



REPUBLIC OF KENYA



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**In re Estate of Rehema Binti Said Msonek (Deceased) (Succession Cause  
100 of 2014) [2015] KEKC 22 (KLR) (23 April 2015) (Judgment)**

*In re Estate of Rehema Binti Said Msonek (Deceased) [2015] eKLR*

Neutral citation: [2015] KEKC 22 (KLR)

**REPUBLIC OF KENYA**

**IN THE KADHIS COURT AT MOMBASA**

**SUCCESSION CAUSE 100 OF 2014**

**AH ATHMAN, PK**

**APRIL 23, 2015**

**IN THE MATTER OF THE ESTATE OF REHEMA BINTI SAID MSONEK (DECEASED)**

**BETWEEN**

**AWADH AHMED JEZAN ..... 1<sup>ST</sup> PETITIONER**

**SAID HEMED SAID ..... 2<sup>ND</sup> PETITIONER**

**ABOUD ABDULRAHMAN ABOUD ..... 3<sup>RD</sup> PETITIONER**

**AND**

**SALIM MOHAMED SALIM ..... RESPONDENT**

**JUDGMENT**

1. The petitioner prays for:
  1. Determination of heirs and their respective shares according to Islamic law
  2. An order for leave be granted for sale of property known as Mombasa/ Block XLIV/76 and the three petitioners be appointed as Trustees for purpose of sale, execution of the transfers and distribution of the estate.
  3. An order that the petitioners be allowed to distribute the proceeds of the sale of the property of the estate to all heirs in accordance to their entitlement under Islamic Law.
  4. Any other relief the court deem fit to grant.
2. The petitioners claim the deceased left the property known as Mombasa/ Block XLIV/76 situated at Mombasa island, that she was survived by three daughters and one son who are now all deceased but they were survived by their respective heirs entitled to inherit the estate.



3. The respondent through his replying affidavit dated 8th December 2014 does not object to distribution of the estate but contend because he inherit through his father, he is entitled to two thirds [2/3] of the estate. He deponed that he is not ready to sell his shares in the estate as he lives in the house with his family.
4. The late Rehema Bint Said Msonek died sometimes in 1945.

## **ISSUES**

5. The issues for determination in this matter are:
  1. What constitutes the estate
  2. The legal heirs and shares of each heir
  3. Distribution

## **Estate**

6. There is no dispute that the property known as Mombasa/ Block XLIV/76 constitutes the property of the late Rehema Bint Said Msonek.

## **Heirs**

7. There is no dispute on the heirs. This is a classic case of Al Munasakha, where the all the primary heirs are all deceased, their respective shares devolve to their respective heirs.

8. The heirs of the late Rehema Said Msonek are:

1. Salma Salim daughter
2. Barke Salim daughter
3. Esha Salim daughter
4. Mohamed Salim son

The share of each daughter =  $1/5$  20%

The share of the son =  $2/5$  40%

The  $[1/5]$  share of Salma Salim devolve to her only child Awadh Jezaan.

The  $[1/5]$  share of Barke Salim devolve to her heirs as follows:

1. Said Hemed Said son  $2/13$
2. Swaleh Hemed Said son  $2/13$  deceased
3. Fatuma Hemed Said son  $1/13$
4. Mohamed Hemed Said son  $2/13$
5. Yahya Hemed Said son  $2/13$
6. Mbarak Hemed Said son  $2/13$
7. Abud Hemed Said son  $2/13$

The  $[2/13$  of  $1/5]$  share of Swaleh Hemed Said devolve to his heirs as follows:



1. Abdallah Swaleh Hemed son
2. Ahmed Swaleh Hemed son
3. Amina Swaleh Hemed daughter
4. Said Swaleh Hemed son
5. Ali Swaleh Hemed son
6. Hashim Swaleh Hemed son
7. Khadija Swaleh Hemed daughter
8. Maryam Swaleh Hemed daughter
9. Hamad Swaleh Hemed son
10. Mohamed Swaleh Hemed son
11. Aisha Swaleh Hemed daughter
12. Rukiya Hanzwani Hemed widow

