

TANZANIA / JUDGMENT

# lifting the corporate veil<sup>1</sup>

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB REGISTRY AT  
DAR ES SALAAM MISC CIVIL APPLICATION NO. 19728 OF 2024 (Arising from Civil Case No. 27085  
of 2023 Before Hon. Judge Dyansobera) MABENA FINANCIAL SERVICES LIMITED.....  
APPLICANT VERSUS TAN- FRECO CONTRUCTORS LIMITED.....RESPONDENT

## RULING

17th February & 7th March 2025 MKWIZU,J The Applicant is a decree-holder who secured a judgment and decree against the Respondent in Civil Case No.27085 of 2023. However, the Applicant approached this Court with this application, seeking an order to lift the veil that shields the respondent's director from accountability. The application was brought by a chamber summons, made under section 42(c), Order XXI Rule 9,10(2)(j)(iii),28,35(1)(2),36 and section 95 of the Civil Procedure Code [CAP 33 R: E 2019] and section 2(3) of the Judicature 1 and Application of Lawas Act [CAP 358 of 2019] with the following prayers:

1. That this Honourable court be pleased to lift and pierce the veil of Incorporation of the Respondent.
2. Consequently, upon lifting the veil of Incorporation, this court be pleased to order for the arrest of Managing Director of the Respondent as Civil Prisoner for failure Ignore and neglects to pay the decretal sum issued by this court in Civil Case No 27085 of 2023 dated 17th May 2024.
3. Costs to be provided for.
4. Any other relief which this honourable court shall deem proper to issue in the circumstances of the matter. The application is duly supported by an affidavit sworn by Mr Adnani Abdallah Chitale, Advocate, filed on the 12th of August 2024. In response, the respondent submitted a counter affidavit. Subsequently, the court fixed a hearing date for the application. Before the hearing, on 9/10/2024, the respondent, through his advocate Baranaba Luguwa, committed to settling the matter by paying the decree holder ( the applicant)t TZS 20,000,000 in advance and assured the court that the outstanding balance would be settled no later than December 2024. Notwithstanding these 2 assurances, December elapsed without the respondent fulfilling his payment obligation, and he failed to appear before the court. In light of these developments, the applicant respectfully requested

the court to allow the matter to proceed ex parte against the respondent, who, although initially present with legal counsel, inexplicably absented himself without providing any justification. Considering the applicant's plea, the court granted the prayer permitting the matter to advance ex-parte, after the respondent's disregard for court proceedings and obligations. Mr. Adnani Abdallah Chitale, the applicant's advocate, requested two court orders: firstly, to lift the veil of incorporation of the respondent's company, and secondly, to arrest and detain the managing directors as civil prisoners for failing to pay the specified decree amount in civil case No. 27085 of 2023, dated May 17, 2024. He mentioned that when he refers to the respondent's director, he is talking about Fredrick Malima, the managing director of the respondents. Malima submitted a counter- affidavit pledging to pay the decretal amount and, during a court session on October 10, 2024, along with his lawyer, assured the court of a repayment plan totalling 115,000,000, starting with an initial payment of 20,000,000, with the rest to be paid by December 2024. However, Mr. Chitale noted that December passed without any payments, and now, in 3 February, the respondents have not returned to court since their last appearance in October. Mr Chitale emphasised that the issue stemmed from a settlement deed that the respondent voluntarily signed but subsequently failed to honour. He noted that despite numerous efforts to trace the respondent's properties to execute the judgment, none could be found. Furthermore, Mr. Chitale highlighted that the company is an artificial entity functioning through its directors. In this instance, Fredrick Malima, as the managing director, was actively obstructing the execution of the judgment. He then invited the court to find that under the given circumstances, it has powers to issue an order lifting the veil of incorporation and order the arrest and detention of Mr Fredrick Malima as a civil prisoner for failing to comply with court orders. He referred the court to the case of Hotel Continental Limited v Lamada Limited, Misc. Land Appeal No. 466 of 2021 and Xiao Long Zhan vs Chinese Hotel and Another, Misc Labour Application No 129 of 2023 (All unreported), in which the managing director had also failed to honour the terms of a signed settlement. 4 I have considered the application and the applicant's submissions. The main issue for consideration is whether there are sufficient reasons for the court to lift the corporate veil of the respondent. It is settled that the company possesses a legal personality, and its rights and responsibilities are distinct from those of its members as expounded Solomoni vs Solomoni & Co. Ltd (1897) AC 22 that: "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 circumstances provided by the law". This rule, however, is not without its exceptions. While the principle of separate legal personality generally protects owners and shareholders from liability, the law recognises that this protection should not be misused to shield individuals from the consequences of their unethical actions. So, when the corporate entity is used in bad faith as a cover for personal transactions or behaviours contravening legal or ethical norms, the court may lift the corporate veil, thereby holding the responsible individuals personally liable by disregarding this separation in a process known as "lifting the corporate veil." which entails looking behind the person in control by investigating the individuals controlling the company 5 and examining the actions and motives of directors or key shareholders to

