

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 310 OF 2022

JOSIAH D. MATEJA & 49 OTHERS..... APPLICANTS

VERSUS

MAXCOM AFRICA PLC LTD..... RESPONDENT

RULING

Date of Last Order:01/11/2022
Date of Ruling: 11/11/2022

B.E.K. Mganga, J.

On 12th December 2018 applicants filed labour dispute No. CMA/DSM/KIN/1121/18 before the Commission for Mediation and Arbitration (CMA). In order to resolve the dispute, on 10th April 2019, Josiah Daudi Mateja, a representative of the applicants and Charles Natai, principal officer of the respondent settled the matter before Fungo, E.S, Mediator. In the said settlement, parties agreed that applicants will be paid TZS 67,425,120 as a result parties signed Certificate of Settlement (CMA F6). It happened that respondent did not honour the agreement, as a result, applicants filed Execution Application

No.788 of 2019 praying the court to issue an order of arrest and detention of directors of the respondent as civil prisoners. On 05th May 2022, the said application was struck out so that applicants can find other modes of execution. Applicants filed Execution application No.189 of 2022 praying for the court to lift the corporate veil so that they can be paid their entitlements. In support of the application, applicants filed the affidavit of Jane Goodluck Mseja, the applicants' Advocate. In opposing the application, respondent filed the Counter affidavit affirmed by Selemani Almasi, her advocate.

By consent of the parties the application was argued by way of written submissions.

Arguing in support of the application, Ms. Mseja, learned counsel submitted that, on 15th August 2019, the parties entered into a settlement agreement before Hon. Fungo, E.S, mediator. He went on that, upon respondent 's failure to honour the agreement, applicants filed Execution Application No. 788 of 2019 praying that the Directors of the respondent be arrested and detained as Civil prisoners. Counsel for the applicants submitted further that, initially applicants prayed for a Garnishee order by attaching the respondent's bank account, but their

efforts proved futile because the bank notified the court that respondent's bank account has no sufficient funds to pay the applicants. Counsel submitted that due to insufficient fund in respondent's bank account, the applicant by the applicants was struck out. Counsel went on that, as the last resort, applicants filed execution application No.189 of 2022 praying for the court to lift the corporate veil so the directors of the respondent can pay the decreed sum. Counsel cited the case of ***Mrs. Georgia Celestine Mtikila vs PG Associates Ltd & another***, Civil Appeal No. 154 of 2020, HC(Unreported) and ***Mussa Shaibu Msangi vs. Sumry High Class Ltd & Another***, [2016] TLS LR430, to support her submissions that the principle of corporate personality is not absolute and can be lifted in exceptional circumstances and prayed the application be granted.

In rebuttal, Mr. Almas, counsel for the respondent submitted that an award cannot be enforced against a person who was not part to the dispute. He submitted further that; applicants want the award to be enforced against the Directors of the respondent while the said directors were not part to the dispute. Counsel for the respondent cited the case of ***SAC profit Emerge Ltd vs. Contract International Ltd***,

Commercial Case No. 30 of 2012, HC(Unreported) and ***Oysterbay properties Ltd & another vs. Kinondoni Municipal Council & Others*** [2011] 2 EA 351 to support his argument that a decree can only be enforced against a party to a suit and not third parties.

Counsel for the respondent submitted further that, in special circumstances, the court may lift the corporate veil to the Company's Directors. He added that applicants are supposed to prove that the company is like a sham, for its leaders to cover up their evils or the purpose of the company is to cover up the misconduct of her leaders and cited the case of ***Salmon vs Salmon & Co. Ltd*** [1987] A.C 22 to support his submissions. Counsel for the respondent submitted further that circumstance where the court may lift a corporate veil were stated in the case of ***Corporate Insurance Co. Ltd vs. Savemax Insurance Brokers Ltd*** [2002]1 E.A 41 and added that in the matter at hand, applicants have not shown any circumstance where the Directors of the Company have done any trick to prevent execution or repayment of the corporate debt. Counsel for the respondent further cited the case of ***Bank of India (T) Ltd vs Fomcom International***

Ltd & 2 Others, Commercial Case. No.19 of 2018 HC(unreported) to support his submissions.

Mr. Almasi distinguished the case of ***Musa Shaibu Msangi vs Sumry High class Ltd and Another*** (supra) submitting that in the said case, the Director decided to bar execution of the Court's order unlike to the application at hand. He further distinguished the case of ***Mrs. Georgia Celestine Mtikila vs PG Associates Ltd & another*** (supra) submitting that in the said case the Director agreed before the court to pay on behalf of the company unlike to the application at hand.

Counsel for the respondent submitted further that the main reason advanced by the applicants in this application is that applicants have they made effort to attach property of the respondent including the bank account without success. Counsel for the respondent went on that reasons advanced by the applicants to unveil the corporate veil cannot warrant for the application to be granted. He strongly submitted that that corporate's lack of properties or economic hardship are not justifiable reasons for lifting the corporate veil and referred the court to

the case of **Corporate Insurance's case** supra) and prayed that the application be dismissed for lack of merit.

