

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE AT
LAW COURT COMPLEX, ACCRA (GENERAL JURISDICTION 11) HELD ON
TUESDAY THE 18TH DAY OF JULY, 2023 BEFORE HIS LORDSHIP JUSTICE RICHARD
APIETU (J)

SUIT NO.GJ/0780/2020

MISYL ENERGY CO. - PLAINTIFF
VRS.
SEPHEM OIL COMPANY LTD - DEFENDANT
ISAAC LUTTERDOT - CLAIMANT/APPLICANT

RULING

This is a Ruling on an Affidavit of Interest filed by the Claimant on 26th April, 2023 and 30th June, 2023 which the Plaintiff disputes by filing an Affidavit in Opposition on 4th May, 2023 and 7th July, 2023.

The facts of the matter is that on the 23rd of January 2019, the Plaintiff issued a Writ of Summons and accompanying statement of claim against the Defendant for the reliefs endorsed therein. On the 15th of January 2021 Judgment was granted in favour of the Plaintiff. In accordance with Order 41 of C. I. 47 the Defendant was duly served with the Entry of Judgment marked as Exhibit MEC 1.

The Defendant having failed to comply with the Entry of Judgment the Plaintiff attached properties believed to belong to the Defendant. On 1st June 2021, the Claimant filed a Notice

of Claim with respect to the attached properties situate at Community 3, Tema and Torve-Akatsi.

I have read the Claimant's Affidavits of Interest and Written Submissions and the Plaintiff's Affidavits in Opposition and Written Submissions. I am of the considered view that the issues which this court have been called upon to determine are:

1. Whether the Properties attached are the personal properties of the Claimant?
2. Whether the attached properties should be released from attachment?

I intend to resolve the 1st issue that is "Whether the Properties attached are the personal properties of the Claimant"?

In doing so reference shall be made to relevant laws and authorities in relation to the subject matter before me.

Order 44 rule 2 (5) of the High Court (Civil Procedure) Rules, 2004 C1. 47 provides as follows:

"Subject to subrule (3) all property movable or immovable, belonging to the judgment debtor and whether held in the judgment debtor's name or by another person in trust for the judgment debtor or on the judgment debtor's behalf, is liable to attachment and sale in execution of the judgment or order".

This provision indicates that it is none other than the property of the Defendant/Judgment Debtor or any property of which the judgment debtor has some interest in that can be attached for purposes of execution.

Order 44, rule 12 (1) of the High Court (Civil Procedure) Rules, 2004 C. 1. 47 provides as follows:

"a person who makes a claim to or in respect of a property taken or intended to be taken in execution under the process of the Court, or to the proceeds or value of any such property, shall give notice of the claim to the Registrar and shall include in the notice a statement of the person's address for service".

As stated by the Claimant's Notices of Claim he has indicated that he has a valid claim to the Properties which have been attached. He has further in his Affidavit of Interest demonstrated how the properties became his personal properties.

I have noted that by a Deed of Assignment dated 15th January 2015 and made between Madam Wendy Porter and the Claimant, the Claimant was assigned Madam Wendy Porter's unexpired interest in all that parcel of land with Commercial Property thereon known as Plot No. RP3/E3 situate at Community 3, VRA Estates, Tema in the Greater Accra Region of the Republic of Ghana. The said Deed of Assignment was labelled as Exhibit IKL1 as attached to the Affidavit of Interest.

In addition to the above as demonstrated by Exhibit IKL 2 attached to the Affidavit of Interest, the said Madam Wendy Porter was given consent to assign her interest in the Tema Property to the Claimant. The Claimant has taken the necessary steps to register his interest and perfect his title in the property with the Lands Commission, a process which is still ongoing.

I have also noted that Exhibit IKL 3 attached to the Affidavit of Interest that by a letter dated 11th January, 2022 from the Land Registration Division to the Director, Survey and Mapping Division of the Lands Commission, the survey and mapping division was instructed to plot

the land in the Claimant's name by preparing a parcel or cadastral plan for the Claimant in respect of the property.

