

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 120 OF 2021

(Arising from Commercial Case No. 2 of 2016)

SIMBANET TANZANIA LIMITED.....APPLICANT

VERSUS

SAHARA MEDIA GROUP LIMITED.....RESPONDENT

Date of last Order: 9th September 2022

Date of Ruling: 16th November 2022

RULING

MKEHA, J:

In the present application, the applicant is moving the court for an order of lifting veil of incorporation resulting in holding the respondent's Directors/shareholders liable for payment of the decretal sum in Commercial Case No. 02 of 2016. Upon grant of the first prayer, the applicant moves the court for an order of arrest and detention of the Respondent's Managing Director, Dr. Antony Mwandu Diallo as a civil prisoner.

The application is made under section 38 (1), 42 (c), (e), 44 (1) 68 (e) and 95 as well as Order XXI Rules 28, 35 (1) (2), 36 and 39 (2) (b) and (d) of the Civil Procedure Code. The application is supported by an affidavit of one Sanctus Mtsimbe, Principal Officer of the Applicant. On the other hand, the application is contested through counter affidavit of Mr. Steven Dogani Diallo, Principal Officer of the Respondent. The application resulted from the Respondent's failure to pay the decretal sum amounting to USD 795,390 equivalent to TZS 1, 837,855,541.87 as on 31st July 2021. In this application, the applicant was represented by Mr. Robert Mossi learned advocate whereas the respondent was represented by Mr. Boniface Sariro learned advocate.

When the application was called for hearing Mr. Robert Mossi learned advocate prayed to adopt the applicant's affidavit and skeleton submissions as his own submissions. The applicant's affidavit and skeleton submissions indicate that, all the efforts to attach properties in view of realizing the decretal sum have been fruitless. In paragraphs 5 to 10 of the applicant's affidavit it is indicated the way the executing court ended up lifting warrants of attachment when it came to be proved that the attached property belongs to Dr. Antony Mwandu Diallo personally.

The owner of the said properties is the Managing Director of the Respondent. In paragraph 12 of the applicant's affidavit, the Managing Director appears to

have promised paying TZS 15,000,000 to TZS 25,000,000 monthly to settle the decretal sum. If agreed, settling the decretal sum would require more than 73 months, more than six years from the day the first instalment is paid. This proposal was rejected by the applicant/decreed holder.

Mr. Boniface Sariro learned advocate submitted in reply that, there is no evidence that the company is avoiding to pay the debt deliberately. That, there was no evidence of concealment of assets of the company.

The only issue to be determined is **whether the applicant managed to demonstrate sufficient cause for lifting corporate veil**. In terms of the decision in **YUSUPH MANJI VS EDWARD MASANJA AND ANOTHER (2006) TLR 127**, before the applicant succeeds in having the veil of incorporation lifted for purposes of execution of a decree he has to prove that, according to the circumstances prevailing at the time of making an application for execution of his decree, there is no real separation between the company and its owners. The applicant/decreed holder has also to prove the company's actions which are wrong and fraudulent, say, concealing assets of the company or doing other acts calculated to obstruct execution of the decree against it and that, unless the veil of incorporation is lifted, the decreed holder stands to suffer for not enjoying what the court decreed in his favour. **See also: THE GRAND ALLIANCE LIMITED VS MR. WILFRED LUCAS TARIMO & 4 OTHERS,**

CIVIL APPLICATION NO. 187/16 OF 2019, CAT AT DAR ES SALAAM.

I am unable to trace with certainty, from the affidavit supporting the application, any wilful act of the respondent/judgement debtor, calculated at obstructing execution of the decree. In terms of the cited caselaws, absence of attachable properties on part of the judgement debtor is no good ground for lifting veil of incorporation. Luckily, the judgement debtor does not deny liability, having undertaken making payments through instalments, save that, the judgement debtor's proposal was not accepted by the applicant/decreed holder. In the circumstances, the applicant is advised to seek other mode of execution or else, bring evidence justifying lifting of veil of incorporation which is lacking in the instant application.

For the foregoing reasons, the application is struck out. No order is made as to costs.

DATED at DAR ES SALAAM this 16th day of November 2022.


C. P MKEHA

JUDGE

16/11/2022

Delivered this 16th day of November, 2022 in the presence of Advocate Robert Mossy for the Applicant and in the absence of the Respondent's Counsel.



J. M. MINDE

DEPUTY REGISTRAR

16/11/2022