

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC.APPLN No 114/2019
ARISING FROM LDA NO. 112 OF 2018.

MUTESI ANN LILLIAN

& 3 OTHERS

.....APPLICANTS

VERSUS

1.IRAN UGANDA EST. LTD

2.SEYED MOHAMMED

3.IRAN UGANDA HOLDINGS

..... RESPONDENTS

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1. MS. HARRIET MUGAMBWA NGANZI

2. MR. EBYAU FIDEL

3.MR. FX MUBUKE

RULING

This application is brought by notice of motion under Section 98 of the Civil Procedure Act, Section 20 of the Companies Act, Order 38 rule 5(d), Order 52 Rules 1 and 3 of the Civil procedure Rules for orders that:

1. The veil of incorporation of the Iran Uganda Establishments Limited, be lifted and the 2nd and 3rd Respondents be ordered to pay the decretal sums owing to the applicants in EMA No. 112 of 2018 and Labour Dispute No. 112 KCCA/CEN/LC/118/2017
2. That costs of the application be provided for.

The application is supported by an Affidavit deponed by Mbabazi Jassy summarized as follows:

That on the 18/05/2018, the applicants secured a ruling against the 1st Respondent in their favour, wherein the 1st Respondent was ordered to pay a decretal sum of Ugx. 119, 633,332/- being salary earned, payment in lieu of accrued leave which remained unpaid.

That efforts to enforce this decree against the 1st Respondent remains futile because it does not have any known assets in its names, save for goods at the known office at Jinja road which the directors claimed and transferred to another company through fraudulent means.

That the 2nd Respondent is a director on both the 1st and 3rd Respondent Companies and uses them as a shield to defraud the creditors and employees like the applicants.

That unless the corporate veil of the 1st Respondent Company is lifted, the applicant shall not be able to realize the fruits of the decree and therefore the orders prayed for should be granted.

In reply Ssekitto Faisal Legal assistant with Ms. Yiga Advocates, in reply admitted that the Applicant filed labour complaint No.112 KCCA/CEN/LC/118/2017, against the 1st Respondent Company which was decided in their favour in the absence of the 1st Respondent, who were never served for a hearing through their lawyers or directly.

That the 1st Respondent only became aware of the Labour officer's decision when she was informed about an order for attachment against her, derived from the *ex parte* proceedings and therefore she could not file an appeal against the decision. Subsequently the 1st Respondent filed an application seeking leave to appeal out of time via Misc. Appln No.199/2018. The application was heard and disposed of by this court which ordered that the matter was premature before the court and referred it back to the Labour officer for disposal.

That the matter having been referred back to the Labour officer to set aside his *ex parte* award, and give impending application to have the decree set aside, the grant of the application for execution, would render the application nugatory.

He asserted that the Respondent has not failed to pay but has challenged the decision of the labour officer and the same is under review awaiting determination by the labour officer. Therefore, the application should be dismissed with costs. And besides this court had no jurisdiction to handle this application given section 20 of the Companies Act.

In rejoinder, Jassy stated that the 1st Respondent was served with their claim and its representatives and its Counsel attended Court, but stopped attending after some time. Later their lawyer withdrew from handling the matter. She attached copies of affidavits of service marked "A" to show that, Seyed Mohammed Ali the 2nd respondent was always served with hearing notices but he chose not to attend.

She asserted that there is no evidence that the file was referred back to the Labour officer nor is there any evidence of any application to the labour officer to set aside his decision in, 112KCCA/CEN/LC/118/2017 was ever filed.

That in accordance with the advice of her lawyers in this matter the application for lifting the veil is against the directors as provided under Section 20 of the Companies Act 2012 and this court has jurisdiction to hear the application.

SUBMISSIONS

It was submitted for the Applicant's that Section 20 of the Companies Act, empowers this court to lift the corporate veil, where a company or its directors are involved in fraud. Counsel cited **D.K Construction Co Ltd and Anor vs Barclays bank Uganda Ltd CS No. 644 of 2000, Jones and Another vs Lipman and Another [1962] 1 ALLER 442 at 445**, in support of his claim.

It was also the Applicant's case that the 1st Respondent was indebted to them following the award of the labour officer and at the time of execution the second Respondent informed the Bailiff that the 1st Respondent was no longer in existence and currently it was trading as Iran holdings, the 3rd Respondent. However a search established that the 1st Respondent was still in existence and the 2nd Respondent was a majority shareholder in it and he was also a director in the 3rd Respondent which was registered after the Applicants filed their complaint. The 3rd Respondent is situated in the same premises on 4 Jinja Road Madhvani building with the sign post in the 1st Respondent's name and are trading in the same goods imported in the name of the 1st Respondent.

