

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA
MISC. CIVIL APPLICATION NO. 138 OF 2021
(Arising from Execution No. 1 of 2021)**

SAID MOHAMED & BROTHERS COMPANY LIMITED..... APPLICANTS

VERSUS

- 1. ONESMO OSCAR MUSHOBOZI1ST RESPONDENT**
- 2. MKURUGENZI MKUU WA NYEHUNGE EXPRESS.....2ND RESPONDENT**

RULING

3rd March & 13th April, 2022

Kahyoza, J.:

Said Mohamed and **Brothers Company Limited** is seeking this court to investigate the ownership of motor vehicle registered as T.439 DFJ make Yotong ordered to be attached. The application was supported by the affidavit of Said Mohamed, principal officer of the applicant.

The background of the matter as discerned from the affidavit of the applicant's principal officer is that the first respondent sued successfully the second respondent. The Court awarded the 1st respondent Tzs. 2,020,000/=. The first respondent applied to execute the decree by attaching motor vehicle registered as T.439 DFJ make Yotong. Said Mohamed, the applicant's principal officer deponed that the motor vehicle registered as T.439 DFJ make Yotong was the applicant's property and that the applicant was not a party in a suit between the respondents.

The first respondent opposed the application by filing a counter affidavit. He averred that it was false to depone that the applicant was not the owner of motor vehicle registered as T.439 DFJ make Yotong or that he was not a party. He demanded strict proof of the averment.

The issue is whether the applicant is the owner of motor vehicle registered as T.439 DFJ make Yotong and if the first issue is answered affirmatively, whether the applicant is a person different from the second respondent. The application was heard *ex parte* as the first respondent did not enter appearance on the date fixed for hearing.

The applicant's advocate, Mr Marwa submitted briefly that the applicant was not a party to the suit between the respondents and that motor vehicle registered as T.439 DFJ make Yotong belongs to the applicant. He referred to the registration card of motor vehicle registered as T.439 DFJ make Yotong.

Undisputedly, motor vehicle registered as T.439 DFJ make Yotong is registered in the name of **Said Mohamed and Brothers Company Limited**. It was so registered on 15th October, 2015. The said **Said Mohamed and Brothers Company Limited** was not a party in the suit where the Court adjudged first respondent a winner. The suit was in the name of **Onesmo Oscar Mushobozi** as a Plaintiff and **Mkurugenzi Mkuu wa Nyehunge Express** as a Defendant.

Given the above facts, without much ado, I find that **Said Mohamed and Brothers Company Limited**, the applicant, was not a party in a suit the first respondent seeks to execute. I, therefore answer the first issue negatively.

That done I now answer the issue whether **Said Mohamed and Brothers Company Limited** and **Mkurugenzi Mkuu wa Nyeunge Express** refer to the same person. I would quickly answer that they are different persons. There are no facts to suggest to me that **Said Mohamed and Brothers Company Limited** and **Mkurugenzi Mkuu wa Nyeunge Express** referred to the same person. **Said Mohamed and Brothers Company Limited** is a legal person, a company and another one is a director of company called **Nyeunge Express**. It is my firm view that **Said Mohamed and Brothers Company Limited** is a company quite distinct in law from a company called **Nyeunge Express** whose director the first respondent sued, if at all both companies do exist.

For arguments sake, let me assume that **Nyeunge Express** and **Said Mohamed and Brothers Company Limited** refer to the same company, hence the directors of **Nyeunge Express** are the same directors of **Said Mohamed and Brothers Company Limited**. Is Company different from its director or can a company be sued in the name of its director. It has long been established that, in law, a company and its directors are different legal entities. See the case of **Solomon V Solomon** [1896] 1 [1987] AC 22, where the House of Lords held that-

"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."

There are exceptions to the general rule in **Solomon V Solomon's** case, one of them being that the principle shall not be invoked-

"Where the person(s) controlling a company have acted fraudulently, the company is considered as "sham" or where a company is used to avoid an existing legal duty, before lifting the corporate veil."

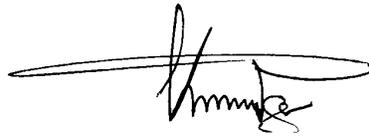
The first respondent sued a director of the Company. Having won the case against the director, the first respondent seeks to attach the property of the Company, which in law different from its directors or subscribers. The first respondent cannot succeed as the director and the company are two distinct persons each person can sue and be sued in its own name. Further, directors can hold property in the exclusion of the company and *vice versa*.

In the end, I find that the first respondent misdirected himself to seek to attach the motor vehicle registered as T.439 DFJ make Yotong in the name of **Said Mohamed and Brothers Company Limited**, which was not a party to the suit. In addition, there is no evidence that **Nyehunge Express** and **Said Mohamed and Brothers Company Limited** refer to the same legal person. Even if, **Nyehunge Express** and **Said Mohamed and Brothers Company Limited** referred to the same legal person, the fact that the first respondent sued the director of the **Nyehunge Express** cannot execute the decree against the property of the Company. The Company, a legal person was not sued and given an opportunity to defend herself. Consequently, I allow the application and set

aside the order to attach the motor vehicle registered as T.439 DFJ make Yotong in the name of **Said Mohamed and Brothers Company Limited.**

I make no order as to costs.

I so order.

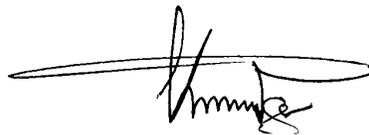


J. R. Kahyoza

JUDGE

13/4/2022

Court: Ruling in the presence of Mr. Marwa Samwel the applicant's advocate and the first respondent in person. The second respondent is absent. Ms. Martina (RMA) present.



J. R. Kahyoza

JUDGE

13/4/2022