

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. CIVIL APPLICATION NO. 34 OF 2021

*(Originating from the Civil Case No.09 of 2014 in the High Court of
Tanzania at Dodoma)*

- 1. SAGUDA MAGAWA SALUM.....APPLICANT**
2. ALBAN SHABAN CHOTA.....APPLICANT
3. MARTINI GAMBO.....APPLICANT
4. MUSSA ABDI ABDILAH I.....APPLICANT

VERSUS

- NAM COMPANY LIMITED..... 1st RESPONDENT**
ASPENAS MAGINA NG'ARANGA.....2ND RESPONDENT

RULING

Date of Last Order: 30/06/2022

Date of Judgment: 13/07/2022

Mambi, J.

This Ruling emanates from the application filled by the applicants under sections 38, 68 (e) and 95 of the Civil Procedure Code Cap 33 [R.E.2019].

The applicants filed their application supported by their affidavits. The

applicants have invited this Court to lift the veil of the corporate (NAM Company limited) herein referred as the first respondent and hold the second respondent liable to satisfy the decree.

During hearing the learned counsel for the applicants submitted that since the second respondent was the one who entered into the contract he is required to be liable. He referred the decision of the court in ***Yusufu Manji vs Edward Masanja & another Civil ppeal No.78 of 2002.***

In response, the respondents' counsel contended that the application has no merit as there is no any proof for concealment on the part of the second respondent. He argued that the case referred by the applicants is distinguishable

I have keenly gone through and considered the brief submissions by both parties in line with case studies and the provisions of the law. One of the key issue to be first asked is whether the court has been properly moved. In other words the first question to be determined is whether the applicants were right in filling the matter. In other words the legal issue to be determined is whether the applicants have advanced sufficient ground for this court to the consider lifting the veil of corporate for the second respondent. Before I determine the legal issues I have raised, I wish to briefly highlight the concept of the corporate corporate veil and doctrine of lifting the veil of corporation. I will also briefly address circumstances under which the corporate veil can be lifted.

The term corporate veil can be briefly defined as the concept that members of a company are shielded from liability connected to the

company's action. This means that where the company incurs any debts or contravenes any law, the corporate veil concept implies that members should not be liable for those errors. (See <https://www.lawyersclubindia.com/articles/case-laws-pertaining-to-lifting-up-of-corporate-veil-theory-11776.asp>).

In other words the corporate veil concept provides that once a company is validly registered under the Companies Act it becomes a separate legal person from its members, for that purpose it is immaterial whether any member has a large or small shareholding. It is trite law that once a company is registered it legally becomes a separate person and therefore members of the company are also considered as a different person and can claim amount from the company just like any other secured creditors. Generally, a company which is an artificial person, with no physical existence is a legal entity represented by a set of members or association of people, with specific objectives. The line of business structure of the company (which is invisible and intangible) can be corporation, partnership, or proprietorship. "a company is an artificial person, has no physical existence. Indeed the registered company is invisible and intangible and exists only in contemplation of law". The court in ***Salomon vs Salomon & Co Limited (1897)*** had once held that:

"the company is a real and legal company, fulfilling all legal requirements. It had an identity different from its members and therefore, the unsecured creditors were to be paid at priority from the secured debentures".

Similarity in another persuasive case from Indian the Court in ***Lee vs Lee Air Farming Limited (1960)*** held that;

"Lee was a separate person from the company he formed and his widow wife is entitled to get the compensation".

It should be noted that under the provisions of the company law, a corporate veil is a legal concept that separates the acts done by the companies and organizations from the actions of the shareholders. The doctrine of corporate veil protects the shareholders from being liable for the actions done by the company. However, such protection is not an absolute right as the law empowers the court to uncover such protection shield and make shareholders or company directors liable. On the other hand, corporate personality is the reality expressed by the law that a company is perceived as a legal entity distinct from its members. This means that a company with such recognition and personality will be considered as a separate legal entity having an independent legal existence from the members of the company. In this regard, a company is known by its own name and has its own right, duties, obligations, and liabilities. The principle of veil of incorporation is a legal concept that separates the personality of a corporation from the personalities of its shareholders and protects them from being personally liable for the company's debts and other obligations. Therefore, there is a clear difference between the company and its members, this is commonly called a Corporate Veil.

