



REPUBLIC OF KENYA



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In re Estate of Al-Amin Bin Said Mandhry (Deceased) (Succession Cause 206 of 2006) [2015] KEKC 26 (KLR) (7 May 2015) (Judgment)

Said Al-Amin Mandhry v Saada Al-Amin Mandhry [2015] eKLR

Neutral citation: [2015] KEKC 26 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
SUCCESSION CAUSE 206 OF 2006
AH ATHMAN, PK**

MAY 7, 2015

BETWEEN

SAID AL-AMIN MANDHRY PETITIONER

AND

SAADA AL-AMIN MANDHRY RESPONDENT

JUDGMENT

1. The petitioner, being dissatisfied with the administration of the estate of the late Al-Amin bin Said Mandhry, filed this petition praying for determination of the heirs, their shares and distribution of [the] estate according to Islamic law. He claims the deceased left a house with shopping outlets on Plot No 5/XXIX/ at Kibokoni and a parcel of land measuring 8.11 acres on Plot No XXX/II/MN at Tua Tugawe - Kisauni and was survived by one [1] widow and three [3] sons and five [5] daughters.
2. The respondent admit the deceased left properties save that he did not own the entire two properties but a half share in the Kibokoni property and [2/3] share in the Tua Tugawe property, Plot No XXX/II/MN.
Backgorund
3. Saada Al-Amin Mandhry and Rukiya Al-Amin Mandhry are the administrators of the estate of Al - Amin Mandhry. They obtained a certificate of confirmation of grant of letters of administration on December 23, 1992 [Cause No 225 of 1991]. The petitioner moved the High Court in Probate & administration cause No 225 of 1991 seeking revocation of the grant and the respondents to be ordered to provide accounts. His application was dismissed by Hon Justice Ojwang on October 12, 2011.
4. The Kibokoni property had a shop that was let out. It was fetching small income in the form of rent. The administrators renovated and changed it into three shops so that it can fetch more income. They gave their brother, Said Al - Amin Mandhry, a barber shop in one of the shops on the Kibokoni house,



to operate without paying rent. He operated it for some time then sub let it to somebody else without consultation with and authority from the administrators. The respondent opposed this action arguing Said had no authority to sub let the shop. This was the start of the dispute in this matter.

5. Mrs Kipsang represented the petitioner while the firm of Timamy & Co advocates represented the respondent.

Issues

The issues for determination in this matter are:

1. What constitutes the estate
2. The legal heirs of the late Al -Amin Mandhry and their respective shares under Islamic law
3. Accounts.
4. Distribution of the estate

Estate

A house with shopping outlets on Plot No 5/XXIX/ at Kibokoni

6. The copy of the title of the property indicate the late Al Amin Said owned a half share of the property measuring 0.066 acre, together with one Abdulahi Kadi Mohamed. The half share of Al Amin Said was transferred to Esha Abdalla Masoud, the widow, through will. The same is however not contested as part of the estate by the respondents. The half share in this property is part of the estate. It consists of a house and the three shop outlets.
7. A parcel of land measuring 8.11 acres on Plot No 754/II/MN at Tua Tugawe - Kisauni
8. This parcel of land is registered under the following names in the stated shares:
 1. Mohamed bin Said bin Ali 2/6
 2. Ahmed bin Said bin Ali 2/6
 3. Fatuma binti Said bin Ali 1/6
 4. Hadija binti Said bin Ali 1/6
9. The above are all children of Said bin Ali. The late Al Amin bin Said is also one of the children but his name does not appear on the title. However Ali Al Amin Al Mandhry [PW1] testified the land belonged to the siblings and that Ahmed and Fatma died without leaving any children, leaving the property to be jointly shared between the remaining two siblings: Al Amin and Khadija bin Said bin Ali Mandhry. Khadija is also deceased and was survived by ten children. Two thirds [2/3] share of this property belongs to the estate and the other one third to the heirs of Khadija binti Said bin Ali Al Mandhry.
10. Rent proceeds in KCB Treasury square branch account No [particulars withheld]
11. The administrators collected rent from the shops in the Kibokoni property and ground rent from the Kisauni property. They have been depositing the rent from the Kibokoni property in a KCB account and the ground rent from the Kisauni property was given to their mother, the widow of the deceased herein. The rent proceeds from the estate also forms part of the estate.

