



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2786 OF 1997**

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

**RULING**

1. This matter relates to the estate of Yakub Umardin Karimbux. He died on 25<sup>th</sup> October 1997.
2. Representation to his estate was sought in this cause on 28<sup>th</sup> December 1997 by Saadia Karimbux Effendy and Syamsuar Effendy. They described themselves in the petition for grant of letters of administration as daughter and son-in-law of the deceased, respectively. The deceased was said to have been survived by two individuals – a son, Nadeem Yakub Karimbux, and a daughter, Saadia Karimbux Effendy. The said son executed a consent to representation being granted to the petitioners and the same was lodged in court simultaneously with the petition. The deceased is expressed to have died possessed of two assets, being the land described as Nakuru Municipality Block 10/92 and 2521 shares in Kenya Oatmeal Ltd.
3. Rehana Yakub Karimbux raised an objection to the petition filed on 28<sup>th</sup> December 1997 *vide* an objection dated 16<sup>th</sup> March 1998 and filed in court on 18<sup>th</sup> March 1998. She described herself in the objection as the surviving widow of the deceased and protested that her existence as such had been concealed in the petition.
4. She filed an answer to the petition and a petition by way of cross-application, both lodged in court on 5<sup>th</sup> May 1998. In the answer, she reiterated that she is the surviving spouse of the deceased, and that the children disclosed in the petition as surviving the deceased were in fact her stepchildren. She protested that her consent, as envisaged in rule 7(7) of the Probate and Administration Rules, had not been sought by the petitioners.
5. In the petition by way of cross-application she reiterated that she was a surviving spouse of the deceased and thereby entitled to a share in his estate. In her affidavit sworn on 5<sup>th</sup> May 1998 in support of her petition, she asserted that the deceased had been survived by three individuals – herself as widow and the two stepchildren, being Nadeem Yakub Karimbux and Saadia Karimbux Effendy. She stated that in addition to the two assets disclosed in the petition of 28<sup>th</sup> December 1997, the deceased also possessed property described as Nakuru Municipality Block 6/107, 108, 109 and 110. He was also said to have had liabilities standing at Kshs. 1,600,000.00.
6. On 26<sup>th</sup> November 1998, Saadia Yakub Karimbux lodged a summons at the registry dated 25<sup>th</sup> November 1998, seeking to be joined to the petition dated 28<sup>th</sup> November 1997 as a joint petitioner for a grant of letters of administration intestate in respect of the estate of the deceased. In her affidavit in

support of the application she avers to be a former spouse of the deceased and a shareholder of and a director in the company known as Kenya Oatmeal Limited. She states that there is a pending suit between her and the deceased on personal property that she sought to recover from him. She also claims entitlement to a share of the matrimonial property.

7. The application dated 26<sup>th</sup> November 1998 was opposed by Rehana Yakub Karimbux. She filed on 5<sup>th</sup> January 1999 grounds of opposition and an affidavit sworn on an unknown date. She states in her affidavit that Saida Yakub Karimbux was a former spouse of the deceased, and having been divorced by the deceased she was not entitled to administration of the estate of the latter. She concedes that Saida Yakub Karimbux is a director in Kenya Oatmeal Limited but contests the claim that she is a shareholder of the said company. She avers to have been a signatory to the bank accounts of the company during the deceased's lifetime, but alleges that she was excluded from the affairs by Saida Yakub Karimbux after the deceased died. She has attached to her affidavit a letter dated 21<sup>st</sup> October 1998 from the Barclays Bank of Kenya, Nakuru East Branch, as proof that she had been a signatory to the company accounts.

8. There is on record another deposition to the petition by Saadia Karimbux Effendy and Syamsaur Efecy. The second objection is by Shella Sheikh and it is dated 9<sup>th</sup> March 1999. She did not file an answer to the petition nor a petition by way of cross-application. Instead she sworn an affidavit on 10<sup>th</sup> March 1999, filed in court on 12<sup>th</sup> March 1999, staking her claim to the estate on her own behalf and that of her daughter, Fayha Tehsin Karimbux. She does not indicate who her husband was and how her said husband related to the deceased.

9. The objections to the petition lodged in court in 1997 were resolved by consent before Waweru J. on 18<sup>th</sup> February 2004. Rehana Yakub Karimbux and Saada Karimbux Effendy were appointed administrators of the estate of the deceased Yakub Umardin Karimbux. A grant of letters of administration intestate dated 18<sup>th</sup> February 2004 was thereafter issued to the two administrators.

10. The two administrators then lodged in court a summons on 4<sup>th</sup> September 2006 seeking confirmation of the grant of 18<sup>th</sup> February 2004. The same was heard by Kubo J., who, on 5<sup>th</sup> June 2008, allowed the application. A certificate of confirmation of grant dated 5<sup>th</sup> June 2008 was issued, duly signed by Rawal J. on 16<sup>th</sup> June 2008.

11. According to the said certificate of confirmation of grant only two assets were available for distribution – Nakuru Municipality Block 10/92 and 2521 shares in Kenya Oatmeal Limited. The two were distributed amongst the only three (3) survivors of the deceased, that is to say Naddem Yakub Karimbux, Saadia Karimbux Effendy and Rehana Yakub Karimbux at the ratios of 58.3%, 29.2% and 12.5% respectively.

