

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CASE NO 499 OF 2001

PETER MURIGI NJIRWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The applicant is a director of Njilux Motors limited, a limited Liability company dealing with buying and selling of new and used cars. He now faces a criminal charge of theft by agent in his individual capacity.

It is conceded by the investigating officer that one Ephantus Njeru Ireri appointed Njilux Motors limited as commission agents to sell m/v Reg. No. KAH 806K which belonged to his (Njeru's) wife.

The said motor vehicle was sold but Njilux motors had failed to remit the purchase price less its commission to the owner of the motor vehicle. One Loice Wanjira Njeru, the owner of the motor vehicle made a complaint that led to the filing of the charge against the applicant. The applicant now contends that he is not criminally liable for the acts of a company with limited liability.

I have considered the nature of the transaction, the contents of the material placed before me and the law applicable.

Inspector of police Hamad Mbwana is right in his averment that where there is a fraudulent transaction conducted by the company the corporate veil is lifted so as to hold the director(s) of the company personally liable. And this is the turning point

The criminal charge is against the applicant alone. How many directors there are in this company we are not told. Most important however is that, the veil of incorporation must be raised first before the charge is laid against the director(s). That veil can only be raised by an application to the court because in the first place it is conferred by statute.

Before that step is taken, the charge cannot be filed. And therefore, even if the applicant is delaying an obvious eventuality, the law must follow its course. If allowed to proceed, the criminal charge may lead to miscarriage of justice. The Republic has to make a choice.

In view of the foregoing the order of prohibition is hereby issued as prayed. It is so ordered.

Dated and delivered at Nairobi this 20th day of September, 2001

A. MBOGHOLI MSAGHA

JUDGE