

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS APPLICATION NO. 460 OF 2016**  
*(Arising out of Civil Suit No. 257 of 2015)*

**HUSSEIN RUBAGA KASHILLINGI T/A**  
**KASHIRINGI, RUGABA & ASSOCIATES ::::::::::: APPLICANTS**

**VERSUS**

**1. SEMBULE STEEL MILLS LTD**  
**2. CHRISTOPHER COLUMBUS SEMBUYA :::: RESPONDENTS**  
**3. FRANCIS SEMBUYA**  
**4. DR. RONALD KIZITO**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING**

This application is brought by Notice of Motion under O. 52 r 3 and S.98 of the Civil Procedure Rules and S. 98 of the Civil Procedure Act. It is for orders that;

- a. That a temporary injunction doth issue restraining the commissioner Land Registration from carrying out any registration and transfer of any instrument or person on land at LRV 241 Folio 5 PLOT No. 32 Windsor Crescent at Kampala pending the determination and disposal of Civil suit No. 257 of 2015.
- b. A temporary Injunction be issued stopping the Commissioner Land Registration from registering the application by the 2<sup>nd</sup> respondent seeking to remove the caveat lodged by the applicant until the determination and disposal of Civil Suit No. 257 of 2015.
- c. That the costs of the application be provided for by the respondents.

The grounds of this application as stated in the affidavit of Mr. Hussein Rugaba Kashillingi are that;

1. The applicants law firm M/S Kashillingi, Rugaba & Associates was instructed by the 2<sup>nd</sup>,3<sup>rd</sup> and 4<sup>th</sup> respondents to offer legal representation in a series of matters dating back to the year 2010 in which the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were raising capital to salvage their interests in the 1<sup>st</sup> respondent.
2. The applicant's law firm diligently carried out these instructions but was never paid by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents despite sending them several demand notices.
3. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents entered certain arrangements with creditors of the 1<sup>st</sup> respondent by which all the assets of the 1<sup>st</sup> respondent were disposed of including debts guaranteed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.
4. The applicant was not paid from the proceeds of the sale of the 1<sup>st</sup> respondent's assets by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents despite knowledge of the applicant's claim of work done on behalf of the respondents jointly and severally.
5. The applicant presented its bill to the respondent in accordance with the laws of Uganda but it was never paid by the respondents jointly and severally. The sum of UGX 810,255,068/= was taxed and certified and is due and owing.
6. The applicant lodged a caveat onto the land comprised in LRV 241 Folio 5 Plot No.32 Windsor Crescent which the 2<sup>nd</sup> respondent now seeks to remove without paying the applicants due sum.

The land known as LRV241 folio 5 plot No.32 Windsor Crescent which is the subject of the caveat and of this application, is the only known and remaining property of the 2<sup>nd</sup> respondent.

7. The applicant/ Plaintiff has instituted civil suit No. 257 of 2015 against the respondents/defendants claiming for the recovery of the sum of UGX 810,255,068 being taxed, allowed and certified costs arising from Advocate client bills of costs for legal services rendered to the defendants.
8. The applicant has high chances of succeeding against the respondents in civil suit No. 257 of 2015. That if the 2<sup>nd</sup> respondent and commissioner Land Registration are not restrained from removing the caveat entered on the register book under Instrument No. KCCA 00004671 on the suit premises before the determination of the main suit and the application for a temporary injunction, the main suit and temporary injunction will be rendered nugatory and the applicant will suffer irreparable damage which cannot be compensated by an award of damages.

Court allowed respective counsel to file written submissions in support of their respective cases which they did. In their written submissions, learned counsel for the applicant outlined the law relating to the granting of a temporary injunction which I will not delve into at this point.

For emphasis, counsel stated that the applicant has established a prima facie case with a possibility of success that he is entitled to payment from the respondents jointly and the fact that the 1<sup>st</sup> respondent disposed of all its assets and now the 2<sup>nd</sup> respondent only has the property which is subject of this application, it is just and fair that this application is not frivolous and vexatious.

It was also counsel for the applicant's submission that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents have no known assets in Uganda to be able to satisfy the said taxed bill and that the 2<sup>nd</sup> respondent has only one asset known within the Jurisdiction of this court.

That if the caveat as lodged by the applicant is removed by the orders of this court then the applicant in the event he is successful shall have no reasonable form of recovery of the sum decreed thereby suffering irreparable damage.

