



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 316 of 2005**

**DAMARIS WAMBUI KANJA.....PLAINTIFF**

**VERSUS**

**APEX SECURITY SERVICES LIMITED.....DEFENDANT**

**J U D G M E N T**

The plaintiff brings this action as administratrix of the Estate of her late husband the late Stanley Kanja Wachanga.

The plaintiff Damaris Wanjiru Kanja stated in evidence that her husband passed away in May 1999. She is the holder of the confirmed grant over his estate. The late Stanley Kanja Wachanga was a director and Chairman of Kipanga Security Guards and Alarm Systems (K) Limited. The said company began to operate in 1987. The said company changed its name severally as follows: Apex Security Services Limited on 1<sup>st</sup> March 1989, Marshall Security Services Limited on 9<sup>th</sup> February 1990 and finally to Apex Security Services Limited on 31<sup>st</sup> December 1990. The late Stanley Kanja Wachanga was a holder of one share in the said company and to support that evidence the plaintiff produced a letter written by the registrar of companies dated 13<sup>th</sup> December 1991. The plaintiff stated that the late Mr Wachanga was actively involved in the company's running and to support this the plaintiff produced various minutes. Her late husband began being sick in 1998 and when he was unable to attend board meetings, due to his illness, he wrote to the company and suggested that his son Geoffrey Ngatia represents him. That the said son was denied a right to attend board meeting on behalf of the late Mr Wachanga. The plaintiff said that she was also denied a right to attend those meetings. The plaintiff concluded that her late husband used to receive payments from the company on a monthly basis and at the end of each year. She said that his estate had lost those benefits.

The defendant did not file an appearance nor a defence and interlocutory judgment, thereof, was entered on 8<sup>th</sup> July 2005 against the defendant.

The evidence tendered by the plaintiff shows that the plaintiff is entitled to a declaration that the deceased share in the defendant company devolved to her by operation of the Law. Section 84 of the Companies Act provides that evidence of a grant, amongst other documents, is sufficient evidence that grant has been granted and the company shall accept it as evidence of such grant. The plaintiff by virtue of section 78 of the Companies Act can transfer the deceased's share even though she is not a member of the defendant company, and by section 79, the company is obliged, on application by a transferor, to register a transfer of share.

The plaintiff has also prayed in her plaint that an account be taken and the defendant be ordered to pay that account found due to the estate of her husband.

The court in view of the prayer for accounts will issue a preliminary decree to enable those accounts to be taken.

The judgment of this court is that a preliminary decree do issue that: -

**(i) the court does hereby declare that the deceased's one share in the defendant company devolved to the plaintiff by operation of the law;**

**(i) an order is hereby issued directing the defendant company to register the deceased's one share in the plaintiff's name.**

(iii) the managing director or the chairmen of the board of directors of the defendant company do within 14 days of service of this decree and penal notice, file an affidavit setting out the payments due to the estate of Stanley Kanja Wachanga (deceased).

**(iv) the costs of this suit are awarded to the plaintiff.**

**MARY KASANGO**

**JUDGE**

Dated and delivered this 5<sup>th</sup> day of May 2006.

MARY KASANGO

**JUDGE**