In rejoinder, counsel for the applicants firmly disputed the argument that Directors of the respondent were not aware of the dispute. Counsel submitted that one of the respondent's Directors signed the settlement deed entered by the parties on 12th November 2018 before Fungo, J.S, Mediator, therefore it cannot be said that directors of the respondent were not involved and further that they were not aware.

I have examined the affidavit in support of the application and the counter affidavit opposing the application and considered submissions made on behalf of the parties and I am of the view that the main issue between is whether, applicants have good ground or reasons for the court to lift the corporate veil.

It is a trite law that a Company is a separate legal entity from its directors and shareholders as it was held in ***Salmon vs. Salmon's case*** (supra). But, in some situations such as where directors evaded tax or legal obligation or where the corporate disobey court orders to mention but a few, corporate veil can be lifted to make directors liable. In the case of **Yusuph Manji vs Edward Masanja & Another**, Civil

Appeal No. 78 of 2002 the court of appeal found that the Director was concealing property of the company and held that in such a situation, the corporate veil was properly lifted. In Manji's case (supra) the Court of Appeal held: -

"In summary therefore having regard to the relationship of the company at the time with the appellant as the managing director, the alleged concealing of the assets of the company by the appellant which was not denied by way of counter affidavit, we are satisfied that this was a proper case in which to apply the principle of lifting the veil of incorporation. The learned judge cannot in our view be faulted in his decision to apply the principle"

I have cautiously considered submissions made by counsel for the applicant and find that the reason advanced by the applicants in this application is that respondent has no properties or fund to pay the decreed sum. From the affidavit and the counter affidavit evidence filed by the respective parties, it is clear that, at CMA, the dispute was settled at the mediation stage. The said Settlement deed was signed by Josiah Daud Mateja on behalf of the applicants and Charles Natai on behalf of the respondent. I have also found that, there is no dispute that the said settlement deed was signed on behalf of the respondent. It is a common ground therefore, that directors supervise daily functions of the company and that directors of the respondent have not disputed that

the person who signed the settlement deed, did so without their authorization. Since there is no such dispute, I safely hold that whatever was done by the person who signed the settlement deed, there was consent of (i) Juma Rajabu Furati, (ii) Ahmed Salim Lusasi, (iii) Hashim Ibrahim Lema and (iv) Mohamed Seif Rashid, the directors of the respondent whether expressly or impliedly, hence both the respondent and her directors cannot be heard now saying that the later were not aware or that they were not part to the dispute. It is my view that the dispute was settled on behalf of the respondent and her directors hence both the directors and the respondent cannot escape from liability at this stage. I therefore find submissions of counsel for the respondent that Directors were not part to the suit and that they have not done any trick to prevent the execution as unfounded. Since directors made efforts to settle the dispute, they have legal obligation to ensure that the decreed sum is paid to the applicants. I associate myself to the reasoning of my learned sister, V. L. Makani, J, in the case of *Hotel Continental Limited vs Lamada Limited*, Appeal No. 466 of 2021 [2022] TZHC LandD 727 and cases cited therein when she held that:-

"It is now settled law that where directors of companies fail to satisfy the decree, the court may lift the veil of incorporation and hold the director personally ... 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 signing the settlement deed at CMA, the respondent, and her directors namely (i) Juma Rajabu Furati, (ii) Ahmed Salim Lusasi, (iii) Hashim Ibrahim Lema and (iv) Mohamed Seif Rashid agreeing to Pay TZS 55,576,320/= to the applicants, committed themselves and are under legal obligation to ensure that the said amount is fully paid. The settlement deed signed by the parties before the mediator, is enforceable in this court as a decree of a court of a competent jurisdiction. See section 87 of the Employment and Labour Relations Act [Cap. 366 R.E. 2019]. That being the position, respondent and her aforementioned directors are under legal obligation to ensure that the said award that is decree, is enforceable. Neither the respondent nor her directors can stop the court from executing the decree by employing corporate veil technicalities. In fact, the Court of Appeal in the case of [Karori Chogoro vs Waitihache Merengo](#), Civil Appeal No. 164 of 2018 [2022] TZCA 83, the Court of Appeal held *inter-alia*:-

"Court orders should be respected and complied with. Courts should not condone such failures. To do so is to set bad precedent and invite chaos. This should not be allowed to occur..."

For the foregoing, I find that the application is merited because applicants have no option of executing the decree without lifting corporate veil of the respondent. That said and done, I hereby allow this application and lift corporate veil of the respondent to enable applicants to execute the CMA award.

Dated in Dar es Salaam on this 11th November 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 11th November 2022 in chambers in the presence of Darianyesi Angelo Rwabugojo and Nelson Vicent Kityege, the 2nd and 35th Applicants and Selemani Almas, Advocate for the Respondent.



B. E. K. Mganga
JUDGE