The estate therefore consist of:



1. A half [1/2] share in the Kibokoni house Plot No 5/XXIX with shop outlets
2. Two thirds [2/3] share in the Kisauni parcel of land Plot No 754/II/MN
3. Rent proceeds from the Kibokoni property deposited in KCB Treasury square account No [particulars withheld]

The Legal Heirs

12. There is no dispute on the legal heirs of the late Al Amin bin Said Mandhry. They are:

1. Esha Abdalla Masoud widow
2. Saada Al Amin Mandhry daughter
3. Asia Al Amin Mandhry daughter
4. Rukia Al Amin Mandhry daughter
5. Shuweikha Al Amin Mandhry daughter
6. Said Al Amin Mandhry son
7. Mahfudh Al Amin Mandhry son
8. Ali Al Amin Mandhry son

13. The widow Esha Abdalla Masoud however passed away sometimes on April 1, 2014 before the matter was concluded. The widow is the mother of all the children, her share devolves to all the children in the respective shares. For purpose of computation, ignoring her will simplify and not affect the result. The son is entitled to twice the share of the daughter under Qur'an:4:11

The shares are therefore as follows:

The share of each son = $2/10$ 20%

The share of each daughter = $1/10$ 10%

Accounts

14. The respondents gave accounts prepared by Al Al Amin Mandhry for rent proceeds of the Kibokoni house and ground rent for the Kisauni house. The Kibokoni house was being used for the accommodation of the widow, Rukia and Shukweikha Al Amin. only the three shops were rented. The petitioner used to be given Kes 9,000.00 per month from the proceeds. When the shop was renovated and changed into three shops, both Saada and the petitioner benefited from one of the shops by running their business without paying rent till the petitioner decided to sub let it. All the three shops eventually were rented.
15. The Kisauni parcel of land is leased to tenants who have constructed houses on it and pay ground rent. Some do not pay due to confusing directions from some government officials. The respondent intend to subdivide it and sell the subdivided plots to the tenants. The respondents accounts represents, in my view a true picture of the proceeds of the estate. The KCB account No [particulars withheld] has a credit balance of Kes 2,272,425.00 as at 31st December 2014. The respondent submitted [filed on 7.4.15] the proceeds for the Kibokoni property was 3,374,461.53 while that for the Kisauni property was Kes 1,879,048.85. The figures may have changed at the moment. The final balance of the rent proceeds deposited in the account shall be available for distribution to all heirs. For fairness, the amount



received by the petitioner before the shop at Kibokoni shall not be deducted from his share. Other heirs have also benefited from the estate.

Distribution

16. The share of the deceased in the Kibokoni house was valued by Paul Wambua valuers on May 13, 2014 at Kes 10,000,000.00 The same had been valued at Kes 7,000,000.00 on 6th November 2007 by Maina Chege & Co. valuers We adopt the value of KES 10,000,000.00 for the share of the deceased in this property.
17. The Kisauni property [land only] was valued by the Paul Wambua valuers on May 13, 2014 at Kes 9,500,000.00. The same was valued by Maina Chege & Co valuers on November 6, 2007 at 13,960,000.00 MainaChege's report indicates the valuation was for advising on the open market value of the property. It did not indicate whether it valued the developments on it or not. It can only mean the valuation included the value of the developments, the houses without land which are not part of the estate. Paul Wambua's report is clear only the land was valued. Mrs Kipsang for the petitioner alluded to the difference and was granted leave to do another valuation. She however did not. The difference may have been occasioned by the inclusion of the value of the developments on the parcel of land. Accordingly we adopt the value of Kes 9,500,000.00 for the parcel of land. The 2/3 share of the deceased is therefore Kes 6,332,700.00

The value of the estate is therefore Kes 16,332,700.00.

The share of each son = Kes 3,266,540.00

The share of each daughter = Kes 1,633,270.00
18. The petitioner is entitled to get his Kes 3,266,540.00 plus 20% of the rent proceeds in the bank account. The other heirs have priority to buy the petitioners share and should pay him his said share in monetary terms before the court can consider selling the propertie[s] to third parties.

Orders accordingly.

Dated and delivered at Mombasa on 7th May 2015

ABDULHALIM H ATHMAN

PRINCIPAL KADHI

In the presence of

Mr Yusuf K Abdulrahman, Court assistant

Mrs. Kipsang for petitioner

M/S Timamy & Co. advocates for the respondents.

