

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPEAL NO. 466 OF 2021**  
(Arising from Land Case No. 69 of 2012)

**HOTEL CONTINENTAL  
LIMITED.....APPLICANT/DECREE HOLDER**

**VERSUS**

**LAMADA LIMITED.....RESPONDENT/JUDGMENT DEBTOR**

Date of Last Order: 30.05.2022  
Date of Ruling: 27.06.2022

**RULING**

**V.L. MAKANI, J.**

The applicant/decree holder, HOTEL CONTINENTAL LIMITED, is praying for the following orders:

- 1. That is honourable court be pleased to lift the veil of incorporation of the respondent/judgment debtor.*
- 2. Upon lifting the veil of incorporation, this honourable court be pleased to order for the arrest and detention as*

*civil prisoner of Mr. Kishimba Jumanne, the Managing Director of the Respondent/Judgment Debtor.*

*3. Costs to be provided for.*

*4. Any other orders and relief as this honourable court shall deem fit to grant.*

The application is made under Order XXI Rules 9, 10(2)(j)(iii), 28,35(1), (2), 36 and section 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The application is supported by the affidavit of Betty Machangu, the Principal Officer of the applicant. The Principal Officer of the respondent/judgment debtor, Jumanne Kishimba filed a counter-affidavit in opposition.

With leave of the court the application was argued by way of written submissions. Mr. Novatus Michael Muhangwa, Advocate filed submissions on behalf of the respondent; while Mr. Tumaini Sekwa Shija, Advocate filed submissions on behalf of the applicant.

Mr. Muhangwa gave a brief background of the matter that the applicant entered into a lease agreement with the respondent in respect of 3 floors in the landed property situated at Plot No. 1516/159, Nkurumah Street, Ilala Municipality, Dar es Salaam City (the leased property). The lease was for 10 years from 01/06/2008 up to and including 31/05/2018. The

rent was USD 7,000 per month exclusive of VAT payable in 12 months in advance. The respondent defaulted in the payment of the rent, so the applicant filed Land Case No. 60 of 2012 against the respondent to claim the rent arrears. The parties herein who were also parties in the Land Case No.60 of 2012 signed an out of court settlement which among other things the respondent agreed to pay the applicant an amount of USD 45,000 and costs of the advocate at USD 3,000. The agreed amount was as opposed to the claimed amount of USD 132,000 and a counter claim by the respondent of USD 225,000 for the costs of renovation and loss of profit. The parties signed a Deed of Settlement which was duly recorded on 23/11/2015 as a decree of the court . Since the recording of the Deed of Settlement the respondent has not honoured the terms of the settlement though efforts to follow up and call its directors, one of them being Jumanne Kishimba has not been fruitful.

In his submissions Mr. Muhangwa adopted the affidavit of the Principal Officer of the applicant Betty Machangu. He said the main issue for consideration by the court is whether the applicant has demonstrated sufficient cause for the issuance of the orders prayed for. The learned Counsel answered this question in the affirmative in that the Deed of Settlement was signed by Jumanne Kishimba the director of the

respondent. He said the Deed of Settlement was signed more than six years ago and it has not been honoured to date. He said under the circumstances it is imperative to pierce the corporate veil as the Managing Director of the respondent Jumanne Kishimba has not taken any action to make sure that the Consent Decree is settled. He said companies being artificial beings act through human beings and thus these individuals should be held responsible where there is an obligation which has not been honoured by the company. Mr. Muhangwa continued to point out that in the counter-affidavit Jumanne Kishimba deponed that the respondent is a going concern, and It has properties, but he said the said properties were not mentioned or identified so the said director is concealing the properties of the respondent and personally he is hiding under the veil of incorporation. Counsel said under these circumstances to pierce the veil becomes necessary. He relied on the case of **Mussa Shaibu Msangi vs. Sumry High Class Limited & Another, Misc. Commercial Cause No. 20 of 2012 (HC-Commercial Division)**(unreported) and **ECO Bank Tanzania Limited vs. Nararisa Enterprises Company Limited & Another, Commercial Case No. 81 of 2014 (HC-Commercial Division, DSM)** (unreported). Mr. Muhangwa concluded that Mr. Jumanne Kishimba should not be left out for failure by the respondent to honour

the Deed of Settlement as he is the brain and hands of the company and hence should be liable personally. He prayed for the orders in the Chamber Summons to be granted.

