Inheritance Appeal Grounds on Unproved Gift and Omitted Second House

Educational sample 414 | Malindi

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL APPEAL FROM KADHI SUCCESSION NO [reference]

[APPELLANT HEIR] v [RESPONDENT HEIR]

MEMORANDUM OF APPEAL

1. The appellant challenges the judgment in [Lamu Kadhi succession cause] delivered on [date]. The appeal concerns the number of estate houses and the alleged lifetime gift. The appellant identifies the exact findings and orders challenged, rather than seeking a new land-title trial.

2. GROUND 1: the trial Court allegedly failed to reconcile the house and plot references in the receipts and other records, and consequently treated an estate comprising two houses as one. The relevant entries are identified at [record pages].

3. GROUND 2: the trial Court allegedly accepted the lifetime gift without sufficient direct evidence of the donor act and the interest transferred. The absence of the person said to hold the gift documents and the conflicting witness accounts required careful evaluation.

4. GROUND 3: payment of rates or rent was allegedly treated as establishing exclusive ownership without distinguishing an estate expense from a proved gift. The appellant does not deny genuine reimbursement merely because the gift claim is disputed.

5. GROUND 4: the Court allegedly failed to determine the complete estate inventory and the proper distribution issue within its inheritance jurisdiction. All heir and asset evidence relevant to that assessment is located at [certified record references].

6. RELIEF: allow the sustainable appeal; correct the estate inventory and determine the proved gift question; direct distribution under applicable Muslim law and verified reimbursement; and determine costs. Complete the applicable appeal procedure and any Kadhi assessor requirement; no fractional shares are invented in this specimen.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Identify the exact lower-court judgment or ruling, operative decree, parties, concise grounds and requested disposition. Use the procedure for this particular appellate court: an ELRC appeal and a High Court or ELC first appeal are not Court of Appeal proceedings. Check limitation, any necessary leave or extension, record, fees, service and directions. Filing an appeal is not an automatic stay.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A Lamu Kadhi succession petition concerned whether a deceased parent left one or two houses without the underlying land. One child asserted an earlier lifetime gift and relied on rates/rent receipts. The opposing child sought identification of heirs and distribution. Documents, Arabic descriptions, witnesses and house/plot numbering conflicted.

Malindi High Court allowed the appeal, identified two houses and directed distribution among seven identified heirs under Islamic law. Rates paid for the estate were to be reimbursed. Each party bore own appeal costs. The alleged gift was not proved. The judicial heading and signature identify Malindi despite erroneous Mombasa reproduction metadata.

For a Kadhi inheritance petition establish article 170(5) and section 5 jurisdiction, including faith and submission of all parties. The source High Court distinguished estate ascertainment from a separate land-ownership suit and sat with the Chief Kadhi. Do not use ordinary probate grant forms mechanically, invent fractional shares or merge ownership of houses with ownership of land.

[2020] eKLR - 28 February 2020. Source decision: https://sheriahub.com/cases/ke/caselaw/harun-omar-bausi-v-ahmed-omar-bausi-2020-eklr

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The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.