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

Winding Up Cause 38, 39 & 40 of 1991

In the Matter of Avitech Limited, Aircraft Engineering Services Ltd & Rent-A-Plane Ltd and In the Matter of the Companies Act

Ruling.

Three matters have been raised before me today for clarification. The first being whether the interest on the sum of 2,786,945/65 deposited with HFCK that has accrued should be paid to the Petitioner. Mr Gatonye has rightly conceded that this should be so and I so order. The second matter is the fixing of a date when the equipment of AES as set out in the 3rd schedule to Ex A should be shared out and how. By consent of both counsel, this will be on 18.1.1994 at 10.30 a.m. at the premises of AES under the supervision of Mr Peter Huth who prepared the 3rd schedule and who seems to know how the share out is to be achieved. It is therefore so ordered. The third matter at first sight appears to present some difficulties. Mr Gatonye has applied for the correction of what he terms an arithmetic mistake in my assessment of the Petitioner's share of the goodwill of RAP which I had assessed at 1,200,000/=. He says that since I had clearly set out on the basis of the Petitioner's own petition his share in RAP to be 146th of 600. I should have applied that same proportion in assessing the Petitioner's share of the goodwill of RAP and that if I had done that, his share would be 286,000/= and not 876,000/= as I had cocluded. He drew my attention to two passages in my judgment in support of this proposition. If he is right, then the overall amount that I held the Petitioner to be entitled to, would also be affected accordingly.

Mr Kibet for the Petitioner has naturally opposed this application saying simply that there is no arithmetic mistake in my judgment and that my assessment of the Petitioner's share of RAP's goodwill at 876,000/= is and must be regarded as independent of the Petitioner's shares in RAP. Mr Kibet has suggested that the proper course for Mr Gatonye to adopt would be to appeal against my judgment or seek its review.

But it is quite clear to me that the basis upon which I had determined the Petitione'share in the goodwill of RAP was as follows:

"I agree that RAP's intrinsic value is its goodwill but the value of this should be shared amongst all the shareholders as shown in the petition filed by the Petitioner and not in equal shares between the three directors only".

And so, since I have assessed the goodwill of RAP at 1,200,000/=, the Petitioner's share of this should really be 286,000/= and not 876,000/= which is an obvious arithmetic mistake on my part, and which I am happy to be able now to correct. One hundred and forty sixth part of six hundred multiplied by one million two hundred thousand shillings comes to two hundred and eighty six thousand shillings and that is my assessment of the Petitioner's share of the goodwill of RAP. Taking this now into consideration, judgment should have been given for the Petitioner in the reduced sum of 299,600/35 and not 889,610/35 and to be paid before 25.1.1994.

It is not uncommon for arithmetic mistakes like what has occurred in my judgment in this matter to happen and indeed, that is the reason for the existence of S.99 of the Civil Procedure Act which permits such mistakes to be corrected at any time on my own motion or upon application being made. I can only say that I regret the arithmetic mistake that I made and apologise for this to the parties in this matter.

It is so ordered.

January 4,1994

Akiwumi, JA