

TANZANIA / JUDGMENT

MISC NO 20811 OF 2024 TAFIMU VRS SARAMIKA FISHING CO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT DAR-ES-SALAAM MISC. LABOUR APPLICATION NO. 20811 OF 2024 CASE REFERENCE NO.

202408261000020811 BETWEEN TAFIMU.....

APPLICANT VERSUS SARAMIKA FISHING CO. L T D 1ST RESPONDENT

RAMADHANI A. M ILANDU..... 2ND RESPONDENT

RULING

Date of last Order: 24/ 09/2024 Date of Ruling: 17/ 10/2024 MLYAMBINA, J. The Applicant filed the present application seeking for the following two orders: One, this Court be pleased to lift the Veil of the Incorporation of the 1st Respondent and 2nd Respondent being the Share Holder and Managing Director of the 1st Respondent to be held accountable individually for the Judgement debt of the 1st Respondent Two, the arrest and detention of Mr. Ramadhani A. MHandu who is Managing Director of Saramika Fishing Co. Ltd, as the Civil Prisoner The application proceeded ex-parte after the Respondent failed to enter appearance. The Applicant was represented by Mr. Kassim Jumanne Kombo. It was Mr. Kombo's submission that on 12/11/2008 the decree holder instituted a complaint before the Commission for Mediation and Arbitration (herein CMA) for payment of deduction dues and penalty for delay in paying the deduction dues. That, on 04/08/2020 the judgement debtor was ordered by the CMA in a certificate of settlement to pay the decree holder TZS 12,000,000/=. The decree holder attempts to find properties of the judgement debtor to attach in an application for execution has proved futile. That, the Respondent has not shown cooperation in revealing the company's property and to date the CMA Award remains unpaid. Mr. Kombo continued to submit that the management of the company is hiding behind the corporate veil with an aim of depriving the decree holders right. He strongly submitted that by lifting the corporate veil and dealing with Ramadhani A. Mlandu who is a Shareholder and Managing Director of Saramika Fishing Co. Ltd will have a higher chance of having their CMA Award paid off. It is a well-established principle that a company has corporate personality which is distinct from its members. Once a company is registered its members cannot be held personally liable for debts owed by the Company unless the Court pierces the company's corporate veil and impose personal liability on the members, who are Directors or Shareholders. In the application at hand, the Applicant pleads the Court to lift the veil of the incorporation of

the 1st Respondent to the 2nd Respondent being the Shareholder and Managing Director of the 1st Respondent's company to be held accountable individually for the Judgement debt of the 1st Respondent. In the case of *Musa Shaibu Msangi v. Sumry High Class Ltd and Another* [2016] TLR 430 where it was held that: The principle of corporate personality is not absolute and can be lifted in exceptional circumstances. Again, in the case of *Saguda Magawa Salum & 3 Others v. Nam Company Limited & Another*, Misc. Civil Application No. 34 of 2021, High Court of Tanzania at Dodoma, it was held: One can ask the question that; can the corporate veil of the company be lifted and make shareholders or directors liable? The answer is that there are circumstances where the corporate veil of the company can be lifted under the doctrine of lifting the veil of corporation. The doctrine of lifting the corporate veil plays an important role in identifying the offenders who do these crimes and hide behind the curtains of the company. The doctrine of a separate legal entity plays the same role as that of the lifting of the corporate veil but in a much broader sense. The concept of a separate legal entity itself is the cause of action or reason behind the members of any given company or an organization to commit crimes and hide behind the curtains of the company. This notion of hiding behind the walls of the company was removed by the Courts and the law and the true meaning of a separate legal entity can be seen in many landmark cases, which led to the establishment of laws. It is undisputed that the Award is not satisfied to date. As deponed in the affidavit in support of the application, the Applicant made effort to make sure the Award is satisfied but his effort proved futile. Even before this Court, despite of being served with the application, the Respondents neglected to appear. In the premises, it is crystal clear that the second Respondent is hiding behind the walls of the company to defeat execution of the Award. To serve justice, the Award was not meant for decoration. It can therefore not be left unexecuted. Under the circumstances, it is my view that the application at hand has merit. Hence, it is hereby granted. The Veil of the Incorporation of the 1st Respondent is hereby lifted to the 2nd Respondent being the Shareholder and Managing Director of the 1st Respondent to be held accountable individually for the Judgement debt of the 1st Respondent. It is so ordered. Y J. MLYAMBINA JUDGE 17/10/2024 Ruling delivered and dated 17th October, 2024 in the presence of the Applicants in person and Latifa Nassoro (Legal Officer) of Counsel Daud Mnzeli for the Respondents.

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