

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CIVIL REVISION AD/HC/MSM/84182/2023

(Arising from Civil Case No. 17 of 2007 at Resident Magistrate's Court of Musoma)

MARY SANGE

(THE DIRECTOR OF MARA MICROFINANCE CO. LTD) APPLICANT

VERSUS

IBRAHIM ALLY KIGOMBE RESPONDENT

RULING

29 Nov & 08 December, 2023

M. L. KOMBA, J.:

This is an application under certificate of urgency brought by way of chamber summons under section 79 (1)(c) of the Civil Procedure Code, Cap 33 R.E. 2019. The applicant is praying for the following orders:

- (i) This court be pleased to call the records in Civil Case No. 17 of 2007 with a view to satisfy as to correctness and legality of the order entered by Resident Magistrate Court on 31/10/2023 by ordering applicant to be detained as a civil prisoner for 21 days while she has never been a party to the original civil case No. 17 of 2007*
- (ii) Having found illegality and material irregularity, the honorable court be pleased to revise the same.*

(iii) Costs of this application be paid by the respondent.

The application is supported by the affidavit of **Mary Sange, THE DIRECTOR OF MARA MICROFINANCE CO. LTD** attached with MEMART of the Company, judgment in Civil case No. 17 of 2007 dated 11/10/2011 and its decree dated 18/01/2012, Judgment of Civil Appeal No. 08 of 2012, proceedings of Misc. Civil Application No. 04/2021, proceedings of 19/07/2021, proceedings of 16/08/2023 and 24/08/2023, ruling delivered on 24/08/2023 and proceedings of 31/10/2023.

On the other hand, respondent filed counter affidavit in opposing the application attaching a letter from BRELA showing the status of the applicant and the promise of the applicant to pay.

The background to this application as gathered from the applicant's affidavit is briefly as follows: Applicant and respondent had civil suit No. 17 of 2007 which was decided in favour of the respondent. both parties appealed to HC Mwanza where the appeal was consolidated and judgment on Judgment of Civil Appeal No. 08 of 2012 was entered in favour of the respondent that the motor vehicle to be returned to the respondent, general damage to the tune of Tsh.10,000,000, and 7% interest to the date of full payment. In July 2023 the applicant partly executes the High

court order by delivering the motor vehicle to the court. In 2021 execution hearing begins and in on 16/08/2023 executing court (RM,S court) ordered the arrest of the applicant. On 24/08/2023 RM'S court vacated its order as applicant herein appeared and was asked to settle the decretal sum. It is in court record that the executing court ordered applicant to be civil prisoner, order which forced her to sign deed of settlement and payment schedule of the decretal sum of Tsh. 20,200,000/= and the applicant surrendered her motor vehicle card as a bond. Applicant did not honor the promise and the settlement plan and on 31/10/2013 the RM'S court revived its order which was uttered on 24/08/2023 that she be a civil prisoner for 21 days. This order is the source of this application.

When this application was called on for hearing applicant had a legal service of Mr. Emmanuel Mng'arwe, an advocate while the respondent stood solo without representation. Counsel for the applicant submission based on applicant affidavit (which was adopted) that applicant was a Director of Mara Microfinance, the company which was sued via Civil Suit No. 10 of 2007 and the appeal was decided in the favour of the respondent. Mr. Mng'arwe adduced that respondent started execution of the decree and on 24/08/2023 RM'S court ordered applicant to pay the

decretal sum to the tune of Tsh 20,200,000/ or has to be sent to prison as a civil prisoner. He said the order was set aside but on 31/10/2023 the RMS court revived its order that applicant be sent to jail as a civil prisoner.

Mr. Mng'ware elaborated that the root cause of all is Mara Microfinance which is a Company and was the judgment debtor. He said when the Company is registered under the Companies Act, Cap 212 it acquires status of legal personality which differentiate the company and Director and according to him, the separator is called corporate veil. He further submitted that when the director is liable to pay Company debt, under section 2 of Cap 112 there must be application to the High court to lift corporate veil as was decided in **Mushi Brothers Limited vs. SAM Construction Co. Limited**, Execution Application No. 01 of 2020 where this court Arusha District Registry explained procedures. He said respondent did not apply to lift corporate veil before he demand payment from the applicant who is the Director. Basing on that he prayed this court to utilize its powers to nullify RM'S court order due to irregularities and found the application to be meritorious.

Respondent while praying his counter affidavit to be adopted he expressed his joy that applicant has acknowledged that she is among the directors as

she was denying for years. He informed this court that the Director informed the RMS court that she was aware of the debt and promised in writing to pay while issuing her car registration card as security. He submitted that the applicant and his counsel are buying time and denying his right. He prayed this application to be dismissed with costs and execution to proceed.

My duty is to determine whether the application has merit. The applicant introduced herself as director of the Company, and it is not disputed that the Company was ordered to settle the decretal sum and return the car to the respondent. It is further not disputed that court order was not honoured by the applicant from the year 2011 to 2023 when she returns the motor vehicle of the respondent which was grounded for all those years and the respondent at paragraph 6 of counter affidavit explain it to be scraper. I find the decree was not honored on time and or to the satisfaction of the respondent.

Record shows that on 24/08/2023 in executing the decree by the respondent herein, the RM'S court ordered the applicant to be detained as civil prisoner. To exonerate herself from being the prisoner she promised in writing to pay the decretal sum to the tune of 20,200,000/ by instalment as

per court record. She failed to meet what she promised and the executing court revive its order while noting that the judgment debtor is using delay technics in not honoring the court order.

Reading Cap 212 at section 15, the Company becomes body corporate after being incorporated by the registrar of Companies, incorporation made the company to acquire legal status. From the record, the decree was issues between the respondent and the Mara Micro Finance Limited, a Company which applicant in her affidavit deponed that she is a director. In persuasive decision of the **High Court of Uganda Jimmy Mukasa vs. Tropical Investments**, civil suit No 232 of 2007 it was held that;

'Directors of such company are not immune from being followed up in execution of decree against their company...the best method of enforcing execution against directors of such company is not by instituting a fresh plaint....but by making the application for lifting corporate vail...'

I have read proceedings which the applicant was ordered to pay the decretal sum and found that on 24/08/2023 before the RM'S court ordered the applicant to pay the decretal sum or else to be civil prison, there was no an order of lifting corporate vail neither the proof that respondent herein informed the Magistrate that there is such an order of lifting

corporate veil. Record shows Mara Microfinance company was judgment debtor and therefore it was the company who is supposed to pay the decretal sum. Yes companies are led by directors and there is procedures to shift liability of the company to director. In order to make the director to enter into shoes of the company, the veil must be lifted so that court of law may deal with the director at personal capacity. It is the position of this court (Arusha Registry) in **Mushi Brothers Limited vs. SAM Construction Co. Limited** (supra) that corporate veil must first be lifted for the director to pay debt of the company and I have reasons to maintain that position. See also in **Jimmy Mukasa vs. Tropical Investments** (supra), **Fah Construction Company Ltd vs. Atlas Mark (T) and Others**, Misc. Communication Application No. 154 of 2020.

So far as the proceedings are silent on procedures, although applicant accepted the debt and is ready to pay, I find there was irregularity in the said RM'S court proceedings. The order should not be executed till the proper procedures were followed. For that matter the application has merit and I hereby set aside order issued on 24/08/2023 which was revived on 31/10/2023 for want of procedures.

In this application both parties have applied for costs. As execution is not determined to finality, I decline to grant at this moment. Costs will follow the cause.

It is so ordered.

DATED at **MUSOMA** this 08th day of December, 2023.



NK
M. L. KOMBA
Judge