

TANZANIA / JUDGMENT

bright technical system general supplies limited vs brave engineering and constraction company limited another 2022 tzhccomd 219 13 may 2022

COURT
TZHCCOMDDECIDED
13 May 2022

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM MISC.
COMMERCIAL APPLICATION NO. 132 OF 2020 (ARISING FROM COMMERCIAL CASE NO.18 OF
2018) BRIGHT TECHNICAL SYSTEM & GENERAL SUPPLIES LIMITED..... APPLICANT
VERSUS BRAVE ENGINEERING AND CONSTRUCTION COMPANY LIMITED..... 1st
RESPONDENT PHILIP MOSHA..... 2nd RESPONDENT Date of Last
Order: 21/04/2022 Date of Ruling: 13/05/2022

RULING

MAGOIGA, J. The applicant, BRIGHT TECHNICAL SYSTEM & GENERAL SUPPLIES LIMITED by way of chamber summons made under section 2(1) and (3) of the Judicature and Application of Laws Act, [Cap 358 R.E 2019] and section 95 and Order XXI Rule 40 of the Civil Procedure Code, [Cap 33 R.E. 2019] and Article 108 (2) of the Constitution of the United Republic of Tanzania as amended from time to time praying that this court may be pleased to give the following orders, namely:- i

1. The second respondent be summoned to appear in court and may be orally examined as what debts are owing to the 1st respondent and whether the 1st respondent has any and what other properties or means of satisfying the decree in Commercial Case No. 18 of 2018;
2. This court open veils of incorporation of the 1st respondent so that the 2nd respondent who is the director of the 2nd respondent may be arrested and detained as civil prisoner in satisfaction of the decree in Commercial Case No. 18 of 2018;
3. Any other reliefs) that this court may deem fit and just to grant;

4. The respondent may be condemned to pay costs of this application. The chamber summons as usual was accompanied by the affidavit of Mr. ISAAC C. ONGIRI stating the reasons why this application should be granted. Upon being served with the chamber summons and affidavit, the respondent through Mr. ALEX MUSHUMBUSHI, learned advocate filed a counter affidavit stating the reasons why this application should not be granted. Facts pertaining to this application are simple and straightforward. Vide Commercial Case No. 18 of 2018 between the applicant as plaintiff and 1st respondent as defendant, parties reached a deed of settlement which was 2 dully recorded and a decree issued on the terms parties agreed for payment of Tshs.174,126,108/= in six installments comprising of principal sum, interest and legal fees. Further facts were that, the 1st respondent managed to pay Tshs. 125,000,000/= only leaving unpaid balance of Tshs.69,126,108/=. This triggered this application for prayer by way of lifting veil of incorporation, hence, this ruling. In this application, the applicant is enjoying the legal services of Mr. Gabriel Mnyele, learned advocate and the respondent is enjoying the legal services of Mr. Karume Ramadhan, learned advocate. When this application was called on for hearing, Mr. Mnyele prayed to withdraw substantive prayer in number one in the chamber summons. The prayer was not objected and was marked withdrawn. Arguing on the second prayer, Mr. Mnyele adopted the affidavit in support of the prayers and told the court that the purpose of this application is to lift the veil of incorporation of the 1st respondent against the 2nd respondent who has been obstructing the execution of the decree in Commercial Case No. 18 of
2018. Mr. Mnyele went on to argue that, the 2nd respondent is the director of the 1st respondent who has refused or neglected to pay the full decreed 3 amount in the above referred case despite executing the deed of settlement. According to Mr. Mnyele, the application is meant to depart from the famous case of SOLOMON vs. SOLOMON [1897] AC 52 on distinctive nature of liability of corporate entities apart from members. Guided by the cases of YUSUF MANJI vs. EDWARD MASANJA [2006] TLR 127, MUSA SHAIBU MSANGI vs. SUMRI HIGH CLASS LIMITED AND ANOTHER [2016] TLR 430, FAH CONSTRUCTION COMPANY LIMITED vs. ATLAS MAK GROUP (T) LIMITED AND 2 OTHERS, MISC. COMMERCIAL APPLICATION NO. 154 OF 2020 (HC) DSM (UNREPORTED), Mr. Mnyele argued that courts in this country have developed principles of lifting veil of incorporation where directors as doers or actors of the companies fails to satisfy the decree of the court by lifting the veil of incorporation and held the director personally liable. On that note, Mr. Mnyele strongly urged this court to grant the instant application by lifting the veil of incorporation alone with costs. On the other hand, Mr. Ramadhan readily adopted the contents of the counter affidavit. The learned advocate for the respondent argued in opposition of this application in that; first, the instant application cannot be granted because it was brought under wrong provisions of the law and as 4 such this court cannot grant application pegged on wrong provisions of the law. Second, that the 2nd respondent was not a party to the proceedings in Commercial Case No. 18 of 2018. Third, that no statement in the affidavit that they have failed to locate the properties of the 1st respondent. According to Mr. Ramadhan, in order for court to grant an order for lifting veil of incorporation the applicant must prove one of

