

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

2012/HP/1554

BETWEEN:

SWALLEH SAIDI  
AND

PLAINTIFF

SWEDISH TRUCK PARTS LIMITED

DEFENDANT

**Before Hon. Mrs. Justice M.S. Mulenga on 8<sup>TH</sup> day of August 2013**

FOR THE PLAINTIFF : IN PERSON  
FOR THE DEFENDANT : MR. M.W. MULELE - MESSRS AKM LEGAL  
PRACTITIONERS

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## R U L I N G

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**Legislation referred to:**

**1. Small Claims Courts Act Cap47, Sections 21 and 24**

This Ruling is on the preliminary issue raised by the Defendant that the Plaintiff's claim does not disclose a valid cause of action as the only relief sought is to execute a Judgment obtained in another Court and that this is not the appropriate Court for the Plaintiff to seek the relief he seeks.

The brief facts of the case are that the Plaintiff instituted an action against the Defendant in the Small Claims Court under Cause number 2010/SCC/05 for which Judgment was entered on 4<sup>th</sup> March, 2010.

The Judgment was for the sum K7,100,000.00 (old currency). The Defendant neglected to settle the Judgment sum and a Writ of Fifta was issued but not executed due to the Defendant changing its business and premises of trade. The Plaintiff was thus seeking to lift the corporate veil so that the execution could be effected on the Directors, Mr. and Mrs. Mumbi, of House No. 70 Katyetye Road, Lusaka.

The Defendant's counsel, Mr. Mulele, submitted that there was no valid claim of action because the Plaintiff only seeks to execute a Judgment obtained in another Court. That paragraphs 5 and 6 of the Plaintiff's Affidavit in Support stated that the execution of Judgment only failed on account of the Defendant having changed its place of business. That there are other avenues through which the Plaintiff could execute his Judgment other than seeking to pierce the corporate veil.

On the second issue Mr. Mulele stated that since the Judgment which was sought to be executed was granted in another Court, the application should have been made in the same Court and could only come to the High Court by way of appeal.

The Plaintiff responded that paragraph 7 of his Affidavit in Support shows that he had a cause of action in seeking to lift the corporate veil. That he had inquired at the Small Claims Court on the course to take and he was advised that in order for the Judgment to be

extended to the Directors, the corporate veil had to be lifted and the same could only be done by the High Court.

The Defendant's counsel maintained that the reasons advanced for seeking to lift the corporate veil were not sufficient as it can only be done when it is proved that the corporate entity was being used as a special purpose vehicle to perpetuate illegality. That the Plaintiff had also failed to disclose that he had issued a Writ of Fifa under cause number 2010/SCC/05 and which was executed on the Directors.

The Plaintiff disputed the latter statement saying that the Writ of Fifa was executed on House No. 70 Katyetye Road because it was the address given by the Defendant as its new location. Further that only a few items which were said to be for the company were taken as the rest was claimed by the Directors as personal property.

The Small Claims Courts Act Cap 47 provides for the jurisdiction, powers and procedures of the said Courts, among others. The Small Claims Courts are therefore self contained Courts that hear cases, give Judgments and enforce any awards given by it. The only recourse that a party has to the High Court is by way of appeal as provided in Section 22 and as rightly submitted by counsel for the Defendant.

The Small Claims Courts Act as amended by Act No. 14 of 2008 has ample provisions for enforcement of Judgments. Section 21 provides that:

***“21. The provisions of the High Court Act shall apply, with the necessary modifications, to the enforcement of Judgments made under this Act.”***

This means that the Small Claims Courts are able to use any necessary mode of enforcement provided in the High Court Act Cap 27 with some necessary modifications. The Plaintiff therefore has an obligation to enforce the Judgment he obtained in the Small Claims Court under the provisions governing the same Courts. Hence, one cannot institute an action in the High Court for the sole purpose of enforcing a judgment obtained in the Small Claims Court when there are adequate provisions thereunder to enforce the said Judgments.

I further note that section 24 as amended by Act No. 14 of 2008 also makes provision for what is to be done to have a Judgment enforced in cases where there is no property to be seized. The Plaintiff thus has not exhausted the procedures for enforcement of Judgment under the Small Claims Court as provided in the Act. The facts show that the Plaintiff has only attempted to execute the Judgment using the Writ of Fisa and that the same was only partially successful. I will not delve into the issue of the conditions that need to be satisfied by an applicant wishing to pierce the corporate veil as it will be merely academic at this point in view of what has been discussed above.

The preliminary issue succeeds that the Plaintiff cannot seek to have a Small Claims Court Judgment enforced in the High Court when there are ample and adequate provisions to have the same enforced in the said Courts.

This action is accordingly dismissed for being misconceived and irregular.

I have taken into account the conduct of the parties particularly the Defendant and thus order that each party will bear its own costs.

Leave to appeal is granted.

***Dated this .....day of .....2013.***

***M.S. MULENGA***  
***HIGH COURT JUDGE***