



REPUBLIC OF KENYA



KENYA LAW
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**Abdi v Abdi (Family Appeal E003 of 2024)
[2025] KEHC 15222 (KLR) (Family) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
FAMILY
FAMILY APPEAL E003 OF 2024
SC CHIRCHIR, J
OCTOBER 27, 2025**

BETWEEN

YASSIN ADID ABDI APPELLANT

AND

MOHAMED ADID ABDI RESPONDENT

*(Being an appeal against the ruling of Hon. Gavava A Mohammed (Senior Resident Kadhi)
delivered on 1st March 2024 at Isiolo Kadhi's Court. Succession cause No. E030 of 2021)*

JUDGMENT

1. On 28.10.2021 the Appellant herein filed summons before the Kadhi's Court seeking for the issuance of Grant Ad Colligenda Bona for purposes of accessing funds held in A/C Number 217447814 at Kenya Commercial Bank and A/C Number 0012100401901 at National Amaana Bank under the name of the Aidid Abdi (The deceased). He stated that the need to withdraw the funds was to pay pending hospital bills which had been incurred during the treatment of the deceased. In the affidavit in support, he reiterated that the sole purpose of the withdrawal of the funds was to defray the costs of treatment for the deceased.
2. On same day, he filed a chamber summons Application, and in support thereof was a Supplementary Affidavit (sic). In the said affidavit he Sought for transfer certain identified movable and immovable assets of the deceased to his name, on grounds that the same did not form part of the estate.
3. The record of proceedings shows that the application was heard by way of viva voce evidence. And in a judgment delivered on 22.11.21 the, Hon. Kadhi appointed the deceased wife one Dowlo Aidid as the Administrator of the estate and distributed the Assets .



4. On 29.08.2023, the Respondent herein filed summons for revocation of grant, the setting aside of the judgement of 22.11.2021, and finally, an order directing the Appellant to account for the deceased's properties . He sought an alternative order that the deceased's money in the account be ascertained and distributed as per sharia law.
5. The application for revocation was heard , again through oral evidence. At the conclusion of the hearing, the Hon. Kadhi (The Trial Kadhi/ Trial court) delivered a ruling in which he set aside the judgement of 22.11.2021 , and the then distribution that was in place . He also determined the sharing ratios and ordered for re- distribution of the Assets , upon the valuation of the entire estate.

Memorandum of Appeal.

6. The Appellant was aggrieved, and moved this court through the present appeal. He has set out the following grounds: -
 - a. That trial Kadhi erred in both law and fact by holding that the only property left by the deceased was Plot No. 417A/Bula Pesa, Kenya commercial bank Account number 217447814 and National Amaana Bank Account number 0012100140190.
 - b. That the trial Kadhi erred by failing to recognize that plot number Isiolo/Bura Pesa/417B had been gifted to Yussuf Aidid and Rage Abdi.
 - c. That the Kadhi erred both in law and fact by holding that the Respondent had been promised Kshs. 5,000,000 by the deceased without any evidence.
 - d. That the trial Kadhi erred by denying some of the heirs their rightful shares, while recognizing their entitlement to it.
 - e. That the trial Kadhi erred by failing to respect the wishes of the deceased.
 - f. That the trial Kadhi erred by ordering for the sale of the estate of the deceased.
7. The appeal was heard by way of written submissions.

Appellant's submissions

8. It is the Appellant's Submissions that contrary to the trial court's finding, the deceased had other properties other than the two bank accounts and a plot at Bula Pesa, Isiolo. He further states that plot No. Isiolo/Bulapesa 417B had been given to Yassin Aidid and Rage Abdi by the deceased, and therefore did not form part of the deceased's estate. It is further submitted that the distribution of the property by the trial court did not conform to the dictates of the holy Quran at chapter 4:4 7-11.
9. The Appellant further submits that there was no evidence to support the court's finding to the effect that the respondent had been promised Kshs. 5,000,0000 by the deceased. That in terms of Section 107 and 108 of the *Evidence Act* the onus was on the respondent to prove that the deceased had given him such a gift. It is further stated that the gift did not meet the threshold of a gift as it was not given to the respondent during the life time of the deceased.
10. It is the appellant further submission that the conclusion by the trial court that none of the properties belonged to the appellant had no evidential basis. The Appellant finally faults the trial Kadhi for ordering for the sale of the deceased's properties.