The widow's share =  $18/144$

The share of each daughter =  $7/144$

The share of each son =  $14/144$

The  $[1/5]$  share of Esha Salim devolve to her heirs as follows:

1. Fauziya Abdulrahman Aboud daughter  $1/8$
2. Gamar Abdulrahman Aboud daughter  $1/8$
3. Abudu Abdulrahman Aboud son  $2/8$
4. Athman Abdulrahman Aboud son  $2/8$
5. Jamal Abdulrahman Aboud son  $2/8$

The  $[2/5]$  share of Mohamed Salim devolve to his legal heirs as follows:

1. Salim Mohamed Salim son  $2/14$
2. Nuru Mohamed Bakhresa daughter  $1/4$  deceased \*
3. Rahma Mohamed Bakhresa daughter  $1/4$  deceased

The  $[1/4 \text{ of } 2/5]$  share of Rahma Mohamed Bakhresa devolve to her heirs as follows:

1. Mohamed Salim Mohamed son
2. Aisha Salim Bakharisa daughter
3. Ali Salim Mohamed son
4. Mbarak Salim Mohamed son
5. Salma Salim Mohamed daughter
6. Abdulrahman Salim Bakhresa son
7. Twalib Salim Mohamed son
8. Maryam Salim Mohamed daughter



9. Ahmed Salim son

The share of each son = 2/15

The share of each daughter = 1/15

The final list of heirs and their respective shares are:

1. Awadh Jazan 20%
2. Said Hemed Said 3.07%
3. Fatuma Hemed Said 1.58%
4. Mohamed Hemed Said 3.07%
5. Yahya Hemed Said 3.07%
6. Mbarak Hemed Said 3.07%
7. Abud Hemed Said 3.07%
8. Abdallah Swaleh Hemed 0.298%
9. Ahmed Swaleh Hemed 0.298%
10. Amina Swaleh Hemed 0.149%
11. Said Swaleh Hemed 0.298%
12. Ali Swaleh Hemed 0.298%
13. Hashim Swaleh Hemed 0.298%
14. Khadija Swaleh Hemed 0.149%
15. Maryam Swaleh Hemed 0.149%
16. Hamad Swaleh Hemed 0.298%
17. Mohamed Swaleh Hemed 0.298%
18. Aisha Swaleh Hemed 0.149%
19. Rukiya Hanzwani Hemed 0.383%
20. Fauziya Abdulrahman Aboud 2.5%
21. Gamar Abdulrahman Aboud 2.5%
22. Aboud Abdulrahman Aboud 5%
23. Athman Abdulrahman Aboud 5%
24. Jamal Abdulrahman Aboud 5%
25. Salim Mohamed Salim 20%
26. Nuru Mohamed Bakhresa 10% deceased \*
27. Mohamed Salim Mohamed 1.3%
28. Aisha Salim Bakharisa 0.66%
29. Ali Salim Mohamed 1.3%
30. Mbarak Salim Mohamed 1.3%



31. Salma Salim Mohamed 0.66%
32. Abdulrahman Salim Bakhressa 1.3%
33. Twalib Salim Mohamed 1.3%
34. Maryam Salim Mohamed 0.66%
35. Ahmed Salim 1.3%

The estate is hereby vested in the heirs in the shares indicated.

### **Distribution**

9. Most beneficiaries would like to get their shares in monetary terms after selling the estate property. The respondent opposes the sale of the property. First opportunity is given to him to buy the property, upon ascertainment of the value of the property, by buying off the shares of his co heirs. The estate be valued for this purpose.
10. By consent the petitioners and respondent are appointed as Trustees of the estate.
11. In the event of sale of the estate property, the Trustees are granted leave to distribute the proceeds provided they shall deposit with the court, the sale agreement and receipts of the shares to all the beneficiaries.

Orders accordingly.

**DATED AND DELIVERED IN MOMBASA ON 23RD APRIL 2015.**

**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

In the presence of:

Mr. Yusuf K. Abdulrahman, Court assistant

Mr. Nabhan for petitioners

Mr. Mulwa for respondent.

