

**IN THE COURT OF APPEAL OF ZAMBIA APPEAL NO. 382 OF 2023
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



B E T W E E N:

MUSONDA CHIZINGA

APPELLANT

AND

CAPSTONE MANAGEMENT COMPANY LIMITED

RESPONDENT

CORAM: Chashi, Ngulube and Banda-Bobo, JJA

ON: 21st January and 11th February 2026

*For the Appellant: C. Chungu, Messrs Nsapato & Co Advocates
(Under the LAZ Pro Bono Programme)*

*For the Respondent: T. Munalula, Messrs Munati Chambers and A.
Musadabwe, Messrs SLM Legal Practitioners*

JUDGMENT

CHASHI JA, delivered the Judgment of the Court.

Cases referred to:

- 1. FQM Trident Limited v Mukuka Mumba – CAZ Appeal No. 91 of 2024***
- 2. Star Drilling and Exploration Limited v National Technologies Limited and Others – SCZ Appeal No. 07 of 2024***

Legislation referred to:

- 1. *The Corporate Insolvency Act, No. 9 of 2017***
- 2. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia***

Rules referred to:

- 1. *The High Court Rules, Chapter 37 of the Laws of Zambia***
- 2. *The Supreme Court Practice (White Book) 1999***

1.0 INTRODUCTION

1.1 This is an appeal against the decision of Hon. Lady Justice W. S. Ngoma, delivered on 30th October 2023, in which she declined to lift the corporate veil of the Respondent Company and to impose liability on its shareholders and directors or any of their sister companies.

2.0 BACKGROUND

2.1 By a complaint dated 14th July 2022, the Appellant, who was the complainant in the court below, commenced an action against the Respondent, seeking, *inter alia*, damages for wrongful, unfair and unlawful termination and payment of underpaid redundancy benefits.

- 2.2 In a Judgment delivered on 1st June 2023, Mwenda J found that the termination was unfair and unlawful and awarded the Appellant damages equivalent to 30 months' salary. On the Respondent's counterclaim, the court awarded its claim for the return of a motor vehicle and payment of the equivalent of daily hire charges for loss of use of the vehicle to be assessed by the Registrar.
- 2.3 The Appellant asserted that, despite demands for payment of the judgment sum of ZMW 632,885.25, the Respondent failed to comply, leading to the issuance of a writ of *feri facias* on 23rd June 2023. An attempt by the Sherriff to execute the writ on 14th August 2023, was unsuccessful. The Appellant contended that the Respondent was no longer operating from its registered address or known business addresses, rendering execution efforts futile.
- 2.4 Consequently, on 23rd August 2023, the Appellant filed a composite notice seeking to lift the corporate veil and to examine the judgment debtor pursuant to section 175 of **The Corporate Insolvency Act**¹ and section 85A of **The Industrial and Labour Relations Act**.² It was

alleged that the Respondent, acting through its principal shareholders and directors, Mr. Chimuka Moore Malambo and Taurai Moore, was fraudulently evading satisfaction of the judgment debt, by failing to notify PACRA of a change in its registered office and by operating through several related entities as a single economic unit and that they ought therefore to be held jointly and severally liable for the judgment debt.

2.5 The Respondent denied the allegations and maintained that it had responded to the demand for payment. It further challenged the execution process, asserting that the writ was directed to premises on Bwinjimfumu Road, which were neither its registered office nor its place of business. It maintained that its registered office at 38C Lake Road, Ibex Hill remained unchanged and denied any obligation to notify PACRA of a change of address.

2.6 The Respondent also denied any fraudulent conduct and attributed its failure to satisfy the judgment sum to its intended appeal, which was later withdrawn. It contended that the Appellant had failed to establish any

basis for lifting the corporate veil or for imposing liability on its directors or related entities. Notwithstanding this, the Respondent maintained that, despite financial difficulties, it remained willing to satisfy the judgment and had accordingly applied to liquidate the debt by instalments.

- 2.7 In reply, the Appellant maintained that execution was attempted at all known locations without success and that the Respondent's continued reliance on an address from which it no longer operated was fraudulent and intended to defeat execution. That the writ bore the address of the premises on Bwinjimfumu Road because it was the Respondent's last known place of business.