Respondent 's submissions

11. It is the respondent's submissions that the deceased's properties ought to include all the properties registered in the name of the deceased. It is further submitted that all the properties should revert to the deceased's name, and a proper succession cause be filed. The respondent further submits that the setting aside of the orders of 22/11/2025 was warranted as an Ad Colligenda Bona grant was used to distribute the property. The respondent further submit that the application for Ad Colligenda bona by the Appellant ploy to disinherit other heirs of the deceased. That contrary to the Provisions of Section 67 of the Succession Act, the intention to issue grant was never published.
12. In respect to the plot No. Isiolo Bulapesa 417B, it is submitted Yussuf Aidid Abdi and Rage Aidid Abdi did not prove that the above plot had been given to them as gift, by the deceased.
13. It is further stated that contrary to Appellant 's submissions, the trial Court did not distribute the property, but ordered that the same to revert to the deceased's name for purposes of distribution.
14. It is the respondent's further submissions that the sharia law of succession does not allow the distribution of the property without the issuance of a full grant. In this regard, section 55(1) of the *Law of Succession Act* has been relied on; That allowing the appeal would be to let the deceased's estate to be administered in unstructured manner. It is further, submitted that the any gift that was allegedly given out by the deceased was incomplete or unfulfilled.
15. On the Kshs. 5,000,000 that was awarded to the respondent by the trial court, it is submitted that the all the witnesses testified to that effect, that indeed the respondent had been given the title deed of the plot number Isiolo Jua Kali B 6. That the deceased was in the process of selling the said property at the time of his demise with the intention to give part of the proceeds of sale to the Respondent.
16. It is submitted that there was no single property purchased by the deceased on the behalf of the appellant, and that there was no evidence brought forth to prove such allegations. It is also stated that the Appellant's haste in rushing to court to get a grant Ad Colligenda Bona was instructive of his intention to deprive other family members of their inheritance.
17. On whether the trial court erred by ordering the sale of properties, it is submitted an order for the sale of Jua Kali/B6 was to facilitate the release of Kshs. 5,000,000 to the respondent, being the gift that his father had given him.

Analysis and determination

18. This, being an Appeal from the trial court, the duty of this court as the first appellate court, is well settled. It is to review evidence, carry out its own analysis and arrive at its own conclusion. (see *Selle & Ano v Associated Motor Boat Co. Ltd* (1968) E.A 123).
19. I have perused the proceedings of the trial court, the ruling of the trial kadhi, the grounds of appeal and the rival submissions of the parties. I will proceed to determine the grounds of appeal as raised by the Appellant, while clustering them, where appropriate.

What were the identifiable properties of the deceased at the time of his demise(Grounds (i) (ii) (iii) & (iv))

20. The Appellant's takes issue with the trial court's finding that the only properties held by the deceased were the two accounts held at Kenya Commercial Bank and National Amana Bank, together with Plot number 417 A Bula Pesa. He also faults the trial court for failing to recognize that plot number Isiolo Bula/Pesa B had been given to Yussuf Aidid Abdi, and Rage Abdi Aidid. He also contends that



- all the vehicles were his, even though they had been registered in the names of the deceased. Further the trial court was faulted for concluding that that Kshs. 5,000,000/= had been given as a gift to the respondent by the deceased.
21. From the grounds of appeal and his submissions it is evident that the gist of the Appellant's complaint, as that of the respondent, is the manner in which the assets of the deceased were identified, and distributed by the court.
 22. I have perused the testimonies of the witnesses and noted that none of them, from either side, produced any documentary proof to support their respective claims to the deceased property. All the claims were based on oral evidence. In this regard, the trial court correctly held that there was no documentary evidence availed by the appellant to demonstrate that he was the owner of the motor vehicles, for instance.
 23. However, I have observed that, when it came to the respondent's claims to the alleged gift of ksh. 5000,000 the trial court did not hold him to the same standard. The trial court accepted the respondent's oral testimony of having been promised a gift of Kshs. 5,000,000/= from the proceeds of the sale of plot No. Isiolo/Jua Kali B/6 without any documentary proof. The Hon. Kadhi's finding that this particular gift was not contested is not correct as the record shows that the Appellant herein testified that there was no evidence to prove that the gift was given. The same position applies to the alleged allocation of plot No. Isiolo/Bula/Pesa/465 to Hibo Aidid Abdi or , Plot No. B223A (1022) at Ole Kasasi Trading Centre to Dekka Abdi and Abdukadir Ahmed Jama. There was no evidence to show that the said plots had been given to the named individuals. Further the Trial Kadhi did not lay a basis for placing more weight on the oral evidence of one party as opposed to the other. Both parties therefore ought to have been held to the same standard.
 24. The genesis of the problem in this succession cause is on plain sight. The respondent approached the Kadhi's court by way of a limited grant namely , Ad Colligenda Bona. The purpose of such a grant is normally for collection and preservation of of the deceased's assets if they are at risk of wastage for instance or for receiving debts owed to the estate. (see section 67 of the [Law of succession Act](#)) . It is never meant to facilitate the distribution of the Assets of the deceased.
 25. However at the same time, the Appellant herein filed a chamber summons accompanied by a supplementary affidavit (sic), seeking to distribute the property. Though one may argue that the chamber summons approach was proper within the Muslim law of succession, the purported distribution was equally faulty as there was no advertisement done to call for any objection to the Administration of the estate by the Appellant . The basis of distribution , whether through Ad colligenda Bona or chamber summons was therefore defective abinitio.
 26. The opportunity to correct the defect was when the respondent herein sought for revocation of the subject grant. The trial kadhi did not revoke the grant but redistributed the property after taking down oral testimonies of the parties and their witnesses as aforesaid. Thus the pleadings in place remained the same grant Ad colligenda bona or the chamber summons.
 27. Am aware of a school of thought that take the position that succession proceedings under Muslim law do not require the filing of a petition for letters of Administration. And whereas there is no dispute on the fact that the deceased, and the parties herein are Muslims, by filing for limited grant Ad Coligenda Bona, a creature only known to the [Law of succession Act](#), the respondent had placed the Administration , however framed the pleadings were, under the purview of part VII of the [Law of Succession Act](#).



