



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 23 OF 2013**

**NAIVAS LIMITED .....PLAINTIFF**

**- VERSUS -**

**NEWTON NYORO MUKUHA T/A GREENMART STORES.....DEFENDANT**

**GREENMART STORES LIMITED.....OBJECTOR**

**RULING**

1. The application before me was brought by **GREENMART STORES LIMITED**, an Objector.
2. The Objector told the court that the company was incorporated on 24<sup>th</sup> April 2009.
3. This court was provided with a Certificate of Incorporation for Greenmart Stores Limited, which was incorporated on 24<sup>th</sup> April 2009.
4. Following its incorporation, the Objector opened a supermarket at Kayole in Nairobi. The name of the said supermarket was said to be **GREENMART SUPERMARKET**.
5. Meanwhile, the plaintiff had obtained judgment against **NEWTON NYORO MUKUHA Trading As GREEN MART STORES**. Having obtained judgment, the plaintiff undertook execution of the Decree, culminating in the attachment of goods.
6. Although the Court Broker believed that he had attached the property of the Judgment – Debtor, the Objector has now come to court, laying claim to the ownership of the attached goods. It is in those circumstances that the Objector applied to this court for a stay of execution.
7. It was emphasized by the Objector that because the said Objector was a limited liability company, it existed as a separate entity from the Judgment – Debtor, **NEWTON NYORO MUKUHA**.
8. As the limited liability company was not the judgment – Debtor, the Objector submitted that it was wrong for the Court Broker to attach its property.
9. In answer to the application, the Decree – Holder submitted that the attachment was

proper because the goods which were attached, were found at the premises where the Judgment – Debtor carried on business.

10. If viewed from a superficial perspective, the submissions of the Objector appear to be attractive. I say so because, in law, a Limited Liability Company is definitely a separate legal entity from its Directors and Shareholders.

11. However, I have decided to delve deeper into the matter. I have done so because of the Replying Affidavit sworn by the Defendant on 30<sup>th</sup> October 2013, in which the defendant boldly asserted that he was a shareholder in the plaintiff company.

12. To my mind, that means that the plaintiff and the defendant were not strangers.

13. I also took note of the contents of the defendant's counter – claim, in which the defendant stated that the plaintiff, **NAIVAS LIMITED**, was a “*Family Business*”, which was established in or about the year 1990.

14. The point that I am emphasizing is that the defendant was laying claim to being closely associated with the plaintiff.

15. In his witness statement, the defendant alleged that although **NAIVAS LIMITED** started off as **RONGAI SELF SERVICE STORE**, in 1990, it was later fraudulently incorporated in 1993, as a limited company.

16. The defendant's story was that the said limited liability company was used as a vehicle for fraud, to deprive some beneficiaries of their inheritance.

17. From the response of the plaintiff, the defendant appears to have done the very thing which he was accusing some of his brothers of a doing earlier.

18. If there was ever a case in which there was a need to lift the corporate veil, this would be a classic example.

19. In the case of **MIEMA ENTERPRISES LIMITED VS NJOKA TANNERS LIMITED, MISC, CIVIL APPLICATION NO. 552 OF 2005**, Warsame J. (as he then was) expressed himself thus;

*“I am satisfied beyond doubt that the goods attached are the property of the Defendant disguised in a manner to defeat the claim of the plaintiff. It is my decision that the objection is based on distortion, deceit and deception, with a view to obstruct the cause of justice.*

*This court has the eyes, mind and ears to see through that deceit and deception”.*

20. Meanwhile, in the case of **CHART ENGINEERING ENTERPRISES LTD VS ATTRACTING SUPPLIES LTD HCCC NO. 406 OF 2008**, Koome J. (as she then was) said;

*“This court is well aware of the ancient rule founded on the case of Salmon Vs Salomon, that a company is a separate entity from its directors. In this case I find Geoffrey Githuka, who is a majority shareholder of the objector and being a director of the defendant with his wife, is deliberately and mischievously using the statute to run away from responsibility”.*

21. In similar vein, this court has seen through the deliberate and mischievous actions of **NEWTON NYORO MUKUHA**. He incurred debts in the name of the business that he was

running. But he also had incorporated a limited liability company, whose names closely resembled that of the defendant, **GREENMART STORES**.

22. The court declines the invitation of the Objector. Instead I find and hold that if the court stopped the process of execution, that would be tantamount to assisting the defendant run away from his legal obligations. I refuse to do so.

23. Therefore, the Objector's application dated 9<sup>th</sup> April 2014 is dismissed. The objector will pay the costs of the application to the plaintiff.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>th</sup> day of November 2014.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

.....for the Plaintiff

.....for the Defendant

.....for the Objector.

Collins Odhiambo – Court clerk.