



REPUBLIC OF KENYA
IN THE KADHI'S COURT AT NAIROBI
SUCCESSION CAUSE NO. 17 OF 2015
IN THE MATTER OF THE ESTATE OF KASSIM ISLAM (DECEASED)
AND
SHAMSIYA MOHAMED.....PETITIONER

J U D G E M E N T

KASSIM ISLAM passed away on the 12th November, 2014 through a road accident in Narok as appears from the attached certificate of death.

On 7th May, 2015, the deceased mother, **SHAMSIYA MOHAMED** filed a Petition seeking for the following orders:-

- (a) Appointment of the Petitioner as administrator to the Estate of the deceased.*
- (b) Determination of the rightful shares of inheritance.*
- (c) Distribution of the Estate.*

It is not disputed that **KASSIM ISLAM** died a Muslim and died intestate leaving behind the following:

- a) Islam Bwanahani Simba - Father.*
- b) Shamsiya Mohamed - Mother.*
- c) Fatma Mohamed - Wife.*
- d) Husseina Islam - Sister.*

At the time of **KASSIM ISLAM'S** death he left the following unencumbered and available properties as particularized at para 3 of the affidavit.

- 1. First Community Bank Account [particulars withheld].**
- 2. Gulf African Bank Account [particulars withheld]**
- 3. .**
- 4. Co-operative Bank Account [particulars withheld].**

The matter came up for hearing on the 16th June,2015 where the Petitioner testified in support of her petition together with one witness.

I have considered the oral evidence, as well as the submission before the court .

Muslim law did not recognize the concept of administration of estate. In contrary, it has laid down machinery for the administration of the estate of the deceased among the legatees and the heirs.

The concept of administration of estate was introduced in Kenya for the first time by the British rulers.

In modern Kenya, the administration of the deceased Muslim is governed by Law of Succession Act, Cap.160, where they are not inconsistent with those of Muslim Laws.

It should be noted that the substantive law that is applicable to the estate of a deceased Muslim is Muslim law as provided by Sec. 2(3) of the Act.

When a Muslim dies without appointing an executor , or dies intestate there is no harm in approaching the court of law in obtaining letters for administration for the purpose of:-

- a) collecting and preserving the estate of the deceased.**
- b) paying all charges against the estate.**
- c) paying debts and legacies.**
- d) distributing the remaining property among rightful heirs....among others.**

I am therefore satisfied that the basic requirement in relation to the administration of the deceased estate under the general provision of Islamic law successions has been met.

For the above reasons the court is pleased to appoint **SHAMSIYA MOHAMED** as administrator to the Estate of the deceased **KASSIM ISLAM**.

I also do find and declare that the deceased was survived by the following heirs/beneficiaries;

- 1. Islam Bwanahani Simba - Simba.**
- 2. Shamsiya Mohamed - Mother.**
- 3. Fatma Mohamed - Wife.**

In determination of the rightful shares of inheritance the court's attention is drawn to **Holy Quran Chap. 4 verse 11 and 12**

“..... For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has third; if the deceased left brothers or sisters, the mother has a sixth ”

“And for them (your wives) one fourth of what you leave behind if you did not have a child but if you have a child then for them one-eighth of what you leave behind...”

The above verse does specify that a mother is entitled to one sixth of the estate of the deceased since the deceased was survived by a sibling; it also specifies that a widow, where there are no children, is entitled to one fourth of the estate and a father is entitled to residuaries.

Ibn Abi Hatim recorded that Qatadah commented on the Ayah, "???????? ??? ????? ????? ????? ?" (*If*

.the deceased left brothers or (sisters), the mother has a sixth)

" Their presence will reduce the share of the mother, but they will not inherit. If there is only one surviving brother, the mother's share will remain one-third, but her share will be reduced if there is more than one surviving brother. The people of knowledge attribute this reduction in mother's share from one-third(to one-sixth) to the fact that the father is the one who helps the brothers(and sisters) of the deceased get married, spending from his own money for this purpose. The mother does not spend from her money for this purpose."

In **Ibrahim Aboobaker and Anor. Vs. Teik Chand Dolwani and Others. Reported in to AIR 1953 SC 298; (1954) 56 BOMLR6** wherein it stated that:

“It’s well recognized proposition of law that the estate of a deceased Mohammedan devolves on his heirs in specific shares at the moment of his death.....”

In premises, the distribution thereof shall be as follows:-

<i>Heirs/Beneficiaries</i>	<i>Status</i>	<i>Share Fraction</i>	<i>Share Percentage</i>
Fatma Mohamed	Wife	1/4	25%
Shamsiya Mohamed	Mother	1/6	16.67%
Islam Bwanahani	Father	7/12	58.33%

It is so ordered.

Dated and delivered at Nairobi this 17th day of June, 2015.

Hon. A. I. Hussein (Mr)

KADHI II

In presence of:

Petitioners