



Case Number:	Civil Case 33 of 3015
Date Delivered:	30 Sep 2015
Case Class:	Civil
Court:	Kadhis Court at Nairobi (Milimani Commercial Court)
Case Action:	Judgment
Judge:	Hon. A. I. Hussein - Kadhi II
Citation:	Zakiya Nasher v Eshe Abdulrahim Awath & another [2015] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE KADHI'S COURT AT NAIROBI

CIVIL CASE NO. 33 OF 2015

IN THE MATTER OF :THE ESTATE OF SABAH ABDULRAHIM AWATH AND USRA ABDULRAHIM AWATH (DECEASED)

AND

IN THE MATTER OF : THE KADHI'S COURT ACT SECTION 5 CAP 11 LAWS OF KENYA

AND

IN THE MATTER OF: THE LAW OF SUCCESSION ACT SEC 49(2) CAP 160 LAWS OF KENYA

BETWEEN

ZAKIYA NASHER.....APPLICANT

AND

ESHE ABDULRAHIM AWATH.....1ST RESPONDENT

WAHIDA ABDULRAHIM AWATH.....2ND RESPONDENT

J U D G E M E N T

The Applicant through originating summons dated 29th July ,2015 sued respondents seeking a declaration that:-

1. That SABAH ABDULRAHIM AWATH and USRA ABDULRAHIM AWATH died Muslims on the 3rd day of January 2014.
2. That the Applicant be declared as the rightful legal heir of the deceased.

The Originating summons was supported by the Affidavit of Zakiya Nasher, according to the applicant , that the deceased was survived by the following:-

<u>Name</u>	<u>Status</u>
Zakiya Nasher	- Mother
Eshe Abdulrahim Awath	- Sister
Wahida Abdulrahim Awath	- Sister

At the time of Sabah Abdulrahim Awath and Usra Abdulrahim Awath death they left the following unencumbered and available properties, held in equal shares by the Applicants , Respondent and

deceased as particularized on paragraph 2 of the affidavit.

(a) Title No. Embu Municipality/104 - Total estimated Value of Kenya Shillings Seventeen Million (Ksh. 17,000,000/-)

The applicant is related to the deceased by virtue of being their mother and they did not left behind any dependant.

The applicant claim is based on the fact that the Respondents have agreed to relinquish their inheritance right towards the property of the deceased.

The Respondents filed a replying affidavit dated 11th August and received in the court on the same date and stated as follows in Para 3 and 4 respectively thereof;

THAT Usra Abdulrahim Awath and Sabah Abdulrahim Awath are the daughters of the applicant and sisters to the respondents.

THAT it has been agreed between the applicant and the respondent that the applicant will take the deceased shares.

The Application was also supported by the consent agreement entered between the Applicant and Respondents date 26th August 2015 and filed On 14th September 2015.

It could be clearly evinced and gauged from the evidence adduced before this court that there is no dispute between the parties herein as to distribution of the deceased estate and in fact they have recorded a consent on the mode of distribution of the deceased estate as appears in agreement entered between the Applicant and the Respondent dated 26th August 2015 and file on 14th September 2015.

I am therefore satisfied that there is no reason to disbelieve the uncontroverted, unrebutted and unchallenged testimony of the Applicant (Mother) which was supported by the response of the respondents and further corroborated and /or supported by the Consent agreement recorded between the Applicant and Respondents on 26th August 2015 and filed on 14th September 2015

Accordingly, the Application is allowed in following terms.

1. THAT, Sabah Abdulrahim Awath and Usra Abdulrahim Awath died Muslims on 3rd January 2014.

2. THAT, the Applicant Zakiya Nasher be and is hereby declared as the rightful legal heirs of the deceased..

No order as to cost.

Dated and Delivered at Nairobi this 30th day of September,2015.

Hon. A. I. Hussein

Kadhi II



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