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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**[COMMERCIAL DIVISION]**  
**MISC. Appl No. 29 OF 2013**

*[Arising From Chief Magistrates’ Court of Mengo Civil Suit No. 269 of 2013]*

10 **SAMUEL ABBO ::: APPLICANT**

**VERSUS**

**CIMEEL ENGINEERING LTD ::: RESPONENT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**RULING**

15 The applicant filed this application under section 98 of the Civil Procedure Act, order 38 rule 5(d), Order 52 rule 1 and 3 of the Civil Procedure Rules and section 20 of the Companies Act for orders that the corporate veil be lifted, Mr. Oloka Columbus, a Director of the respondent company be ordered to pay the decretal sum of UGX 24,600,000/= plus interest and costs.

The grounds supporting the application were; that judgment was passed on admission against  
20 the respondent in Civil Suit No. 269/2013 and execution is to commence. The respondent’s last known address or registered office cannot be located, as well as ascertaining it’s property and any properties located are in the Director’s names, the Director deliberately lost touch with his lawyers with the intention to defraud the applicant having undertaken to pay the money, and finally that it is fair, just and equitable that the corporate veil is lifted in order for  
25 the applicant to recover his money.

The applicant Mr. Samuel Abbo deponed the following facts in support of the application. The applicant filed a Civil Suit No. 269/2013 against the respondent for recovery of UGX 24,600,000 /= and judgment was entered against the defendant on admission. The bill of costs was then filled, taxed and allowed. The respondent’s known address or registered office  
30 cannot be located as well as ascertaining its property and any properties located are in the

names of the Director. The Director who used to attend all court proceedings has now lost touch with his lawyers.

He asserted that the acts of the Director are deliberate and intended to defraud the applicant having undertaken to pay the money.

5 The respondent opposed the application.

### **Ruling**

The main issue to be determined is whether the corporate veil should be lifted.

The applicant averred that the last known address of the respondent cannot be traced and that they could not ascertain any properties registered in the respondent's names. They relied on  
10 **Gower's Principles of Company Law 6<sup>th</sup> Edition (page 173)** where three instances were listed under which court can pierce the veil of incorporation which are;-

1. When court is construing a statement, contract or other documents.
2. When the court is satisfied that a company is a mere facade concealing the true facts.
- 15 3. When it can be established that the company is an authorized agent of its controllers or its members corporate or human.

The applicant thus averred that the act of the respondent to vacate their offices after the judgment was entered only indicates that the company is a mere facade and the Director intended to conceal the true facts. He merely used the company to obtain a loan well knowing  
20 that he would not repay the same.

The respondent in reply contended that the applicable law to lifting the veil is the Company Act 2012 which the applicant did not rely on. They further contended that the allegations of fraud deponed in the affidavit are not strictly proved as required by the law. They concluded by submitting that the applicant did not have any grounds permitting court to lift the corporate  
25 veil.

Section 20 of the Company act 2012 provides that;

*"The High Court may, where a company or its Directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil".*

It is therefore clear that for the court to lift the veil, the applicant must prove fraud. This was upheld in the case ***Stanbic Bank Uganda Ltd Vs Ducat Lubricants (U) Ltd & 3 Others Misc. Appl No. 845 of 2013***, where court noted that;

*"The provision does not indicate at which stage the High Court may lift the corporate veil. However by using the term "involvement in fraud" it is apparent that it should be established to the satisfaction of the court".*

10 Accordingly, in my view fraud should just not be alleged, but it must be proved to the satisfaction of court.

It was held in the celebrated case of ***Fredrick J.K. Zaabwe Vs Orient Bank Ltd And Others Civil Appeal No. 4 Of 2006*** that;

15 *"an allegation of fraud need to be fully and carefully inquired into. Fraud is a serious matter."*

In ***Kampala Bottlers Ltd Vs Damanico (U) Ltd, (S.C. Civil Appeal No. 22/92 Wambuzi, C.J*** (as he then was) stated at page 7 of his judgment;

20 *".....fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."*

The learned Chief Justice goes further to state;

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*"Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters."*

In the case before me, the applicant did not prove fraud, he merely stated that the Director lost touch with his former lawyers which according to Counsel was a fraudulent act. I disagree. Under the circumstances, I agree with the respondent that the applicant's affidavit in support only contained allegations of fraud but did not prove them. The applicant has not proved to  
5 my satisfaction that the respondent committed fraudulent acts.

The applicant further alleged that the respondent was using the company as a mere facade to conceal the truth.

Court in the case of ***Stanbic Bank Uganda Ltd Vs. Ducat Lubricants (U) Ltd & 3 Others Misc. Appl No. 845 of 2013*** stated;

10           *"It is a basic common law principle that the mind of a company where guilty intent or responsibility is being considered cannot meaningfully be separated from the minds of the Directors where the will of the company is to be discerned".*

In the case of ***HL Bolton Co Vs TJ Graham and Sons [1956] 3 All ER 624***, Lord Denning held at page 630;

15           *"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and*  
20 *managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such.... That is made clear in Lord Haldane's speech in*  
***Lennard's Carrying Co Ltd Vs Asiatic Petroleum Co Ltd ([1915] AC 705 at pp 713, 714.*** *So also in the criminal law, in cases where the law requires a guilty mind as a*  
25 *condition of a criminal offence, the guilty mind of the Directors or the managers will render the company themselves guilty.*

A suit can be filed against a Director/individual who is a member of the company in their own individual capacity and it would be a matter of evidence to prove that the use of the company name was merely a front or vehicle to perpetrate the alleged fraud by the individual. In other words it is up to the plaintiff to prove that the company was a mere conduit of the individual. It is a different thing to say that the acts of the 3<sup>rd</sup> and 4<sup>th</sup> respondents are the acts of the company unless the corporate veil is lifted. The corporate veil ought to be lifted where there is proof of involvement of the Directors in fraud. It is yet to be resolved by the courts whether the involvement should disclose personal benefit to the Director. The question of personal benefit to the Directors is considered in the context of considerations of whether to hold the Director or the company liable for fraud which has been established”.

It is my considered view relying on the above authorities that the applicant has failed to prove that the Director only used the name of the company as a mere front to perpetuate the fraud, on top of failing to prove to my satisfaction that the defendant committed fraudulent acts against the respondent. The applicant also did not show court how the Director used the company as a mere facade to conceal some truths.

Having failed to prove fraud to the satisfaction of this court, the application can therefore not stand.

The application is accordingly dismissed with costs to the respondent.

**B. Kainamura**  
**Judge**  
**12.06.2018**