

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**

**HCT - 00 - CC - MA - 1082 - 2013**

**(Arising from HCCS No. 28 of 2011)**

**JOHN NSAMBA ::**  
**APPLICANT**

**VERSUS**

**SDV TRANSAMI (U) LTD ::**  
**RESPONDENT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

In this application John Nsamba, Applicant hereafter, seeks leave to appeal this court’s decision in which it dismissed Miscellaneous Application No. 639 of 2013.

The application is brought against SDV Transami Limited, Respondent hereafter.

It grounded on the following;

That this court failed to fault the finding of Justice Kiryabwire and ended in upholding a decision he had entered under a wrong law.

And that the court failed to follow Supreme Court decision stating that a decision entered under a wrong rule should be set aside.

Further that this court erred in fact and law when it found that the Applicant was rightly made liable for the debts of Investpro Holdings Company yet there was no evidence on record that he had willfully failed to obey the decree against the company.

And further that no lifting of the veil took place to ascertain the liability of the Applicant.

And also that the learned Judge relied on foreign decisions at the cost of existing Ugandan Legislation and precedents' ignoring the legal principle of corporate personality.

He supported his application with an affidavit in which he conceded that judgments and decrees had issued against Kalsons Agroviet Limited and Investpro Holdings Limited.

He however, contended that the decrees should not have been executed against him as director. It is his feeling that his intended appeal is meritorious and deserves a hearing.

The Applicants affidavit was countered by one deponed by Diana Kasabiti, counsel for the Respondent. She deponed that the Applicant's intention was to delay justice in as much as he had undertaken to pay the debt, and actually paid part of the debt. She relied on the correspondences dated 28 May 2013 and 31 May 2013.

In those two letters, Ms. Bwambale, Musede & Co. Advocates, who were the Applicant's advocate wrote to the Respondent's advocates stating that the Applicant had instructed them to settle the debt.

In both the letters the then Applicant's advocate wrote;

*"We act for and on behalf of our client John Nsamba whose instructions are hereunder*

*That he is able to meet a fraction of United States Dollars \$35,000 legal fees inclusive and absolve himself from liability in the following installments ..."*

Then the letter proceeded to state the amounts and installments of payment.

To confirm that the Applicant would continue with the payment, his advocates in para (111) wrote as follows;

*"That our client has also intimated to us that if he is out of prison, he is likely to adjust this payment scheduled positively and/or rather have the extent of his liability sorted out in a lesser period of time and also arrange for extra security deposit"*

The letter also stated how the other two David Baingana and Patrick Kaliisa would contribute saying;

*"That the balance of the liability shall be divisible in agreeable terms between the other Defendants, David Baingana and Patrick Kaliisa"*

In an affidavit in rejoinder the Applicant distanced himself from the position that had been communicated to the Respondent's advocate referring to it as *"negligence and or inadvertence of counsel"*

There is no evidence on record nor in the submission of counsel for the Applicant to show that the advocates of the Applicant were negligent. It is in fact seen that after their written commitment payments were made in part.

There is however, still the questions as to whether the order made against the Applicants to pay in MA 48 of 2013, directing him to pay the debts of Invespro Holding Limited was not unlawful, and especially since it was made under order 29(2) of the Civil Procedure Rules.

The Order extracted and enforced against the Applicant read;

*"Leave is hereby granted that the execution orders in Civil Suit No. 028 of 2011 passed against the Respondent be executed against the Directors of the Respondent company as under Order 29(2) of the Civil Procedure Rules"*

Yet Order 29(2) of the CPR under suits by or against corporations provides for service on corporations as

*"Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served*

*(a) On the Secretary, or any director or other principal officer of the corporation; or*

*(b) By leaving it or sending it by post addresses to the corporation at the registered office or if there is no registered office, then at the place where the corporation carries on business.”*

Its my finding that Order 29(2) under which the Order to execute against the directors (Applicant) was issued, has nothing to do with execution of judgments, but instead notification of an existing situation. I do and as I held earlier in Miscellaneous Application No. 639 of 2013 that the Order under which the learned Judge issued the Order was a wrong one.

Counsel for the Applicant contended that this was enough to set aside the decision of the learned Judge.

He relied on **Charles Ssempebwa and 134 Olbs V Silver Spring Hotel (1969) Ltd** CA 103 of 2003 and the earlier decision in **Sango Bay Estates Ltd V Dresdner Bank Ltd** [1971] EA CA. Their Lordships dealing with the circumstances under which leave could be granted to an intending Appellant to appeal, held that where a case was found to be arguable, it deserved leave to appeal to the appellate court. In my opinion the issue raised by the Applicant, raises issues that would merit judicial consideration by an appellate court.

I did earlier on in this ruling find that the Applicant accepted liability, but then this could be the situation of a prisoner seeking freedom. In a case when considering whether the Applicant deserves leave to file an appeal, the issue of merit of the intended appeal or the chances of success of appeal are not the only determinants. Issues of law are major factors.

Counsel for the Applicant who raised the issue of corporate personality as against the order compelling the Applicant to pay the debts of the Defendant company simply because he as director was involved in the consents that the Defendant and the Respondent entered into.

Counsel for the Respondent submitted that the Applicant having been party to the consent, he could not turn around and claim insulation due to the Defendants corporate personality.

There was no lifting of the veil. Counsel for the Applicant submitted that it was not necessary.

In my opinion the company as a legal person should make good its own debts unless it is shown that directors such as the Applicants were using it as a mask to siphon of its money and or other assets. See **Mugenyi Co. Advocates V Attorney General** SC 43/95.

It's my view that the Applicant has put forward an arguable issue.

The foregoing reasons are in my opinion arguable and since leave to appeal is granted where prima facie it appears that *"there are grounds of appeal which merit serious judicial consideration"* **Sango Bay Estates Limited V Dresdner Bank & Anor** [1971] EA 17, this court finds this a fit and proper case wherein leave to appeal should be granted. Leave is so granted.

Considering the vicissitudes in this matter, each party shall bear own costs in respect of this application.

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**David K. Wangutusi**  
**JUDGE**

**Date: 15 - 05 - 2014**