



**In re Estate of Khamis Jagina (Deceased) (Succession Cause  
236 of 2009) [2016] KEKC 35 (KLR) (5 May 2016) (Ruling)**

*In re Estate of Khamis Jagina [2016] eKLR*

Neutral citation: [2016] KEKC 35 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
SUCCESSION CAUSE 236 OF 2009  
AH ATHMAN, PK**

**MAY 5, 2016**

**IN THE MATTER OF THE ESTATE OF KHAMIS JAGINA (DECEASED)**

**BETWEEN**

**ALI HAMISI KINGANGA ..... PETITIONER**

**AND**

**MUHAMAD HAMISI JAGINA ..... RESPONDENT**

**RULING**

1. This is a Notice of motion dated February 8, 2016 for orders for leave for the substitution of the petitioner with Momo Hathani Mbarak alias Momo Hamisi Jagina.
2. The applicant deponed that the petitioner is her brother and had passed way on August 25, 2015 at Mombasa. Death certificate was annexed to the application and the substitution is necessary to finalize determination of the matter.
3. The respondent opposes the application. He filed grounds of opposition dated March 9, 2016. He states the applicant is not a beneficiary of the estate and not a sister of Ali Hamisi Jagina, the deceased petitioner.
4. The matter was disposed of by way of written submissions. Counsel of parties reiterated their positions in the applications and reply thereto.
5. Momo Hamisi Jagina is listed as one of the heirs of the estate in this matter. In his reply to the petition the respondent at para 3 contested her entitlement to inherit the estate as a legal heir. He claimed the deceased had denounced her. The matter was settled by consent dated August 14, 2013. Parties were silent on the heirs in that consent adopted by court. They agreed on all assets of the estate save for two properties which they were to address later.



6. The applicant is a prima facie beneficiary of the estate. The respondent disputes this fact but his statement alludes she was recognized but later denounced by the deceased. This is all the more reason why she must be allowed to defend her entitlement.
7. The application is granted as prayed. Orders accordingly.

**DATED AND DELIVERED AT MOMBASA ON 5TH MAY 2016**

**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

**In the presence of:**

Mr. Yusuf K. Abdulrahman, Court Assistant

Mr. Mazrui for applicant

Mr. Mwawasi for respondent

