



In re Estate of Ibrahim Bakari Mwaigachu (Deceased) (Succession Cause 208 of 2014) [2015] KEKC 50 (KLR) (23 March 2015) (Ruling)

Asba Adam Khamis v Amir Ibrahim & 2 others [2015] eKLR

Neutral citation: [2015] KEKC 50 (KLR)

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

SUCCESSION CAUSE 208 OF 2014

AH ATHMAN, SPK

MARCH 23, 2015

IN THE MATTER OF THE ESTATE OF IBRAHIM BAKARI MWAIGACHU DECEASED

BETWEEN

ASBA ADAM KHAMIS PETITIONER

AND

AMIR IBRAHIM 1ST RESPONDENT

2. MAULIDI IBRAHIM 2ND RESPONDENT

RUKIA IBRAHIM [JNR] 3RD RESPONDENT

RULING

Introduction

1. The applicant deponed that the respondents violently threatened her and other tenants at one of the houses where she is staying. She states her late husband has a share in the said house and built an extension in one of them. She is apprehensive that the respondents will cause more violence if not restrained.
2. The respondents oppose the application and deny the extension is not part of the estate.

Submissions

3. The applicant submitted her husband, who has a share in the estate of his father, used to collect rent for the house where she lives, that she has continued to do so after his death and the tenants do not recognise the respondents as landlords of the house. She stated the respondents interfered and caused chaos at her residence. She contends the respondent collect rent of the house and she has not interfered



with them therefore they should not cause her troubles and the status quo should remain pending determination of the petition.

4. Rukia Ibrahim, on her behalf and that of her siblings, the first and second respondents, submitted the houses belong to their father and the late Bakari Ibrahim, their elder brother was collecting the rent on their behalf and sending it to their mother. She denies having insulted the applicant and claims she is the one who insulted them. She states they have not chased her from the house, they only sought to collect rent from the other tenants, some of whom had refused to pay, but the applicant's children assaulted her. She contends the family of the late Ibrahim is entitled to collect the rent proceeds from his estate and have no problem the applicant continuing to live their without paying rent.

Issue

5. The main issue for determination is whether or not the applicant should continue collecting rent of the house she lives in and whether or not the respondent should be restrained from going to and collecting rent for the said estate property

Analysis and Findings

6. The estate of Ibrahim Bakari is an issue in this matter that is pending, the exact extent of the estate has not been established yet, but generally the dispute is only on part of it, the extension on one of the houses. The larger part, there is no dispute, it belongs to the late Ibrahim Bakari. The respondents have confirmed the applicant's [and her children's] right to remain occupying part of the house. That is as it should be as she and her children are entitled to her husband's share in the estate. Was her husband collecting the rent of the other five [5] rooms as his or for the estate as alluded by the respondents? The man to answer this question is now deceased and cannot enlighten the court. As the estate has not been distributed, the correct thing to do would be to collect for the estate and distribution to heirs. While her husband could collect rent on behalf of the estate, the applicant cannot claim the same status and responsibility.
7. According to the petition, the heirs are eight [8] children, five [5] sons and three [3] daughters, her husband being one of them. The share of the applicant's husband would be about 15.38% and the respondents and other heirs would be entitled to the remainder. Based on party's submissions, the two houses fetch about KES 28,000.00 per month while six [6] rooms are owner occupied, three by the applicant and three by the respondents. Although the amount to be collected from the six rooms if they had been rented was not indicated, clearly both parties are benefiting; they may remain in such occupation without interference from the other party and without paying rent pending determination of the petition. The share of the late Bakari Ibrahim from the rent proceeds of both houses would be about 4,300/-.
8. Having found the applicant not entitled to collect rent on behalf of the estate in this matter and that her share of the rent proceeds is about KES 4,300.00 per month, her application cannot be granted but I make the following orders:

Costs be in the cause.

- 9 Orders accordingly.

DATED AND DELIVERED IN MOMBASA ON 23RD MARCH 2015

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI



In the presence of:

Mr. Yusuf K. Abdulrahman, court assistant

Petitioner / applicant

Respondent

