

LEGAL ALERT

HEPWORTH SUPPLIERS LIMITED VS. INNOVATIVE MATERIAL SYSTEMS, APPEAL NO. 178 OF 2023



1. Introduction

On 4 July 2024, the Court of Appeal delivered an instructive judgment that brought to fore the limited circumstances in which the Court may pierce the corporate veil. The Judgment not only reinforced the precedent established by the Supreme Court in the earlier decision of **Madison Investment Property and Advisory Company vs. Peter Kanyinji SCZ Judgment No. 48 of 2018** but further considered the applicability and enforcement of charging orders within the jurisdiction.

2. Facts

2.1. On 13 June 2022, Hepworth Suppliers Limited (the “**Appellant**”) lodged an appeal before the Court of Appeal against a post-judgment Ruling relating to two applications made by Innovative Material Systems (the “**Respondent**”) for a charging order and for an order that the Directors in the Appellant be held personally liable for payment of the judgment debt (the “**Appeal**”). The main issues were centered

around the circumstances under which a Court could be moved to lift the corporate veil. The Court of Appeal further pronounced itself on the enforcement of charging orders within the jurisdiction.

2.2. Further to the foregoing, in the two post judgment applications, the Respondent applied for an order that the Directors of the Appellant be held personally liable for the payment of the judgment sum pursuant to **Section 175(1) of the Corporate Insolvency Act**. In deciding the same, the High Court Judge determined that the Appellant’s Directors behaved in a way that amounted to carrying on a business with intent to defraud creditors. The High Court noted that the Appellants’ Directors had during the course of litigation transferred the assets of the Appellant with the intention of leaving the Company without assets. The foregoing, in the Court’s opinion, warranted the lifting of the corporate veil and met the test espoused in **Section 175 (1) of the Corporate Insolvency Act**. Consequently, the Court held the Appellant’s Directors

personally liable for the debt.

3. Decision of the Court of Appeal

3.1. In coming to this decision, the Court of Appeal recognized that the principle of the corporate veil - that a company has a separate personality from its members and that members cannot be held liable for the debts of a company beyond their initial financial contribution to it. The Court of Appeal, further recognized that the corporate veil may be lifted through judicial intervention or legislation. The Court guided that each application to lift the corporate veil must rest on its own facts and circumstances.

3.2. The Court of Appeal narrowed in on fraudulent action as one of the circumstances under which the corporate veil may be pierced. In this regard, the Court stated that it is not only proof of fraudulent action, but also any acts that would be seen to deprive a creditor of its benefit, or actions that improperly use the corporate veil. The Court further held that

Section 175(1) of the Corporate Insolvency Act affords a Court wide discretionary powers to look beyond the corporate veil and assign personal responsibility to persons behind the company without limitation of liability in appropriate circumstances.

3.3. Further to the foregoing, the Court of Appeal set aside the charging order that had been made in favor of the Respondent in the High Court. The Court of Appeal relied on its earlier decision in the case of **Molly Mpelekamayo Washington vs New Plaza Enterprises Limited (Appeal 147 of 2021)** where it exhaustively dealt with the issue of whether a charging order is available in the jurisdiction. In the named case, the court considered the English (Extent of Application) Act, the Charging Orders Act 1979 and earlier decided cases and thereby concluded that the Charging Orders Act 1979 falls outside the remit of the High Court and is therefore unavailable to applicants.

4. Conclusion/Implications of the Court of Appeal

Judgment

4.1. The Judgment of the Court of Appeal is noteworthy as it has clarified the fact that it is not only proof of fraudulent action, but also any acts that would be seen to deprive a creditor of its benefit, or actions that improperly use the corporate veil that may be used as a basis to lift the corporate veil.

4.2. The Judgment has reinforced the notion that Courts enjoy wide discretionary powers to lift the corporate veil and assign personal responsibility to members without limitation and in appropriate circumstances. Further, the Judgment has cemented the principle that evasion and concealment are the basis for the lifting of the corporate veil.

4.3. This Judgment cements the notion that charging orders are not available as a means of enforcement of a judgment within the Zambian jurisdiction.

We hope you found this alert useful. Please contact our Dispute Resolution and Public Policy Partner and Senior Associate, Sydney Chisenga at SChisenga@corpus.co.zm and Martha Siwale Namwila- Mwala at MNamwila@corpus.co.zm respectively, if you have any questions relating to this legal alert.



Sydney Chisenga
Managing Partner
Dispute Resolution and Public Policy
Corpus Legal Practitioners
Email: SChisenga@corpus.co.zm
Tel: +2602 11 372300 / 01 / 04



Martha Siwale Namwila Mwala
Senior Associate
Dispute Resolution and Public Policy
Corpus Legal Practitioners
Email: MNamwila@corpus.co.zm
Tel: +2602 11 372300 / 01 / 04