

TANZANIA / JUDGMENT

ibrahim ally kigombe vs mara microfinance co ltd 2 othersa 2024 tzhc 303 15 february 2024

COURT
TZHCDECIDED
15 February 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY CASE REFERENCE NO.
2024010900000417 (Arising from Civil Appeal No. 8 of 2012 HC Mwanza, Original Civil case No.
17 of 2007 Resident Magistrate court of Musoma at Musoma) BETWEEN IBRAHIM ALLY
KIGOMBE..... APPLICANT VERSUS MARA MICROFINANCE CO.
LTD..... 1stRESPONDENT MARY
SANGE..... 2ndRESPONDENT PAULO
MAYANJA..... 3rdRESPONDENT

RULING

12h & February, 2024 M. L. KOMBA, J.: The applicant herein is praying for an order to lift the corporate veil of the 1st respondent and the applicant to execute his decree against the Directors of the Company who are the 2nd and 3rd Respondents. The decree was issued in Civil Case No. 17 of 2007. The application is preferred under Section 95 and Order XXI Rule 40 of the Civil Procedure Code, Cap 33 R.E 2019 and Section 481 of the Companies Act, Cap 212 which was accompanied by affidavit of the applicant, Ibrahim Ally Kigombe. Page 1 of 6 On the other hand, respondent filed counter affidavit in opposing the application with Preliminary Objection, later on the objection was withdrawn. In a nutshell, the background to this application as gathered from the applicant's affidavit is briefly as follows: Applicant and 1st respondent had civil suit No. 17 of 2007 which was decided in favour of the applicant. Both parties appealed to HC Mwanza where the appeal was consolidated and judgment on Judgment of Civil Appeal No. 08 of 2012 was entered in favour of the applicant herein that the motor vehicle to be returned to applicant, general damages to the tune of Tsh. 10,000,000/- and 7% interest to the date of full payment. Applicant decided to execute his decree via CIVIL REVISION AD/HC/MSM/84182/2023 where he lost for procedural irregularities. When this application was called on for hearing applicant stood solo without any representation while respondent had a legal service of Mr. Emmanuel Mng'arwe, an advocate. When given time to present his application, the applicant as a lay person in law he prayed this court to adopt his affidavit and his application and form part of his submission while retaining his right to rejoin points after respondent submission. Page 2 of 6 Mr.

Mng'arwe on the other side apart from applying the respondent affidavit to be adopted, was of the presentation that affidavit accompanied by application has no reasonable grounds/ sufficient cause to lift veil of directors as indicated in their counter affidavit. That corporate veil should be lifted so that directors can pay the debt ordered in civil case no 17 of 2007. He submitted that there are circumstances to be demonstrated by applicant for the application to succeed as was in the case of Saguda Magawa Salum and 3 others vs NAM Company Ltd and another, Misc Civil Appl No. 34 of 2021. The decision listed conditions to be considered when the order to lift veil of directors are applied. He said in the application at hand the applicant has failed to mention reasons as to why 1st respondent's corporate veil should be lifted. During rejoinder, applicant submitted that Directors failed to show the properties of the company that's why he applies for lifting veil so that the directors can pay the debt as directed by the court. I have gone through and considered the submissions by both parties in the subject matter. The only issue to be considered by this court is whether the applicant has advanced sufficient ground for this court to consider lifting the corporate veil of the second and third respondent as Page 3 of 6 can be glanced from affidavit and submission of both parties. Mr. Mng'arwe during oral submission he said there is no sufficient cause advanced by applicant. I further read respondents' affidavit where respondents deny to hide their status of director. At paragraph 5 respondent adduced that it was the duty of the applicant to seek for court assistance for directors to identify the Company properties. On the other side at paragraph 6 of the applicant affidavit deponed that his effort to realize his decree was fruitless as he failed to identify properties of the 1st respondent while other directors hide under the doctrine of lifting corporate veil and did not co-operate in identification of properties in order to settle decretal sum as revealed in the attached ruling. Further at paragraph 7 the applicant is praying this court to lift corporate veil so that he can execute his decree issued via Civil Appeal No. 8 of 2012 and paragraph 8 the applicant is showing circumstances when the directors can be held liable. I have considered affidavit and application placed before this court. At paragraph 6 the applicant deponed that it was the respondents who invoked the doctrine of corporate veil. In this doctrine, members of a company are shielded from liability connected to the company's action. This means that where the company incurs any debts or contravenes Page 4 of 6 any law, the corporate veil concept implies that members should not be held liable for those errors. In simple words, corporate veil is a legal concept that separates the acts done by the companies and organizations from the actions of the shareholders/Directors. The doctrine of corporate veil protects the directors from being liable for the actions done by the company. However, such protection is not an absolute right as the law empowers the court to uncover such protection shield and make shareholders or company directors liable for acts of the company. The process is called lifting corporate veil. In the case at hand, the applicant is the decree holder in Civil Appeal No. 8 of 2012 which was determined on 01st September 2015. To date he failed to execute his decree on various reasons and as facts read from affidavit, that in CIVIL REVISION AD/HC/MSM/84182/2023 respondent complained that corporate veil was not lifted and therefore it was not right for the applicant to demand payment from the respondents. In this application, the applicant prays this court to lift corporate veil so that he can execute his decree. The 1st respondent herein is judgment debtor fact which was not disputed. From facts deponed in affidavit, the decree was not honored. Page 5 of 6 The cited case by the counsel for respondents,

though is not binding, it mentions some of the conditions. For this court to grant what is prayed by the applicant it needs to certify if applicant has reasons for that. Since the applicant is a decree holder and the 1st respondent is judgment debtor, and the fact that the 2nd and 3rd respondents are directors of the 1st respondent, then the applicant has moved this court correctly. The satisfaction of the decree sought by the applicant depends on the liability of the acts done by respondents, the second inclusive, she cannot use corporate veil as the protection to avoid legal obligations. As analyzed, this court has gratified that there are grounds for lifting the corporate veil as prayed by the applicant. The application is allowed. No order as to costs. DATED at MUSOMA this 15th day of February, 2024. k M. L. KOMBA Judge Page 6 of 6

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