IN THE HIGH COURT FOR ZAMBIA **2022/HP/1199**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
PRINCIPAL
04 JUL 2024
REGISTRY - 2
P.O. BOX 50067, LUSAKA

BETWEEN:

EMMA MWIINGA PANDE **PLAINTIFF**

AND

MORMUZA GENERAL DEALERS (Z) LTD **DEFENDANT**

Before:	***The Hon. Mr. Justice Charles Zulu.***
For the Plaintiff:	Mrs. E. Mwale, Messrs Shamwana & Co.
The Defendant:	No Appearance.

R U L I N G

Cases referred to:

1. ***Madison Investment Property and Advisory Company Limited v. Kanyinji (SCZ Appeal No. 010/2016).***
2. ***Adams v Cape Industries PLC (1990) 1 Ch. 433.***
3. ***R v Grantham [1984] Q.B. 675.***

Legislation referred to:

1. ***The Corporate Insolvency Act No. 9 of 2017 of the Laws of Zambia.***

1.0 INTRODUCTION

1.1 This ruling is in respect of an application at the instance of the Plaintiff (judgment creditor), for an order to pierce the veil of incorporation of the Defendant (judgment debtor); whereby, the shareholders or/and directors of the Defendant Company be held personally liable concerning the judgment debt adjudged against the Defendant. The application was made pursuant to section 175 of the ***Corporate Insolvency Act No. 9 of 2017 of the Laws of Zambia***.

2.0 BACKGROUND

2.1 A brief background to the present application is that, the Plaintiff, Emma Mwiinga Pande, took out a writ of summons and statement of claim dated August 5, 2022, against the Defendant, Mormuza General Dealers (Z) Ltd.

2.2 The Plaintiff's claim against the Defendant was the sum of K230, 000.00, being money paid by the Plaintiff for the purchase of property known as LN21354/1, but possession was never given to the Plaintiff on account of alleged fraud. Fraud was alleged on grounds that the Defendant was not the legal or beneficial owner of the said property and the Defendant had no capacity to sell.

2.3 A judgment in default of appearance and defence was obtained by the Plaintiff dated September 2, 2022.

2.4 Subsequently, the Plaintiff and the Defendant executed a consent order, dated November 10, 2022. The same was approved by the Court, whereby the Defendant entirely admitted liability to the Plaintiff in the sum of K230,000.00, and undertook to liquidate the judgment debt in three instalments, starting with the month end of September, 2022.

3.0 **THE PLAINTIFF'S AFFIDAVIT EVIDENCE**

3.1 An affidavit in support of the application was deposed to by Emma Mwiinga Pande, the Plaintiff. She first recounted the events leading to the present application as reproduced above.

3.2 She stated that out of the judgment sum of K230,000.00 only K89, 705.25 was paid and the balance remains unliquidated.

3.3 The facts relied upon for the grant of the present application reproduced in the affidavit, relate to the alleged fraud that the property the Defendant Company sold to the Plaintiff was not registered in its name, and was sold without legal authority.

3.4 According to the deponent, shareholders of the Defendant Company are Morgan Muzambalika, Lwendo Munyanti and Lubasi Sishekanu. A printout from PACRA was exhibited, marked "EMP3" dated July 28, 2022.

3.5 She recounted that this matter emanated from a conveyancing transaction between the Defendant and she, entered into on March 28, 2022, for the purchase of Property No. LN/21354/2, Salama Park, Lusaka at a purchase price of K230,000.00.

3.6 It was alleged that the Defendant initially issued to her an offer letter in the name of Deborah Sikoongo. And that after her protest, the Defendant proceeded to issue a counterfeit title in her name. Copies of the said impugned offer letter and certificate of title were exhibited, marked "EMP1"and "EMP2", respectively.

3.7 It should be noted that the Defendant did not enter appearance to this application neither did they file an opposition.

