



REPUBLIC OF KENYA
IN THE KADHI'S COURT AT KIBERA
CIVIL SUIT NO. 15 OF 2013
IN THE MATTER OF THE ESTATE OF MWAJUMA NJERI
HUSSEIN (DECEASED)

FATUMA SALIMPLAINTIFF/APPLICANT

-VERSUS-

ALI HUSSEIN MURSAL.....DEFENDANT/RESPONDENT

J U G D E M E N T

By an Originating Summons, dated 29th October, 2013 the Applicant namely:

i. Fatuma Salim, wife to Ali Hussein (herein after 'the Respondent' - their marriage certificate was annexed to the Originating Summons filed by the Applicant and veracity thereof is not objected by both party and the Applicant is a daughter to inlaw of Mwajuma Njeri Hussein (the deceased), seeking for the following orders:-

- 1) **THAT** Mwajuma Njeri, Hussein (deceased) died a Muslim on 2nd August, 1993 and was survived by
 - Ali Hussein Mursal (son)
 - Ratib Hussein Mursal (son) (deceased)
- 2) **THAT** the above mentioned be declared as the rightful legal heir of the deceased.
- 3) **THAT** this Honourable court be pleased to distribute the estate of the deceased in accordance with Islamic Shariah.
- 4) **THAT** Fatuma Salim be appointed as an Administrator and or/personal representative to the Estate of Mwajuma Njeri Hussein (deceased) pending distribution of the the estate.

The Originating summons was supported by the Affidavit of Fatuma Salim, applicant according to the affidavit at Para 4, that the deceased was survived by the following:-

<u>Name</u>	<u>Status</u>
Ali Hussein Mursal	- Son
Ratib Hussein Mursal	- Son (Deceased)

And that they were the only children of the late Mwajuma Njeri Hussein.

At the time of Mwajuma Njeri's death she left the following unencumbered and available properties as particularized on par 5 of the affidavit.

(a) L.R No. 10 (formerly known as Kericho unsurveyed plot 45) – Swahili Village.

(b) L.R No. 28 Kericho – unsurveyed – Swahili Village.

The applicant is related to the deceased by virtue of being her daughter in law.

The applicant claim is based on the fact that the Respondent is bedridden and is in a vegetative state.

The Respondent (Ali Hussein Mursal) filed a replying affidavit and stated as follows in Para 3 and 4 respectively thereof;

“THAT I have no objections for my wife Fatuma Salim to be one of the administrators of the estate of my late mother Mwajuma Njeri Hussein”.

“THAT I do support the application by my wife to be made an administrator and a personal representative of the estate of Mwajuma Njeri Hussein (deceased)”.

The Respondent decision is purely based on his current health status.

In court during the hearing of the O.S one Abdul Ratib Hussein (son to Ratib Hussein deceased) as a heir speaking on behalf of her two (2) other sister had no objection and supported the application made by the applicant.

I have considered the oral evidence adduced, as well as the written submission by both party.

I am therefore satisfied that the basic requirement under the law of successions act (cap 160) and substantive Islamic Law of Inheritance has been met.

For the above reasons the application prayed for, is granted.

I also do find that the deceased was survived by the following;

1) Ali Hussein Mursal - Son

2) Ratib Hussein Mursal (Deceased) - Son

And Ratib Hussein was survived by the following:

1) Abdul Ratib Hussein Mursal - Son

2) Ali Ratib Hussein Mursal - Son

3) Leila Ratib Hussein Mursal - Daughter

4) Nila Ratib Hussein Mursal - Daughter

By virtue of **Mawarithh** (Inheritance) verses 11, 12 and 17 of **Surah an – nisaa** they are accordingly entitled to a lawful share of the estate of the deceased.

The distribution thereof shall be done in accordance with the Islamic Law of Inheritance and as follows:-

LEGAL HEIRS	TYPE	%	ACTUAL AMOUNT
<u>TOTAL INHERITANCE</u>			
		<u>100%</u>	_____
1. ALI HUSSEIN MURSAL	PRIMARY HEIR	50%	_____
2. ABDUL RATIB HUSSEIN	PRIMARY HEIR	50 %	_____
3. ALI RATIB HUSSEIN	PRIMARY HEIR	12.5%	_____
4. LEILA RATIB HUSSEIN	PRIMARY HEIR	12.5%	_____
5. NILA RATIB HUSSEIN	PRIMARY HEIR		_____
6. MWAJUMA RATIB HUSSEIN	PRIMARY HEIR		_____
TOTAL DISTRIBUTION		100.00%	_____
Residue	-	0.00%	-

I shall however not make any order as to actual amount in regard to the Inheritance share pending valuation.

Dated and delivered at Nairobi this 8th day of November, 2013

HON. A. I. Hussein (Mr)

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Coram: Before Hon. A. I. Hussein

C/clerk – Koitamet

Applicant - Present

Respondent – Absent