



**In re Estate of MLA (Deceased) (Succession Cause 144 of 2014)
[2016] KEKC 21 (KLR) (18 August 2016) (Judgment)**

ASM v LMM [2016] eKLR

Neutral citation: [2016] KEKC 21 (KLR)

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

SUCCESSION CAUSE 144 OF 2014

AH ATHMAN, PK

AUGUST 18, 2016

BETWEEN

ASM PETITIONER

AND

LMM RESPONDENT

JUDGMENT

1. The petitioner claims late MLA died in 2011 in old Town - Mombasa island and was survived by her mother, three sons and one daughter. He claims the deceased left a property known as Mombasa / Block [particulars withheld] comprising of two flats and two shops which she had bought from funds of her son ASM who died as a result of an accident in Georgia - U.S.A. He claims the property is the estate of both MLA mother and ASM, his full brother and the respondent has a share only in the share of their mother. He further claims the respondent obtained limited grant of letters of administration [revoked on September 15, 2015] which he used to collect rent of the property from May 2011 and which he has not accounted for.

He prays for orders that:

1. Distribution of the estate of the deceased MLA to the heirs as per Islamic law.
2. A permanent injunction restraining the respondent from collecting, using, distributing or in any manner dealing with the deceased estate pending the hearing and determination of this suit.
3. Respondent to give accounts of the rent proceeds from the estate so far, failure to which his share be surcharged for the same.
4. Costs



2. The respondent appointed the firm of Mburu Namboye & Co. advocates on March 22, 2016. He had been served with the petition on August 18, 2014. He participated in the hearing of the petitioner's case on March 14, 2016. He opposes the petition but to date has not filed a reply to the petition. Neither the respondent nor his advocate on record appeared in May 2016 on the day scheduled for mention for them to inform court how they wish to proceed to present their case. The petition should be allowed for lack of a formal objection. But this being a succession matter and a court of equity the court gave the respondent a chance to present his case orally. But he still failed to take up that opportunity. This being a 2014 matter, I am compelled to proceed to make a determination on the evidence adduced.

Facts

3. The deceased is a Muslim lady. He had children from two different husbands. two sons and one daughter [A, A and A] are full siblings while one, the respondent is an only child from her other marriage. A predeceased her. He is a full sibling to the two brothers and one sister. He died from an accident in Georgia, in the United States of America. The insurance money was used to finance the property. It was bought and registered in the name of the deceased herein.

Issues

4. The issues for determination in this matter are:
 1. Whether the property constitutes the estate of ML only or both ML and her son ASM
 2. The heirs and their respective shares
 3. Accounts.

Estate

5. The petitioner argued the property known as Mombasa / Block [particulars withheld] belonged to the estate of ASM having been financed from payment of his insurance upon his death. This fact was not controverted by the respondent although no documents had been produced to prove it. His evidence is that the payment of his insurance was 8.5 Million and the property was bought at KES 12 Million with the balance of KES 3.5 million paid in instalments through rent proceeds. Under cross examination by the respondent, [and in his own testimony] the petitioner stated their mother bought the house for all of them [all her children]. He admits the house is registered in their mother's name and belongs to her, he reiterated that their mother did not say that the house belong to the estate of A and that the balance of the purchase price was paid by their mother. He explained the reason of his prayers for the property to be returned to its original source as being the respondents conduct of not taking care of his children, not praying or fasting.
6. Under re-examination he stated that their mother had received proceeds of estate of A under Islamic law and therefore the respondent is only entitled to their mother's share.
7. The property was bought after the death of ASM by the mother of the parties herein. The title of the property is the name of the deceased herein. A was not alive at the time of purchase of the property. He could not have entered any transaction. The petitioner's arguments are contradictory. He did not cite this petition as being in the matter of the estate of AS. He specifically admitted the house belongs to their mother and is in her name. It is the respondent's alleged conduct that has compelled him to make the prayer that the property originally belongs to their brother.
8. The heirs of A were entitled to distribute the proceeds or even invest them in purchase of property. They should then have registered it in all their names if they had wanted or intended to co proprietors.



Agreements of monetary nature must be put into writing, and Muslims are bound by their agreements provided they are not repugnant to Islamic law. In the instant case it is clear the property was bought in the name of the parties' mother in her name. It is therefore her property. There is no evidence to the contrary.

9. Under Islamic law one is entitled to inheritance by blood or marital relationship and religion as provided in Qur'an: 4:11, 12 and 176 and Sunnah. It is not upon a parent or siblings to like a beneficiary. The shares are specific and entitlement automatic if the conditions are satisfied. The rational being fairness among beneficiaries for one knows not who is most beneficial to him or her.

"...Your parents or children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise". Nisa : 11

10. There is no claim the respondent is not a Muslim. There is no legal hindrance for the respondent to inherit the deceased herein.
11. Accordingly, I find and hold that the property known as Mombasa / Block [particulars withheld] 102 constitute the estate of MLA alone.

Heirs

12. There is no dispute on the heirs. The legal heirs of the late Mariyam Lali Athman are:
 1. KMA mother
 2. ASM son
 3. ASM son
 4. ASM daughter
 5. LMM son
13. The mother is entitled to one sixth of the estate and each son is entitled to twice the share of each daughter under Qur'an: 4: 11

'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 share of the mother = $7/42$ 16.66%

The share of each son = $10/42$ 23.8%

The share of the daughter = $7/42$ 11.9%

Accounts

14. The respondent was granted limited grant of letter of administration ad colligenda bona on May 8, 2011. The grant was revoked on September 13, 2015. The respondent had been in charge of collecting rent for this period. The petitioner has since been collecting rent of the estate property. Both parties reside in the property house. One tenant has been depositing rent in court. All tenants are ordered to henceforth deposit rent to court.



15. Both parties to file accounts for the period they have collected rent from the estate property. Balance shall be distributed to heirs as hereinbefore indicated.
16. Parties have leave to file consent on administrator and / or file application for grant of letters of administration in the High Court.

Distirubution

17. The petitioner prayed for the distribution of the estate. Distribution of proceeds of rent should be done in the shares hereinabove indicated after payments of rates and / or fees for maintenance, renovations e.t.c. In this case there would be no need to do valuation. If any beneficiary wishes to get his share in monetary terms it would be necessary to do valuation, to determine the monetary share of each heir. Parties have leave to inform court of their preferred mode of distribution for consideration.

No orders as to costs.

DATED, SIGNED AND DELIVERED IN MOMBASA ON 18TH AUGUST 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of:

Mr. Yusuf K. Abdulrahman, Court assistant

Mr. Akanga for the petitioner

Mr. Namboye for the respondent

