



10. Saadia Haitham Said daughter
10. The widow is entitled to one eighth [1/8] of the estate and each son to twice the share of the daughter under Qur'an: 4: 11 and 12.
- The share of the widow = $14/112$ 12.5%
- The share of each daughter = $7/112$ 6.25%
- The share of each son = $14/112$ 12.5%
- The 12.5% share of Ahmed devolves to his heirs as follows:
1. Mbarak Ahmed Haitham son 2.529%
 2. Abdalla Ahmed Haitham son "
 3. Juweiriya Ahmed Haitham daughter 1.264%
 4. Haitham Ahmed Haitham son 32.529%
 5. Zahra widow 1.562%
 6. Sheikha Abdulrahman mother 2.083%
11. The estate is hereby vested in the heirs in their shares hereinbefore indicated.

Distribution

12. Parties to do and file valuation report and present proposals on valuation. The actual rent and occupation of the property has not been clarified. It may be partly rented and partly owner occupied. The same shall be established on a mention date and directions shall be given on the proceeds of the estate pending final distribution of the estate.

Each party to bear its own costs.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 14TH APRIL 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of

Mr. Yusuf K. Abdulrahman, court assistant.

Petitioner

Respondents

