

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 88 OF 2022**

**KATARAMA TOURIST HOTEL LIMITED.....APPELLANT  
*VERSUS*  
MANAGING DIRECTOR GPH INDUSTRIES LTD.....1<sup>ST</sup> RESPONDENT  
DAVID GARETH HUGHES.....2<sup>ND</sup> RESPONDENT  
PRISCA JOSEPH MARIBA.....3<sup>RD</sup> RESPONDENT**

**RULING**

*05<sup>th</sup> & 16<sup>th</sup> June, 2023*

***Kilekamajenga, J.***

The applicant sued the first respondent in the Resident Magistrates' Court at Mwanza for the claim of Tshs. 26,378,160/= through Civil Case No. 18 of 2016. The trial court decided in favour of the applicant on 28<sup>th</sup> July 2017; consequently, the first respondent was ordered to pay the above claim together with an interest of 7% from the date of judgment to the date of satisfying the decretal sum. The first respondent failed to pay the decretal sum as ordered by the court. The applicant, vide Miscellaneous Civil Application No. 02 of 2021, applied in the Resident Magistrates' Court of Mwanza for the following orders:

- 1. That, this Honourable court be pleased to lift the veil of incorporation of the judgment debtor/respondent GPH Industries Limited so that Directors of the judgment debtor be held personally liable to pay decretal sum of Tshs. 28,532,376/=.*



- 2. That, this Honourable Court be pleased to order for the arrest and detention of the second respondent as managing director and third respondent as director and shareholders of the first respondent.*
- 3. That, this Honourable Court to order that civil proceeding be brought in the names of the respondents to cover Tshs. 28,532,376/= as directors and shareholders.*
- 4. Any other relief this court may deem fit to grant.*
- 5. Costs of this application be provided for.*

The Resident Magistrates' Court dismissed the application reasoning that the applicant failed to prove whether the first respondent was concealing the assets of the company to the extent of rendering the execution impossible. Being aggrieved, the applicant lodged in this court a reference protesting the decision of the executing court. This application was made under **section 79 and Order XLIII (2) of the Civil Procedure Code, Cap. 33 RE 2019** and **section 44(1)(b) of the Magistrates' Courts Act, Cap.11 RE 2019**. As the law requires, the application was supported with an affidavit deposed by the counsel for the applicant, Mr. Innocent John Kisigi. In response, the respondents, through the legal services of the learned advocate Mr. Kulwa Samson Ndulila, filed a point of objection on the basis that the application was brought against an improper person namely, the Managing Director of GPH Industries LTD. At some point, Mr. Samson prayed to withdraw the point of preliminary objection allowing the determination of the application on merit.

When called for hearing, the learned advocate for the applicant, Mr. John Kisigiro reiterated the prayer to lift the company's veil for the directors to be liable for payment of the decretal sum or else the second and third respondents should be arrested and detained as civil prisoners. He argued that the main case was brought against the Managing Director of GPH Industries Limited who was, by that time, the second respondent. The applicant tried to execute the decree by arresting two vehicles (a truck and bus) which were later found to be the properties of GPH Transport Limited, the company which is also owned by the second respondent. The applicant continued to look for the first respondent's assets though in vain leading to the application for lifting of the corporate veil. He argued further that, the second respondent is the owner of both GPH Industries LTD and GPH Transport LTD. The applicant was unhappy with the dismissal of the application for lifting the corporate veil. The counsel believed that, the directors of the company were liable for payment of the decretal sum and the procedure to reach such directors is by lifting the corporate veil. The counsel referred the court to the cases of **Yusufu Manji v. Edward Masanja and Abdallah Juma**, Civil Appeal No. 78 of 2002, CAT at Dar es salaam (unreported); **Musa Shaibu Msangi v. Sumry High Class Limited and another** [2016] TLS LR 430.