On the other hand, counsel for the respondent first raised a preliminary objection under O.6 rule 28 of Civil Procedure Rules, which is to the effect that the application is incompetent, misconceived, incurably defective and bad in law as far as it seeks to maintain a caveat on the 2<sup>nd</sup> respondent's property comprised in Lease hold Register Volume 241 Folio 5, Plot 32 Windsor Crescent in recovery of a debt owed to the applicant by the 1<sup>st</sup> respondent. It was further stated that;

- i) The applicant cannot institute a suit against the 2<sup>nd</sup> respondent for the liability incurred by the 1<sup>st</sup> respondent without lifting its corporate veil.
- ii) The 2<sup>nd</sup> respondent was never made party to the taxation hearing of the decree of which the applicant is seeking to enforce against the 2<sup>nd</sup> respondent.
- iii) The applicant unlawfully lodged a caveat on the 2<sup>nd</sup> respondent's land because the same has never been attached under execution.

Counsel for the Respondent further elaborated that the concept of corporate personality is what distinguishes a company from other forms of business organisations and that an incorporated company is a separate legal entity distinct from its members.

That in this case, the 1<sup>st</sup> respondent Sembule Steel Mills Ltd is a separate legal entity from any of its subscribers and as such its liabilities cannot be imputed on the 2<sup>nd</sup> respondent personally simply because he is a director there of without lifting the corporate veil.

Further that with regard to this application, the 2<sup>nd</sup> respondent was neither made party to the initial suit nor the taxation hearing where the applicant was awarded the sum claimed in this suit and to execute against him under the decree without a hearing would be denying him the right to be heard and hence in contravention with the principles of natural justice.

Learned counsel for the Respondent also asserted that to grant an injunction restraining the removal of the caveat on the 2<sup>nd</sup> respondent's land would be to preserve an illegality because the applicant had no right to lodge the same on the said land as it is the personal property of the 2<sup>nd</sup> respondent and not that of the 1<sup>st</sup> respondent against whom his claim lies.

After a thorough consideration of the submissions by the respective counsel and the law applicable, I will go ahead and resolve this matter. The law relating to a temporary injunction has been well articulated by both counsel citing a wealth of authorities.

In brief, an injunction is a court order requiring an individual to do or omit doing a specific action. According to the Ugandan case of **Robert Kavuma Vs M/S Hotel International SCCA No. 8 of 1990**. The guidelines for the grant of temporary injunction are well stated. These are that;

- i) The applicant must show that there is a substantial question to be investigated.*
- ii) The applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained.*
- iii) The balance of convenience is in favour of the application.*

Before I delve into these principles of granting a temporary injunction, counsel for the respondent raised a preliminary objection which is fundamental to this application and I will first resolve it.

It is to the effect that the application is incompetent, misconceived, incurably defective and bad in law as far as it seeks to maintain a caveat on the 2<sup>nd</sup> respondent's property comprised in Lease hold Register Volume 241 Folio 5, Plot 32 Windsor Crescent in recovery of a debt owed to the applicant by the 1<sup>st</sup> respondent.

As put by counsel for the respondent, an incorporated company is a separate legal entity separate and distinct from its members. This was well enunciated in the case of **Salmon Vs Salmon & Co. Ltd (1897) A.C 22 HL** where the Court of appeal stated that ***the company is at law a different person altogether from its subscribers to the memorandum of association and though it may be that after the incorporation, the business is precisely the same as it was before and the same persons are managers and the same persons receive profits, the company is not in law the agent of subscribers or trustees for them nor are subscribers as members liable in any form or shape except to the extent and in the manner provided by the Act.***

Because of the above legal position, in order to impute liability on the directors of the company, the corporate veil has to be lifted. According to Section 20 of the Companies Act 2012 the jurisdiction to lift the corporate veil of a company is vested in the High Court. It states;

***“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.”***

In the instant case, learned counsel for the applicant asserts and it is a fact that the land comprised in LRV241 folio 5 plot No.32 Windsor Crescent which is the subject of the caveat and of this application, is the only known and remaining property of the 2<sup>nd</sup> respondent.

According to the facts, it is well known that the land which is the subject matter in this application belongs to the 2<sup>nd</sup> respondent and yet the applicant wants it caveated for the services he rendered to the 1<sup>st</sup> respondent in order to raise capital.

Since the 1<sup>st</sup> respondent is a company which is separate and distinct from its members, there is no way the 2<sup>nd</sup> respondent's property can continue being caveated and attached without following the mandatory requirement of lifting the veil.

In the result, this court cannot grant a temporary injunction to restrain the removal of the caveat because the 2<sup>nd</sup> respondent's property which forms the subject matter of this application is not the property of the 1<sup>st</sup> respondent to whom the applicant's services were rendered and have not been paid for.

Without an order of lifting the veil, this court cannot grant a temporary injunction stopping the Commissioner Land Registration from registering the application to remove the caveat.

I have therefore not found any substantial question to be investigated or that the applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained. Even the balance of convenience is against the applicant in this case.

Consequently, this application is dismissed with costs to abide the main suit.

I so order.

**Stephen Musota.**

**J U D G E**

**13.12.2016**