

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

MISCELLANEOUS LABOUR APPLICATION NO. 129 OF 2023

BETWEEN

XIAO LONG ZHAN APPLICANT

VERSUS

CHINES HOTEL 1ST RESPONDENT

SHICHANG ZHOU 2ND RESPONDENT

RULING

Date of last Order: 31/07/2023

Date of Ruling: 31/07/2023

MLYAMBINA, J.

In the matter at hand the Applicant prayed for three orders: *One*, this Court be pleased to lift the veil of incorporation of the judgement debtor. *Two*, this Court be pleased to order for the arrest and detention of the 2nd Respondent, the shareholders and Managing Director of the 1st Respondent/judgement debtor. *Three*, any other relief(s) this Court may deem fit and just to grant.

The application was argued orally. Before the Court, the Applicant was represented by Mr. Kelvin Mundo, Personal Representative, whereas Mr. Heriel Munisi, Learned Counsel appeared for the Respondents.

Arguing in support of the application, Mr. Mundo submitted that; the Applicant filed a case before the Commission for Mediation and Arbitration (herein CMA) where both parties attended. He stated that in Labour *Revision No. 5 of 2023*, this Court ordered the 1st Respondent to pay the Applicant a total of TZS 35 million. However, till to date the 1st Respondent has not complied with that order. Mr. Mundo submitted that; for the past six months now, the Applicant has been making follow up of the 1st Respondent's properties at Kariakoo Narung'ombe Street Plot 46 Block C where the Applicant was working. He discovered that all the properties of the Respondent in that Plot have been shifted to unknown place.

Mr. Mundo went on to submit that after such discovery, the Applicant could not easily make follow up of the properties of the Respondent. That, the Applicant had no other means of making follow up for the compliance of the Court's order dated 28/04/2023 than filing this application. In support of his application, Mr. Mundo cited the cases of **Bank of India (Tanzania) Ltd v. Forncom International Ltd and 2 Others**, Commercial Case No. 19 of 2018 Commercial Division at Dar es Salaam (unreported), p. 18 and the case of **Mrs. Georgia Celestine Mtikila v. PG. Associates Ltd and Another**, Misc. Civil Application No. 154 of

2020, High Court of Tanzania Land Division at Dar es Salaam (unreported). He therefore urged the Court to grant this application.

In response to the application, Mr. Munisi adopted the Respondent's counter affidavit to form part of his submission. He conceded that there was an order of this Court issued on 28th April, 2023 requiring the Respondent to pay the Applicant TZS 35,000,000/= . He also conceded that there is no any filed appeal to the Court of Appeal and that the Respondent has not paid the decretal sum of TZS 35 Million.

As regards issuing order for the arrest and detention of the 2nd Respondent, Mr. Munisi submitted that the 2nd Respondent is not the Managing Director of the 1st Respondent. That, he is the Director of Chinese Hotel Investment Group Ltd. He stated that the Applicant was employed by the 1st Respondent through Frigola XU who took the position of the Applicant.

He further submitted that the 2nd Respondent has not done anything that can lead to his arrest and detention. He has not done any fraud or concealment. To support his submission, Mr. Munisi referred the Court to the case of **Rulkeria Michael Duma v. ATN Petroleum Co. Ltd and**

Another, Civil Revision No. 7 of 2019 High Court of Tanzania at Dar es Salam (unreported), pp 4-5.

Mr. Mushi added that he has done search and found the Company still exists. It has shares and one vehicle fan cargo. In the alternative, he prayed for the Court to attach such properties.

In rejoinder, Mr. Mundo submitted that the issue of different names was not raised before the CMA. He added that, even if it exists, that is a minor error which can be rectified for justice to be done. He referred the Court to the case of **Christina Mrimi v. Coca Cola Kwanza Bottlers Ltd**, Civil Application No. 113 of 2011, Court of Appeal of Tanzania at Dar es Salaam (unreported) p.3 para 4.