3.0 RULING OF THE LOWER COURT

- 3.1 Upon considering the affidavit evidence and the submissions by the parties, the learned Judge identified the issue for determination as whether this was a proper case to lift the Respondent's corporate veil and hold its shareholders and directors personally liable.
- 3.2 The learned Judge reaffirmed the principle of separate corporate personality and held that the veil may only be

lifted in limited circumstances such as fraud, evasion of legal obligations, or carrying on business with intent to defraud.

3.3 She found no evidence that the Respondent had acted fraudulently or sought to evade its obligations. She held that the alleged failure to notify PACRA of a change of address did not, of itself, amount to fraud, particularly as the relocation occurred during the Appellant's employment and before her claim arose.

3.4 The Judge further found inconsistencies between the Appellant's affidavits and the Sheriff's report concerning the attempted execution, and was not persuaded that the Respondent was concealing its whereabouts or deliberately frustrating enforcement of the judgment.

3.5 She also held that, a three (3) months delay in execution was not unreasonable in light of the pending appeal and the Respondent's application to settle the judgment debt by instalments, and rejected the argument that the Respondent's association with other companies justified lifting the corporate veil. Accordingly, the Judge concluded that no basis had been established for

piercing the corporate veil and declined to impose personal liability on the Respondent's shareholders, directors, or related entities.

4.0 THE APPEAL

4.1 Dissatisfied with the Ruling of the lower court, the Appellant appealed to this Court advancing six (6) grounds of appeal, couched as follows:

- 1. The court below erred in law and fact when it held that a delay of three (3) months in settling a judgment debt is not inordinate.**
- 2. The court below erred in law and fact when it failed to consider the Appellant's application for an order to examine the Respondent as a Judgment debtor.**
- 3. The court below erred in law when it failed and refused to lift the corporate veil to hold the shareholders and directors of the Respondent personally liable despite evidence of the Respondent evading and concealing its obligation to pay the judgment debt to the Appellant.**

4. The court below erred in law and fact when it held that the failure to inform the Patents and Companies Registration Agency of a change in the registered address does not amount to fraud that justifies lifting of the corporate veil.
5. The court below erred in law and fact when it failed to hold the entities which are owned and managed by same parties as the Respondent, namely Brunelli Construction Zambia Limited, Zorai Procurement Services, Zotac Tyres Limited, Telplus Solutions Limited and MLM Meat Company Limited and Magnum Investments Limited, personally liable for the judgment sum due to the Appellant despite evidence that the various entities operate as a single economic unit with the Respondent.
6. The court below erred in law and fact when it failed to award the Appellant costs, despite the vexatious and unreasonable conduct of the Respondent in failing to settle the judgment sum.

5.0 THE ARGUMENTS

5.1 Both the Appellant and the Respondent filed heads of argument. However, we do not find it necessary to recapitulate them in this judgment, for reasons that will become apparent later. We note only that the Appellant consistently relied on **The High Court Rules**¹ and **The Rules of the Supreme Court**² in its submissions. As we held in **FQM Trident Limited v Mukuka Mumba**,¹ those rules do not apply to proceedings before the Industrial Relations Division, which, although a division of the High Court, is governed by its own statute and rules.

6.0 ANALYSIS AND DECISION OF THE COURT

6.1 We have considered the record, the Judgment under appeal and the submissions by Counsel for both parties. Although the learned Judge determined the application on its merits, it is our considered view that this appeal turns principally on whether the Appellant's application to lift the corporate veil was procedurally competent in law.

