

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION MILIMANI**

**MISCELLANEOUS APPLICATION NO. E310 OF 2025**

**(IN THE MATTER OF THE ESTATE OF ABDULMAIN ABEID**

**SALIM - DECEASED)**

**NAIMA ABEID SALIM ..... 1<sup>ST</sup>**

**APPLICANT**

**MAJID ABDULMAIN ..... 2<sup>ND</sup>**

**APPLICANT**

**ADNAN ABDULMAIN ..... 3<sup>RD</sup>**

**APPLICANT**

**NUMEIRI ABEID SALIM ..... 1<sup>ST</sup>**

**INTERESTED PARTY**

**ABDUL HAKIM ABEID SALIM ..... 2<sup>ND</sup>**

**INTERESTED PARTY**

**SABAH ABEID SALIM ..... 3<sup>RD</sup>**  
**INTERESTED PARTY**

**MUNA ABEID SALIM ..... 4<sup>TH</sup>**  
**INTERESTED PARTY**

**VERSUS**

**ZARNA RAMADHAN ..... 4<sup>TH</sup>**  
**RESPONDENT**

**RULING**

1. The Deceased, Abdulmain Abeid Salim, died on 29<sup>th</sup> April, 2024. The Respondent, as his widow, petitioned the Kadhi's Court for Letters of Administration Intestate. She also filed an application dated 30<sup>th</sup> June, 2025, seeking temporary injunctions against the Applicants and orders restraining them from interfering with the estate of the Deceased. She claimed that the Applicants were intermeddling with the Deceased's estate as well as interfering with her peaceful occupation of the matrimonial home.

2. Before the said application could be determined, the Applicants moved to this Court vide the application dated 18<sup>th</sup> September, 2025, wherein they asked this Court to transfer the Succession Cause at the Kadhi's Court to the High Court at Nairobi for determination.
3. The Applicants stated that they do not submit to Sharia law with respect to the Deceased's estate and prayed that the same be administered under the laws of intestacy.
4. The grounds of the Application are listed on its face and supported by three separate affidavits of the three Applicants herein, all dated 18<sup>th</sup> September, 2025. The Applicants stated that they are the children of the deceased from his first and second marriages, and that the Respondent is his third wife. Each of the Applicants averred that they do not submit to the jurisdiction of the Kadhi's Court and prayed that the matter be transferred to this Court.
5. The Respondent filed a Replying Affidavit dated 28<sup>th</sup> September, 2025, in which she opposed the said application. She stated that she was the deceased's only

wife and that he had no other existing marriages at the time of his death. She countered the Applicants' averments that they had not submitted to the jurisdiction of the Kadhi's Court. To the contrary, she averred that the Applicants had indeed admitted the jurisdiction of the Kadhi's Court by filing documents in the matter and wholly participating in proceedings of the said Court. She attached a screenshot of the CTS to show that the Applicants had filed several pleadings in the proceedings.

6. She stated that it was only after she filed further documents and the matter was coming up for ruling that they resorted to filing the instant application to defeat the course of justice. She stated that she is not amenable to the matter being transferred from the Kadhi's Court.
7. The Application was canvassed by way of written submissions, which this Court considered at length.
8. Upon considering the grounds of the application, the affidavits, and the submissions, I find that the issue for determination is whether the Applicants have shown

sufficient reasons for this Court to order the transfer of the succession cause from the Kadhi's Court.

9. The Law applicable in this case is **Section 18** of the **Civil Procedure Act**, which provides as follows;

**18. Power of High Court to withdraw and transfer case instituted in subordinate court**

**(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—**

**(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**

**(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—**

**(i) try or dispose of the same; or**

**(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**

**(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.**

**(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.**

10. The Applicants averred that they do not want to submit to the jurisdiction of the Kadhi's Court. That was their main reason for seeking to have the matter transferred to this Court.

