

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NO. 279 OF 2000

ELOF HANSSONJUDGMENT/CREDITOR

VERSUS

JETHA & SONS LIMITEDJUDGMENT/DEBTOR

R U L I N G

The application the subject of this ruling is dated 21st October 2004. The same is brought under Section 3A of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules.

The application seeks the lifting of the suspension of the warrant of arrest against Mr. Dinesh Kumar Sojpal Jetha. The warrant of arrest had been issued by this court on 3rd November 2003 against Mr. Jetha, the director of the judgment debtor.

The submissions made before me make it very clear that the director of the judgment debtor company has failed to produce the books of account that would be necessary for an examination to be carried out under Order 21 rule 36 of the Civil Procedure Rules.

Mr. Ochuo for the director submitted that the books of account were held by various banks who had failed to provide them to the director. The plaintiff counsel submitted that it is not enough for the director to attend examination but it was necessary that he supply the books that are necessary for cross-examination. The argument by the director's counsel that the present application is res judicata is rejected because the record bears it out very clearly that the plaintiff sought direction in view of the director's failure, and the court directed the deputy registrar to conduct the examination of the director and if the director failed to supply documents necessary for that examination the Deputy Registrar was to make appropriate orders.

The Deputy Registrar on the matter being referred to her stated in part: *"I confirm that judgment debtor has not complied with the order of 3rd May 2004 and hence the oral examination cannot proceed today"*

I also reject the submission by Mr. Ochuo that the correct application by the plaintiff ought to have been one for review. It is quite clear that the director of the judgment debtor is intending to frustrate the plaintiff in realizing its fruits of judgment; the court will refuse to be used in that manner and will rise up against such attempts by granting the plaintiff the prayers sought.

The conduct of the director through out the proceeding of this matter is at the most bordering on being contemptuous to the order of this court, and he has perpetuated the doctrine of corporate personality to frustrate the plaintiff decree holder. It ought to be noted that the courts will not shy away from exercising the power available to it to lift the corporate veil if the corporate personality is being used as a mask for fraud or improper conduct. The end result is that this court grants the following orders: -

- (1) That the suspension of the Warrant of Arrest against DINESH KUMAR SOJPAL JETHA is hereby lifted.
- (2) That the plaintiff is granted the costs of the application dated 21st October 2004.

Dated and delivered this 20th December 2004.

MARY KASANGO

JUDGE