According to him the 1st and 3rd Respondent were using the corporate personality to avoid liability to the judgement debt accrued. Therefore, it is absurd for the 2nd Respondent to argue against the inclusion of the 2nd and 3rd Respondent's in the application. He cited *John Lubega Matovu vs Mukwano Investments Ltd Miscellaneous Applications No. 156 of 2012*, which cited Lord Denning in *Bater vs Bater (1951)* cited in *Bullen & Leake & Jacobs Precedents of pleading 4th edition Vol2 at 809* for the same legal proposition, and *Salim Jamal & 2 others vs Uganda Oxygen Ltd & 2 Others [1997] 2 KARL 38*, in which it was held that corporate personality cannot be used as a cloak or mask for fraud.

He insisted that no evidence was adduced to show that the Respondent had applied to the labour officer to set aside the decree.

According to him this Court's jurisdiction to handle this application is premised on Section 34 (1) of the Civil Procedure Act which provides that

(1) All questions between the parties to a suit in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by separate suit.

Therefore, this Court had jurisdiction to hear an application for lifting the veil of incorporation and to handle execution of employment matters.

It was his submission that the 2nd Respondent's act of abandoning to appear before the labour officer and registering another company in which he is the majority shareholder and controlling director, connotes fraud on his part and therefore the corporate veil of the 1st Respondent ought to be lifted and the 2nd Respondent is held liable for the decretal sum of Ugx. 199,633, 332/- in respect of LD. 112, of 2018.

In reply Counsel for the Respondent contended that the application was premature because the decree is subject of an application filed before the labour officer seeking to set it aside. He insisted that the decree is contested, and although the file has not yet been forwarded to the labour officer by this court, by pursuing this application the applicants are perpetuating an injustice, therefore, it should be dismissed.

Counsel argued that this court has no Jurisdiction to handle this application, because it is a creature of statute whose jurisdiction and the remedies are clearly spelt out under the Employment Act and they did not include hearing company matters. He argued that lifting the veil was not a simple interlocutory matter nor

was proof of fraud. In his opinion evidence ought to have been heard to establish negligence and Fraud.

He went ahead to argue that whereas the application was based on fraud, the applicants had not pleaded any fraud, or called any evidence to prove it. He argued that the documents from the Registration Services Bureau which were attached to the record, simply show that the Companies exist, but they do not show any fraud.

Making reference to **DK Construction**(supra) and **Barclays Bank Uganda Limited**(supra), Counsel argued that whereas both cases referred to circumstances where Companies transacted with 3rd parties or the public as a mask, with the intention to hoodwink, in the instant case, the decree was not a transaction, and the claim was not for fraud, it was a claim for unlawful dismissal against the 1st Respondent which did not deny that it employed the Applicants. Counsel insisted that the Applicant's always knew that the 1st Respondent was a legitimate corporation, therefore they did not satisfy the requirements of Section 20 of the Companies Act 2012, because it is not intended for parties who have failed to execute a decree and besides the 2nd and 3rd Respondents were never party to the labour dispute.

He contended that section 34 of the CPA (supra) was misapplied because it did not mean that the Court handling the execution was mandated to apply section 20 of the Company's Act to lift the Veil. In his view the Applicant did not invoke the correct procedure for execution of decrees as established under section 38 of the Civil Procedure Act and lifting the veil was not part of that procedure.

He insisted that the application is premature because the Respondent contested the decree and an application to have it set aside has been filed before the labour Officer and it is waiting for court to forward the file to the labour officer.

RULING

We have considered the application, the evidence in support and against it and the submissions of both parties.

Before we proceed to resolve the application, we need to discuss the contention by learned Counsel for the Respondent, that this court has no jurisdiction to handle this application because it is a creature of statute whose jurisdiction is defined by the Employment Act 2006.

The Industrial Court is established under Section 7 of the Labour Disputes (Arbitration and Settlement) Act 2006 and its functions as prescribed under section 8 of the same Act are to;

“... ”

1) The Industrial Court shall-

a) arbitrate on labour disputes referred to it under the Act and

b) to adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law ...”

The Industrial Court is therefore not limited by the Employment Act, and it is dressed with jurisdiction to adjudicate any question of law or fact arising from references of labour disputes under the LADASA or any other law. Therefore, where the resolution of any labour dispute involves any other law, other than the Employment Act, LADASA, or any other related legislation, this court is not barred from applying or interpreting the law when resolving the said labour dispute. It should be noted that many employees are employed by Companies which are governed by the companies Act and are corporate bodies who can sue and be sued. It is therefore not unusual for the Companies Act to be invoked in resolving disputes between the Companies and their employees.

