



REPUBLIC OF KENYA IN THE KADHI'S COURT AT NAIROBI MLIMANI

COMMERCIAL COURTS

CIVIL CASE NO. 108 OF 2014

MOHAMED JUMA.....PLAINTIFF

VERSUS

FATUMA REHAN JUMA.....1ST DEFENDANT

AMINA JUMA.....2ND DEFENDANT

SAID JUMA.....3RD DEFENDANT

AZIZ REHAN JUMA.....4TH DEFENDANT

RAMLAT TWALIB.....5TH DEFENDANT

ALI TWALIB.....6TH DEFENDANT

JUMA TWALIB.....7TH DEFENDANT

JUGDMENT

ASHA JUMA passed away on the 28th July 2010, at Coptic Hospital in Nairobi as appears from the attached certificate of death.

On 4th April, 2014, the deceased Son, **Mohamed Juma** filed a Plaint seeking for the following orders:-

- a. A declaration that the 3rd,4th,5th,6th and 7th Defendants are not the children of the deceased Asha Juma and Juma Rehan and as such are neither dependants nor direct beneficiaries of her estate.
- b. A Prohibitory Order to refrain the 3rd,4th,5th,6th and 7th Defendants to cease from claiming to be the heirs of the estate of the late Asha Juma's and children of Juma Rehan.
- c. Cost of this suit.
- d. Any other relief and /or further relief that this Honorable Court may deem fit to grant in the circumstances.

The Plaint was supported by the Affidavit of the Plaintiff sworn on 4th April 2014 according to the Plaint the deceased was survived by the following:-

<i>Name</i>	<i>Status</i>
1. Juma Rehan	Husband
2. Mohamed Juma	son
3. Fatuma Rehan Juma	Daughter
4. Amina Juma Rehan	Daughter

It is on record that the Plaintiff took out a summon to enter appearance and had it served on to the Defendants alongside the plaint. The return of service traced on the file reveals that a process server deponed a R/S on 29th April 2015 ,to effect that he had duly served the Defendants who accepted the service but decline signed.

No entry of appearance and filing of Answer to petition was effected within the requisite period. When the matter was called for mention the defendants again failed to appear before the court, notwithstanding their absent the court went ahead and ordered the plaintiff to serve them with a notice of hearing.

The return of service traced on the file reveals that a process server by name Kennedy Igunza deponed a R/S on 27th July 2015 and filed on 28th July 2015, to effect that he had duly served the defendants who accepted the service and declined to sign.

Trial commenced on the 29th July 2015 with no appearance on part of the defendant. The matter therefore proceeded by way of undefended cause

The plaintiff gave evidence on oath. He reiterated the content of his plaint and stressed on the following:-

The deceased , also known as Asha Mohamed Suleman as appears in PExhibit 17, was legally married to Juma Rehan in 1954 under Islamic Law as appears in PExhibit 1. The said marriage was blessed, as appears in PExhibit 3, with three issues namely ;

- a. Mohamed Juma - The Plaintiff
- b. Fatuma Rehan Juma - The 1st Defendant
- c. Amina Juma Rehan - The 2nd Defendant

Upon the death of their mother (deceased) Juma Rehan (Father) was issued with the letters of administration, by the High Court of Kenya at Nairobi, on 9th March 2012 for the estate of the deceased as appears in PExhibit 4.

The 3rd and 4th Defendants the biological children of Fatuma Rehan Juma (the Ist Defendant) as appears in PExhibit 11 and 10 respectively the evidence which was further corroborated by a verification of birth certificate letter, from a director of civil registration, dated 17th May 2015 and marked as PExhibit 12.

The 2nd Defendant, Amina Juma got married to one Twalib Ali and divorced in 1988 as appears in PExhibit 5,6,7 and 8 respectively . The 5th ,6th and 7th Defendant are the product of the said marriage between the 2nd Defendant, Amina Juma and one Twalib Ali as appears in PExhibit 13,14 and 16.

The 3rd,4th,5th,6th and 7th Defendant are the grandchildren of the deceased and Juma Rehan and that through their respective biological mothers, the 1st and the 2nd Defendants they are falsely and fraudulently attempting to misrepresent that they are the direct descendants and beneficiaries of the

deceased and Juma Rehan .

I have carefully considered the testimony of the Plaintiff. I have scrutinized into the alleged grounds raised by the plaintiff as contained in his Pleadings.

A person's offspring constitutes one of the many groups of heirs expected to receive a share of her/his estate in any tradition of inheritance. It is often said that the existence of children is ipso facto the main reason for inheritance within the family.

Heirs according to the Mohammedan Law are classified in three (3) categories herein namely:-

Ahlul –Faraidh (Quranic Sharers)

Asabah (Residuary or agnates)

Dhawil – Arham (Distant kindred/Uterine relatives)

At the first rule of intestate succession is that the Quranic sharers must first (before all other) be assigned their shares. The Quranic sharers are the most important class of heirs who take primacy, they are entitled before all others the shares allocated to them either by the Holy Quran or by the tradition. Reference may be made to Holy Quran chap 4:11.

Four the shares are males and there are eight (8) females, they are (a) the father, (b) the grandfather and lineal male, ascendant (when not excluded), (c) the uterine brother (d) the husband. The female are (a) the widow, (b) daughter (c) Son's daughter or the daughter of a lineal male descendant how low so ever (d) mother (e) grandmother, (f) full sister (g) consanguine sister (ie) half sister on the father's side and (h) Uterine sister (e) half sisters from on the mother's side.

Asabah – The Residuals

The second rule of intestate Succession is that whatever left after assigning the first class their share(residue) should go to the heirs of the second class, names the Asabah or Agnates, also known as the Residuaries, because they take the residue of the estate of the deceased person. They compose of all those agnate male relatives i.e. son agnate grandson, son of a brother, father, grandfather, great grandfather etc.

The distant kindred or Dhawil –Arham (uterine relatives)

They consist of:

Children of daughters and their descendants line low so ever

The children of son's daughter and their descendants line low so ever

The daughter of full brother and of full brother's son and their descendants

Male guardian lower responsible to close of relation to the deceased their occurs a female and who are therefore called (also grant father)

Assigning these classes of heirs the respective shares if any is done in the following manner;

Firstly, the Quranic sharers are assigned to their entitlement in accordance to the primary sources of Sharia.

Secondly, if there be any residue after assigning the Quranic sharers the respective shares the Residuaries become entitled to certain shares as provided by the primary sources of Sharia.

