



REPUBLIC OF KENYA

IN THE KADHIS COURT AT KISUMU

SUCCESSION CAUSE NO 1 OF 2015

IN THE MATTER OF THE ESTATE OF JUMA MOHAMED (DESEACED)

MARIYAM JUMA.....APPLICANT

v

KASIM SAID

YAHYA SAID

RASHID SAID.....RESPONDENTS

JUMA SAID

JUDGEMENT

MARIYAM JUMA referred herein as a petitioner filed a petition on 12th day of DECEMBER 2015 The petitioner claimed that: the deceased Juma Mohamed was her father was severed by the following:

1- MARIAM JUMA

2- HADIJA MOHAMED

3- SAIDA JUMA

4- MWAJUMA JUMA

5- ZAINAB JUMA

6- RAMADHANI JUMA

7- ALI JUMA

8- SHBAN JUMA

9- SAID JUMA

10- ASMAN JUMA

11- MOHAMED JUMA

12- REHEMA JUMA

13- RUKIA JUMA

14- TATU JUMA

The petitioner alleged that the late Juma Mohamed had an estate at Banja which he left for his daughters after giving his sons their rightful shares, He did not write will He just said verbally .

The petitioner sought that : some of their brothers have passed away and their children taken over the share given to the daughters ,She availed three witnesses; P W 1 Edward Mwangi testified confirming the plot at Banja sought that: when their father died He had given four sons their pieces of land (Ramadhan Shaban Said and Asman) He had daughters also from different mothers but grew up together a plot along the road He promised to give it to the Daughters.

P W 2 Saida Juma said that: She surprised that they are claiming that it is their father's, Yahya is the one who use to tell them that their plot was to be sold and that they had found a buyer .

P W 3 Rahma Juma said : said did not stay here .

On the other hand the respondents denied all petition's allegation stated that the plot was written in their father and grand mother's name .The 3rd respondent (Rashid Said) sought that: He heard his father saying that He was given this plot by his father and that He was given him as a son.

The 4th Respondent (Juma Said) said that : He had never been told by their father that it belongs to someone. The respondents produced a such from land office showing that was written in their father and grand mother's name .

I have noted the issue deeply and found that, what had been done by the late (Juma Mohamed) Was not fair, because he gave gift of lands among sons and left out daughters and this is contrary to Islamic teachings.

The general evidence shows that parents must be just as is the saying of Allah (which means): "...Be just; that is nearer to righteousness and fear of Allah..." [Quran 5: 8]

The specific evidence for it is what was reported on the authority of An-Norman Bin Al-Basher who said: "My father took me to the Messenger of Allah and said to him: 'I have gifted one of my slaves to this son of mine.' The Messenger of Allah asked: "Have you given such a gift to every son of yours?" He replied, 'No.' Thereupon, he said: "Take this gift back." So my father came back and revoked his gift".

[Al-Bukhara & Muslim] In another narration on this incident, he said: "Be fearful of Allah and treat your children justly." al bukhary.

On this basis the deceased owes those one that he did not gift

When a Muslim dies there are four duties which need to be performed. These are:

1. payment of funeral expenses
2. payment of his/her debts
3. execution his/her will
4. distribution of the remaining estate amongst the heirs according to Shariah

On this basis the daughters are entitled to a gift which is plot at Banja / 980 .

I hereby order as follow:

- 1- The land registry to transfer plot no banja / 980 to Marim juma saida juma and Rahema juma
- 2- Marym juma is appointed as administrator of above mention estate to ensure that the children left by her late sisters gate their share.
- 3- the owner of the shop to range for its demolition within 3 months.
- 4- the respondent are here by restrained from causing disturbance at the sight.

R/A- 30 Days

read and delivered this 6th day of JULY 2015 in the presence of

Mursal. M . Sizi ----- Kadhi 11

court asistant----- ABDULATIF

Petitioner

Respondent