4.0 THE PLAINTIFF'S ARGUMENTS

4.1 The Plaintiff's Advocate, Mrs. Mwale, filed written arguments in which section 175 (1) of the Act was cited, which provides:

4.1.1 ***If, in the course of winding up, receivership or business rescue proceedings or any other proceedings against a company, it is shown that business of a company has been carried on for fraudulent purposes, or with intent to defraud creditors , the Court shall, on the application of an insolvency practitioner or creditor, order that any person who was knowingly party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for debs or liabilities of the company as the Court orders***

4.2 It was contended that this was a proper case in which to pierce the veil of incorporation, because the transaction in question was actualized by officials of the Company. She singled out Mr. Morgan Muzambalika as the person with whom the Plaintiff interacted with throughout the transaction.

4.3 Counsel further argued that the Defendant Company was used by its shareholders to fraudulently convey property to the Plaintiff, which fact was not denied by the Defendant.

5.0 DETERMINATION

5.1 I have carefully considered the affidavit evidence and arguments tendered by Counsel in support of the application. It is trite law that despite there being a separate existence between a company and its shareholders or directors, the court can go behind the corporate veil and expose individuals behind the company and make them liable for the debts and liabilities of the company, if material facts exist to warrant such a move. In the case of ***Madison Investment Property and Advisory Company Limited v Kanyinji***[1], also adverted to by Counsel, the Supreme Court guided as follows:

> 5.1.1 ***The principle that should underpin any attempt to pierce the corporate veil is therefore this, that courts will not allow the corporate personality to be used to protect individuals from wrong doing.***
>
> ***Fraudulent actions will not be protected nor will those where the Limited Company is simply being used as a façade, as a sham.***
>
> ***However, the power to intervene and lift the veil must be exercised charily. There ought to be hidden untoward intent.***

5.2 Further, in the case of ***Adams v Cape Industries PLC***[2], it was held:

> 5.2.1 ***Special circumstances exist indicating that the company is a mere façade concealing the true facts.***

5.3 The question for determination in the present case is whether or not the Plaintiff has sufficiently established that the shareholders of the Defendant Company have been involved in fraudulent dealings in the name of the Defendant to warrant piercing the veil of incorporation, and hold the shareholders personally liable for the debts of the company. In ***R v Grantham***[3] at page 681 Lord Lane CJ observed as follows in regard to this kind of behaviour:

5.3.1 ***A man intends to defraud a creditor either if he intends that the creditor shall never be paid or alternatively if he intends obtain credit or carry on obtaining credit when the rights and interests of the creditor are being prejudiced in a way which the defendant himself know is generally regarded as dishonest .... [A] trader can intend to defraud if he obtains credit when there is a substantial risk of the creditor not getting his money or not getting the whole of his money and the defendant knows that is the position and knows he is stepping beyond the bounds of what ordinary decent people engaged in business would regard as honest.***

5.4 The element of fraud sufficient to warrant the lifting of the veil of incorporation alluded to the case of ***R v Grantham*** (supra), conforms to the facts relied upon by the Plaintiff herein.

5.5 I agree with the Plaintiff's Counsel that the Defendant Company was used by its shareholders as a façade; to defraud the Plaintiff of the purchase price by purporting to sale her the subject property, which property was not owned by the Defendant Company, neither did the Defendant Company have authority to sell the said property.

5.6 I thus find that there exist material facts to warrant the grant of an order to pierce the veil of incorporation and hold the shareholders and /or directors of the Defendant Company personally liable for the debts of the Company.

5.7 The fact that, part payment in the sum of K89, 705.25 was paid towards the refund of the purchase price, does not in any sense diminish the Plaintiff's chance to get the order hereof.

6.0 CONCLUSION

6.1 In the light of the foregoing, the application to pierce the veil of incorporation of the Mormuza General Dealers (Z) Ltd, is hereby granted. The shareholders/or and directors are hereby held personally liable to pay the debt herein. And the judgment debt incurred by the Defendant shall be borne by its shareholders and /or directors of the Defendant Company.

6.2 Costs for the Plaintiff to be taxed in default of agreement.

6.3 Leave to appeal is granted.

DATED THE 4TH DAY OF JULY, 2024.

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THE HON. MR. JUSTICE CHARLES ZULU