



Case Number:	Succession Case 47 of 2018
Date Delivered:	27 Mar 2019
Case Class:	Civil
Court:	Kadhis Court at Isiolo
Case Action:	Judgment
Judge:	HON. ABDULHALIM H. ATHMAN PRINCIPAL KADHI
Citation:	In re Estate of Noor Elmi (Deceased) [2019] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Family
History Magistrates:	-
County:	Isiolo
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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Estate

5. Fatuma Noor Elmi obtained certificate of Confirmation of grant from Meru High Court on 4th June 1993 in Succession Case No 207 of 1991. She had the property registered to herself under the registration of titles Act Cap 281 laws of Kenya grant Number LR 63230 for [68] years from 1.11.91 at annual rent of KES 3,000.00. It measures 0.0948 Ha. The first respondent entered a ten year build and lease agreement with Co-operative Bank Ltd from 1st august, 2010. The terms of the agreement were that the bank will finance the construction of the building up to the roof slab level with an allowance for upward expansion on 48 feet (frontage) by 120 feet (depth) of the plot. The cost will be recovered from rental proceeds within a period of (10) years. The rent per month was 95,000.00 per month reviewed every two years at 10%. The building was constructed at a cost of KES 14,002,240.00. The agreement should end in August 2020, however total recovery of the building cost from the monthly rent will not be complete until end January 2021. The monthly rent will then be KES 152,958.45 per month. The debit balance of KES 82,612.00 will be cleared from this amount from the rent of January 2021.

6. Although the property is registered in the name of Fatma Noor Elmi, on her own admission and evidence of her sisters and witnesses, the property belonged to the late Noor Elmi. Under Islamic law of inheritance it is available for distribution to all heirs according to their respective heirs.

The three (permanent) shops

7. The court made a site visit on the afternoon of 5th march 2019 in the presence of parties. It established that the building housing the bank stretches one half of the parcel of land from front to back. Three permanent shops are constructed on about one third of the remainder on the front side. A hotel made of temporary *mabati* structure covers the remaining two thirds with a small empty space at the back. A small corridor separates the bank from the three shops. A black smith has a temporary *mabati* structure beside the building of the bank along the corridor. Halima, the second respondent, claims the three shops are hers, developed after their father's death from her own funds and capital from tenants and is therefore not available for distribution. She admits it is developed on the estate land. She argues there is land available to the other heirs if they want to develop their own shops. The first respondent supports this claim. The petitioner contends it was constructed from the funds their aunt Fatuma Gele left. Mariam Mohamed Noor [DW1] evidence is that the second respondent told her their aunt left KES 800,000.00 and that she wanted to use it to construct the shops. Under cross examination, her testimony was shaken. She was not sure there was money left by the parties' aunt. She said she was told, she did not see the money. The evidence is hearsay and not reliable. It is not admissible. I find the three shops were exclusively financed by Halima Noor Elmi, the second respondent. Had the three shops taken the entire remaining parcel of land, I probably would have a different decision regarding the shops, for lack of consent of all heirs in their construction. However land is available for any of the other heirs to make development of their own on the remaining parcel of land. The hotel is a temporary structure that can be easily demolished and developed. Accordingly I find the three shops do not belong to the estate.

8. The rent for the hotel and black smith is part of the estate and is available for distribution to all heirs.

Heirs.

9. The legal heirs of the late Noor Elmi are:

1. Fatuma Noor Elmi daughter
2. Mohamed Noor Elmi son
3. Khadija Noor Elmi daughter
4. Halima Noor Elmi daughter

10. The son is entitled to twice the share of the daughter under Q:4:11

'Allah instructs you concerning your children [i.e. their portions of inheritance]: for the male, what is equal to the share of two females.

The share of the son = 40%

The share of each daughter = 20%

Distribution

11. The rent for the bank is not yet available for distribution until January 2021. From then onwards it should be distributed to heirs in shares hereinbefore indicated.

12. The rent for the hotel and Blacksmith kiosk is available for distribution, it be distributed to heirs in their respective shares indicated hereinbefore.

13. The petitioner is entitled, in consultation with her siblings, to develop up to a third of the remaining part of the land consisting of the temporary hotel, or equivalent to that occupied by the three shops.

14. Alternatively, if the petitioner wishes to get her share of the estate in monetary terms, the entire estate [the entire parcel of land and developments thereon, excluding the three shops] be valued, and the respondents to pay her share in monetary terms.

Each party to bear its own costs.

Dated, signed and delivered at ISIOLO on 27th March 2019

HON. ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

ISIOLO LAW COURTS

In the presence of

Mr. Guyo Adan, Court assistant

Petitioner

Respondents



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