

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
COMPANY CAUSE NO. 0017 OF 2019**

**IN THE MATTER OF SECTION 108 OF THE INSOLVENCY ACT  
AND**

**THE LIQUIDATOR RIFT VALLEY RAILWAYS (U) LTD=====APPLICANT**

**AND**

**EAST AFRICAN RAIL AND HANDLING  
LOGISTICS LIMITED**

**=====RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The applicant filed this application under S. 108 of the Insolvency Act seeking orders that the corporate veil of the respondent be lifted, the assets of the respondent be pooled with the assets of Rift Valley Railways (U) Ltd (In liquidation), and the respondent be ordered to pay to the liquidator the whole or part of any or all the claims made in the liquidation and costs of the application. The Respondent was served under substituted service by advertising, the respondent did not file an affidavit in reply and the applicant sought to have the matter proceed *ex parte*. The applicant filed submissions which this court has considered in writing this the ruling. The applicant was represented by Katono of Nambale, Nerima & Co Advocates.

Counsel for the applicant submitted that **S. 108** of the **Insolvency Act** states that;

*“On application of the liquidator or creditor or shareholder, the court may, if satisfied that it is just and equitable to do so, lift the veil of any associated company on terms and*

*conditions as it may consider fit to facilitate and ensure due completion of the liquidation process in a just and equitable manner and may order that-*

- a. A company that is or has been an associated company of the company in liquidation pays to the liquidator the whole or part of any or all of the claims made in the liquidation.*

Counsel further submitted that in the supporting affidavit of Nelson Nerima an Advocate of the High Court and an Insolvency practitioner states that Rift Valley Railways (U) Ltd was incorporated in Uganda on 8<sup>th</sup> November 2005 and in 2006 the Government of Uganda granted a concession to Rift Valley Railways (U) Ltd to operate and maintain the assets of Uganda Railways Corporation.

Counsel for the applicant submitted that the East African Rail and Handling Logistics Limited was incorporated in Uganda on 28<sup>th</sup> March 2012 and its major business was planning the efficient and effective forward and reverse flow and storage of goods and services and related information between the point or origin and delivery in order to meet the customers' requirement. In January 2018 the Government of Uganda terminated the concession agreement with Rift Valley Railways (U) Ltd. Following the termination of the concession agreement, the directors and managers of both companies left Uganda.

Applicant Counsel submitted that at the time of the termination of the concession agreement, Rift Valley Railways (U) Ltd was insolvent and subject to a number of suits and insolvency proceedings. On 23<sup>rd</sup> May 2019 the High Court appointed Nelson Nerima as a liquidator of Rift Valley Railways (U) Ltd upon a petition by Hass Petroleum (U) Limited and to date the liquidator has received creditors' claims in the region of over 15 billion shillings and over thirty two million dollars, none of which has been paid.

Counsel submitted that the last annual return of Rift Valley Railways (U) Ltd indicates that its shareholders are RVR Investments (FTY) Limited of Mauritius and KU Railways Holdings Ltd of Mauritius. That the last annual return of East African Rail and Handling Logistics Limited indicates that its shareholders are EA Rail & Handling Logistics Co. Limited of Mauritius and KU Railways

Holdings Ltd of Mauritius. That the directors of Rift Valley Railways (U) Ltd are also directors of East African Rail and Handling Logistics Limited.

He further submitted that the secretary of Rift Valley Railways (U) Ltd is also the Secretary of East African Rail and Handling Logistics Limited. The directors who signed the resolutions are also identical i.e Karim Kadek and Mohamed Self. The bank signatories of Rift Valley Railways (U) Ltd are also the bank signatories of East African Rail and Handling Logistics Limited.

Counsel for the applicant submitted that Rift Valley Railways (U) Ltd owns and controls East African Rail and Handling Logistics Limited through a web of offshore companies and the affiliation between companies/shareholders/directors cannot be wished away by legalese of a corporate veil *per Ssekaana J in Palmfox International (U) Ltd v DFCU Bank & Others, Misc cause No. 423 of 2017*, the corporate veil is disregarded where court is satisfied that it would cause injustice.... See *Paulinus Chukwu Ejiofor v Charles Byamugisha & others, High Court Commercial Division Misc. Application No. 309 of 2016*.