After considering the rival submissions of the parties, Court records and relevant laws, I find the Court is called upon to determine; *whether the Applicant adduced sufficient reason(s) for the application to be granted.*

As pointed out herein above, the application is for lifting veil of incorporation of the judgement debtor and proceed to arrest and detain the second Respondent. Generally, in law, a company is a different person

from its subscribers. This principle is incorporated under *Section 15 of the Companies Act, Act No. 12 of 2002*. It is also stated in a landmark case of **Salomon v. Salomon and Co. Ltd** [1897] AC 22 where it was held that:

The Company is at law a different person altogether from the subscribers..., and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee of them. Nor are subscribers, as members liable, in any shape "or form, except to the extent and in the manner provided by the Act.

However, in certain special and exceptional circumstances, the Court may go beyond the purview of the above principle and lift the veil of incorporation to the members of the relevant company. The principle of lifting the veil of incorporation has been elaborated in various decisions including the case of **Saguda Magawa Salum & 3 Others v. Nam Company Limited and Another**, Misc. Civil Application No. 34 of 2021, High Court at Dodoma (unreported) where it was held that:

The doctrine of lifting of corporate veil refers to the situation where a shareholders is held liable for its

corporation's debts despite the rule of limited liability and /of separate personality.

Again, the circumstances under which the veil can be lifted has been highlighted in numerous decisions including the case of **Chongqing Lifan Industry (Group) Impo & Exp Co. Ltd v. M/s I & M Bank Tanzania Ltd and Another**, Miscellaneous Civil Application No. 386 of 2019 where it was held that:

The veil is lifted by the Court upon satisfaction that indeed the Director misapplied the money or assets of the Company or that, he or she has been guilty of misfeasance, breach a fiduciary or other duty in relation to the company.

In the matter at hand, the record is clear that on 28th April, 2023 the Court ordered the first Respondent to pay the Applicant a total of TZS 35,175,000. It is undisputed that to date the Court's order has not been satisfied by the Respondent despite the fact that the Applicant filed an application for execution. No reasons have been adduced as to why such an order has not been satisfied.

Mr. Mundo submitted that for the Applicant has been making follow up of the 1st Respondent's properties at Kariakoo Marung'ombe Street Plot

46 Block C and discovered that all the properties of the Respondent in that Plot have been shifted to unknown place. The facts which were not disputed by the Respondents.

On his part, the second Respondent alleges that he is not the Managing Director of the 1st Respondent. That, he is the Director of Chinese Hotel Investment Group Ltd. As rightly submitted by Mr. Mundo, such an issue was neither raised at the CMA nor before this Court on an application for revision.

Additionally, in the executed decision, the Court found that the Applicant is the employee of the first Respondent notwithstanding the list of companies associated with such company. In his counter affidavit, the second Respondent admitted that he is among the Directors of the Chinese Hotel Investment Group Limited. However, he claimed not to be aware of the Chinese Hotel. The matter being already determined by the Court, I find the Respondents are implying delaying tactics to pay the Applicant as ordered by the Court. For such reason, and in line with the above analysis, I find the Applicant has satisfied the Court with sufficient reason to lift the veil of incorporation as prayed.

In the result, the application is hereby granted. The second Respondent be arrested and detained in accordance with *Section 44 of the Civil Procedure Code [Cap 33 Revised Edition 2019]*.

It is so ordered.

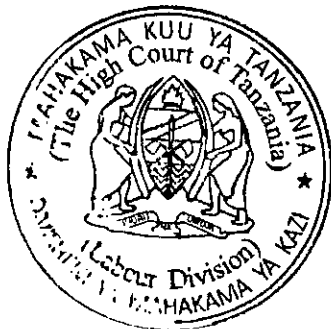


Y.J. MLYAMBINA

JUDGE

31/07/2023

Ruling delivered and dated 31st July, 2023 in the presence of the Applicant and his Personal Representative one Kelvin Mundo and in the absence of the Respondents.



Y.J. MLYAMBINA

JUDGE

31/07/2023