

REPUBLIC OF KENYA

IN THE KADHIS COURT AT GARSEN

SUCCESSION CASE NO 04 OF 2016

IN THE MATTER OF THE ESTATE OF

OMARI HIRIBAE OMARI.....{DECEASED}

ABUBAKAR OMAR HIRIBAE.....PETITIONER.

JUDGEMENT/RULING

In this miscellaneous succession matter dated 6th June, 2016 the petitioner prays for:

1. Immediate and quick release of the estate for distribution.
2. Distribution of estate to heirs according to Islamic law
3. An order that the estate be deposited in the money be deposited in court or to the petitioners' account.
4. Any other grant the court may deem fit to Grant.

The petitioner with the letter from Public trustee MOMBASA (REF. PT/M/114/2016/1/MAB) dated 31st May, 2016.

The letter states that the estate of **OMARI HIRIBAE OMARI** .ADMN.CAUSE NO. 114 OF 2016 who died on 4th October, 2002 had been referred to him for administration. The deceased hailed from GARSEN within my administrative jurisdiction.

They requested this court to;

- I. Investigate
- II. Confirm particulars of rightful heirs i.e. I.D No's, Ages, sex, and relationship to the deceased.
- III. Mode of distribution.

The petitioner together with his witnesses testified. He stated that the process of getting the letter from the public trustee has taken 14 years since the deceased past on. He adds that he sought to the actual money available but proved difficult. He narrates he was in court because the family had entrusted him to follow up the matter. He further states that he is the son to the deceased and his identification had been taken by the public trustee Mombasa. He optimistic that since no one is opposed to the cause it should take the shortest time possible to get the estate since it has taken long. He observes that the late father was a driver at the ministry of health at Hola. He also told the court that they are a polygamous family with two widows and eight children listed and signed against each name together with their identification numbers. The purpose of this cause is in relation to this money raised at the Mombasa Public Trustee. The estate is ready and because the deceased was a Muslim it should be distributed according to Islamic law.

The petitioner by consent of all the heirs agreed that the estate should be distributed in an Islamic succession law is transferred to this court for it not to attract interest or be subjected to deductions not allowed by Shariah.

They requested the court to implement the Shariah to the later by allowing the whole estate be paid out to the heirs for it has taken a very long time to mature. I have considered the evidence, as well as the submission before the court. It is crystal clear from the record of the court that by time of the deceased death he was survived by the following;

- 1) FATUMA OMARI HIRIBAE - Widow.
- 2) SOMOE SHEHE MUHEMIR - Widow
- 3) HIRIBAE OMAR CHALALU – Son
- 4) MWANAAM HASHORA OMAR - Daughter
- 5) ESHA HADENDE OMAR – Daughter

6) HADIJA NDOGE OMAR – Daughter

7) MAIMUN SAIDA OMAR – Daughter

8) ALLY JILLOH OMAR – Son

9) ABUBAKAR DHADHO OMAR – Son

10) SAID HIRIBAE OMAR - Son

Many Muslims around the world have unknowingly accepted many of its laws and customs which are not in accordance with Islam. The laws of succession fall into this category even though Islamic law regarding this matter can be legitimately accommodated and practically implemented within the many existing legislation systems. Islamic law, it appears has been relegated to subsidiary and subordinate role in the modern lifestyle. As I have stated before Muslim law did not recognize the concept of administration of estate. In contrary, it has laid down machinery for the administration of the estate of the deceased among the legatees and the heirs. The concept of administration of estate was introduced in Kenya for the first time by the British rulers.

In modern Kenya, the administration of the deceased Muslim is governed by Law of Succession Act, Cap.160, where they are not inconsistent with those of Muslim Laws.

It should be noted that the **substantive law** that is applicable to the estate of a deceased Muslim is Muslim law as provided by Sec. 2(3) of the Act.

The estate of the deceased Muslim vests in the executor in many cases the Kadhi if no member can execute where there is one and it vests in him/her, even if no probate was obtained by him.

The law may be stated thus:

When a Muslim dies leaving behind a will where under he had appointed an executor, then his estate vests in him, as he is the legal representative of the deceased. In particular: (I) the bequeath able one-third vests in him for the purpose of the will, and (ii) the rest vests in him as a bare trustee for the heirs.

