



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 258 OF 2013

BAKEX MILLERS LIMITED.....PLAINTIFF

- VERSUS -

ESGEE INDUSTRIES LIMITED.....DEFENDANT

RULING

1. ***Bakex Millers Limited, the plaintiff*** decree holder herein, has judgment against ***Esgee Industries Limited, the defendant*** judgement debtor, for ***ksh 13,104,750*** with interest at 12% per annum from ***7th March 2013*** until payment in full.

2. The plaintiff by ***Notice of Motion*** dated ***23rd July 2014*** seeks the following prayers:

1. *The court do order **PIYUSH GULABCHAND SHAH** who is the Managing Director of the Defendant company to attend court and be orally examined on oath as to the assets and or means of the Defendant's company to satisfy the decree in favour of the plaintiff and to produce its books of accounts, bank statements and other accounting and financial documents.*

2. *In the event that the said Managing Director of the Defendant company namely **PIYUSH GULABCHAND SHAH** does not provide a satisfactory account after his examination, the corporate veil be lifted and the aforesaid be held personally liable to satisfy the decree herein.*

3. ***Order 22 Rule 35 of the Civil Procedure Rules***, under which the application is brought, provides:

“Where a decree is for the payment of money, the decree-holder may apply to the court for an order that-

a. The judgment-debtor;

b. In the case of a corporation, any officer thereof; or

c. Any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”

4. The plaintiff's director by his affidavit in support of the Notice of Motion deponed that after judgment was entered in favour of the plaintiff, on ***22nd May 2014***, warrants of attachment were issued for the attachment of the defendant's movable assets. ***Keyshian Auctioneers*** were allocated those warrants. ***Keyshian Auctioneers*** have to-date been unable to trace the defendant's movable assets and the defendant's company is reported to have closed down. It was deponed that despite the plaintiff's efforts to locate and attach the defendant's movable assets, in order to execute the decree, has been unsuccessful. It is on that ground that the plaintiff seeks to cross examine the defendant's managing director ***PIYUSH GULABCHAND SHAH***.

5. The public confidence in a legal system would be eroded if the courts were without power to enforce judgment. It is also true that the entry of judgment does not provide a litigant with the remedy sought from the court if there is no compliance. ***Order 22 of Rule 35*** empowers this court where a decree is a money decree, for the judgment debtor or in the case of a corporation an officer of the corporation to

be orally examined on the assets of the judgment debtor or the corporation. In this case the defendant is a corporate. The person that the plaintiff seeks to cross examine is the managing director of the defendant's company. Such examination no doubt will aid the plaintiff in execution of the judgment herein. The prayers sought by the plaintiff are merited.

6. Accordingly *I grant prayer 1 and 2* of the *Notice of Motion* dated *23rd July 2014*. The *plaintiff* is also *awarded costs* of that application.

DATED, SIGNED and DELIVERED at NAIROBI this 22nd day of May 2018.

MARY N. KASANGO

JUDGE

Ruling read in open court in the presence of

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendant