



In re Estate of Salim Ibrahim Juma (Deceased) (Succession Cause 186 of 2015) [2015] KEKC 51 (KLR) (26 March 2015) (Ruling)

Mwanamsham Salim v Samya Said Mbarak [2015] eKLR

Neutral citation: [2015] KEKC 51 (KLR)

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

SUCCESSION CAUSE 186 OF 2015

AH ATHMAN, PK

MARCH 26, 2015

IN THE MATTER OF THE ESTATE OF SALIM IBRAHIM JUMA (DECEASED)

BETWEEN

MWANAMSHAM SALIM 1ST PETITIONER

MWANAMSHAM SALIM 2ND PETITIONER

AND

SAMYA SAID MBARAK 1ST RESPONDENT

SAMYA SAID MBARAK 2ND RESPONDENT

RULING

Background

1. The petitioner filed this succession cause on September 26, 2011 for determination of estate and heirs and distribution of estate to heirs according to Islamic Shariah. The respondent in reply to the petition prayed it be dismissed as the deceased had left a will which should be followed in the distribution of the estate. She also stated the executors of the will should first get letters of grant in the High court to administer the estate in accordance with the will. She did however have no problem with the court determining the respective shares of the heirs. The parties requested court for and were granted time for discussion. They had more than four meetings between February and September 2012 but no settlement was recorded. On September 19, 2012, the matter was dismissed for non prosecution. Mr. Hayanga for the petitioner, applied for and was granted its reinstatement. The parties had gone to the High court for and obtained letters of administration. The petitioner filed chamber summons dated March 12, 2015 for orders:

1. That the estate of Salim Juma Ibrahim be distributed according to Islamic law.



2. That the court to determine the heirs and appropriate shares of beneficiaries according to Islamic law.
2. Mr. Noor holding brief for Mr. Nabhan for the respondent submitted that they do not oppose the application, that the list of heirs as in the petition and list of properties as in the certificate confirmation of grant can be confirmed.

Issues

3. The issues for determination in this matter are:

Estate

4. The estate of the late Salim Ibrahim Juma, as confirmed in the certificate of confirmation of grant dated March 13, 2015, consist of the following properties:

Heirs

5. There is no dispute in the heirs. The list in the petition is the same one in the letters of grant of probate. The legal heirs of the late Salim Ibrahim Juma are:
One [widow], four [4] sons and three [3] daughters.
6. The widow is entitled to one eighth [1/8] of the estate under Qur'an :4:12
And for them [i.e. the wives] is one fourth if you leave no child. But if you leave a child then for them is an eighth of what you leave after any bequest you [may have] made or debt.
7. Each son is entitled to twice the share of the 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.
The share of the widow = 11/88 12.5%
The share of each daughter = 7/88 7.95%
The share of each son = 14/88 15.9%

Distribution.

8. The only thing remaining is distribution of the estate. The certificate of confirmation of grant indicate the estate shall be distributed according to Islamic Shariah. The shares of the heirs according to Islamic Shariah has been indicated herein above. Heirs may distribute proceeds of estate or distribute properties to heirs according to their respective shares. They have leave to do valuation to help in the exercise. Meanwhile the estate vests in the heirs in their respective shares.

Orders accordingly.

DATED AND DELIVERED IN MOMBASA ON 26TH MARCH, 2015.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of:

Mr. Yusuf K. Abdulrahman, Court Assistant



Mr. Hayanga for the petitioner

Mr. Nabhan Swaleh for respondent

