



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT 171 OF 2003**

**TERMCOTANK KENYA LIMITED.....PLAINTIFF**

**- Versus -**

**ASSOCIATED BITUMEN LTD..... DEFENDANT**

**R U L I N G**

This is an application by the plaintiff decree holder under Order 21 Rules 36, 41, 67 and 70 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. It seeks inter alia orders that the directors of the company, one Tarlok Singh (Papa), one Paramjit Singh and one Ranjit Singh (Lalla) do attend court and be examined as to the company's means of settling the decree and that the said directors be held jointly and severally liable to personally satisfy the decree herein.

The application was served upon the said directors but they did not appear to be examined or to oppose the application. Instead two of them, Paramjit Singh Viridi and Tarlok Singh Viridi, applied for stay of the order requiring them to personally attend court to be examined. They did not even prosecute that application.

When the application for the examination of directors came up for hearing before me on 9th June 2005 at about 9.00 a.m. Mr. Musyoki who held brief for M/s Simani & Co. Advocates requested that the file be placed aside upto 11.00 a.m. as someone was coming from M/s Simani & Co. Advocates to argue the application. The court obliged him but nobody came. Instead Mr. Musyoki turned up again at 11.20 a.m. when Mr. Omondi had virtually completed arguing his client's application that the named directors be held personally liable to settle the decree. Mr. Musyoki informed the court that he had instructions to record a consent the terms of which counsel for the decree holder did not approve. The court adjourned the matter to the following day to give the parties time to discuss and if possible reach a settlement but now was reached. In fact on that following day neither Mr. Musyoki nor anybody from the firm of M/s Simani & Co. Advocates appeared.

So what I have before me is an unopposed application. Mr. Omondi argued that the said directors have been given an opportunity to appear but they have ignored to come to court.

The objective of the examination of the directors or officers of a company under Order 21 Rule 36 is to establish whether the company has property or means of satisfying the decree. It is also intended to establish whether or not the business of the company is being conducted fraudulently. Where it is shown that the corporate personality is being used as a mask for fraud or improper conduct the corporate veil will be pierced and the officers of the company will be held personally liable.

In this case the directors have refused to come to court for the examination. What is the court to make of such conduct? The presumption the court should make in such a situation is that the directors have no regard for the court process and that there is something about the conduct of the affairs of their company which they wish to conceal from the public eye. In the circumstances I grant the decree holders application and order that the said directors of the defendant company are personally liable to settle the decree herein. The decree holder shall have the costs of this application to be paid by the said directors.

**DATED and delivered this 17th day of June 2005.**

**D.K. MARAGA**

**JUDGE**