The rationale behind the corporate veil is to shield members of the company from liability Connected to the company's actions. This means

that corporate Veil is a legal concept that separates the personality of a corporation from the personalities of its shareholders, and protects them from being personally liable for the company's debts and other obligations. Indeed shareholders or directors may hide behind the corporate veil, assured that their liability does not extend beyond the value of their share if they are not controlled through lifting the veil of the corporation.

One can ask the question that can the corporate veil of the company be lifted and make shareholders or directors liable? The answer is that there are circumstances where the corporate veil of the company can be lifted under the doctrine of lifting the veil of corporation. The doctrine of lifting the corporate veil plays an important role in identifying the offenders who do these crimes and hide behind the curtains of the company. The doctrine of a separate legal entity plays the same role as that of the lifting of the corporate veil but in a much broader sense. The concept of a separate legal entity itself is the cause of action or reason behind the members of any given company or an organization to commit crimes and hide behind the curtains of the company. This notion of hiding behind the walls of the company was removed by the courts and the law and the true meaning of a separate legal entity can be seen in many landmark cases, which led to the establishment of laws.

While a company is a separate legal entity, the fact that it can only act through human agents cannot be neglected. Since an artificial person is not capable of doing anything illegal or fraudulent, the façade of corporate personality might have to be removed to identify the persons who are really guilty. This is known as lifting of the corporate veil.

Besides the statutory provisions for lifting the corporate veil, courts also do lift the corporate veil to see the real state of affairs. However, even though the legislature and the courts have in many cases now allowed the corporate veil to be lifted. It should be noted that the principle of veil of incorporation is still the rule and the instances of lifting or piercing the veil are the exceptions to this rule.

At times it may happen that the corporate personality of the company is used to commit frauds and improper or illegal acts. Since an artificial person is not capable of doing anything illegal or fraudulent, the façade of corporate personality might have to be removed to identify the persons who are really guilty and take the liability on behalf of the company. This is known as 'lifting of corporate veil'. The doctrine of 'lifting of corporate veil' refers to the situation where a shareholder is held liable for its corporation's debts despite the rule of limited liability and/of separate personality. The veil doctrine is invoked when shareholders blur the distinction between the corporation and the shareholders. This means that, a company or corporation can only act through human agents that compose it. As a result, there are two main ways through which a company becomes liable in company or corporate law: firstly through direct liability (for direct infringement) and secondly through secondary liability (for acts of its human agents acting in the course of their employment).

In this regard the court in certain circumstances may go beyond principle described in **Solomon (supra)** by lifting the veil where there are grounds to do so. Generally there are grounds under which Corporate veil can be lifted. These grounds among other include; Situation where the Company is a Sham (Fraud), invocation of the principal of agency, Public Policy and

protection of Revenue (Tax Evasion). Other grounds where the veil of corporate can be lifted include Statutory Provisions. In those statutory provision support of Lifting the Corporate Veil can be invoked where it is established that there is *reduction* of number of members below the statutory minimum, failure to refund application fee and fraudulent trading. The question is, have the applicant established all these conditions for lifting the corporate veil for the second respondent?. The answer in my view is yes that the applicants have established that the second respondent was among the directors of the first respondent and he is the one who entered into the contract on behalf of the company. Since the satisfaction of the decree sought by the applicants depends on the liability of the acts done by the second respondent, he cannot use corporate veil as the shield to escape liability if any. My reasons are based on the fact that if the purpose of incorporation of the company is to defeat law or avoid legal obligation then lifting of corporate veil cannot be avoided at any rate. In other words, if the purpose of incorporation of the company is to contravene any law or to avoid any legal obligations (arising by way of contract) or any illegal activity then there is lifting of corporate veil and that particular person/persons are liable.


Consequently, since the company act and it transact its business through the its directors and since the second respondent was one of the directors responsible for the decree which has yet to be honoured the court cannot permit the second respondent to use shield and hide under the corporation veil to avoid his legal obligation as a director who was responsible for the contract.

Looking at the records, I am of the settled mind that this court has satisfied itself that there are grounds for lifting the corporate veil as prayed by the applicants.

In the premises and from the foregoing reasons, in terms of the enabling provisions of the Companies Act the application filed by the applicants is hereby granted. I make no order as to costs.


Order accordingly.




A. J. MAMBI
JUDGE
13/7/2022


Ruling delivered in Chambers this 13th of July, 2022 in presence of both parties.




A. J. MAMBI
JUDGE
13/7/2022

Right of appeal explained.




A. J. MAMBI
JUDGE
13/7/2022