



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

CIVIL SUIT NO 348 OF 2010

EUNICE SOKO MLAGUI..... PLAINTIFF

VERSUS

SURESH PARMAR.....1ST DEFENDANT

P C PATEL & PRAMOD PATEAL (Administrators

of the ESTATE OF RAJINDER K PATEL.....

.....2ND DEFENDANT

R U L I N G

By this application, the Plaintiff/Applicant seeks from the court the following orders –

- 1. That the court be pleased to order that the Respondents/Defendants furnish the Applicant/Plaintiff with all the bank statements relating to the funds for distribution to shareholders of Software Applications Limited (SAL) and Software Application (K) Ltd (SAKL).**
- 2. That the court be pleased to order that the monies held by the Respondents/Defendants on behalf of all the shareholders of SAL and SAL be deposited in an interest bearing account in the joint names of all the shareholders of the said companies with a bank acceptable to all shareholders.**
- 3. That the court be pleased to order that the**
- 4. Respondents/Defendants furnish the Applicant/Plaintiff with audited accounts of Software Application Uganda Limited (SAUL) in which SAKL holds 50% interest for the years 2008 and 2009.**
- 5. That the costs of this application be provided for.**

The application is made by a notice of Motion dated 18th May, 2010, and is brought under **Order XXXIX Rule 8** of the **Civil Procedure Rules**, and **Section 3A** of the **Civil Procedure Act**. It is supported by the annexed affidavit of **EUNICE SOKO MLAGUI**, the Plaintiff/Applicant and is based

on following grounds –

1. **That the Applicant/Plaintiff, the late Rajinder K. Patel and 1st Respondent/Defendant were the shareholders of the SAL and SALK.**
2. **That the external auditors on the instructions of the Respondents/Defendants prepared a statement of distribution of the assets of the said companies on the 10th December, 2008.**
3. **That the Applicant/Plaintiff raised legitimate issues in regard to the said statement of distribution and other subsequent statements of distribution which the Respondents/Defendants have refused to take into account thus affecting the final figure of the Applicant's/Plaintiff's share of the distribution.**
4. **That the Respondents/Defendants prefer that the matter be presided over by the external auditors of the said companies who are extremely biased in favour of the Respondents/Defendants such that it is unlikely that the Applicant/Plaintiff will get her fair share of the distribution.**
5. **That accordingly the Applicant/Plaintiff did not have any alternative but to file this suit in order to protect her interest.**
6. **That the Applicant/Plaintiff would like to be furnished with all the bank statements relating to the funds for distribution for SAL and SAKL and audited accounts for SAUL for the years 2008 and 2009.**
7. **That the funds for distribution are held by the Respondents/Defendants and for purposes of transparency and protection of her interest, she would like the said funds deposited into an interest bearing account in the joint names of all the shareholders.**
8. **That should the funds continue being held by the Respondents/Defendants, they will have an unfair gain over the Applicant/Plaintiff whereas the funds are for the benefit of all shareholders and not the Respondents/Defendants only.**
9. **That the Applicant/Plaintiff shall suffer substantial loss unless the order sort herein is granted.**
10. **That the Respondents'/Defendants' right shall not be prejudiced nor shall they suffer irreparable loss if the order is granted.**

The application is opposed by the replying affidavit of Suresh Thakorbbhai Parmar, the 1st Defendant herein. At the hearing of the application, Ms. Kitonga appeared for the Applicant while Ms. Awino appeared for the Respondent. After considering the pleadings and the submissions of both Counsel, I find that this is a fairly simple matter. There were only 3 shareholders in the dissolved Companies, and it is instructive that the Applicant was the minority shareholder with 32% of the shares. She strongly feels that she is being discriminated against by the external auditors of the Companies who, in her view, are extremely biased in favour of the Respondents. The only solution to such a predicament is transparency in the accounting procedures of the Companies so that the Applicant does not feel cheated. Unless the Applicant is supplied with all the Bank statements relating to the funds for distribution to the shareholders, she will always perceive herself as short-circuited even if that perception is incorrect.

Secondly, though the monies in which the shareholders have an interest is deposited in the Client Account of the external auditors, the Plaintiff does not have access to such an account and will always suspect that all may not be well when the other shareholders are given information freely as to the state of the accounts therein to which she is not privy. In my view, it is harsh and wrongful to deny one shareholder the receipt of information which is freely supplied to other shareholders. It smacks of discrimination, and that is not acceptable.

For a person in the Applicant's position, it is painful to imagine that the other members are in the know as regards the state of accounts relating to the funds for distribution of their Companies' audited accounts when she alone is left out in the dark. The best way out of that problem is to have an account which all the Shareholders can access in order to avoid unnecessary suspicion and acrimony. In order to ensure justice and fair play, I find it imperative that the orders sought by the Applicant be granted as prayed. I accordingly make the following orders –

1. **That the Respondents do furnish the Applicant with all the Bank statements relating to the funds for distribution to shareholders of Software Applications Limited (SAL) and Software Applications (K) Limited (SAKL).**
2. **That the monies held by the Companies' external auditors in the latter's client account on behalf of all the shareholders of SAL and SAKL be deposited in an interest earning account in a reputable bank acceptable to all the shareholders and in the joint names of those shareholders.**
3. **That the Respondents furnish the Applicant with audited accounts of Software Applications Uganda Limited (SAUL) in which SAKL holds 50% interest for the years 2008 and 2009.**
4. **Given the nature of the relationship between the Applicant and the Respondent, I don't think it will be proper to award the Applicant the costs of this application. Such an award to her would only sour the relationship between them. I accordingly direct that each party shall bear its own costs.**

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 3rd day of February, 2011.

L. NJAGI

JUDGE