Section 2 of the Act defines a labour dispute to mean “... *any dispute or difference between an employer or employers and an employee or a dispute between employee; or between labour unions, connected with employment or non-employment, terms of employment, the conditions of labour of any person or of the economic and social interests of a worker or workers.*”

The basis of this application was a dispute arising out of the 1st Respondent, being a body corporate and an employer of the Applicant's, failing to pay them accrued wages, leave and other benefits. The matter was heard and disposed of by the Labour officer in accordance with the Employment Act. It was referred to the Industrial Court for execution. Section 16 of the LADASA, provides that shall “...*be enforceable in the same way as a decision in a civil matter in the High Court. ...*” Accordingly, all labour officers awards are referred to the Industrial Court for execution by the Registrar of the Industrial Court. Also see. **Mutawe Andrew Vs Sanlam General Insurance LD Miscn. Application 101/2016**). In the circumstances this Court has jurisdiction to resolve this application.

Section 34 (1) of the Civil Procedure Act which provides that:

“All questions between the parties to a suit in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by separate suit...”

The gist of this application as we comprehend it is that **the Corporate Veil of the 1st Respondent Iran Uganda Establishments should be lifted to enable the Applicant's realise the decretal sum from the 2nd Respondent Seyed Muhammed Ali, who purportedly transferred all the assets of the 1st Respondent to the 3rd Respondent.**

The Interpretation Section (2) of the Insolvency Act, 2011 provides that:

“ Lifting the Corporate veil means the power Court has where the shareholders or directors of a company in question have used their business to defraud creditors of the business or to do some other wrongful or illegal act and the court ignores the protection from liability by incorporation or limited liability status of the business and makes the shareholders or directors personally liable for the debts, liabilities and obligations of the company. ”

The Circumstances that would apply for a court to lift the corporate veil are set out under section 20 of the Companies Act, 2012, as follows:

“Where a company or its directors are involved in acts including tax evasion, fraud or where a single-member company, the membership of the company falls below the statutory minimum.”

In **HL Bolton Co. vs TJ Graham and sons**[1956] 3 ALLER 624, cited with approval by Madrama J, in **Stanbic Bank Uganda Ltd vs Ducat Lubricants (U) Ltd & 3 Ors (Misc. Application No. 845 of 2013)**,

Lord Denning held that;

“A Company in many ways may 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 the hands that do the work and cannot be said to represent the mind or will. Others are directors or managers who represent the directing minds 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 Criminal law in cases

where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or managers will render the Company themselves guilty.”

Therefore, Section 20 of the Companies Act can only be invoked where there is proof of the director's fraud. It is the Applicant's case that the 1st Respondent committed fraud by registering and transferring all the assets of the 1st Respondent to the 3rd Respondent, in which he is the majority shareholder and controlling director.

It is not disputed that the 1st Respondent did employ the Applicant's and an award was issued by the labour officer in their favour for the payment of their arrears. The Respondent however argued that they filed an application to set aside this decree, but they did not furnish court with evidence to that effect. Therefore, the decree is still in place until it is set aside. The Applicants therefore, have a right to execute the said decree.

The argument that the Applicants brought this application prematurely on the grounds that they did not follow the procedure as laid down under Section 38 of the Civil Procedure Act, does not hold because the application was made after the Bailiff, found that the 1st Respondent had no assets.

The Applicants assertion that that a search established that the 1st Respondent was still existent and the “2nd Respondent was a majority shareholder and director in the 3rd Respondent which was registered after the applicants complaint before the labour officer, and given that the 3rd Respondent was trading in the same premises as the 1st Respondent, situated on plot 4 Jinja road Madhvani building and trading in the same goods, under a different licence, warranted this court to lift its corporate veil so that the 2nd Respondent is held liable.

The search which the Applicants carried out at the Registration Services Bureau only confirmed the existence of the 1st and 3rd Respondents. Nothing in the

Reports indicated that there was any fraud carried out and none was pointed out to this court by the Applicants. It was not even apparent that the assets of the 3rd respondent were transferred by to it from the 1st respondent.

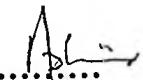
It is well settled that a Company having no traceable assets or having no assets is not a ground for lifting the veil (see **Post Bank Credit (in Liquidation) vs Nyamangu Holdings Ltd HCCCS No. 2285/1996 and Jimmy Mukasa Vs Tropical Investments Ltd &3 others, HCCS No. 232/2007**).

In the absence of evidence to prove fraud by the 2nd Respondent, we have no basis to grant this application. It is therefore dismissed with no order as to costs.

No order as to costs is made.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

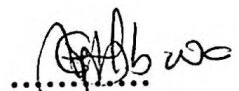
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PANELISTS

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DATE...29 / Apr / 2000