REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1285 of 1999

VIVIEN WENDY OYIER …….....
…….PLAINTIFF

VERSUS

JUMA MOHAMED …….....…….1ST DEFENDANT

MOMBASA LINERS TRANSPORT COMPANY ….....2ND DEFENDANT

AND

OCEAN BUS WORLD …….....…….1ST OBJECTOR/APPLICANT

MOMBASA COASLINE LTD. ….....……2ND OBJECTOR/APPLICANT

RULING

The applicant applies for an order of review of my order of the 13th April, 2005 by his application of the 19/9/2005.

It is not alleged that any new or important matter or evidence has been discovered which after due diligence was not within the Applicant's knowledge or that there is some mistake or error apparent on the face of the record.

What is alleged is that the order was made in the absence of the Applicant who it is contended should have been summoned for cross examination and given a chance to defend himself.

The order of 13th April 2005 was made after the advocate for the Respondent sought an adjournment which was refused and the matter proceeded on the basis that the application was not opposed. The application was dated the 9.12.2004 and was fixed for hearing on the 13.4.2005 filed on the 21.1.2005. No ground of opposition or replying affidavit was filed.

Miss Omondi for the applicant submitted that as the applicants were not parties to the proceedings no

orders could be made against them. She relied on the case of **Garden Square Ltd v Kogo & another** in which the learned Judge found as in the famous case of **Salomon v Salomon,** a member of a company is not liable for its corporate debts.

In the present case, an application was made to lift the corporate veil to find the Applicants in this application personally liable. That order was made. That is not, however, an issue now as the order has been made.

In the case of **Pop In (Kenya) Ltd & others v Habib Bank A.G. Zurich CA. No.80 of 1988** the learned court of appeal cited with approval the following passage from **Hoystead & others vs Taxation Commissioner (1925) ALL E.R. (Rep) 56 at page 62:-**

"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances…It is a principle of law that this cannot be permitted."

If it is wrong then the Applicant's remedy is to appeal against it.

See **Nyamogo & Nyamogo advocates v Kogo CA No.322 of 2000** where the learned Court of Appeal cited with approval the following passage from **Air Commentaries on the code of Civil Procedure** by **Chitaley & Rao (4th Edition), Vol.3, page 3227:-**

"**A point which may be a good ground of appeal may not be a ground for an application for review. Thus, an erroneous view of evidence or of law is no ground for a review though it may be a good ground for an appeal."**

The order was not made exparte but interpartes the applicant not making any representations as to why the order should not be made. I cannot see that any good grounds to review my order have been made and therefore dismiss this application with costs.

Dated and delivered at Nairobi this 27th day of February, 2006.

P. J. RANSLEY

JUDGE