



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT NAIROBI

MLIMANI COMMERCIAL COURTS

SUCCESSION CAUSE NO. 36 OF 2015

**IN THE MATTER OF THE ESTATE OF ADAMALI GULAM HUSSEIN LAKDAWALLA ALSO
KNOWN AS GULAM HUSSEIN MULLA ALLIBHAI LAKDAWALA (DECEASED)**

HASHIM ADAMALI LAKDAWALA.....PETITIONERS

J U G D M E N T

ADAMALI GULAMHUSSEIN LAKDAWALLA passed away on the 25th July 1988, at Nairobi as appears from the attached certificate of death.

On 4th August 2015, the deceased son, **HASHIM ADAMALI LAKDAWALA** filed a Petition seeking for the following orders:-

- a. Determination of the deceased's heirs and their shares according to Islamic Law.
- b. An order that MR. HASHIM ADAMALI LAKDAWALLA be given probate to administer the estate of the deceased in accordance with the deceased's will and the Islamic Law.
- c. An order that Plot No. 566 and Plot Portion No. M29 both situated in Malindi Sub-County registered in the name of the deceased father, MR. GULAMHUSSEIN MULLA ALLIBHAI(Deceased) and inherited by the deceased by way of General Power of Attorney dated 28th October , 1969 and the will dated 7th March ,1972 be registered in the name of the Petitioner to administer the estate in accordance to the deceased will and Islamic law.
- d. Any other relief this court may deems fit to grant.

The Petition was supported by the Affidavit of the Petitioner sworn on 23rd July 2015 according to the Petition at Para 3, that the deceased was survived by the following:-

<u>Name</u>	<u>Status</u>
<i>a. Hashim Adamali Lakdawalla</i>	- <i>Son</i>
<i>b. Laila Ghai</i>	- <i>Daughter</i>
<i>c. Ammar Shabbir Lakdawalla</i>	- <i>Grand Son</i>
<i>d. Zahira Shabbir Lakdawalla</i>	- <i>Grand Daughter</i>

e. Shakira Shabbir Lakdawalla - Grand Daughter

At the time of **ADAMALI GULAMHUSSEIN LAKDAWALLA** 'S death he left the following unencumbered and available properties as particularized at para 4 of the Petition.

1. Land Portion No. 566 Malindi Township in Malindi Sub-County in Kilifi County.

2. Land Portion No. M29 along Sabaki River in Malindi Sub-County in Kilifi County.

I have considered the evidence, as well as the submission before the court . It is crystal clear from the record of the court that by time of the deceased death he was survived by the following;

a. Hashim Adamali Lakdawalla - Son.

b. Laila Ghali - Daughter.

c. Shabbir Adamali Lakdawalla - Son.

On the 18th June 2008 ***Shabbir Adamali Lakdawalla*** passed away, at Nairobi as appears from the attached certificate of death, He was survived by the following;

a. Ammar Shabbir Lakdawalla - Son

b. Zahira Shabbir Lakdawalla - Daughter

c. Shakira Shabbir Lakdawalla - Daughter

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.

The estate of the deceased Muslim vests in the executor, where there is one and it vests in him/her, even if no probate was obtained by him. In case the letters of administration have been obtained, the estate vests in the administrator. If there is neither an executor nor an administrator, then the property vests in the heirs. The law may be stated thus:

When a Muslim dies leaving behind a will where under he had appointed an executor, then his estate vests in him, as he is the legal representative of the deceased. In particular: (i) the bequeathable one-third vests in him for the purpose of the will, and (ii) the rest vests in him as a bare trustee for the heirs. Although it is not necessary for an executor to obtain the probate, but no court will pass a decree against a debtor of the deceased, or allow execution proceedings, unless probate is obtained. There is no harm in approaching the court of law in obtaining letters for administration/probate for the purpose of:-

(a) To collect all the assets of the deceased, including the debts,

(b) To pay all charges against the estate, such as funeral expenses,

(c) To pay the debts of the deceased,

(d) To pay the legacies, and

(e) To distribute the remaining property among the heirs. ...among others

I am therefore satisfied that there is no reason to disbelieve the uncontroverted, unrebutted and unchallenged testimony of the Petitioner . I am satisfied that the basic requirement under the law of successions act (cap 160) and substantive Islamic Law of Inheritance has been met.

Accordingly, the court is pleased to grant **HASHIM ADAMALI LAKDAWALA** probate to administer the estate of the deceased **ADAMALI GULAMHUSSEIN LAKDAWALLA**.

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

- a. Hashim Adamali Lakdawalla - Son***
- b. Laila Ghai - Daughter***
- c. Ammar Shabbir Lakdawalla - Grand Son***
- d. Zahira Shabbir Lakdawalla - Grand Daughter***
- e. Shakira Shabbir Lakdawalla - Grand Daughter***

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

“Allah commands you regarding your children. For the male a share equivalent to that of two females, ;if only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children;..... ”

The above verse does specify that a sister should inherit half of the amount her brother inherits .

Nevertheless, given the Quranic specification it appears that male siblings inherit double the amount inherited by his sister but there is one vital justification on variations.

The amount inherited by the sister is a net amount added to her wealth – This is a consequence of the rule of maintenance under Islamic law; women have no duty to maintain themselves or others while males are obliged to support them. A woman has exclusive right of disposal over her property where she inherits it or earns it. She has no financial obligation/liability of maintaining even her children. The husband is bound to maintain her and her children however considerable her wealth may be.

The amount inherited by a brother is a gross amount from which he will have to deduct the expenses of supporting the various women, elderly men and children in the family. Thus the share given to a man is in proportion to his responsibilities and not due to any superiority over the female.

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.....”

These facts illustrate what jurists have known all along namely that inheritance law under Islamic Law are quite complicated and cannot be reduced to a single slogan. It’s the view of the court that the *provisio* of Mawarith (Succession) given each heir his divinely fixed shares. Effort must be made to uphold the injunctions no matter the complexity/complations.

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

Relative(Heirs)	Status	Share Fraction	Share Percentage
Hashim Adamali	Son	2/5	40%
Laila Ghai	Daughter	1/5	20%
Shabbir Adamali	Son	2/5	40%

It is crystal clear from the record and finding of this court that **Shabbir Adamali**, a direct descendant (Son) of the deceased died long before the distribution of the estate of the deceased and He was survived by a son and two daughters.

The doctrine of representation is called upon to allot shares to the three (3) grandchildren of the deceased. Which means that the three grandchildren of the deceased are entitled to the presume undistributed shares of their father **Shabbir Adamali** 40% which is equivalent to 100%.

In premises, the distribution of the undistributed shares of Shabbir Adamali Estate thereof shall be as follows:-

Relative(Heirs)	Status	Share Fraction	Share Percentage
Ammar Shabir	Son	1/2	50%
Zahira Shabir	Daughter	1/4	25%
Shakira Shabir	Daughter	1/4	25%

It is so ordered.

Dated and delivered at Nairobi this 8th day of September, 2015.

Hon. A. I. Hussein (Mr)

KADHI