



THE REPUBLIC OF KENYA

IN THE KADHIS COURT

AT ISIOLO

SUCCESSION 14 OF 2015

IN THE MATTER OF THE ESTATE OF IBRAHIM WARIO.....DECEASED

HABIBA IBRAHIM.....PETITIONER

V

HALKANO IBRAHIM.....RESPONDENT

JUDGEMENT

This succession petition was filed by one Habiba Ibrahim hereinafter the Petitioner against Halkano Ibrahim hereinafter the Respondent seeking a permanent restrictive injunction against being ejected from the matrimonial home belonging to her deceased husband.

The matter was heard on 10th December 2015. The petitioner submits that she was married to the deceased and have 3 children from the said marriage: Diramu, Fardoosa and Wario. She further asserts that her husband died while she was still married to him, and she was living at the matrimonial plot and that he gave it to her. She further submits that the respondent, who is a son to the deceased has time and again threatened to eject her from the plot, and snatch away from her the children she bore the deceased. The reasons given are that she has remarried and also that she has wasted the goats she was given in order to use for bringing up the children.

There were three witnesses for the petitioner. They attested to the fact that the children were orphans and ejecting them from their father's home would be disastrous for the young children. They also emphasized that the other sons of the deceased and their mother had other plots and there was no reason as to why they should eject her from their father's plot.

The respondent argues that after the death of their father, the elder brothers took the responsibility of managing the whole family. But after their step mother remarried, there was no use for her living in the matrimonial plot according to the respondent. He wants the husband ejected if the petitioner was to live in his father's plot.

The respondent's witnesses agree that the plot was never divided among the heirs. They also assert that there are other plots in the possession of the respondent, his brother and their mother.

There was a site visit of the plots on 14th April 2016 in order to familiarize ourselves with the number of plots, size and the structures put up in the plots.

This court is tasked with making findings as to whether the petitioner is entitled the plot and the matrimonial home.

Islamic Law acknowledges that the property of a deceased person has to be promptly distributed to the heirs unless there is a reasonable and justifiable cause as to why such property cannot be distributed promptly. This safeguards against potential loss of status that may disqualify one from inheriting.

The petitioner claims that the respondent and his family want to eject her from the matrimonial home. The respondent does not object that the petitioner was married in that home. The only objection to her staying there is that she is now married to another man, and they cannot resist the temptation of another man living with his step-mother. The petitioner's assertion is that they wanted her to get married to one of the brothers to the deceased but she refused, and therefore they would want to disinherit her. The Quran 4:19 states: *"O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good."* This Qur'anic verse is a clear injunction against women inheritance and is instructive in this matter.

The concept of matrimonial property is only applicable upon divorce unless there is a clear indication that the parties involved themselves in partnership arrangement, or there was clear contribution from the wife. What applies here is the laws of inheritance.

What is clear to me is that the deceased left 2 plots, one of which the petitioner lived with him before his death. He also left behind a wife and 8 children. What is also clear to me is that the petitioner cannot continue to enjoy living in those premises when she is married to another man. These societies are very closed and exclusive and there is every intention by the step-sons to protect what belongs to their father, at whatever cost.

For the petitioner to live the rest of her life without remarrying just for the sake of preserving her right to live in her husband's matrimonial home would also be disastrous.

That is never the intention of the Shari'ah.

There is a real threat on the petitioner's peace and stability if she were to be allowed to live in the premises of the deceased with the rather new husband. That is the feel that one gets when he interrogates closely the Merti society. In many other societies, step-mothers are treated just as biological mothers are. Here, it is different, and a sad reality altogether.

It is for the above reasons that this court takes the view that the property has to be distributed among the legal heirs. A valuation of both plots has to be done by a qualified valuer, and the respondent shall bear the costs of valuation. After determination of the value, the petitioner and her 3 children shall be allocated that which is equivalent to their shares and shall vacate the premises three months after getting their shares. That is to allow them to find appropriate and convenient place to put up.

However, before valuation is done, the petitioner shall continue to enjoy all rights and privileges that accrue to her as a beneficiary of the deceased's estate. She is however barred from allowing her rather new husband to the said premises.

The actual and legal custody and maintenance of the petitioner's children vests in the petitioner.

The shares of each heir shall be as follows:

NAME OF LEGAL HEIR	RELATIONSHIP TO THE DECEASED	SHARE IN PERCENTAGE
HABIBA IBRAHIM	WIDOW	12.5%
JARSO IBRAHIM	SON	15.91%
HALKANO IBRAHIM	SON	15.91%

WARIO IBRAHIM	SON	15.91%
KALA IBRAHIM	DAUGHTER	7.95%
ABDU IBRAHIM	DAUGHTER	7.95%
HAWO IBRAHIM	DAUGHTER	7.95%
DIRAMU IBRAHIM	DAUGHTER	7.95%
FARDOOSA IBRAHIM	DAUGHTER	7.95%

Orders accordingly.

DATED, DELIVERED AND SIGNED AT KAKUMA THIS 15th November 2016

Before

HON. KUNYUK TITO

KADHI-KAKUMA LAW COURTS



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