



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 2786 of 1997.

IN THE MATTER OF THE ESTATE OF YAKUB UMARDIN KARIMBUX (DECEASED)

RULING

By summons dated 04.09.06, Rehana Yakub Karimbux and Saadia Karimbux – Effendy applied for confirmation of grant of letters of administration issued to them on 18.02.04 and that costs of the application be in the cause.

At the hearing of the application, the applicants were represented by learned counsel, Mrs S.K. Effendy and Mr S. Migdad. One Sheila Sheikh as objector was represented by learned counsel, Mr. E.Z. Ongoya.

Mrs Effendy who led Mr Migdad referred the court to an order issued on 07.04.04 to the effect that the objection by Sheila Sheikh dated 06.12.2000 had been marked as settled, with no order as to costs. Counsel for both applicants sought confirmation of the grant, pointing out that the application was supported by the affidavit of Rehana Yakub Karimbux sworn on 28.08.06, the affidavit of Saadia Karimbux – Effendy sworn on 04.09.06 and the supplementary affidavit of Saadia Karimbux – Effendy sworn on 07.02.07. The supplementary affidavit of Saadia deponed that it was reaffirming the contents of her earlier affidavit sworn on 01.09.04. There is in fact no affidavit by her sworn on 01.09.04 but there is one sworn on 04.09.04. I take the reference in her supplementary affidavit sworn on 07.02.07 to her affidavit sworn on 01.09.04 to be an error and that the affidavit whose contents she was reaffirming is the one sworn by her on 04.09.04.

In her supplementary affidavit sworn on 07.02.07 Saadia, *inter alia*, deponed that the deceased herein, Yakub Umardin Karimbux was also referred to as ‘Yakub Umardin’. Saadia annexed to her supplementary affidavit sworn on 07.02.07:-

- a) Photocopy of Lease for the property known as Nakuru Municipality Block 10/92 in the name of Yakub Umardin plus a photocopy of Certificate of Official Search dated 15.04.04 showing that the above property was leased to Yakub Umardin.
- b) Photocopy of letter of 07.02.07 from the Registrar of Companies stating that the late Yakub Umardin Karimbux was a shareholder in Kenya Oatmeal Limited and indicating his shareholding in that company.

The affidavit of Rehana Yakub Karimbux and Saadia Karimbux – Effendy deponed that the deceased herein was survived by:-

- a) Nadeem Yakub Karimbux (son)
- b) Saadia karimbux – Effendy (daughter)
- c) Rehana Yakub Karimbux (widow).

Applicants' counsel told the court that there is a consent dated 24.11.06 signed by all the 3 persons named as beneficiaries to the mode of distribution among themselves. For the record, the mode of distribution is given in the 2 applicants'/administrators' affidavit as follows:-

- a) Nadeem Karimbux 58.3%
- b) Saadia Karimbux – Effendy 29.2%
- c) Rehana Yakub Karimbux 12.5%

On the other hand, counsel for objector Sheila Sheikh said he had been instructed by his senior, Mr Majanja to object to the application for confirmation of the grant in question and that the objection dated 09.03.99 was still alive. Objector's counsel acknowledged, however, that the information he had been given that the objection was still alive may not be accurate in view of the order of 07.04.04 of which he was unaware. He, however, pointed out that the objector's principal claim was that she was a daughter-in-law of the deceased, that she and her daughter, Fayha Tehsin Karimbux are entitled to a share of the estate of the deceased herein but that they had not been provided for in the mode of distribution proposed by the applicants/administrators. Objector's counsel asked for time to formally put in objections to the summons dated 04.09.06 for confirmation of the grant in question. He submitted that the claim by the objector and her daughter is not far-fetched and that it would be in the global interests of justice to have the formal objections on record so that the matter is not litigated in instalments. He added, however, that if the court was minded otherwise, he asked to rely on the objector's affidavit sworn on 10.03.99.