On the other hand, Mr. Samson for the respondents objected the application arguing that GPH Industries LTD was not a party in the main suit. As a matter of law, the company was supposed to be sued in its own name. However, in this case, the main case was brought in the name of the Managing Director of GPH Industries LTD. Therefore, the applicant failed to execute the decree because the company was not a party in the case. Cementing his argument, the counsel referred the court to the cases of **Kyela Polytechnic College v. Kyela FM Radio**, Civil Appeal No. 25 of 2019, HC at Mbeya and **GM Dewji and Company Limited v. Ayan Abdullah Ahmed and another**, Civil Revision No.6 of 2021, HC at Dar es salaam. The counsel vehemently objected the application for not falling under the cases benefit from lifting the company's veil. He urged the court to dismiss the application.

In his brief rejoinder, Mr. Kisigiro was of the opinion that, the objection that the main suit was brought in the name of wrong party is misplaced. Such an issue ought to be determined during the trial. He further distinguished the two cases submitted by the counsel for the applicant. He urged the court to hold the company's directors liable for the decree.

After hearing the rival arguments from both sides, now this court has one issue to determine which is whether this application has merit. The main contention is

whether the 2<sup>nd</sup> and 3<sup>rd</sup> respondents may be liable for payment of decretal sum of Tsh. 28,532,376/=. According to the applicant's counsel, their liability arises because they are directors of GPH industries. Therefore, the applicant sought their arrest and detention as civil prisoners after failing to satisfy the decretal sum against the Managing Director - GPH Industries Ltd. I should make it clear that, the law and practice on lifting corporate veil was established way back in the case of **Salomon v. Salomon & Co. Ltd** (1897) AC 22. In fact, the rationale behind lifting corporate veil is to assist the decree holder realize the decree by going beyond the closed doors of the companies. Lifting the corporate veil is intended to unveil the individual person within the rubric of a company. When the court unwraps the company's veil, the director(s) become liable for the payment of decretal sum passed against the company.

In our jurisdiction the same principle has been discussed in numerous cases including the case **Yusufu Manji** (*supra*) and **Musa Shaibu Msangi** (*supra*) which were referred by the applicant's counsel. From the cited cases, for the court to use its inherent powers and lift the company's veil, the judgement debtor must be a company which has legal personality capable to sue and be sued as per section 15(1) and (2) of the Companies Act. Applying the above law to the case at hand, the main case was between the applicant and the first respondent (Managing Director GPH Industries Limited). It does not need a good

company lawyer to discern that, the company was not a party to the main case. The applicant sued the Managing Director who is, unfortunately, not a company. Furthermore, the applicant did not do the needful prerequisites before filing the case. At this stage, it is arduous to decide whether the Managing Director in the main suit was the second or third respondent. More bewildering, the Managing Director at the time of filing the main suit may be different from the current one. Furthermore, it is nebulous whether the Managing Director was sued for the acts of the company or on his own illegal acts. In my view, the applicant ought to have unveiled the Managing Director before filing the main suit so as to know the exact person behind the claim.

I entirely concur with the respondents' counsel observation, to lift the corporate veil, the decree to be executed must have been given against the company. In this case however, the applicant sought an order to lift veil against the first respondent who is not a company. It is may be abhorrent to justice to attach the company directors to the decree issued against the Managing Director. If the Managing Director had legal personality, he/she should shoulder the decree. In the case of **Kyela Polytechnic College** (*supra*) this court observed that:

*"Suing the company in its name has different consequences than suing the directors of the company. When the company is sued in its name that when held liable, its assets can be used to satisfy the decree of the court. However, when the Directors are sued in their own capacity,*

*it may connote that the cause of action is attributed to the acts of the directors having no connection to the liability of the company. When held liable the directors may become responsible in satisfying the decree.”*

Thus, the applicant sued the first respondent, the Managing Director of GPH Industries Ltd, who, as alleged by the applicant’s counsel, was the second respondent. It was therefore erroneous for the applicant to join the third respondent who was not a party in the main suit. The third respondent, being a company director, could only be held responsible where the decree was against the company and not against the Managing Director. That being the case, Misc. Application No. 2 of 2022 was bound to fail right from the beginning. Consequently, the instant application is hereby dismissed with costs. Order accordingly.

**DATED** at **Mwanza** this 16<sup>th</sup> day of June, 2023



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**16/06/2023**



**Court:** Ruling delivered this 16<sup>th</sup> day of June, in absence of both parties.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**16/06/2023**