I have also noted that as evidence of ownership of the property in the Volta Region by an Indenture dated 19th December, 2016 and made between Torgbui Ahordzi IV and the Claimant, the Claimant acquired freehold interest in all that parcel of land with Commercial Property thereon situate at Torve-Kpota in the Akatsi District in the Volta Region of the Republic of Ghana. This document has also been exhibited as Exhibit IKL 4 and attached to the Affidavit of Interest.

The Plaintiff in its Affidavit in Opposition to the affidavit of interest says that the Defendant is one and the same as the Claimant and invites the Court to decide that by virtue of the Claimant being the majority shareholder of the Defendant Company, even if the properties under attachment are found to be the properties of the Claimant, the said properties automatically belong to the Defendant therefore validating the attachment.

It is trite law that once a company is incorporated, the Company obtains a separate legal personality distinct from its members, officers and shareholders. Section 14 (2) of the Company's Act 2019 Act 992 provides that, "from the date of incorporation, the company becomes a body corporate by the name contained in the application for incorporation and, subject to section 13, is capable of performing the functions of an incorporated company".

It was held in the celebrated case of **SALOMON VS. SALOMON & COMPANY LTD. [1897] A.C. 22** that once a company is incorporated it assumes a different personality and identity, distinct from its owners and actors. This principle was accepted in the Ghanaian cases of **OWUSU VS. R. N. THORNE LTD. AND ANOTHER [1966] GLR 90-92**, **MORKOR V KUMA [1999-2000]1 GLR 69**.

The concept of separate legal personality means the recognition in law that an entity has a separate, distinct and independent legal status from that of its owners or managers of the entity. The law recognizes that upon incorporation, the company has full capacity to carry on business in its own name, enjoy rights and incur liabilities independent of its owners or managers. Indeed, after incorporation, a Company can own properties in its own name as well as to sue and be sued.

In the case of **REPUBLIC VS. HIGH COURT, ACCRA; EX PARTE APPIAH AND OTHERS [1999-2000] 2 GLR 420** the deceased owned 100% of the shares in a company. Upon his death the administrators of his estate sought to include the company in the inventory of the estate with the presumption being that since he owned 100 per cent of the shares, he and the company are one and that the company is owned by the deceased as his personal property. The Supreme Court speaking through Ampiah JSC held that; the legal position is that an incorporated company has a legal personality of its own different from those who form it. It could sue and be sued as a legal entity. There is no dearth of authority on this issue: see **SALOMON VS. SALOMON CO [1897] AC 22, HL**. Consequently, though the late Kofi Boye Safo could be the owner of the 100 per cent shares in the company, he is not the company so as to make the company his personal property. As a legal entity the company is governed by rules and regulations of the company. Its management is vested in the board of directors whose managing director is directly involved in the day-to-day activities of the company and who is responsible to the board and the shareholders. Upon the death of a shareholder, his shares, unless otherwise directed by the deceased himself, are vested in his legal representatives, executors or administrators who would later distribute them to the beneficiaries who then would have their name entered in the register of the company as members. ... It would appear therefore that the direction of the court that the company's affairs be conducted by persons other than the directors, as if the company belongs to the deceased and has become part of his estate was given without recourse to the law".

From the above authorities, it is clear that the Plaintiff cannot say that by virtue of the Claimant being the former Managing Director, and majority shareholder, he is one and the same as the Company. The Plaintiff has not raised or established any issue or basis for the Court to even consider the lifting of the Defendant's veil of incorporation.

It is therefore obvious from the above authorities that a Company's properties are distinct from the properties of the individuals that own and run the Company and vice versa; Save for certain instances, and the interpleader before this Court is not one of those instances, where an inference can be made that the Properties of the Claimant are that of the Defendant Company's as well. It is therefore my considered opinion that the property belongs to the Claimant and not the Defendant.

I intend to resolve the 2nd issue that is "Whether the attached properties should be released from attachment"?

In doing so reference shall be made to relevant laws and authorities in relation to the subject matter before me.

Order 44 rule 13 (1) of the High Court (Civil Procedure) Rules, 2004 C1. 47 provides as follows:

"where on the hearing of proceedings pursuant to an order made under rule 12(4) all the persons by whom adverse claims to the property in dispute, in this rule referred to as "the claimants" appear, the Court may

(a) summarily determine the question in issue between the claimants and execution creditor and make an order accordingly on such terms as may be just".