11. I have looked at the pleadings and it is evident that the Applicants had initially submitted to the Kadhi's Court.

Primarily, based on the indicated relationship, I am convinced that the Applicants have demonstrated, *prima facie*, an interest in the succession case. They had indeed filed several pleadings in the succession cause, as shown by a screenshot of the CTS attached to the Respondent's affidavit dated 28<sup>th</sup> September, 2025. They, however, changed their minds before the determination of the succession cause, and are no longer interested in submitting to the Kadhi's Court. The question before this Court is whether the Applicants can rightly opt out of the Kadhi's Court's jurisdiction, having submitted to its jurisdiction at the beginning.

12. The Court in **IAM v AGH [2020] eKLR** considered whether a party's submission to the Kadhi's Court prevents the party from subsequently opting out of the Court's jurisdiction. In holding that a party can subsequently opt out of the Kadhi's jurisdiction, the Court made the following observations;

***“8. There is no dispute that the applicant had admitted the jurisdiction of the Kadhi's Court,***

*but he now says he has opted out. The Kadhi's Court has jurisdiction to hear and determine a divorce matter between two parties who profess the muslim religion. However, they have to submit to the jurisdiction of the Kadhi's Court. The submission, in my view, has to be voluntary. The applicant may have, at the filing of the response to the petition, submitted to the jurisdiction of the Kadhi's Court, but did this submission bind him throughout the petition? I find not. A religion or faith entails voluntary submission to it. It means that, at any time, one can opt out. One can change the religion or faith, or decide not to be bound by the tenets of the religion or faith, or decide not to have any religion or faith altogether. I do not think he owes anyone, including the court, an explanation. Article 32 of the Constitution allows for the*

*freedom of conscience, religion, belief and opinion.*

*9. I find that the applicant has the freedom to opt out of the jurisdiction of the Kadhi's court under Article 170(5) of the Constitution and section 5 of the Kadhi's Court Act."*

13. I associate myself with the above holding. I thus find that the Applicants, although they had initially submitted to the Kadhi's Court, have the right to opt out of the Court's jurisdiction, and they have rightfully exercised that option. For this reason, I find that the Kadhi's Court does not have jurisdiction to proceed with the **Succession Cause No. E055 of 2025.**

14. I have also considered the list of properties indicated to be part of the Deceased's estate, with a view to ascertaining the value of the estate and the pecuniary jurisdiction. The list was provided by the Respondent in her application before the Kadhi's Court dated 30<sup>th</sup> June, 2025. She listed the following properties: Part of Aden Hotel on LR No 209/697/33; One Flat on LR No 36/VII/259

EASTLEIGH; Part of L.R No 12565/4 MARLBOROUGH Estate in Nairobi, Part of L.R No 209/ 2716 and 209/785/17 WARANGA; and Plot No. 798 JUJA/KALIMONI BLOCK 2 (THIKA MUSLIM).

15. I note that, on the face of it, most of the said properties are parcels of land located in Nairobi and Thika. Even though the parties have not indicated the estate's approximate value, I find it more likely that the assets are worth more than Kshs.20 million.

16. Based on the foregoing, I find that the Applicants have established sufficient reasons why this Court should order the transfer of the succession cause from the Kadhi's Court to the High Court. The application is allowed.

### **Disposition**

17. The application dated 18<sup>th</sup> September, 2025 is hereby allowed.

18. The **Succession Cause No E055 of 2025** is transferred to the High Court at Nairobi for hearing and determination.

19. Upon transfer, the Deputy Registrar shall list the file for directions before a Judge.
20. Each part to bear its own costs.
21. Orders accordingly.

**DATED, DELIVERED and SIGNED at NAIROBI** through the Microsoft Teams Online Platform on this **5<sup>TH</sup>** day of **MAY, 2026.**

.....

**HON C. KENDAGOR**  
**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Mr. Muraya Advocate for the Applicants

Ms. Akinyi Advocate holding brief for Mr. Yusuf Advocate for the Respondent