

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT
KAMPALA
HCT-00-CC-MA-0563 - 2008
(ARISING FROM HCT-00-CC-CS—0044-2002)

EASTERN BUILDERS & ENGINEERS LTD.....
.....APPLICANT

VERSUS

MALVA CONSTRUCTION (U)
LTD.....RESPONDENT

BEFORE: HON MR. JUSTICE LAMECK N. MUKASA

RULING

This is an application seeking an order to lift the corporate veil brought under Order 38 rule 5 (d) and Order 52 rules 1 and 3 of the Civil Procedure Rules.

The grounds for the application are briefly that:

1. Judgment was passed against the defendant in Civil Suit No 44 of 2002 and execution is to commence.
2. The defendant does not own any assets as all are in the director's name.
3. The directors deliberately left the country with the intent to defraud the plaintiff.
4. The corporate veil be lifted to recover the amounts owed to the plaintiff.

This application is supported by two affidavits, one deposed to by Kuldeep Singh and an additional deposed to by Gurdeep Singh. Both are directors of Eastern Builders and Engineers

Ltd, the Applicant. In their respective affidavits they aver that on 31st July 2002 Judgment was passed against the Respondent, Ms Malva Construction (U) Ltd, and the Applicant is to recover the amount of US\$93,581.80 and interest.

In his affidavit in support Kuldip Singh avers:-

- “5. That neither the directors nor their place of business can be found.
6. That the respondent has always hidden behind the corporate mask thus frustrating execution.
7. That the directors of the respondent company operated the company as their conduit, a device, a sham, a cloak, a mask which they held before their faces in an attempt to avoid recognition by the eye of equality.”

Gurdial Singh makes similar averments in his additional affidavit in support.

Service of this application on the Respondent was by substituted service by advertisement in the Monitor Newspaper of 20th and 23rd April 2009. There was no representation for the Respondent at the hearing and hearing proceeded exparte.

In her submission Ms Dippa Verma Jivram, Counsel for the Applicant, argued that the Respondent Company was still on the Company Register but its directors had closed the business office and kept their whereabouts unknown with an intention to use the company's subsisting corporate registration as a sham, cloak and a mask in an attempt to avoid execution against them. She prayed for Court to lift the corporate veil and issue a notice to show cause to the Directors of the company why execution should not be levied against them instead of the company. I was referred to a number of authorities.

In Nile Bank Ltd Vs Gomba Machinery and General Equipment Ltd (1992) IKLR 67, an application by the Judgment Creditor seeking an order from Court for a warrant of arrest in execution of a judgment to issue against the Managing Director of the Judgment debtor company, personally, on lifting of the veil Karokora J (as he then was) stated:-

“---this would probably be done if the applicant/judgment creditor, in his affidavit proved that the defendant company was as it was described in Jones Vs Lipma (1962) I WLR 832 at page 838, the creature of the Managing Director, a device and sharm, a mask which he had before his face in an attempt to avoid recognition by the eye of equality. There the court would so act in order to protect the Judgment Creditor against such fraudulent Managing Director.”

In Jones and Aurthor Vs Lipma and Anor (1962) I All EA 442 the claim was for specific performance of an agreement to sell property. It was argued that the property had been sold and transferred in company called Alamed Ltd. Court held that specific performance cannot be resisted by a vendor who, by his absolute ownership and control of a limited company in which the property is vested, is in a position to cause the contract to be completed.

In W.E. Kiwalabye Vs Uganda Commercial Bank & Anor 1994 IV KALR 8, Justice Kato stated that before the veil can be lifted there must be some fact from which the Court can draw a conclusion that the Company and a particular individual are one and the same thing.

In Salim Jamal & 2 Others Vs Uganda Oxygen Ltd & 2 Others (1997) IIKALR 38 the Supreme Court held that Corporate personality cannot be used as a cloak or mask for fraud. Where this is

shown to be the case the veil of incorporation may be lifted to ensure that Justice is done and the Court does not look helplessly in the face of such fraud.

Applying the law as stated in the above authorities to the instant case, the application was a blanket application to lift the corporate veil of the judgment debtor company and issue a notice to show cause to the Directors of the Company. The Directors so intended were not named. The shareholding in the company was not given. No evidence was availed to Court to enable it to determine whether the company's corporate personality was being fraudulently used as a cloak, sham or mask to avoid execution of the judgment. The mere fact that the company had closed its business offices is not evidence of fraud on the part of the judgment debtor's directors. No company assets have been shown to be held by the Directors themselves. And who were these directors." There are no facts before this court to warrant lifting the veil.

The application fails and is dismissed. Since it proceeded *ex parte* I make no order as to costs.

Hon Mr. Justice Lameck N. Mukasa

JUDGE

3rd March 2010