determine if they use the company's legal identity to hide their wrongful acts. This process was well explained in *Millicon Tanzania Nv versus James Allan Russells Bell and others*; Civil reference No.3 of 2017

92018) TZCA 355, where it was held that: “We are aware that, piercing the veil entails looking behind the person in control of the company not to take shelter behind legal personality where fraudulent and dishonest use is made of the legal entity” In *Bank of Africa Tanzania Limited vs A.A. Trans Limited, Asgher B. Versi & Akbar B. Versi*, Misc Civil Application No 596 of 2023 (unreported), the court considered disobedience of court orders as one of the grounds on which a corporate veil may be lifted. The court held; “... there are some situations where directors evaded tax legal obligations or where the corporation disobeyed court orders, to mention a few. In such situations, the corporate veil can be lifted to make directors personally liable.” It is undisputed that the parties' dispute in Civil Case No. 27085 of 2023 ended up in a Deed of Settlement adopted and registered as a decree of 6 the Court. In that decree, the respondent agreed to pay the applicant 115,000,000/= within two months from 10/5/2024, the date of assigning the deed of settlement. The respondent was not satisfied with the decree. The applicant's efforts to locate the respondent's property proved futile, leaving him with no option that came with a prayer to lift the corporate veil of the respondent to hold her Managing Director personally liable and or accountable for the debts of their company until full realisation of the amount in the decree. The respondent's liability is undoubtedly viable, transparent, and without doubt, and he has been very much aware of it from the beginning. According to the records, the respondents' managing director was directly involved. He signed the deed of settlement on 10th May 2024, and he again, on October 8, 2024, undertook to repay the decretal sum by first depositing TZS 20,000,000 and promised to settle the outstanding balance by December 2024. But today, nothing has been done, and no reason was given to the court's attention as to why all this happened. I think Mr Malima's conduct fits the established exceptions under which a corporate veil can be lifted. I grant the 1st prayer. The second prayer is for an order for the arrest of the Managing Director of the Respondent, Fredrick Malima, as a Civil Prisoner for failure to ignore 7 and neglect to pay the decretal sum issued by this court in Civil Case No 27085 of 2023 dated 17th May 2024. Fortunately, the power of this Court to commit a Judgment Debtor to jail as a civil prisoner is statutorily stated. Order XXI Rules 35 (1) and (2) of the CPC, provides that: “35(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention as a civil prisoner of a Judgment Debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to prison.

