



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

Misc Appli 44 of 2005

JOSEPH CHESANG CHEPKWONY APPLICANT

VERSUS

ELIZABETH CHEPKOECH SALAT RESPONDENT

RULING

After my ruling of 13th October, 2006, I gave directions to give clarifications as to statements made by Kenya Planters' Co-operative Union Ltd. so as to make final order on Originating Summons dated 10th January, 2005 seeking accounts of the assets of the estate herein and seeking order that monies found to have been appropriated by the Respondent, Elizabeth Chepkoech Salat be apportioned and taken into account and be deemed as an advance to her from the estate.

The Statement of Accounts presented before the court on 6th November, 2006 vide an affidavit from Josephine Chesang Chepkwony Salat sworn on 6th November 2006. I agree with the averments and submissions made by Counsel for the said Josephine that the new statements submitted by Kenya Planters' Co-operative Union Ltd. are in stark contradiction to the earlier one and do create more confusion.

The Respondent has not filed any response to the said affidavit. On 23rd January, 2007 when the matter came before me no further submissions were made, and I was urged to make final order on the application referred to hereinbefore.

I am now back to square one and on drawing table without much to assist me except the admission from the Respondent that the income received was Shs.1,250,000 from the coffee products from 1991 – 2006. As observed in my earlier ruling her statement to the effect that she did not receive anything from the years 1987 – 1990, from 1993 – 1996 and from 1998 – 2006 is definitely not creditworthy as she herself has shown deliveries of coffee bags during those years. She ought to have received the payments from those deliveries. Moreover, she has not explained the absence of income from those many years.

Doing best I can under the circumstances, I shall calculate Shs.20,000 per year as the income appropriated from the years 1991 to 2006. Thus I find that the sum of Shs.320,000 was appropriated by the Respondent and said sum shall be apportioned to her share and deemed to be the advance to her from the estate of the deceased.

In the first 3 years i.e 1991 – 1993 she received Shs.1,080,000 and then except for Shs.45,000 in 1997 she did not receive any income. Once again she has shown salaries for Shs.792,000 from the income of

Shs.1,080,000 and salary of Shs.34,000 from the income of Shs.45,000.

On the other hand she herself has shown deliveries of around 130 bags during 1998 and 1999.

To give my final order, I shall have to go back to my earlier ruling and I had already found on the loss of the estate at the behest of the Respondent as under:

- 1. Milk products – Loss to the estate Shs.3,000 per month from the year 1995 Shs.36,000 x 16 = Shs.432,000/-**
- 2. Coffee Products Shs.320,000**
- 3. Trees from Sotik Farm – Shs.700,000**
- 4. Tenancy on Kericho Plot bearing No.631/1036 Shs.2,150,000/-**
- 5. Sotik club 181 L.R.No.7288/272 – Shs.890,000.**

Thus I find that the Respondent has appropriated Shs.4,492,000 and the said sum be apportioned and taken into consideration and be deemed as an advance to her from the estate of the deceased.

I shall not make any order as to costs.

Orders accordingly.

Dated and signed at Nairobi this 1st March, 2007.

K.H. RAWAL

JUDGE

1.3.2007