In response to objector's counsel's submissions, Mrs Effendy submitted that the order issued on 07.04.04 was drawn up by consent of the parties; that the objector was represented by Kimondo, Gachoka & Co. Advocates that day; that by virtue of that order, the objection was extinguished and that the court cannot rely on the objection. Mrs Effendy pointed out that more than 6 months had passed and that the objector should have filed a caveat under rule 15 of the Probate & Administration Rules (made under the Law of Succession Act, Cap.160) in order to ensure she received notice of application for making or confirmation of grant. Mrs Effendy said the proposed mode of distribution is in accordance with Sharia Law and that there is no opinion from the Kadhi's court on the beneficial entitlement of a daughter-in-law (like the objector) whose husband pre-deceased the deceased herein. Mrs Effendy submitted that an opinion be sought from Kadhi's court on whether the objector and her daughter are beneficially entitled to any of the estate of the deceased herein. Mrs Effendy also pointed out that the objector's affidavit sworn on 10.03.99 deponed at paragraph 5 that the deceased herein died on 25.10.87 while the said deceased actually died on 25.10.97 and that the objector's husband died in 1989. Mrs Effendy emphasized that the fact that the objector's husband who was a son of the deceased herein died before the said deceased should be taken into account by the Kadhi in determining whether the objector and her daughter are, under Sharia Law, beneficially entitled to a share in the estate of the deceased herein.

Mr Migdad said he concurred in the submissions of Mrs Effendy and that he had nothing to add.

In reply, objector's counsel said he had no objection to the opinion of a Kadhi being sought by this court regarding entitlement or otherwise of the objector and her daughter to part of the estate of the deceased herein. Objector's counsel added, however, that he reiterated that the objector be allowed to put in a formal objection in case there is another ground she and her daughter may wish to rely upon.

On the issue of the date of death of the deceased herein, objector's counsel acknowledged that the objector's affidavit cited it as 25.10.87. He said the objector had no intention to mislead, as witness the fact that the first paragraph of her notice of objection dated 09.03.99 gives the date of death of the

deceased herein as 25.10.97. Objector's counsel said the objector would be guided by the court record as to the correct date of death of the deceased herein.

I have given due consideration to the application for confirmation of the grant in question and the objection thereto.

This is an old case, filed way back in 1997. There appear to have been various objections. However, records in the court file show that on 18.02.04 the contestants appeared through their respective counsel before Hon. Justice Hatari Waweru in chambers and a consent order was recorded as follows:

'THIS MATTER coming up for hearing on the 18th day of February 2004 and in the presence of counsel for the Petitioners and counsels for the three respective Objectors AND UPON HEARING all the counsels for the parties herein;

IT IS ORDERED BY CONSENT

- 1. THAT the 1st objector REHANA YAKUB KARIMBUX and the 1st Petitioner SAADIA KARIMBUX EFFENDY are hereby appointed joint administratrixes of the Estate of YAKUB UMARDIN KARIMBUX (Deceased) and a grant shall issue to them forthwith;**
- 2. THAT the joint administratrixes may jointly or severally apply for confirmation of the grant before expiration of six (6) months;**
- 3. THAT the Objection dated 16th March 1998, objection dated 9th March 1999, the objection dated 6th December 2000 and the Petition by way of cross-petition filed on 5th May 1998 are hereby marked as settled upon the above terms with no order as to costs.**

GIVEN under my hand and the seal of this court at Nairobi this 18th day of February 2004.

ISSUED at Nairobi this 7th day of April, 2004.

