



Media Release

A victory for Muslim women in the *Harnaker Matter* as judge rules section 2C(1) of the Wills Act unconstitutional.

Monday 18 September 2017; In a victory for Muslim women, Judge Le Grange of the Western Cape High Court in the *Harnaker Matter* has declared section 2 (1) (c) of the Wills Act unconstitutional as it does not recognise the equality rights of spouses married in terms of Muslim rites. The provision does not allow the children of the spouse (mother) married in terms of Muslim rites to repudiate their share in the Estate in favour of their mother if the deceased was also married in terms of civil law.

The *Harnaker Matter* stemmed from an adverse administrative decision taken by the Deeds Office in the exercise of its discretion conferred on it by the Deeds Registries Act 47 of 1937.

The Application was brought before the Western Cape High court by F Moosa & Associates, with the Women's Legal Centre admitted as a friend of the court.

Judge Le Grange noted that in the absence of any evidence or argument by the twelfth respondent (the Registrar of Deeds, Cape Town) or those in Government qualified to do so, it is only evidence and arguments of the Applicants and Amicus (The Women's Legal Centre) that can be considered.

The Judge ruled that twelfth respondents decision that the third applicant is not a 'surviving spouse' of the late Osman Harnaker for purposes of receiving benefits under section 2C(1) of the Wills Act fall to be reviewed and set aside. Thus declaring the third applicant a surviving spouse who can benefit from her late husband's estate.

The brief facts of the matter are that the deceased left a Sharia Will which allocated different shares of his Estate to his children and spouses to whom he was married in terms of Islamic and Civil law. Both marriages had been conducted according to Muslim rites, however the first marriage had also been registered in a civil ceremony. The second marriage was not able to be registered civilly, because the Marriage Act does not recognise polygynous marriages. However, according to both wives' legal representative, the husband treated both wives as equals. When the husband died the family assumed that the estate would be administered and divided equally amongst the surviving spouses. Yet, when the house was in the process of being transferred into the joint names of two spouses the Deeds office objected.

Says Seehaam Samaai, Director of the Women's Legal Centre; "This case must be seen within our own historical context and how intersecting issues of class , race, gender impact on the daily realities of Muslim women married in terms of legally unrecognised Muslim marriages. Muslim women in South Africa have multiple forms of intersecting identities which all impact on their lives. This case therefore cannot be seen through one marginalised lens which is religion. Muslim women in SA have endured

systematic injustice and inequality within society and the State has an obligation in terms of our constitution to address the historical and intersectional discrimination perpetuated against Muslim women.”

-ends-

For more information or to arrange an interview, please contact Angie Richardson on 083 397 2512 or angie@thepressoffice.net