



**In re Estate of Abdulhussein Awadh (Deceased) (Succession Cause 96 of 2010) [2016] KEKC 33 (KLR) (5 May 2016) (Ruling)**

*In re Estate of Abdulhussein Awadh (Deceased) [2016] eKLR*

Neutral citation: [2016] KEKC 33 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
SUCCESSION CAUSE 96 OF 2010  
AH ATHMAN, PK**

**MAY 5, 2016**

**IN THE MATTER OF THE ESTATE OF ABDULHUSSEIN AWADH ..... DECEASED**

**BETWEEN**

**SAFIYA ABDULHUSSEIN ..... PETITIONER**

**AND**

**GULAM ABDULHUSSEIN ..... RESPONDENT**

**RULING**

1. This is a ruling on distribution of the estate. Judgment in this matter was entered on October 2, 2014. The estate comprises of:
  1. A house without land on Plot No 49A /I/MN at Mwandoni
  2. A [12.8 acres] farm at Majajani, Mavueni - Kilifi. [subdivision No 13 Group III]
2. The Mavueni farm was sold in 2005 without consent of heirs by Awadh Abdulhussein at KES 270,000.00. The cost would be considered issued to him in final distribution. Leave was granted to all parties to do valuation. The respondent's proposal was for the sale of the property and distribution of proceeds while the petitioner preferred distribution of proceeds of sale.
3. Valuation done by Value consults limited dated September 23, 2015 returned a value of KES 4,000,000.00 for the Mwandoni Swahili house without land. The respondent disagrees with this valuation but gave no basis to his disagreement and had not filed any valuation of his own. He had more than [18] months to do and file valuation but had not. I adopt this as representing the correct value of the property for purpose of distribution of the estate.



4. The heirs failed to appoint a joint administrator to manage the house. The respondent apparently has vested interest in the status quo but the status quo is detrimental to other heirs who are not getting their share of proceeds of the estate.
5. The respondent is entitled to his share but it is now settled practice that estate properties are first offered for sale to heirs and beneficiaries and only offered to third parties where none of the heirs is able or willing to buy the property. The other heirs having offered to buy the property, it shall be offered to them.

The value of the estate is as follows:

- i. The Mwandoni house 4,000,000.00
- ii. The Mavueni farm 270,000.00
- iii. Total 4,270,000.00

The heirs and their respective shares are:

1. Awadh Abdulhussein son
2. Zulekha Abdulhussein daughter
3. Gulam Abdulhussein son
4. Swafiya Abdulhussein daughter
5. Mbarak Abdulhussein son

Each son =  $2/8$

Each daughter =  $1/8$

The share of each son = 1,067,500.00

The share of each daughter = 533,750.00

The respondent's share = 1,067,500.00

Awadh's share [less 270,000.00] = 797,500.00

6. The respondent be paid his share KES 1,067,500.00 through court deposit within three [3] months from date hereof, upon which he shall cease to have any share or interest in the estate property and shall give vacant possession of the property or any part thereof within [30] days.

- 7 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. Mwadzogo for the petitioner

Mr. Apollo Muinde for respondent .