the following grounds:- if the company traded illegally, public conveniences, protect fraud and is used to defend crime. In this application, none was stated, insisted Mr. Ramadhan. Mr. Ramadhan distinguished the cases cited by Mr. Mnyele that lifting started during execution and not in fresh application of this nature. In his view, the learned advocate argued that the application could have come during execution process and not in this manner it was brought. On the foregoing reasons, the learned advocate for the respondent urged this court to dismiss this application with costs. In rejoinder, Mr. Mnyele argued that the issue of wrong citation, if any, was to come by way of preliminary objection and not now. According to Mr. Mnyele, the provisions cited are proper and pointed out that paragraph 4 of the affidavit stated the reasons for grant. 5 On that note, the learned advocate for the applicant reiterated his earlier prayers. This marked the end of hearing of this application. Having dutifully and carefully considered the rivaling arguments and the authorities cited for and against this application, the issue for determination, in my considered opinion, is whether there are exceptional circumstances to warrant this court use its inherent powers to lift the veil of incorporation against the respondents. All taken on board and considered dispassionately, I find this application is merited. I will try to explain. One, there is no dispute that Commercial Case No. 18 of 2018 between the applicant and the 1st respondent ended up by deed of settlement and the said deed of settlement was signed by the 2nd respondent as director of the 1st respondent. The above state of affairs is supported by the contents of the counter affidavit of the respondent in particular at paragraph 3 in which the respondents stated that the contents of paragraphs of 1-8 inclusive are not in dispute between parties. Two, on the same token, the decree of the court has not been satisfied as agreed and no plausible explanation is offered by the 2nd respondent why he is not able to satisfy the decree as agreed. This is other than deliberate act not to pay the decreed amount in full on the part of the 6 2nd respondent who is the director. The only explanation given is that there is little difficult in business without further particulars what is that little difficulties. It is for the above reasons, that this court finds that the application is merited and the intervention of the court to avoid rendering execution impossible in the circumstances of this court is imperative than not. The arguments by Mr. Karume that the application was brought under wrong provisions of the law without pointing to court as an officer of the court what is the proper provisions are technical arguments which are against the interest of justice to be protected under section 95 of the CPC cited. Even, other grounds cited for grant of lifting veil of incorporation by Mr. Ramadhan when fully considered, I find the ground of public convenience covers this application because it is a public convenience that a party's decree should be paid fully otherwise will undermined the public convenience and confidence that court decrees are not capable of being satisfied. More important the cases cited by Mr. Mnyele are relevant and not distinguishable as Mr. Ramadhan wants this court to believe. 7 On the foregoing, this application is granted and the lift of veil of incorporation against the 2nd respondent is granted with costs. It is so ordered. 13/05/2022 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/182381/source_file/bright-technical-system-general-supplies-limited-vs-brave-engineering-and-construction-company-limited-another-2022-tzhccomd-219-13-may-2022.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/bright-technical-system-general-supplies-limited-Liftingthecorporateveil-tzhccomd-2022--6a3ea52c3b1caa912982523a>

Prepared on 14 October 2026 · Esheria