28. In the circumstances, the trial court should have directed the parties to file for confirmation of grant for purposes of distribution of the property. This would have given the trial court the chance to clearly ascertain the deceased's assets, determine all the heirs and given a chance to other beneficiaries who are not necessarily heirs of the deceased to property tender and prove their claims against the estate of the deceased. Am of the considered view the defect in procedure, contributed to allocation of properties to some persons without having undertaken the task of proving their claim.
29. Nevertheless, I agree with the Appellant's submission that the finding on the alleged gift of ksh. 5,000,000 made in favour of the respondent had no basis. This ground of Appeal therefore succeeds. For the same reason however, I have no reason for faulting the Hon. Kadhi for failing to uphold the alleged gift to Yassin Aidid and Rage Abdi as there was no evidence in support of such gifting. Thus, this ground of Appeal fails. On ground 1 , am in agreement that contrary to the finding of the Hon . Kadhi , the deceased had more properties than those recognized by the trial court, since plot Nos: Isiolo/ Bula pesa/465 and plot No. B223A , also belonged to the deceased.

Whether the trial court failed to respect the wishes of the deceased. (Ground 5)

30. A deceased person's wishes though may not qualify as a will, may be expressed orally, in written form or through conduct, like when he gives out gifts. Both parties presented oral evidence on the alleged wishes of the deceased, but there was no documentary evidence to support any of their claims. There was no conduct or state of affairs either that the court could use to infer that the gifting of any of the properties had been concluded. Therefore, there was no sufficient proof of what the wishes of the deceased were. The trial court therefore cannot be faulted for failing to give effect to the alleged wishes. This ground therefore fails.
31. In the end this appeal partially succeeds and I will proceed to make appropriate orders, not just following my findings in this appeal but also in exercise of the powers conferred upon this court by Rule 73 of the Probate and Administrative Rules.
32. Final orders:
- a). The order of Hon. Kadhi setting aside the judgment of 22.11.2021 is hereby upheld.
 - b). I hereby direct that all the movable and immovable properties of the deceased where they have already been transferred, be transferred back to his name. consequently: -
 - (1). The Registrar of Lands – Isiolo County or County Government of Isiolo , Land Registrar- Kajiado County or County Government of Kajiado as the case may be are hereby directed to transfer back the following properties to the deceased's name :
 - i. Plot No. Isiolo/Bulapesa/417B
 - ii. Plot No. Isiolo/Jua Kali/B/6
 - iii. Isiolo/Bulapesa/465.
 - iv. Plot No. B/223A(1022) at Ole Kasasi Trading Centre, Kajiado.
 - v. Plot No. Isiolo/Bula Pesa/417 A.
 - (2). The National Transport Authority (NTSA) to revert the registration of the following motor vehicles to the name of the deceased:
 - i. KBE 791 B- Dozer D6



- ii. KBS 807 B- Shovel Machine
 - iii. KAG 061 R – Fiat Tipper
 - iv. KCM 907 – Land Cruiser
- c). The following person are hereby appointed as Administrators of the deceased's estate
- (i). Duola Hassan Ali
 - (ii). Jawahir Aidid Abdi
 - (iii). Mohamed Aidid Abdi
 - (iv). Yassin Aidid Abdi
- d). The Administrators or any of them , to file for confirmation of Grant before this court within 30 days of this judgment. The summons should contain a complete list of the deceased's properties, heirs and other beneficiaries, if any.
- e). Save as stated above, all the other orders made by Hon. Kadhi on 1st March, 2024 are hereby set aside.

DATED , SIGNED AND DELIVERED AT ISIOLO THIS 27TH DAY OF OCTOBER, 2025.

S. CHIRCHIR

JUDGE

In the presence of

Roba Katelo – Court Assistant.

Ms. Mutegi for the Appellant

Mr. Kaberia for the Respondent.

