



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCCC. NO. 509 OF 2013

VIMAL VELJI SHAH.....APPLICANT/DECREE HOLDER

VERSUS

CHEMAFRICA LIMITED.....1ST RESPONDENT/JUDGMENT DEBTOR

SRUNGARAPU RAJA SEKHAH...2ND RESPONDENT/JUDGMENT DEBTOR

SATHYA NARAYANA VASU..... 3RD RESPONDENT/JUDGMENT DEBTOR

VENKAJESWAR RAO.....4TH RESPONDENT/JUDGMENT DEBTOR

SWASTHIKA INVESTORS

LIMITED.....5TH RESPONDENT/JUDGMENT DEBTOR

BABA ENTERPRISES

LIMITED.....6TH RESPONDENT/JUDGMENT DEBTOR

RULING

1. This Court is not certain that the Decree holder herein has appreciated the efficacy of the provisions of Order 22 Rule 35 of the Civil Procedure Rules in respect to a corporation:-

[Order 22. r. 35]. Where a decree is for the payment of money, the decree-holder may apply to the court for an order that— (a) the judgment-debtor; (b) in the case of a corporation, any officer thereof; or (c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.

2. The orders that can be granted upon the oral examination of an officer of a corporation under this Rule is the lifting of the veil of incorporation. As stated by Kimaru J in Masefield Trading (K) Ltd vs Rushmore Company Limited & 2 others:-

“I think the above rule grants this court jurisdiction to summon any officer of a company to attend court so that he may be examined on the assets and means of the company to settle the sum decreed to be paid by the company. By examining such an officer, the court may or may not lift the veil of incorporation”.

3. Before this Court is an application dated 16th October 2017 by the Decree holder for the following substantive prayers:-

1. That the Directors of the Judgment Debtor company, the 1st Respondent herein, be orally examined on the assets of the Judgment debtor company and the said Directors be compelled to produce all the books, accounts and all other relevant materials relating to the said company for examination by the Decree holder.

2. That in default of the said Directors producing the books, accounts and all other relevant materials and in default their satisfying

the Court as to the whereabouts of the assets of the company the said Directors be committed to civil jail for such a period as this Honourable Court may deem fit and just.

4. The prayer for oral examination of the directors of the Judgment debtor Company is spent because Abotula Venkata Sathya Narayana Vasu, a director of Company, was orally examined before Court on 8th July 2019.

5. A consequent step would be for the Applicant to seek that the veil of incorporation of the Defendant Company be lifted. Only upon grant of such order can the directors or shareholders of the Company be pursued to answer the judgment debt by whichever means of execution that the Decree Holder may elect.

6. Instead, the Decree Holder has sought that the directors of the Company be committed to civil jail. That is to jump the gun.

7. The Court is unable to make such a drastic order as piercing of the corporate veil in the absence of a specific request for such order! The Notice of Motion of 16th October 2017 is not grantable as prayed and is hereby struck out with costs.

Dated, Signed and Delivered in Court at Nairobi this 14th Day of February 2020

F. TUIYOTT

JUDGE

PRESENT:

Ouma for Wanjeri for Respondent

Oweya for the Applicant

Court Assistant: Nixon