- 6.2 The Appellant's application before the court below was precipitated by the Respondent's failure to satisfy the judgment debt and the unsuccessful execution of a writ of *feri facias*, allegedly because the Respondent no longer operated from its registered or known business addresses. On that basis, the Appellant sought, by way of a composite notice, to lift the Respondent's corporate veil and to impose personal liability on its shareholders, directors and alleged sister companies.
- 6.3 The learned Judge dismissed the application on the merits, holding that the Appellant had failed to establish fraud, evasion of legal obligations or any conduct warranting the piercing of the corporate veil. While no fault can be found with that conclusion, the more fundamental question is whether the application itself was properly before the court.
- 6.4 The proper approach to applications of this nature was clarified by the Supreme Court in **Star Drilling and Exploration Limited v National Technologies Limited and Others.**² In that matter, following an arbitral award and failed execution of a money

judgment, the appellant similarly sought to pierce the corporate veil in order to hold the shareholders and directors of the judgment debtor personally liable. The application was commenced by interlocutory summons pursuant, *inter alia*, to section 175 of **The Corporate Insolvency Act**.¹ Although the High Court granted the application, the Supreme Court reversed that decision and held as follows:

*“The argument by the appellant that a failed execution of a writ of *fifa* entitles a judgment creditor to apply to court to pierce the corporate veil if the judgment debtor is a limited liability company is, therefore, unacceptable for the following reasons: The rules do not provide for such a procedure; and, piercing the corporate veil is not a form of levying execution for a money judgment. The principle of piercing the corporate veil has its roots in the need to curb the perpetration of fraudulent acts by members and officers of a company under the cover of the corporate veil”*

6.5 On the procedural impropriety of the application itself, the Supreme Court further observed:

“The appellant's predicament is compounded by the fact that it commenced the application for piercing the corporate veil wrongly before the High Court Judge.

At paragraph 9 of this judgment, we have stated that the appellant moved the High Court Judge by way of an interlocutory summons. This was pursuant to Section 175 of the Corporate Insolvency Act ... These provisions of the law are not the correct sections and orders to seek enforcement of the award for the following reasons: Section 175 of the Corporate Insolvency Act prescribes a sanction which a court may impose upon a person running the business of a company where there has been fraudulent trading of making that person liable for the debt or liabilities of the company.”

6.6 The Supreme Court then concluded in unequivocal terms that:

“The remedy of piercing the corporate veil is not auxiliary to a main action nor is it resorted to as a means of levying execution as we have explained earlier. It is a stand-alone cause of action and should be commenced as a separate action.”

6.7 In the present matter, the Appellant adopted precisely the approach deprecated by the Supreme Court. Following the unsuccessful execution against the judgment debtor, it proceeded by way of a composite notice within the same proceedings, seeking to impose personal liability on persons and entities other than the

judgment debtor. This approach was procedurally flawed. As clarified by the Supreme Court, piercing the corporate veil is neither an auxiliary remedy nor a continuation of execution proceedings. It does not arise automatically upon the failure of execution against a corporate judgment debtor.

6.8 Rather, piecing the corporate veil constitutes a distinct and stand-alone cause of action, the object of which is to displace the principle of separate legal personality on the basis of proved abuse. As such, it must be commenced as a separate action and requires the formulation of proper pleadings setting out clear, specific and particularised allegations of fraud, improper conduct or abuse of the corporate form.

6.9 By adopting an incorrect procedure, the application before the court below was incompetent from inception and ought not to have been entertained at all. In those circumstances, it was unnecessary for the court below to have engaged with the merits of the application. For the same reason, the limb of the application seeking the examination of the Judgment Debtor was equally

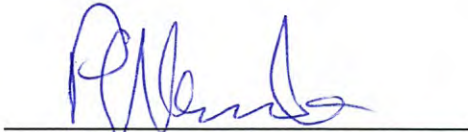
incompetent and suffered the same fate. Nevertheless, and for the reasons we have outlined above, the court below was on firm ground in dismissing the application to lift the corporate veil.

7.0 CONCLUSION

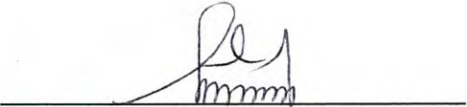
7.1 In sum, the appeal lacks merit and is accordingly dismissed. As the matter emanated from the Industrial Relations Division, we shall make no orders as to costs.



J. CHASHI
COURT OF APPEAL JUDGE



P.C.M NGULUBE
COURT OF APPEAL JUDGE



A.M BANDA-BOBO
COURT OF APPEAL JUDGE