



ITEM 66(c) & ITEM 32(a) FIRST SCHEDULE

STAMP ACT 1949

TAN NYOK CHIN

V.

PEMUNGUT DUTI SETEM

ORIGINATING SUMMONS NO.: BA-24NCVC-1560-08/2023

 HIGH COURT OF SHAH ALAM

 YA ROZI BINTI BAINON

 31 JANUARY 2024

The Plaintiff's husband dies testate on 7.11.2019, leaving his last Will and Testament dated 25.04.2008 ("Will") which includes a land ("the Land") to be distributed to the

Plaintiff and their five (5) children ("Children"). By way of Deed of Settlement and Renunciation of the Inheritance ("DSRI") dated 27.03.2023, all of the Deceased's children renounced their rights and entitlements to the Land stipulated under the Will which resulted the Plaintiff as the sole beneficiary of the Land. The Kuala Lumpur High Court issued an order to vest ("the Vesting Order") all shares of the Land to the Plaintiff and granted leave for the Plaintiff to execute the transfer instrument to effect the vesting of the title of the Land. The Plaintiff submitted Form 14A dated 22.06.2023 ("Form 14A") to Defendant for adjudication. The Defendant issued Notice of Assessment dated 13.07.2023 where a fixed stamp duty of RM10.00 was imposed on the 1/6 share of the Land and an *ad valorem* stamp duty of RM20,800.00 was imposed on the 5/6 share of the Land that was previously renounced by the Plaintiff's children.

The Plaintiff argued that the transfer of 5/6 share of the Land vested to her pursuant to the Vesting Order and DSRI shall only be subjected to the fixed stamp duty of RM10.00 under Item 32(i) First Schedule Stamp Act 1949 ("SA 1949") and should not be construed as a "gift" under Item 66(c) First Schedule SA 1949. This is because at the time of renunciation by the other beneficiaries, the administration and distribution of the Will has yet to be completed. As such, since the other beneficiaries renounced their rights, interest, and entitlement to the Land, they did not and could not have any right or title to make/grant a gift to the Plaintiff. The Plaintiff contended that the principles enunciated in the Court of Appeal's case of Lee Koy Eng were applied in her case as there were striking parallel facts that could be drawn between them. The Plaintiff argued that Defendant had misinterpreted the relevant principles and provisions of the law and erroneously imposed *ad valorem* stamp duty on Form 14A based on Item 66(c) First Schedule SA 1949.

The Defendant submitted that on the last page of the Will, it was clearly stated that the estates passed as gifts to the beneficiaries. Hence, the Court may take judicial notice that the property was gifted to the beneficiaries by the deceased. The inference also can be made that there was entitlement and rights of the property to the beneficiaries before renunciation took place vide the DSRI. The Plaintiff's children voluntarily renounced and foregone their respective entitlement and rights of inheritance under the Will towards the land by way of the execution of DSRI to Plaintiff as a sole beneficiary to administer the estate of the deceased and to vest all the shares. Thus, the DSRI was valid and enforceable to transfer the children's interest to the Plaintiff as agreed and granted her to be entitled to such right that did not belong to her in the first place. The renunciation also was made to the Plaintiff in consideration for love and affection as clearly stated in paragraph (b) DSRI, constitutes a gift to the Plaintiff. Therefore, the renunciation was a conveyance that operates as a voluntary disposition inter vivos under section 16 SA 1949 leads to Item 46 First Schedule SA 1949. As such, the adjudication of Form 14A for the transfer of 5/6 of the Land attracts Item 66(c) First Schedule SA 1949.

On 31.01.2024, the High Court dismissed the Plaintiff's Originating Summons with costs of RM6,000.00.

**Editorial Note:** *The Plaintiff has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.*