



In re Estate of Ahmed Hamda Ahmed (Deceased) (Succession Cause 141 of 2013) [2015] KEKC 46 (KLR) (26 March 2015) (Judgment)

Salma Brek Said v Hafswa Abeid Faraj & 3 others [2015] eKLR

Neutral citation: [2015] KEKC 46 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE 141 OF 2013
AH ATHMAN, PK
MARCH 26, 2015
IN THE MATTER OF THE ESTATE OF AHMED HAMDA AHMED**

BETWEEN

SALMA BREK SAID PETITIONER

AND

HAFSWA ABEID FARAJ 1ST RESPONDENT

ANISA ABEID FARAJ 2ND RESPONDENT

SAHALE ABEID FARAJ 3RD RESPONDENT

OMAR ABEID FARAJ 4TH RESPONDENT

JUDGMENT

Introduction

1. The petitioner prays for;
 1. Appointment of the petitioner as the administratrix of the estate
 2. Determination of heirs and estate Distribution of the estate
 3. Distribution of the estate according to Islamic Shariah
 4. Any other relief the court deems fit to grant in the interest of justice
2. The petitioner claims the deceased was her legal husband and left
 1. Two [2] houses without land at Kisauni
 2. one [1] house with land at Kisauni



3. one [1] house without land at Kongowea- Mombasa.
4. a half share in a house with land at Kisauni.
3. The respondents admit the petitioner is a widow of the deceased herein but contend she is not the only beneficiary, that the deceased was survived by a sister: Khatim Hamoe Alyan [now deceased] who was survived by her children, the respondents. They state only Plot No. xxxx constituted the estate which the petitioner meddled and changed it in her name. They oppose her appointment as administrator of the estate.
4. The late Ahmed Hamda Hemed ALyan died on 6th May 1996 at Mombasa Hospital of hypertension. The petitioner Salama Brek Said, his widow, travelled to Hadhramut - Yemen with her nephew, where she is still resident. She alleges the respondents took over control of her late husband's estate and only gave her KES 50,000.00 as her share of proceeds in 2013. She gave Abdalla Abeid Salim power of attorney to get her inheritance right in the estate of her late husband.

Issues

5. The issues for determination in this matter are:
 1. The estate of the late Ahmed Hamda Hemed Alyan.
 2. The legal heirs and their respective shares
 3. Whether or not the petitioner should be appointed administratrix of the estate
 4. Distribution of the estate

Estate

6. Half [1/2] share in the house without land on plot No. xxxx, Kisauni
Upon reading the petition and reply and upon hearing the petitioner's attorney and examination of the ownership documents, the estate of the late Ahmed Hamdah Alyan consist of half share [1/2] in the house without land on plot No. xxxx, Kisauni; together with Anisa Abeid Faraj.
7. House No. 41 without land on Plot No. xxxx
according to the landlords letter dated 20th August 2013, belongs to Awadh Alyan and Ahmed Awadh. The petitioner's attorney testified that Awadh Alyan , who owns a half of this property, was a brother to Ahmed Hamda Alyan and was only survived by him at the time he died. Khatim Hamda Alyan was their sister who died after Ahmed[3.6.2003]. She is also entitled to the share of Awadh Alyan.
Unless proven that Ahmed Awadh and Ahmed Hamdah Alyan are one and the same person, the other half of the property is not part of the estate. One third of the Awadh Alyan devolved to Khatim Hamda Alyan. The two thirds [2/3] of the half share of Awadh Alyan in this property devolved to the two siblings, and is therefore part of the estate.
The respondents alluded the late left a parcel of land Plot No. xxxx [original No. xxxx], no evidence had been annexed or produced. No evidence was produced regarding the other estate properties. The court cannot confirm the same as part of the estate.

Heirs

8. The legal heirs of the late Ahmed Hamda Alyan are:
 1. Salama Breik Said widow 1/4



2. Khatim Hamda Alyan full sister 3/4 deceased
9. Khatim Hamda was survived by three daughters and one son, the respondents herein. The fin list of heirs and their respective shares are as follows:
 1. Salama Brek Said widow 5/20
 2. Hafsa Abeid Faraj niece 3/20
 3. Anisa Abeid Faraj niece 3/20
 4. Sahale Abeid Faraj niece 3/20
 5. Omar Abeid Faraj nephew 6/20

Administration

10. The petitioner, being entitled to a minority share of the estate, is not entitled to be appointed the sole administrator of the estate. She can be appointed together with one of the respondent, especially Anisa Abeid Faraj who has half proprietorship with the deceased in one of the properties. The two are appointed joint administrators of the estate.

Orders accordingly.

DATED AND DELIVERED IN MOMBASA ON 26TH MARCH 2015.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of:

Mr. Gichana for petitioner

Mr. Kamoti for respondent