- (2) Where appearance is not made in obedience to the notice, the court shall, if the decree-holder requires, issue a warrant for the arrest of the judgment debtor.” The above provisions grant this Court the authority to issue an arrest warrant for the judgment debtor and commit him to prison as a civil prisoner for failing to satisfy the decreed amount. However, before that, the Court may issue a summons for him to show cause why he should not be arrested and taken to prison as a civil prisoner. The ultimate result of failure to show cause is for the Court to order his arrest and imprisonment until the decreed amount is satisfied. These procedures are well articulated in *The Grand Alliance Ltd V. Mr. Wilfred Lucas 8 Tarimo and Others*, Civil Application No. 187 of 2019 (CAT), after revisiting the Indian decision in the case of *Mahadev Prasad v. Ram Lochan* Air 1981 SC 416, where the Court stated: It follows then that the imprisonment of a judgment debtor in execution cannot be ordered unless the conditions and limitations are satisfied. One of those conditions is that there must be an application for execution of a decree for payment of money by arrest and detention in prison of a judgment debtor (See sections 42 and 44 and Order XXI rule 10 of the code). After receipt of the application, the executing court has discretion to issue a notice to show cause to the person against whom execution is sought, on a date to be specified in the notice, why he should not be committed to prison or to issue a warrant of his arrest (See Order XXI rule 35(1) of the Code). The purpose of this warrant is to bring the judgment- debtor before the executing court and it is not an automatic order for committal as civil prisoner because the executing court is required to be satisfied with the conditions stated under order XXI rule 39 (2) of the Code before committing a person to prison.” As previously mentioned, Fredrick Malima, the judgment's debtor and respondent director, positively responded to the application, which seeks, among others, orders his arrest and imprisonment as a civil prisoner for failure to satisfy the court decree. In paragraph 4 of his counter-affidavit, he committed to paying the decretal amount on specific dates, which were not shared with the court. On October 9, 2024, he appeared before this court with his advocate, promising to repay the decretal amount with an advance payment of 20,000,000. He also vowed to settle the remaining balance before December 2024. However, he has failed to fulfil these commitments. He has not appeared in court personally or through his legal representative, even after a second service through his advocate, Barnabas Luguwa, on 12/2/2025 at 10:33 am, offering no valid reason for his absence. The Court views this conduct with considerable disapproval. This is a deliberate action taken by the respondent's director to halt the execution, particularly the payment of what he promised to pay and/or delay the conclusion of the execution proceedings. Such behaviour must not be tolerated, and it displays nothing but the director's deliberate efforts to obstruct the execution of the decree issue. In the case of *Shabani Amuri Sudi* (the administrator of the estate of the late Amuri Sudi vs Kazumari Hamisi Mpala, Misc. Land Application No.30 of 2019, this Court had this to say on disobedience of court orders or decisions: 10 ”Court orders must be respected, obeyed and complied with religiously. Likewise, court proceedings are controlled by the presiding judge or magistrate, parties cannot decide to do contrary to the court's order. Tolerating them will amount to voluntary invitation to judicial chaos, disrespect and injustice.” (Emphasis supplied) Given that Mr Fredrick Malima was fully informed of the

application and afforded a fair opportunity to articulate any reasons against the requests made, his failure to provide a satisfactory explanation for his inability to fulfil his financial obligations, his absence and lack of communication regarding scheduled appearances in court demonstrates a clear disregard for the decree holder's rightful entitlements as outlined in Order XXI Rule 35(2) of the Civil Procedure Code (CPC). In light of this, the Court finds that Mr. Malima has not given any valid justification for why he should be spared from imprisonment. I am thus, compelled to issue an order for the arrest and detention of Fredrick Malima as a civil prisoner. I hereby grant the application under Order XXI Rule 35 of the Civil Procedure Code Cap 33 (R.E. 2019) and order the judgment debtor's director, Fredrick Malima, to pay the total decretal amount of Tshs 115,000,000 within 20 days from the date of this ruling, 11 specifically by March 27, 2025. Failure to make this payment will result in his arrest and detention as a civil prisoner for six months. Additionally, it is hereby ordered that during his imprisonment, the decree-holder shall pay Tshs 300,000 each month to the Ukonga Prison officer as a subsistence allowance for the custody of the judgment debtor. Should the decree-holder fail to make this monthly payment, Mr Fredrick Malima shall be released from prison. By this order, Mr Fredrick Malima is also reminded that under sub-section (2) of section 46 of the Civil Procedure Code, any release after serving the six-month term or any other term specified herein shall not discharge the existing debt. Given the nature of the application, I make no order as to costs. DATED at DAR ES SALAAM, this 7th MARCH 2025 E.Y. MKWIZU JUDGE 12

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