

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUBUVA, J.A., MSOFFE, J.A., And KAJI, J.A.)

CIVIL APPEAL NO. 78 OF 2002

YUSUFU MANJI APPELLANT

VERSUS

EDWARD MASANJA 1ST RESPONDENT

ABDALLAH JUMA 2ND RESPONDENT

(Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)

(Kyando, J.)

dated the 8th day of February, 2002

in

Misc. Civil Application No. 227 of 2002

JUDGMENT OF THE COURT

LUBUVA, J.A.:

This appeal arises from the decision of the High Court (Kyando, J.) in Miscellaneous Civil Appeal No. 227 of 2001. In the Court of Resident Magistrate at Kisutu, Employment Cause No. 126 of 1999 was filed by the Labour Officer on behalf of the respondents, Edward Masanja and Abdallah Juma. In the proceedings the respondents were claiming overtime payment, transport and rent allowance from Metro Investment Limited, the Company which had employed them

as watchmen. In an ex-parte judgment, the trial Resident Magistrate awarded the respondents their claim against the Company.

In the process of executing the decree, proceedings were instituted against the appellant, Yusufu Manji, the Managing Director of Metro Investment Limited. The trial Resident Magistrate ordered the appellant to satisfy the ex-parte decree issued against the Company within 30 days failure of which, he would be committed as a civil prisoner. From this order, Miscellaneous Civil Application No. 227 of 2001 was filed moving the High Court to examine and satisfy itself on the propriety and legality of the trial court's order against the appellant, Yusufu Manji, and not Metro Investment Limited, the Company.

In support of the application for revision, it was urged that it was improper to execute against the applicant, Yusufu Manji the decree which was passed against the company, Metro Investment Limited. It was strongly urged that a company being a separate legal entity from its shareholders as directors, the shareholders as directors should not be held liable for the debts of the company. It was further submitted that this was an appropriate case in which the

veil of incorporation could be lifted in order to hold the director, personally liable.

Dealing with the application, the learned judge took the view that it was in the interest of justice to lift the veil of incorporation of the company. According to the judge, this was so because at the time the decree against the company was passed and executed, the appellant was the managing director of the company, and that there was evidence that effort was being made to conceal the identity of the person running the affairs of the company. Consequently, the appellant was held liable for satisfying the decree passed against the company.

Dissatisfied, the appellant has preferred this appeal. He was represented by Mr. Kamara, learned advocate. In a two-ground memorandum of appeal, the substance of the complaint raised was that the learned judge erred in finding that the appellant was liable to satisfy the decree because he was not a party to the original suit, Employment Cause No. 126 of 1999. In elaboration, he contended that as the appellant was not a party in Employment Cause No. 126 of 1999, there was no basis upon which to involve him in the matter

at the stage of execution. He maintained that the principle of lifting the veil of incorporation was not applicable in the circumstances of the case. First, he said as the Company, Metro Investment Limited, has since gone into Liquidation the principle of lifting the veil of incorporation would therefore not apply. Secondly, in this case even if it is accepted that the principle was applicable, it would only come into play in so far as the shareholders were concerned. Here, it was not shown that the appellant was a shareholder. At any rate, Mr. Kamara further submitted, whatever might be the case, evidence was required to show the relationship between the appellant and the company. It was not a matter of mere allegation. If it was established that the appellant was a shareholder then in that situation he could be held liable. In support of this submission, the Court was referred to the book titled "**The Principles of Modern Company Law**" by the learned author L.C.B. Gower at page 191.

On their part, the appellants who were unrepresented did not have anything to say on these submissions. However, the 1st respondent, Edward Masanja, observed that at the time when execution process was being carried out, the appellant was the Managing Director of the Company.

In this case, the central issue is the propriety of involving the appellant at the stage of executing the decree which emanated from a suit in which he was not a party. In the application lodged to set aside the ex-parte judgment of the Resident Magistrate's Court in Employment Cause No. 126 of 1999, the learned judge addressed this issue by applying the principle of "lifting the veil of incorporation". This principle, it is to be observed, was enunciated in the case of **Salomon v. Salomon & Co. Ltd.** (1897) A.C.22.

Briefly stated, the facts were that Salomon had initially carried on prosperously the business of a leather merchant. Later on he converted the business into a limited company which ran into difficulties. The company went into liquidation and its assets were sufficient to discharge the debenture, but nothing was left for the unsecured creditors. The Court of Appeal held Salomon liable but the House of Lords reversed the decision holding that the company being a legal person its members including Salomon were not liable for its debts. As per Lord Macnaghten the House of Lords at page 49 *inter alia* held:

"The company is at law a different person altogether from the subscribers, and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee of them. Nor are subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act".

In our view, and as correctly held by the learned judge, in certain special and exceptional circumstances, the court may go beyond the purview of this principle by what was described in **Salomon** (supra) lifting the veil. Were there such circumstances in this case, we pose to ask. With respect, we do not agree with Mr. Kamara, learned counsel for the appellant, that there were no such circumstances. First, the alleged liquidation of the company, Metro Investment Limited is not borne out from the evidence on record. That is, at the time the matter was before Makwandi, Resident

Magistrate, in Employment Cause No. 126 of 1999, there was evidence to the contrary that the company was still legally in existence and that the appellant was the managing director.

Secondly, while the appellant was still the managing director, it was expressly alleged in the affidavit sworn by the 1st respondent, Edward Masanja, in support of the Employment Cause No. 126 of 1999 that the appellant Yusufu Manji was to be held liable because there was effort to conceal the assets and identity of the company. This allegation was not specifically denied by the appellant by way of a counter-affidavit.

In the circumstances, it is our view that the respondents would be left with an empty decree as it were, against the company, Metro Investment Limited. Furthermore, it is apparent that the company's managing director was at the time the appellant, who, as said before was alleged to be involved in concealing the assets of the company. For this reason, we think it would not serve the interest of justice in this case to shield the appellant behind the veil of incorporation.

Therefore, having regard to the fact that the appellant was the managing director of the company, we do not accept Mr. Kamara's

In the event, we find no merit in the appeal which is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 15th day of November, 2005.

contention that evidence was required to prove the appellant's relationship with the company or that he had shares in the company. The principle enunciated in **Salomon** (supra) would apply to the contrary once special and exceptional circumstance is shown. Here, as just shown such circumstance is premised upon the fact that the appellant was the managing director of the company. The appellant was also alleged to be involved in concealing the identity and assets of the company. In that capacity, and as held by the learned judge, we agree that the appellant was in a better position to know the trend of affairs regarding the alleged concealment of the company's assets.

In summary therefore, having regard to the relationship of the company at the time with the appellant as the managing director, the alleged concealing of the assets of the company by the appellant which was not denied by way of counter-affidavit, we are satisfied that this was a proper case in which to apply the principle of lifting the veil of incorporation. The learned judge cannot, in our view, be faulted in his decision to apply the principle.

In the event, we find no merit in the appeal which is accordingly dismissed with costs.

DATED at DAR ES SALAAM this 15th day of November, 2005.



D.Z. LUBUVA
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(S.M. RUMANYIKA)
DEPUTY REGISTRAR