



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 285 OF 2009

PAUL STUART IMISONDECREE HOLDER

-VERSUS-

JODAD INVESTMENTS LTD..... JUDGMENT DEBTOR

RULING

1. As it often occurs in the courts, parties obtain judgment against a limited liability company and thereafter face an uphill task of executing that judgment. Sometimes this is due to deliberate attempts of the officers/ directors of the indebted company to do all to defeat the judgment obtained against the company.

2. Such is what has befallen Paul Stuart Imison (Paul). He obtained judgment against the defendant company Jodad Investments Limited (Jodad) on 9th June 2017 and to date he has been unable to find an asset owned by Jodad. An attachment by auctioneer of three vehicles, in execution of the judgment herein ended up with those vehicles being released following this court's Ruling of 8th December 2017 which found that those vehicles did not belong to Jodad.

3. It is in that background that Paul has filed the Notice of Motion application dated 15th August 2019. There are three substantive prayers in that application but only two will at this stage be entertained by this court. They are:

- *THAT summons do issue compelling one **CALVIN HAROLD COTTAR** and **LOUISE HELEN COTTAR**, the known Directors of the Judgment Debtor's Company **JODAD INVESTMENTS LIMITED**, to personally appear in court on such date as may be ordered or allocated.*
- *THAT the said Directors be ordered to produce the Judgment Debtor's books, papers, documents and/or evidence showing the affairs of the company. In default of such attendance and/or providing suitable means and assets for the satisfaction of the decree of the Honourable Court, the said Directors be jointly and/or severally held personally liable to satisfy the decree of the court in full.*

4. It is only after those two prayers have been entertained and the directors of Jodad, that is Calvin Harold Cottar and Louise Helen Cottar, will have produced the books of accounts of Jodad and after they are subjected to cross examination that I will consider the third prayer that is the one seeking the lifting of the corporate veil of Jodad.

5. It follows that the preliminary objection raised by the directors of Jodad is misconceived because at this point the court will not lift the corporate veil. Those directors also misapprehended the tenor of the Ruling dated 16th May 2019 because that was a Ruling on whether Paul could execute the decree herein by attaching an immovable property owned by a company known as Tekeleza Limited.

6. With the above discussion in mind I find that the Notice of Motion dated 15th August 2019 has merit in as far as it relates to the prayers set out above. This finding is based on the fact that Paul obtained judgment against Jodad which to date he has not been able to execute because he is unable to trace the assets of Jodad. That is what the production of books of account and cross examination of the directors of Jodad will assist in, that is tracing Jodad's assets.

7. The orders that commend themselves and which are the orders of this court are as follows:

*(a) Summons shall issue compelling **CALVIN HAROLD COTTAR** and **LOUISE HELEN COTTAR** as directors of **JODAD INVESTMENTS LIMITED** to appear before court on a date to be fixed at the reading of this Ruling.*

*(b) On the day **CALVIN HAROLD COTTAR** and **LOUISE HELEN COTTAR** will appear before court in obedience to the court's*

summons they shall produce all the books of accounts bank statement and any other documents relevant to revealing the assets of JODAD INVESTMENTS LIMITED.

(c) CALVIN HAROLD COTTAR and LOUISE HELEN COTTAR shall be cross examined by Paul Stuart Imison or his counsel with a view to ascertaining the assets of JODAD INVESTMENTS LIMITED.

(d) After that cross examination as set out in (c) above this court will make a determination on the prayer for the piercing of the corporate veil of JODAD INVESTMENTS LIMITED.

(e) Paul Stuart Imison is awarded costs of the Notice of Motion dated 15th August 2019 and the costs of the preliminary objection dated 29th October 2019.

DATED, SIGNED and DELIVERED at NAIROBI this 28th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **28th** day of **April, 2020**.

MARY KASANGO

JUDGE