On his side Mr. Tumaini Shija for the respondent agreed to the background set out by his fellow Counsel. And he prayed to adopt the counter affidavit. He only emphasized that the respondent has made payments of about USD 11,000 partly satisfying the decree. He said Mr. Jumanne Kishimba has never lent a deaf ear to the demands as there has never been any demands on him by the applicant for fulfilment of the obligations in the Deed of Settlement as submitted.

Mr. Shija went on stating that the respondent is a limited liability company capable of suing and being sued and is independent of its directors. He said the members and directors of the company cannot be held responsible for the acts of the company as it is a distinct person altogether. He cited the case of **Solomon vs. Solomon & Co. Ltd (1897) AC 22** where it was stated that the acts and omission of the company should only be attributed to the company and not its members except under circumstance provided the law. He said the exceptional circumstances in Tanzania are in the case of **Yusuf Manji vs. Edward Masanja & Another, Civil Appeal No. 78 of 2000 (CAT-**

**DSM**(unreported) where the Court of Appeal said the court may go beyond **Solomon vs. Solomon** (supra). The court found that the company's managing director was involved in the concealing of the assets of the company and for that reason it found it would not be proper to shield the appellant behind the veil of incorporation. He said in the matter at hand there is no proof that the director of the respondent Jumanne Kishimba is in any way involved in concealing the assets of the company. He cited several cases where in exceptional circumstances were mentioned by the court including the case of **Bank of India (Tanzania) Limited vs. FOMCOM International Limited & 2 Others, Commercial Case No. 19 of 2018 (HC-Commercial Division, Dar es Salaam)** (unreported). In the said case the circumstances mentioned included where the person/s controlling the company have acted fraudulent, where the company is considered as sham or where a company is used to avoid an existing legal duty. In the same case, the court may also lift the corporate veil to individual where he consented/promised to pay the amount that was supposed to be paid by the corporation. Mr. Shija pointed out to the court that Mr. Jumanne Kishimba has not done all those things listed in the case to warrant the lifting of the veil of incorporation.

Mr. Shija said the respondent is a viable company operating a well-established hotel business in Dar es Salaam but the applicant has made assertions that they tried to search for the property of the respondent but in vain. He said the court before considering lifting of the corporate veil has to ensure itself that execution has failed. He relied on the case of **Harel Mallac Tanzania Limited vs. Junaco (T) Limited & Another, Misc. Commercial Application No. 144 of 2016 (HC-Commercial Division)** (unreported). Mr. Shija said the applicant has not made any efforts to execute the decree against the respondent thus there are no reasons to warrant the piercing of the corporate veil of the respondent.

In the prayer by the applicant for the arrest and detention as civil prisoner of Mr. Jumanne Kishimba, the Managing Director of the respondent upon the lifting of the corporate veil, Mr. Shija was of the view that if the respondent is unable to settle its debts there are other legal avenues availed and not to arrest and detain Mr. Jumanne Kishimba because it would defeat the spirit in Order XXI Rules 20(1)(a) and 35(1) of the CPC. He prayed for the application to be dismissed with costs.

There was no rejoinder submissions from the applicant.

I have gone through the Chamber Summons, affidavit, counter affidavit and submissions by the learned Advocates. The main issue for consideration is whether the application has merit, in particular whether there are sufficient reasons for the court to lift the corporate veil of the respondent.

The rationale of lifting the corporate veil of a company is to ensure that the decree holder is not left with an empty judgment where company directors takes advantage of the veil to avoid their legal obligations by concealing themselves in the cover of their companies (see the cases of **Bank of India (Tanzania) Limited (supra)** and **Multichoice Kenya Limited vs. Maikam Limited & Another, Civil Case No. 492 of 2012** quoted in the case of **Mbeya City Council vs. Janeth M. Massaburi & 10 Others, Misc. Civil Application No. 08 of 2019 (HC-Mbeya)** (unreported). In these cited cases the elements of fraud or improper design must be attributed to the directors of the company as basis for the lifting of the veil of incorporation.