#### **DETERMINATION**

The applicant seeks to lift the veil of the respondent East African Rail and Handling Logistics Limited since the said company has the same shareholders with Rift Valley Railways (U) Ltd which is in liquidation. This is premised on the fact that the shareholders are RVR Investments (FTY) Limited of Mauritius and KU Railways Holdings Ltd of Mauritius. That the last annual return of East African Rail and Handling Logistics Limited indicates that its shareholders are EA Rail & Handling Logistics Co. Limited of Mauritius and KU Railways Holdings Ltd of Mauritius. That the directors of Rift Valley Railways (U) Ltd are also directors of East African Rail and Handling Logistics Limited.

This court agrees with the applicant's argument in regard to ownership and according to the evidence adduced by the applicant's counsel it's crystal clear that the Rift Valley Railways (U) Ltd owns and controls East African Rail and Handling Logistics Limited with the same controlling minds of the directors and company secretary. In the case of *Salim Jamal & 2 others vs Uganda Oxygen Ltd & 2 others [1997] 11 KARL 38*, the Supreme Court held *that corporate personality cannot be used as 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.*

There is limited principle of law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's legal personality. See *Prest v Petrodel Resources Ltd* [2013] 3 WLR 1

The privileges accorded to companies must operate in accordance with the terms upon which they are granted. The doctrine of corporate veil piercing is premised on the basis that such privileges should work hand in glove with responsibility in order to avoid the possibility of abuse or exploitation. When there is a fracture in the proper operating parameters, the court may ascertain the realities of the situation by removing the corporate shield or veil in order to make the controller behind the company personally liable as if the company were not present. See *Infrastructure Projects Ltd v Meja Projects Ltd* HCCS No. 2351 of 2016

In the case of *Prest v Petrodel Resources Ltd* [2013] 3 WLR 1 Lord Sumption made a distinction between what he saw as "two distinct principles" of *concealment and evasion*. While the latter did involve true veil-piercing, the former did not. Under the concealment principle, where a company is interposed so as to conceal the identity of the real actors, the court may look behind the veil to discover the facts which the corporate structure is concealing without actually disregarding the corporate structure altogether. In contrast, under the evasion principle, the court indeed disregards the veil if a company is interposed so that its legal personality will defeat or frustrate the enforcement of a legal right against the controller which exists independently of the company's involvement. The two companies based on the facts presented in court are one and the same and their operations are very much interrelated. It is in the interest of justice that the veil be pierced. Both principles of concealment and evasion are available to

determine the liability of the parent major company- Rift Valley Railways under Liquidation. There is need to focus on identifying corporate controllers standing behind interposed companies and there is need to pin liability on the two companies in order not to defraud the creditors of Rift Valley Railways (U) Ltd.

It bears emphasis however, that the corporate veil should only be disregarded in cases where it is being used for a deliberately dishonest purpose or fraud. When the corporate character is employed for the purpose of committing illegality or defrauding others, the court can ignore the corporate character and look at the reality behind the veil, so as to enable it to pass appropriate orders to do justice between the parties concerned. See *Delhi Development Authority v Skipper Construction Co. (P) Ltd* [1996] 4 SCC 623: AIR 1996 SC 2005

The High Court under section 20 of the Companies Act is empowered to lift the veil of incorporation therefore the corporate veil of East African Rail and Handling Logistics Limited is hereby lifted and the assets of the same if any be pooled together with those of Rift Valley Railways (U) Ltd (In Liquidation).

It is also ordered that the East African Rail and Handling Logistics Limited should pay the liquidator the whole or part of any or all of the claims made in the liquidation.

Therefore this application is granted with costs.

I so order.

*Dated, signed and delivered be email at Kampala this 23<sup>rd</sup> of April 2020*

**SSEKAANA MUSA**  
**JUDGE**