



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO.738 OF 2017

VELOS ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

PARAGON ELECTRONICS LIMITED....DEFENDANT

RULING

In the application dated 15/8/2018, the Plaintiff seeks leave to join Ramesh Jayantilal Sheth, Ashok Jayantilal Sheth, Jatinder Singh Mehta and Ravinder Singh Mehta to this suit as the 2nd, 3rd, 4th and 5th Defendants respectively. It also seeks leave to amend the plaint and an order that the amended plaint be deemed as served and that the 1st Defendants be directed to file their amended defence within 14 days of the order. The Plaintiff also seeks directions on whether the original Defendant should be served with the amended copies of the summons and the plaint.

The application was based on the main ground that after the Plaintiff filed this suit on 25 /11/015, it established that the Defendant's directors, who it proposes to add as Defendants were directly and actively involved in the perpetuation of malicious acts and wrongful eviction giving rise to the cause of action in the suit, hence they are liable to the Plaintiff.

The application was supported by the Affidavit of Bulent Gulbahar, a director of the Plaintiff, who deponed that the proposed Defendants were Directors of the Defendant at all material times leading to the suit. He annexed a copy of the Defendant's CR12 and annual returns for the years 2009 and 2010 and averred that the proposed Defendants perpetuated the malicious acts that led to the Plaintiff's wrongful eviction from the Suit Property. He attached copies of police statements made by Sarah Maina, Principal Land Registration Officer at Ardhi House and S.G. Mwangi, a surveyor, which statements are stated to have been obtained by the deponent from the police officers who were investigating fraud on the part of the proposed Defendants. The deponent further set out instances where the proposed Defendants are said to have personally acted maliciously and fraudulently. These allegations include maliciously blocking the sewer line and cutting off power and water supply to the Plaintiff's property. He annexed a copy of the proceedings in **HCCC NO. 289 of 2009** consolidated with **HCCC No.285 of 2010**, from which he inferred that the directors perjured themselves during cross-examination. He further deponed that the Defendant is no longer operating normally as its business has been crippled and there is real risk that the Defendant may go into liquidation and the directors may otherwise jettison the company thereby leaving the Plaintiff with no recourse for the illegal acts done by the Defendant's directors using the company as a vehicle.

The Defendant opposed the application through the replying affidavit sworn on 30/8/2018 by Jameshchandra Jayantilal Sheth, one of the directors of the Defendant. He swore that the Defendant does not intend to liquidate its property and that it is prejudiced because it cannot collect rent from its premises, following a garnishee order nisi issued against it. He attached a copy of the order issued in

HCCC No. 289 of 2009. He further deponed that the actions of the proposed Defendants were done in their capacity as directors of the Defendant and thus liability can only attach as against the Defendant and not its directors or officers.

The court has considered the application, the affidavits and the annexures as well as the submissions of parties. Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or *suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.

In **JMK Vs MWM & Another [2015] eKLR**, the Court of Appeal sitting at Malindi cited the case of **Central Kenya Ltd. V. Trust Bank & 4 Others, CA NO. 222 OF 1998** with approval, which affirmed that the guiding principle in amendment of pleadings and joinder of parties is that all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated by costs.

In this case the parties proposed to be joined as parties are directors of the Defendant. Since the decision in **Salomon and Salomon and Co. Ltd (1897) A.C. 22 HL**, courts have upheld the doctrine of the separate corporate entity of the company from its shareholders and the limited liability of a company. The courts have lifted the corporate veil where there is evidence that the corporate veil is being used to shield fraud and improper conduct on the part of the shareholders and/or those in control of the company.

This suit arose from the judgement in **HCCC 285/2010 Paragon Electronics Limited v Velos Enterprises Limited**, in which the court found the Defendant herein liable to pay damages to the Plaintiff, but found that the Plaintiff was at liberty to recover the damages in a separate suit. This dispute arose from the Plaintiff's purchase of the Suit Property from the Defendant vide the sale agreement dated 23/8/2006 and is a claim for damages on account of loss of rent from the Suit Property due to what the Plaintiff terms as the Defendant's acts of blocking the sewer and disconnecting its water and electricity.

The Plaintiff is apprehensive that the Defendant may not be able to satisfy the judgment in this case if its case succeeds. The Defendant disputes the Plaintiff's claim and has filed a defence. The matter is yet to be heard, and the contested matters can only be canvassed during trial.

The court has considered the application, the Defendant's response and the submissions of both parties and finds that the Plaintiff has not made a case for the lifting of the Defendant's corporate veil. The prayer for joinder of new parties fails. The Plaintiff is however granted leave to amend the plaint and serve it on the Defendant within 14 days of today.

Dated and delivered at Nairobi this 19th day of March 2019

K.BOR

JUDGE

In the presence of:-

Mr. T. Oriwa for the Plaintiff

Ms. J. Barasa for the Defendant

Mr.V.Owuor- Court Assistant