



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL APPEAL NO. 144 OF 2013**

***(Being an appeal from the Ruling of Hon. S. Gacheru – PM in Mombasa RMCC No. 175 of 2011 between Tropical Pharmaceuticals Ltd –Vs- Munawar Pharmaceuticals Ltd and Hussein Juma Hussein delivered on the 11<sup>th</sup> day of October, 2013)***

**HUSSEIN JUMA HUSSEIN ..... APPELLANT**

**V E R S U S**

**TROPICAL PHARMACEUTICALS LTD ..... 1<sup>ST</sup> RESPONDENT**

**AND**

**MUNAWAR PHARMACEUTICALS LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. An appeal has been filed in this matter against the Ruling of Hon. S. Gacheru – PM in **Mombasa RMCCC No. 175 of 2011** delivered on 11<sup>th</sup> October 2013.
2. Pending the hearing of this appeal Appellant filed a Notice of Motion dated 11<sup>th</sup> December 2013. By that application Appellant seeks to stay proceedings in **RMCCC No. 175 of 2011**. The Respondent was served through the firm of Godfrey Mutubia & Co. Advocates but on 13<sup>th</sup> March 2014 when the application came before Court for hearing the Respondents were not represented.
3. Since there were no counter arguments presented before me I shall proceed to set out the findings that I have made.
4. The 1<sup>st</sup> Respondent is the Plaintiff while the 2<sup>nd</sup> Respondent is the Defendant in **RMCCC NO. 175 of 2011**. 1<sup>st</sup> Respondent obtained judgment against 2<sup>nd</sup> Respondent. When that judgment amount remained unsatisfied 1<sup>st</sup> Respondent filed in the lower Court Notice of Motion dated 21<sup>st</sup> November 2012 brought under Order 22 rule 35(b) of the Civil Procedure Rules. By that application 1<sup>st</sup> Respondent sought to have Appellant, Hussein Juma Hussein summoned as a Director of 2<sup>nd</sup> Respondent to be examined on whether 2<sup>nd</sup> Respondent has property which could satisfy the judgment.
5. Appellant filed a Preliminary Objection to that application stating that the Court had no jurisdiction to lift the corporate veil of a limited liability company. The lower Court delivered its Ruling on 11<sup>th</sup> October 2013 dismissing the Preliminary Objection which Ruling is the subject of

this appeal. A copy of that Ruling was not provided to this Court.

6. Appellant by his present application seeks to stay proceedings in **RMCCC NO. 175 of 2011**. Is there a basis for seeking that stay? In my view the answer is in the negative. 1<sup>st</sup> Respondent's application sought to have Appellant, who is alleged to be Director of the 2<sup>nd</sup> Respondent to be examined on the property, if any, the 2<sup>nd</sup> Respondent owns, which property can satisfy judgment obtained by 1<sup>st</sup> Respondent. Appellant failed to halt the hearing of that application by his Preliminary Objection. That application for examination of Appellant was brought under Order 22 Rule 35 of the Civil Procedure Rules. That Rule provides that an Officer of Corporation may be examined on whether the Corporation has property that can satisfy judgment. The Rule is in the following terms-

**“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.”**
7. Without wishing in any way to pre-empt the pending appeal, there is nothing in that Rule that permits the lifting of a Corporation's veil. It does, on prima facie basis, seem as though the application seemed to simply have Appellant examined as an Officer of 2<sup>nd</sup> Respondent. There is, therefore, no basis that I can see why the proceedings of the lower Court should be stayed pending the present appeal. Even if there was a basis to stay, the only thing that could be stayed is the application for examination of the Appellant as an officer of 2<sup>nd</sup> Respondent, but not the stay of the whole suit in the lower Court.
8. In view of the above the Notice of Motion dated 11<sup>th</sup> December 2013 is dismissed with no orders as to costs.

**DATED and DELIVERED at MOMBASA this 15<sup>TH</sup> day of MAY, 2014.**

**MARY KASANGO**

**JUDGE**