



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Civil Suit 161 of 2012**

**LINUMAK INVESTMENTS LTD .....PLAINTIFF**

**VERSUS**

**DIAMOND SHIELD INTERNATIONAL LTD .....DEFENDANT**

**RULING**

The plaintiff's / applicant's application dated 27<sup>th</sup> March 2013 prays for:-

- a) **Orders of injunction to restrain one Joyce Wanjiru Mwaura the defendant Managing Director from transacting bank account number 01100983245809 held at Co-operative Bank Thika Branch.**
- b) **To lift the Corporate veil of the defendant company and allow the plaintiff to execute directly against the Directors of the Company including Joyce Wanjiru Mwaura.**
- c) **That being in breach of the consent, order dated 30th October 2013 Joyce Wanjiru Mwaura be committed to Civil jail for a period of six (6) months.**

The application is supported by the affidavit of **Jared Ochieng** the plaintiffs Managing Director. The respondent on the other hand has not filed any objection to the application.

At the prosecution of the said application **Mr. Ojuro** learned Counsel of the applicant reiterated the contents of **Mr. Ochieng's** affidavit and went further to add that Joyce Wanjiru Mwaura the respondent's director has perpetuated fraud and cannot therefore enjoy the protection of the law and in particular the distinction between the company and the directors as envisaged by the Company's Act.

**Mr. Ojuro** relied heavily on the celebrated case of **Salomon =vs= Salomon & Company Ltd 1897 (A. C. 22 (H.L))**

He argued that the said director has frustrated all the efforts so far made by the applicant in recovering the debt and that she still operates an account at Thika Co-operative Bank Branch despite the consent order of 30<sup>th</sup> October 2012.

**Mr. Anyumba** for the defendant / respondent whose application for adjournment I had earlier own disallowed argued that lifting of the corporate veil is a fundamental issue and that the same ought to be done in clearest of circumstances. He argued that this application ought to be disallowed.

I have carefully listen to the parties herein as well as perused the application. I note that the

defendant failed to respond to the application despite being granted sufficient time to do so. The issues raised are indeed weighty and it would have been appropriate for the defendant to have filed an appropriate response if any. In the absence of any response I do not find any difficulty in granting the applicant's request.

Further I do note with grave concern that despite the consent order dated 30<sup>th</sup> October 2012 the respondent has completely dishonoured without any sufficient reason or at all.

From the circumstances obtaining herein I do not see any good faith exhibited by the defendant or its directors. I can safely conclude that the sole intention is to defeat the applicant's prospects of recovering its dues.

For the foregoing reason I do allow the application in terms of prayer 2, and 3 with costs to the applicant. This order to apply to file number Kisumu HCCC 163 of 2012.

**Dated, signed and delivered at Kisumu this 26<sup>th</sup> day of April 2013**

**H. K. CHEMITEI  
JUDGE**

**In the presence of:**

.....Plaintiff

..... Defendant

*HKC/ao*