

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 279 of 2000

ELOF HANSSONPLAINTIFF

VERSUS

JETHA & SONS LIMITEDDEFENDANT

RULING

An application was made by the decree holder dated 16th October, 2005 whereby the decree holder sought the committal to civil jail of the Director of the Judgement-debtor. The basis of that application was that the said director had failed despite court orders to supply books of accounts of the judgement-debtor company. The court delivered a partial ruling of that application on 30th November, 2005. The court required the said director to supply books of accounts, details of the debtors of the judgement-debtor, audited accounts and income returns. Those were to be attached to an affidavit which the director was required to file within 7 days. The decree holder came before court on 17th October, 2006 to further argue its application dated 16th October, 2005 seeking the arrest of the director of the judgement-debtor company. The decree holder's counsel submitted that the director failed to file the affidavit within the time ordered by the court. The affidavit was filed on 16th December, 2005. Decree holder stated that the director failed to get leave of the court to file the affidavit out of time. Further he stated that the affidavit failed to comply with the orders of 30th November, 2005 in that director failed to give particulars and addresses of the debtor's of the judgement debtor's company. The un-audited accounts that were supplied were not in compliant with the order of the court. The director supplied income tax returns of the judgement debtor company for the period 1994 – 1997 yet the judgement debtor company traded up to the year 2000. In regard to banking details the director merely gave the name of the bankers of the judgement debtor company but did not supply bank statements. The application was opposed by the counsel on behalf of the director. The counsel stated that the affidavit was filed later than ordered because of unavailability of the deponent. He submitted that the plaintiff would not suffer any prejudice from that delay and in case that once such an affidavit was filed the court was mandated to look at it and consider the same. The director's counsel further submitted that the decree holder could not move the court summarily seeking the committal of the judgement debtor director.

In response to the decree holder's counsel's arguments, the director's counsel stated that the decree holder had been supplied with names of judgement debtor's bankers and the decree holder had not stated that it was unable to trace those accounts. Similarly he stated that the debtor's list was supplied. In regard to un-audited accounts it was argued that there is no legal format of accounts that ought to be supplied. The director's counsel stated that what the decree holder should be seeking to do is to cross examine the director rather than to seek judgement against him. In so cross examining the director the decree holder would be seeking to find out whether the judgement debtor company has things that can be attached in satisfaction of the judgement obtained against it. The director's counsel was of the view that the orders that were sought by decree holder cannot be obtained from the court under the application brought by the decree holder. That at the most the court could do is to seek the attendance of the judgement debtor's director for cross examination. That the rule under which the application is brought does not allow court to go further than that. He stated that it was important for the court to appreciate that there was no decree against the director which the court could executed against him.

The court has considered those arguments and others that do not necessarily appear in this ruling. It is obvious that the director of the judgement debtor company has indeed not complied totally with the order of the court made by its ruling of 30th November, 2005. As it has been said before by this court it does seem the intent of the said director to take the court in circles without necessarily providing the information required and it does seem that the said director does not wish to give the assistant require in regard to the proposed examination. That as it may be the court is of the view that the decree holder should proceed with the documents so far provided with the cross examination of the said director before the Deputy Registrar. It is only after such cross examination that the decree holder would be at liberty to appropriately move this court, if it so desires, in relation to the lifting of the veil and to proceed against the said director. Accordingly this court's order is that this matter be mentioned before the Chief Magistrate of Milimani Commercial Court in her capacity as the Deputy Registrar with a view to fixing a date for cross examination of the judgement debtor director Mr. Dinesh Kumar Sojpal Jetha. That being the order of the court the application dated 16th October, 2005 is now spent. The costs of that application in view of Mr. Jetha's obvious and blatant disregard of this court's order shall be borne by Mr. Jetha personally. This court assesses those costs at Kshs.20,000/= and this shall be payable by the said Mr. Dinesh Kumar Sojpal Jetha within 7 days from this date hereof and failure to so pay the decree holder may proceed to execute the same against him personally. At the reading of this ruling a mention date will be given for parties to appear before the Deputy Registrar as stated hereinbefore. Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered this 21st day of November, 2006.

MARY KASANGO

JUDGE