SENIOR DEPUTY REGISTRAR

HIGH COURT OF KENYA AT NAIROBI'

The court record shows:-

- a) That the objection of 16.03.98 was by REHEMA YAKUB KARIMBUX, described as the deceased's widow. She was objecting to the making of a grant of representation to the estate of the deceased herein to Saadia Karimbux Effendy and Syamsaur Effendy. Rehana attached to her objection an answer to Saadia Karimbux – Effendy's and Syamsaur Effendy's petition and simultaneously cross – petitioned to be appointed administratrix.
- b) That the objection of 09.03.99 was by SHEILA SHEIKH, described as the deceased's daughter-in-law. She was also objecting to the making of a grant of representation to the estate of the deceased herein to Saadia Karimbux Effendy and Syamsaur Effendy.
- c) That the objection of 06.12.2000 was by SAIDA YAKUB KARIMBUX, described as beneficiary former wife and creditor. She too was objecting to the making of a grant of representation to the estate of the deceased herein to Saadia Karimbux Effendy and Syamsaur Effendy.

Objector Rehana Yakub Karimbux at (a) above was represented by Mohamed & Kinyanjui Advocates; objector Sheila Sheikh at (b) above was represented by Khamati, Minish & Co. Advocates.

The consent order given on 18.02.04 appointed REHANA YAKUB KARIMBUX and SAADIA

KARIMBUX EFFENDY as joint administratrixes of the estate of the deceased herein, i.e. YAKUB UMARDIN KARIMBUX who, according to the supplementary affidavit of Saadia Karimbux – Effendy, was also referred to simply as YAKUB UMARDIN. This court was not told that the consent order was appealed against or that an application for its review was filed. I must and do hold that the said consent order still stands and is binding between the parties thereto, including objector SHEILA SHEIKH who was represented at the hearing before me by learned counsel, Mr E.Z. Ongaya. The said Sheila Sheikh's objection was that the petition for a grant of letters of administration of the estate of the deceased herein did not take account of the interests of herself as the deceased's daughter-in-law and her daughter, FAYHA TEHSIN KARIMBUX. The said Sheila Sheikh having been a party to the consent order given on 18.02.04 which, *inter alia*, marked her objection as settled, she cannot now revive the objection while the consent order subsists.

Issue was also made of the date of death of the deceased herein *vis-a-vis* that of Sheila Sheikh's late husband, Tehsin Yakub Karimbux. I confirm that documents in the court record establish that Sheila Sheikh's husband died on 19.03.89 and that the deceased herein, Yakub Umardin Karimbux alias Yakub Umardin died on 25.10.97, i.e. Sheila Sheikh's husband pre-deceased his father the deceased herein.

There is a consent dated 24.11.06 to the effect that Nadeem Yakub Karimbux (deceased's son), Saadia Karimbux – Effendy (deceased's daughter and administratrix) and Rehana Karimbux (deceased's widow and co-administratrix) consented to the mode of distribution of the estate of the deceased herein as follows:-

- a) Nadeem Karimbux 58.3%
- b) Saadia Karimbux 29.2%
- c) Rehana Yakub Karimbux 12.5%.

Clearly objector Sheila Sheikh's interests are not catered for nor are those of her daughter in that mode of distribution. It is such non-provision for those interests that must have caused Sheila Sheikh to file her objection dated 09.03.99. The court order given on 18.02.04 with the consent of the parties and to which Sheila Sheikh was a party showing that she consented to her objection being marked as settled must be and is construed to mean that her said objection was no longer an issue. As long as the said court order is in force, as it indeed is, Sheila Sheikh cannot casually purport to disown it in the manner her present counsel has suggested without invoking the normal procedure of either appeal or review. One or other of these options ought to have been exercised earlier but that was not done.

The upshot is that the objection by Sheila Sheikh dated 09.03.99 is dismissed, the summons dated 04.09.06 for confirmation of grant of letters of administration of the estate of YAKUB UMARDIN KARIMBUX (Deceased) to REHANA YAKUB KARIMBUX and SAADIA KARIMBUX – EFFENDY is allowed and the grant confirmed.

Costs shall be in the cause.

Orders accordingly.

Delivered at Nairobi this 5th day of June, 2008.

B.P. KUBO

JUDGE