In this present application, there is no dispute that there was Land Case No. 69 of 2012 between the parties which ended up by a Deed of Settlement and the said Deed of Settlement was signed by the director of the Company Jumanne Kishimba and was registered as a decree of the court. It is further not in dispute that the respondent has not satisfied the decree since 2015 when the decree was granted.

Now has there been efforts by the applicant to execute the decree. According to the affidavit by the Principal Officer of the applicant the efforts made were by sending demand notices to the respondent, searching and/or identifying for the properties of the applicant for six years but in vain. The respondents on the other hand states among other reasons that, no efforts have been made, the respondent has partly settled the claim, there is no act of fraud by the directors specifically Mr. Jumanne Kishimba and that he has never consented to payment of the said claim.

It is apparent from what has been stated above that since the Deed of Settlement was signed by Mr. Jumanne Kishimba as the Managing Director in 2015, the said decree has not been satisfied six year down the line, and further there is no plausible explanation that has been

offered by the respondent as to why the respondent has not satisfied the decree as agreed. It is also apparent that the reason by Jumanne Kishimba, the Managing Director of the respondent in his Counter-affidavit is that the applicant has not made efforts to execute the decree, but he has not stated why the respondent has not paid the decreed amount. I am inclined to state that the reason offered by the respondent and its director is flimsy, because the respondent as a company know that they are indebted to the applicant and so is the director who signed the Deed of Settlement. In other words, there are elements of improper design attributed by the directors of the company to warrant the non-satisfaction of the decree by this court.

I am confident that efforts were made by the applicant to satisfy the decree because for six years, with such a substantial amount the applicant would not have remained silent. In his submissions Mr. Shija has stated that the respondent has paid about USD 11,000 but there is no proof as to when the said amount was paid and in what modality. And to say the least, this statement strengthens the more that the respondent knows of his obligations to pay but has decided not to do so.

It is now settled law that where directors of companies fails to satisfy the decree the court may lift the veil of incorporation and hold the director personally (see **Yusuf Manji (supra), Mussa Shaibu Msangi vs. Sumri High Class Limited & Another [2016] TLR 430, FAH Construction Limited vs. Atlas MAK Group (T) Limited & 2 Others, Misc. Commercial Application No. 154 of 2020 (HC-Commercial Division, DSM)** (unreported), and **Bright Technical System & General Supplies Limited vs. Brave Engineering & Construction Company Limited & Another, Misc. Commercial Application No. 132 of 2020 (HC-Commercial Division, DSM)** (unreported). In **Bright Technical System** (supra) my brother Hon. Magoiga, J said:

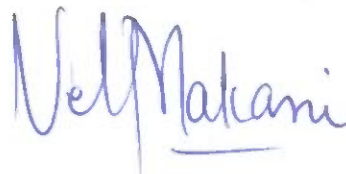
*"... it is a public convenience that a party's decree should be paid fully otherwise will undermine the public convenience and confidence that court decrees are not capable of being satisfied."*

In a similar vein, it is imperative for the court to intervene to make good the execution so that the decree is satisfied considering that it has taken six years for the applicant to enjoy the fruits of her decree. In view thereof, the veil of incorporation of the respondent/judgment debtor is hereby lifted and I hold as such.

The applicant has also prayed for the order for arrest and detention of the Managing Director, Jumanne Kishimba. However, the law requires that that the person who is to be arrested or detained to be part of the application for execution and emphasis is that notice has to be served upon the party so he can show cause by virtue of Order XXI Rule 35 (1) of the CPC. The said person to has to appear in person and address the court as to why he should not be detained for want of satisfaction of the decree amount. Since the veil of incorporation has been lifted, the applicant may wish to file for an application for execution and further seek for an order of arrest and detention of the Managing Director Jumanne Kishimba as a modality to execute the decree.

In view thereof, the application is granted to the extent that the veil of incorporation of the respondent/judgment debtor is lifted with costs.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**27/06/2022**