



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Adam Syngidura Marjan (Appeal E012 of 2023)
[2025] KEHC 18157 (KLR) (Family) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

APPEAL E012 OF 2023

H NAMISI, J

DECEMBER 5, 2025

IN THE MATTER OF THE ESTATE OF ADAM SYNGIDURA MARJAN

BETWEEN

**JOHN OCHIENG OKEROSI & ADAM SYNGIDURA MARJAN T/A DAVSON &
WARD APPELLANT**

AND

HALIMA MWIMA NOOR 1ST RESPONDENT

YUSUF SINGUDURA 2ND RESPONDENT

FATUMA DAFALA 3RD RESPONDENT

*(Being an Appeal from Ruling of Hon. Suqyan Hassan Omar, Mr. delivered on
30 January 2023 at Kadhis Court, Nairobi in Succession Cause No E044 of 2020)*

JUDGMENT

1. The Appellants and the business entity, Davson & Ward, have moved this Court to set aside the Ruling of the Hon. Deputy Chief Kadhi, who declined to entertain their application for the rectification of a confirmed Grant. The learned Kadhi held that the Appellants' claim, centred on a disputed partnership debt and the ownership of corporate assets, was civil in nature and thus fell outside the limited jurisdiction conferred upon the court by Article 170(5) of the *Constitution*.
2. This Court, sitting in its appellate capacity under Section 50 of the *Law of Succession Act*, is called upon to determine whether a creditor or business partner can invoke the specialized machinery of the Kadhi's Court to settle commercial accounts under the guise of estate administration.



Background of the Dispute

3. The Deceased, a Quantity Surveyor and businessman of Muslim faith, died intestate on 2 August 2020. His estate is substantial, comprising of shares in various companies, real estate and motor vehicles. The 1st Respondent petitioned the Kadhi's Court at Nairobi for a Grant of Representation. A Grant of Letters of Administration Intestate was issued to her on 18 January 2021. Following the requisite statutory period, the 1st Respondent applied for the confirmation of Grant, which was subsequently done on 7 November 2022 and a Certificate of Confirmation of Grant issued on 9 November 2022. The Certificate detailed the distribution of assets, including shares in Davard Investments Ltd and properties registered in the name of the Deceased.
4. The Appellants assert that the Deceased was a partner in a firm known as Davson & Ward (Business Registration No. BN/16349) alongside the 1st Appellant. They further contend that the Deceased was a shareholder in Davard Investments Ltd.
5. On 11 November 2022, the Appellants filed Summons for Rectification of Grant, under section 74 of the *Law of Succession Act* and Rule 43(1) of the Probate and Administration Rules, seeking orders intended to alter the distribution schedule. In particular, the Appellants sought a declaration that the Deceased owed the partnership, Davson & Ward, a sum of Ksh 6,151,875/= which was to be settled out of the estate prior to distribution thereof. The Appellants further sought rectification to reflect that certain assets were not wholly owned by the Deceased but were property of the partnership or the limited liability company, and this should not be distributed exclusively to the heirs.
6. In response, the 1st Respondent raised a Preliminary Objection, arguing that the Kadhi's Court lacked jurisdiction to hear the application based on the fact that the dispute was effectively a civil claim for debt recovery and partnership dissolution, which matters fall outside the constitutional mandate of the Kadhi's Court.
7. The court delivered its Ruling on 30 January 2023, upholding the objection and stated that the application raised issues of civil nature rather than questions of Muslim personal law regarding inheritance. The Application was consequently dismissed.
8. Aggrieved by the Ruling, the Appellants lodged this appeal on the following grounds:
 - i. That the learned Kadhi erred in law and in fact in holding that the Appellant's application dated 11 November 2022 lacked merit and therefore dismissed it;
 - ii. That the learned Kadhi erred in law and fact in failing to appreciate the Appellant's application dated 11 November 2022 raised issues of liabilities of the estate which he ought to have determined;
 - iii. That the learned Kadhi erred in law and in fact by failing to appreciate that the Application before him touched on the liabilities of the estate of the Deceased, which the estate ought to have settled before the assets were distributed;
 - iv. That the learned Kadhi erred in law and in fact in distributing to the beneficiaries of the estate of the Deceased assets which were not owned by the Deceased at the time of his death;
 - v. That the learned Kadhi erred in law and in fact by failure to thoroughly examine the evidence before him and especially the particulars of liabilities against the estate of the Deceased;



- vi. That the learned Kadhi erred in law and in fact in holding that the Appellant's application dated 11 November 2022 was civil in nature and therefore he did not have the requisite jurisdiction to hear and determine it.
9. The appeal was canvassed by way of written submissions.