12. The matter that I am now being called upon to determine is the summons dated 17<sup>th</sup> April 2013. It is brought at the instance of Rehana Yakub Karimbux, founded on Section 47 of the Law of Succession Act and rules 49, 59(3) and 73 of the Probate and Administration Rules. It seeks injunctive orders against Saida Yakub Karimbux, Saadia Karimbux Effendy and Sukhwinder Singh Judles with respect to Nakuru Municipality Block 6/107, 108, 109 and 110 which is owned by the Kenya Oatmeal Limited. There is also a prayer that the changes in the shareholding of Kenya Oatmeal Limited be reverted to the status as at the date of the deceased's death on 25<sup>th</sup> October 1997. There is also a prayer that all the rental proceeds from the property owned by the Kenya Oatmeal Limited be deposited in an account in the joint name of the applicant and the respondents or their respective advocates pending the hearing and disposal of the application. The final prayer is that the property owned by Kenya Oatmeal Limited, that is to say Nakuru Municipality Block 6/107, 108, 109 and 110, be sold and the proceeds therefrom be shared equally amongst the *bona fide* beneficiaries of the estate in accordance with the law.

13. The application is predicated on the grounds set out on the face of the application, as well as on the facts deponed to in the affidavit of the applicant sworn on 17<sup>th</sup> April 2013. The applicant's case is that the deceased's principal estate was acquired and owned through shareholding in the Kenya Oatmeal

Limited through which he owned the property known as Nakuru Municipality Block 6/107, 108, 109 and 110. She accuses the respondents of manipulating the shareholding in the Kenya Oatmeal Limited so as to exclude her from participating in the administration of the estate. That was allegedly done during the pendency of the succession cause. This accusation is specifically targeted at Saadia Karimbux Effendy, who is her co-administrator and the second respondent to the application, who is said to have had the shareholding manipulated in favour of the other two respondents who were not beneficiaries of the estate. She fears that the property belonging to the estate may be alienated to her disadvantage.

14. Of the three persons named as respondents to the application, only the second respondent, Saadia Karimbux Effendy, has responded to the application. She has filed grounds of opposition dated 10<sup>th</sup> May 2013 and two affidavits, sworn on 14<sup>th</sup> June 2013 and 2<sup>nd</sup> July 2013. She argues that the orders sought in the said application are not available for they relate to property belonging to a limited liability company and shareholding in the company; consequently they are outside the scope of the jurisdiction of the probate court. She states that the matters raised ought to be placed before the commercial court in a suit properly brought under the Civil Procedure Act.

15. As indicated above, the grant herein has been confirmed. There is a certificate of confirmation of grant on record. The property which makes up the estate has been distributed. The only thing which is outstanding is the vesting of the assets listed in the certificate of confirmation of grant in the names of the persons mentioned in the said certificate. There is no further distribution to be done. Yet the tenor of the application appears to be that the estate is yet to be distributed. In my view the application does not appear to be properly conceived.

16. The application is about Nakuru Municipality Block 6/107, 108, 109 and 110, yet this property does not form part of the estate of the deceased. It was not part of the assets that were placed before the court for distribution. The said property belongs to a company known as Kenya Oatmeal Limited. The deceased held shares in Kenya Oatmeal Limited, and it was these shares that were before the court for distribution. He did not own the property held in the name of the company, and such property cannot be dealt with as if it forms part of his estate. That being the case, this court cannot make any orders touching on Nakuru Municipality Block 6/107, 108, 109 and 110.

17. The court is invited to order suspension or reversal of all changes in the shareholding of the company and to revert the same to the status quo as at the deceased's death on 25<sup>th</sup> October 1997. The only matter of the shareholding that the probate court can handle is the division or distribution of the shares held by the deceased in the company. It cannot delve any deeper as to enquire into how the shareholding in the company changed. Its responsibility is limited so far as shareholding is concerned. The remedy with respect to shareholding lies elsewhere.

18. I have already stated that the court has distributed the shares and to that extent it has discharged its mandate. Any other issues relating to shareholding should be taken to another forum. Needless to say that the applicant seems to be reopening the issue of distribution by asking for a suspension or reversal of changes in shareholding. If she is unhappy with the distribution of 5<sup>th</sup> June 2008 she should have appealed against it or sought a review of the confirmation orders.

19. This is a probate court. The only concern it should have regarding Kenya Oatmeal Limited is with respect to the shares that the deceased held in the company. That matter was dealt with when the shares were placed before the court and distributed on 5<sup>th</sup> June 2006. If another issue arose thereafter as to the exact shareholding that the deceased held in the company, that in my view is a matter that is beyond the scope of the mandate of the probate court.

20. The same applies to the prayer that all the rental proceeds from the company's property be deposited in court. The property owned by the company is not and was never before me as a probate Judge. There is no legal basis upon which I can give any orders as a probate court on collection of rental income by the company. Neither can I give any orders that such property be sold and the proceeds of sale be shared among the shareholders.

21. There is clearly no merit in the application dated 17<sup>th</sup> April 2013. The same is for dismissal and I do hereby dismiss the same. The costs of the application are awarded to the respondent.

**DATED, SIGNED and DELIVERED at NAIROBI this 10<sup>TH</sup> DAY OF JULY, 2015.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Onyango for Mr. Orina advocate for the Applicant.**

**In the presence of Mr. Amalemba for Mr. Kahonge advocate for the Respondent.**