



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. 896 OF 2009

GARDEN CHAMBERS LIMITED.....PLAINTIFF

-VERSUS-

RAMABEN RAMNIKLAL PATANI.....1ST DEFENDANT

ASHIT RAMNIKLAL PATANI.....2ND DEFENDANT

SELINA RAMNIKLAL PATANI.....3RD DEFENDANT

RULING

1. This ruling is a sequel to the court's ruling delivered on 30th September 2019 in respect to the notice of motion dated 8th November 2018 wherein the applicants sought orders that:

1. That the respondent/Judgment Debtor's officers, Directors, Manager and/or any of the company officials do appear personally before this Honourable court to be orally examined as to whether the judgment – debtor has any property or means of satisfying the decree herein.

2. That the Judgment Debtor's officers, Directors, Managers and any other person be compelled to attend and appear before this Honourable Court and produce such all and any book of accounts and documents relating to operations of the respondent company between the years 2008 to date and be orally examined as to its means of satisfy the decree herein.

3. That DHIRAJLAL V. PATANI being the Managing Director of the judgment Debtor/respondent and is hereby summoned to appear for cross examination and production of the respondent's records together with the company bank statements and his personal bank statements as stated above.

4. That in default of appearance and/or in failure to such reasonable circumstances as may be deemed fit, the said director named herein above be deemed personally liable to settle the claim herein and warrants of attachments do issue against him personally.

2. In the said ruling, this court held in part as follows :

“28. In the instant case, I am not satisfied that any material has been placed before me to support the lifting of the corporate veil against the named director. The named director has not been shown to have participated in any fraudulent acts or underhand dealings within the company so as to warrant his being held personally liable for the debts of the company. In any event, the company has been shown to have been a family business in which several family members, including the applicants herein were beneficiaries. In the circumstances of this case, I find that if there are any debts or liabilities, arising under circumstances that would warrant the lifting of the corporate veil, then it would only be fair and just that the same be shared among the all directors/shareholders rather than holding only one director liable.

29. Accordingly, allow the instant application, albeit partly, and only to the extent that Mr. Dhirajlal V. Patani attends court for examination as stated earlier in this ruling. I reiterate that having found that there is no material to support the lifting of the veil, I decline to grant prayer No. 4 of the application.”

3. In response to the aforesaid ruling, the plaintiff's Director, **Dhirajlal V. Patani**, attended court on 5th December 2019 for cross examination. His testimony was that the plaintiff company filed the suit that gave rise to the costs that are the subject of these proceedings in

2009 but that the only property owned by the company was sold off. He stated that all the company records got lost and that he could not remember the company's bank account number held with the Bank of Baroda.

4. He confirmed that he is aware that the company was ordered to pay costs of Kshs 400,000 but added that the company has not been in operation since 2009 and had not filed any tax returns for the entire period.

5. He reiterated that all the company's records got lost at the time the building on which the company operated was forcefully taken over by its new owners. He further stated that he was the only surviving director of the company following the demise of the three other directors.

6. He confirmed that the company has been dormant since the year 2009. He testified that the company was not engaged in any other business except the management of the building which was sold and proceeds shared among the four directors after which the bank account was closed.

7. I have considered the testimony of the plaintiff's only surviving Director Mr. Patani. I observed his demeanor and he struck me as a candid witness who was willing to state the true position of the affairs of the plaintiff company. His case was that the company has been dormant since the year 2009 and that its bank account had been closed following the sale of its only asset. This court is of the view that this is a clear case where the company folded up its operations almost a decade ago and has no means of settling the costs awarded to the plaintiffs.

8. As I had already found in my earlier ruling, I find that no reasons have been advanced to support the lifting of the corporate veil so as to hold the surviving director personally liable for the costs awarded to the applicants. This court notes that the Directors testimony that the company has not been in operation for more than 10 years has not been controverted by the applicants.

9. Having regard to my findings in this ruling and the earlier ruling of 30th September 2019, I find that this is a matter where the loss should lie where it falls, in which case, I find that the plaintiff Director cannot be personally held liable for the costs.

10. I make no orders as to costs.

Dated, signed and delivered via Microsoft Teams at Nairobi this 5th day of June 2020 in view of the declaration of measures restricting court operations due to Coved -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the absence of:

Mr. Omondi for Gachie for Defendant/Applicant

No appearance for plaintiff.

C/A & DR – Hon. Wanyama