In the unreported case of **WILLIAM QUARTEY VS. NEIL HAMMOND [SETH QUARTEY, JOYCE QUARTEY AND DR. RICHARD A. HAMMOND- CLAIMANTS]**

(DATED 27 JAN 2017) His Lordship Samuel Asiedu J (as he was then was) determined a similar issue where the Plaintiff in the suit sued and obtained judgment against the Defendant. Following the judgment, the Plaintiff attached a property believing same to be the property of the Defendant. However, before the property could be sold at a public auction, the Claimant filed a notice of claim, laying claim to the ownership of the property. The Court in finding for the Claimant and ordering the release of the property from wrongful attachment held as follows, "from the totality of the evidence available the court finds that the land in question is not the property of the defendant in suit number RPC/389/2010 in which the plaintiff obtained judgment against the defendant therein and that being so, the plaintiff has no right to attach a property which does not belong to the defendant judgment debtor in execution of the judgment he obtained. The said property is therefore released from attachment.

In the unreported case of **CHARLES OBENG POKU VS. JAMES BOATENG AND DENNIS YEBOAH (7 NOV 2016)** His Lordship Dr. Richmond Osei Hwere J held as follows:

"Apart from making a bald assertion that Exhibits A and C were somewhat concocted, the judgment creditor did not advance any evidence to show that the documents were indeed concocted in order to defeat the claim. On the contrary, the claimant's evidence measured up to the standard required by law. The claimant led documentary evidence to prove that he purchased the vehicle prior to the purported attachment. In the circumstance, I conclude that the claimant managed to prove on a balance of probabilities that the Mercedes Benz with registration number AS 8672 Z is his motor vehicle. In the result, the claimant's claim to the attachment in execution of judgment dated 29/09/14 is hereby granted. The said Mercedes Benz vehicle with registration number AS 8672 Z as set out in the writ of *fifa* dated 25/11/14 issued by the Plaintiff/Judgment Creditor is declared not executable. Consequently, I order that the vehicle should be released to the claimant".

While the Claimant has presented evidence which in no doubt established his ownership of those properties, the Plaintiff has not presented any factual or cogent legal basis to this Court to establish the Defendant's ownership of those properties. It is therefore my considered opinion that the properties should be released to the Claimant. The properties are therefore released from attachment.

(SGD)

JUSTICE RICHARD APIETU

(HIGH COURT JUDGE)

PARTIES:

PLAINTIFF REPRESENTED BY CLEMENT AGBONYITOR

DEFENDANT ABSENT

CLAIMANT ABSENT

COUNSEL:

GYAMAA OWUSU BOAKYE HOLDING THE BRIEF OF ALEX OWOO FOR THE PLAINTIFF/JUDGMENT CREDITOR/RESPONDENT PRESENT

DAVID AYESU DEBRAH HOLDING THE BRIEF OF GODWIN MENSAH SACKEY FOR THE CLAIMANT/APPLICANT PRESENT

REFERENCES

CASES CITED

1. SALOMON V SALOMON & COMPANY LTD. [1897] A.C. 22
2. OWUSU VS. R. N. THORNE LTD. AND ANOTHER [1966] GLR 90-92, MORKOR V KUMA [1999-2000]1 GLR 69
3. REPUBLIC VS. HIGH COURT, ACCRA; EX PARTE APPIAH AND OTHERS [1999-2000] 2 GLR 420
4. WILLIAM QUARTEY VS. NEIL HAMMOND [SETH QUARTEY, JOYCE QUARTEY AND DR. RICHARD A. HAMMOND- CLAIMANTS] (DATED 27 JAN 2017)
5. CHARLES OBENG POKU VS. JAMES BOATENG AND DENNIS YEBOAH (7 NOV 2016)

STATUTES

1. ORDER 41 OF C. I. 47
2. ORDER 44 RULE 2 (5) OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004 C.1. 47
3. ORDER 44, RULE 12 (1) OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004 C.1. 47
4. SECTION 14 (2) OF THE COMPANY'S ACT 2019 ACT 992

5. ORDER 44 RULE 13 (1) OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004
C.1. 47