I am therefore satisfied that there is no reason to disbelieve the uncontroverted, un rebutted and unchallenged testimony of the Petitioner. I am satisfied that the basic requirement under the law of successions act (cap 160) and substantive Islamic Law of Inheritance has been met.

In determination of the rightful shares of inheritance the court's attention is drawn to Holy Quran Chap. 4 verse 11 and 12

“Allah commands you regarding your children. For the male a share equivalent to that of two females, if only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children ...”

The above verse does specify that a sister should inherit half of the amount her brother inherits.

I do find and declare that the deceased was survived by the following heirs/beneficiaries. The distribution thereof shall be done in accordance with the Islamic law of inheritance and as follows:-

NO.	NAME	1D. NO./ Birth certificate	AGE	RELATIONSHIP	SHARE IN %	AMOUNTIN KSHS.
1	FATUMA OMARI HIRBAE	XXX	61	WIFE	6.25%	
2	SOMOE SHEHE MUHEMIR	XXX	61	WIFE	6.25%	
3	HIRIBAE OMARI CHALALU	XXX	42	SON	14.583%	
4	MWANAAMU HASHORA HIRIBAE	XXX	42	DAUGHTER	7.292%	
5	ESHA HADENDE HIRIBAE	XXX	38	DAUGHTER	7.292%	
6	HADIJA NDOGE OMAR	XXX	37	DAUGHTER	7.292%	
7	MAIMUNA SAIDA OMAR	XXX	32	DAUGHTER	7.292%	

8	ALLY OMAR JILLOH	XXX	29	SON	14.583%	
9	ABUBAKAR OMAR HIRIBAE	XXX	22	SON	14.583%	
10	SAID HIRIBAE OMAR	XXX	21	SON	14.583%	
	Totals				100%	

ORDERS

Muslims everywhere should realize that profession of faith is not enough, it is necessary that the Muslims not only accept Islam as their religion but also as way of life. Laws and customs in whichever country or whatever society that conflict or contradict the way ordained by the Almighty are unacceptable to all those wishing to follow divine law. Some individuals feel that in this modern day and age of science and technology Islam is outmoded. However when Allah (s.w.t) perfected the religion that He chose for mankind, the laws that he decreed are eternally valid for the whole humanity regardless of time and place. Allah says in the holy Quran “*This day, have I perfected your religion for you, completed My favor upon you, and have chosen for you Islam as your religion.*” (Qur’an 5:3)

The laws of succession are no exception. The inescapable significance and importance of this aspect of Islamic Law is self evident from the verses immediately following those verse giving details of the laws of inheritance, Allah promises divine reward for those abiding by his commandments and divine punishment for those who do not. “*This are the limits (set by) Allah (ordainments as regards laws of inheritance), and whoever obeys Allah and his messenger will be admitted to Gardens under which rivers flow (in paradise), to abide therein and will be great success. And whosoever disobeys Allah and his messenger, and transgresses His limits, He will cast him into the fire to abide therein; and he shall have a disgraceful torment.*” (Qur’an 4:13-14)

This is why our constitution and the succession act Cap 160 have given as the opportunity to be served within the confines of modern law and Islamic law.

In view of the above and in the application of Law of Succession Act, Cap.160, which I believe directed the matter here in Kadhi’s court. As stated above we should implement it however difficult it seems.

IT IS HEREBY ORDERED:-

1. **THAT**, the **ADMINISTRATOR - GENERAL**, PUBLIC TRUSTEE P.O BOX 80366-- 80100 **MOMBASA** releases immediately the stated estate to court as prayed and as the Muslim law directs. The estate hereby vests in the heirs above in and the shares indicated.

GIVEN under my hand and seal of the court this 13th day of June 2016 at Garsen.

HON. RASHID K. OTUNDO

KADHI - GARSEN

ISSUED AT GARSEN THIS 13TH DAY OF JUNE 2016

PENAL NOTICE:

If anyone served with this order or becomes aware of it and he or she fails to comply shall be deemed to be in contempt and shall be liable to the punishment for a period not exceeding six months imprisonment