Analysis & Determination

10. The jurisdiction of the Kadhi's Court is sui generis; it is a creature of the Constitution with a specific, limited mandate. Article 170(5) provides:

The jurisdiction of a Kadhis' court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts
11. This provision establishes what the Court of Appeal in *Genevieve Bertrand v Mohamed Athman Maawiya & another* [2014] KECA 687 (KLR) termed as a conjunctive test, whereat the Court stated:

“In the case of the Kadhi's Court, it is a creature of the Constitution (section 66 of the retired Constitution and Article 169 of the current Constitution). The jurisdiction of the Kadhi's Court is specifically defined under Article 170 (5) of the Constitution and Section 5 of the Kadhi's Act, as “determination of questions of Muslim Law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's Court”. Thus the jurisdiction of the Kadhi's Court is determined by the existence of three factors. That is the subject matter of the claim or dispute, the party's Muslim faith, and the party's submission to the jurisdiction of the Kadhi's Court.”
12. For the Kadhi's Court to seize jurisdiction, 3 distinct elements must co-exist: the dispute must pertain to Muslim law regarding personal status, marriage, divorce or inheritance; all parties to the dispute must profess the Muslim religion; and the parties must submit to the jurisdiction of the Kadhi's Court.
13. From the record, there is no averment that the 1st Appellant professes the Muslim faith. The requirement that all parties profess the Muslim faith is a constitutional imperative designed to protect non-Muslims from being subjected to religious adjudication. This Court takes judicial notice that where a party's name or background suggests a non-Muslim identity, and no evidence is tendered to the contrary, the presumption of the Kadhi's jurisdiction is rebutted.
14. Even if the 1st Appellant submitted to the jurisdiction by filing the application, as he argues, jurisdiction under Article 170(5) is not conferred solely by consent. It is conditioned on faith plus consent. A non-Muslim cannot waive the constitutional limitation regarding their faith to confer jurisdiction on a religious court. In *Re Estate of Abdulrehman Noor (Deceased)* [2019] eKLR, the Court held that the Kadhi's Court cannot adjudicate succession matters involving non-Muslims or where parties do not submit to its jurisdiction. Similarly, in *Re Estate of the Late Mohamed Abdalla Bajaber (Deceased)* [2021] eKLR, the Court emphasized that Kadhi's Courts lack jurisdiction over non-Muslim heirs.
15. The Appellants argue that because section 83 of the Law of Succession Act mandates administrators to pay debts, the determination of their debt is a matter of inheritance. This argument conflates administration with adjudication.



16. Inheritance in the context of Article 170(5) refers to the application of Islamic law of succession (mirath), determination of heirs (warith), calculation of shares (faraid) and distribution. While Sharia law requires the payment of debts (dayn) before distribution, the judicial determination of a contested commercial liability involving a partnership or corporation is governed by secular laws, specifically the *Law of Contract Act*, the Partnership Act or *Companies Act*.
17. The dispute herein involves the taking of partnership accounts between the deceased and the 1st Appellant to determine if a debt of Kshs. 6.1 million exists. This requires an examination of ledgers, contracts, and business conduct. These are civil/commercial questions, not questions of Muslim law relating to inheritance. The Kadhi's Court is not a commercial court. To hold otherwise would expand the Kadhi's jurisdiction to any commercial dispute merely because one party has died and was a Muslim. Therefore, the learned Kadhi was correct in law to down his tools. The claim by Davson & Ward was a civil suit for debt recovery and partnership accounting.
18. Even if the Kadhi's Court had jurisdiction, the mode of approach by the Appellants was procedurally fatally defective. The Appellants filed a Summons for Rectification of Grant under Section 74. Section 74 provides:

Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.
19. This section is strictly limited to the correction of clerical errors, accidental slips, or misdescriptions. It is not a gateway for substantive litigation. In *Re Estate of Charles Kibe Karanja (Deceased)* eKLR, Justice Musyoka illuminated this distinction, holding that substantive changes to the distribution of an estate, such as the introduction of new beneficiaries or liabilities, cannot be effected through rectification. Such changes go to the root of the grant and require either a Review of the orders or a Revocation of Grant under Section 76.
20. The Appellants sought to introduce a massive liability and reclassify assets from the deceased's name to a company's name. This is a fundamental alteration of the estate's composition, not a correction of a name or description. By attempting to use Section 74, the Appellants sought a summary determination of a complex commercial dispute, bypassing the rigorous evidentiary process of a full trial required to prove a contested debt.
21. Further, Rule 43(1) of the Probate and Administration Rules stipulates that an application for rectification is to be made by the holder of the Grant. The Appellants are creditors/partners, not administrators. They lack the locus standi to apply for rectification. A creditor who feels aggrieved by the confirmation of a grant that excludes their debt has specific remedies which include Objection to the confirmation under section 71, or application for revocation of Grant under section 76(d)(ii) for failure to produce a true inventory. Most appropriately for a disputed debt, file a civil suit to prove the debt and obtain a judgment, which can then be enforced against the estate.
22. The Appellants cannot bypass the requirement of proving their debt in a civil court by asking a probate court to summarily rectify the Grant to include it.
23. The separation of jurisdictions in Kenya's legal system is not merely procedural; it is constitutional. The Kadhi's Court serves a vital but specific function in applying Muslim personal law. It is not a forum for general civil litigation, nor is it a sanctuary for creditors seeking to bypass the rigors of commercial litigation.



24. For the reasons expounded above, I find that the appeal is unmeritorious. The same is dismissed. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 5 DAY OF DECEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Appellants: Ms Wambua h/b Opiyo

For 1st Respondent: Ms Wagemu h/b Ali

For 2 & 3 Respondents: N/A

Court Assistant Lucy Mwangi

