



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Case 455 of 1999**

**ANIL WALIA.....PLAINTIFF**

**VERSUS**

**VIJAY VIR SINGH.....1<sup>ST</sup> DEFENDANT**

**ST. ANN GIRLS SEC. SCHOOL LTD.....2<sup>ND</sup> DEFENDANT**

**AND**

**PINE BREEZE HOSPITAL LTD.....1<sup>ST</sup> OBJECTOR**

**ST. MICHAEL'S HIGH SCHOOL LTD.....2<sup>ND</sup> OBJECTOR**

**RULING**

These are objection proceedings brought by Pine Breeze Hospital Ltd and St. Michael's High School Ltd (the Objectors) under Order 21 Rules 56 and 57 of the Civil Procedure Rules. They seek orders that the deceased has no real or moveable property within the objectors' companies capable of being valued, attached and sold by the decree holder and that the decree holder's application for access into the objectors' property is unlawful.

The application is based on the grounds that the properties the decree holder seeks to attach belong to the objectors who are not parties to this suit. The objectors being limited liability companies, their shareholders including the deceased in this case have no assets in their companies.

Basing himself on the averments in the affidavit in support of the application by Rita Walia, a director of both companies who is also the deceased's widow, Mr. Waiganjo for the Objectors submitted that in his application for execution the decree holder seeks to sell the deceased's shares and the assets attached to them in the Objector Companies. Companies being legal entities separate from their shareholders, the deceased has no assets in the Objector Companies capable of being attached. They cited the cases of **Salomon Vs Salomon & Co. Ltd (1897) AC 22** and **Omondi Vs National Bank of Kenya Ltd & Others [2001] EA 175 (CAK)** in support of that proposition.

Besides that bar, counsel said even the deceased's shares in the Objector Companies cannot be sold in

execution of the decree herein. He said this is because the Articles of Association set out in Table A Part II of the First Schedule of the Companies Act which have been adopted by the Objector Companies forbid the sale of their shares to third parties without the approval of their respective Boards of directors of share holders. As the shareholders of those companies strongly oppose the sale of the deceased's shares in execution of the decree herein, he said the court's hands are tied and it has to allow this application.

Opposing the application, Mr. Karanja for the decree holder submitted the Objectors have no proprietary interest in the deceased's shares. They have therefore no *locus standi* to object to the attachment of his shares. Consequently, this application is bad in law and should be struck out.

It is not in dispute that Anil Walia, the decree holder and the plaintiff in this suit, has a decree of Kshs.9,103,767/= against the defendants in this suit. Unable to execute it he discovered that the 1<sup>st</sup> defendant, the late Vijay Vir Singh (the deceased) has one share in Pine Breeze Hospital Ltd and 24,533 shares in St. Michael's High School Ltd. When the decree holder applied to attach those shares the two companies filed these objection proceedings.

I am in complete agreement with the decision in the *locus classicus* case of Salomon Vs Salomon & Co. Ltd (1897) AC 22. It is a basic principle of company law that the company has a distinct and separate legal personality from its shareholders and directors even where the directors happen to be the sole shareholders. Apart from their shares, shareholders have no proprietary interest in the company's assets. The decree holder in this case cannot therefore attach the assets of the Objectors.

However, shares and securities are assets capable of being attached in execution of decrees. Any provisions in the Articles of Association of a company restricting the sale of shares to third parties can never be a bar to attachment and sale of shares in execution of court decrees. See *Caneland Ltd Vs Dolphin Holdings Ltd & Another* [1999] 1 EA 29. A decree holder or purchaser does not therefore require the authority of the directors or shareholders of such company to sell or buy shares in it. If such restriction were to be a bar, the provisions of Order 21 Rules 67 and 70(3) of the Civil Procedure Rules would be superfluous.

I disagree with Mr. Waiganjo that the decree holder is seeking to attach the assets of the Objectors. What he seeks to attach are the deceased's shares. What I think is objectionable, and to that extent I think the Objectors have a point, is the way the decree holder is going about doing that. The advertisement that it is the shares together with the assets attached to them is obviously wrong.

The Objectors' shares are admittedly not listed in the Stock Exchange. The invitation to prospective purchasers to view the Objectors' assets for purposes of ascertaining what the shares are worthy is, in my view, perfectly in order, otherwise how will the prospective purchaser know what the shares are worth?

As long as the viewing is done in an orderly manner and with prior consultation with the Objectors' officers who should in any case co-operate, there should be no problem.

For these reasons I dismiss this application. As to costs, the decree holder having adopted a wrong mode of attaching the shares, I order that each party bears its own costs.

DATED and DELIVERED at Nakuru this 9<sup>th</sup> day of June, 2010.

**D. K. MARAGA**

**JUDGE.**