

BOLD TIMES (PVT) LTD  
versus  
PRINCESS MAKAMURE  
and  
FLAMBOYANT HOUSING TRUST  
and  
THE SHERIFF OF THE HIGH COURT, ZIMBABWE (N.O)

HIGH COURT OF ZIMBABWE  
MATANDA-MOYO J  
HARARE, 22 October 2014

**Urgent Chamber Application**

*T. Mutebere*, for the applicant  
*L. Ziro*, for the first respondent  
In person, second respondent

MATANDA – MOYO J: The applicant seeks a provisional order in the following terms:

“TERMS OF THE FINAL ORDER SOUGHT”

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. That the first and the third respondents are hereby barred from attaching and or seizing the applicants property in execution until court application for a Declaratory Order under case No HC 9100/14 has been finalised.
2. Costs of suit

## INTERIM RELIEF GRANTED

Pending determination of this matter the applicant is granted the following relief:

1. That the removal of the applicant's property attached by the third respondent on the 16<sup>th</sup> of October 2014 at No. 34 Millennium Tobacco Floors Msasa Harare be and is hereby stayed.

The background facts of this matter are the following. The first respondent obtained an arbitral award against the second respondent to the tune of US\$30 000 and the writ and order for execution against Flamboyant Housing Provisions Trust was issued under HC 7569/13 dated 22 October 2013 and 4<sup>th</sup> November 2013 respectively.

The applicant's property was attached on the 6<sup>th</sup> of November 2013 and removed in January 2014. The same property was released by the Sheriff on 13 February 2014 after The Sheriff was convinced that the applicant and the second respondent are different entities separate from each other. The first respondent has again attached the property belonging to the applicant on the basis that the applicant and the second respondent are one. The applicant's property was attached on 16 October 2014 and removal is scheduled for 22 October 2014.

Prior to being served with a notice of seizure and attachment by the Sheriff, the applicant on 15 October 2014 instituted proceedings for a declaratory order declaring the applicant to be a separate and independent entity from the second respondent under case 9100/14.

Hence the question for determination here is whether or not the applicant is inextricably mingled with the second respondent such that to separate them would lead to a legal fiction.

The locuss classicus case of *Saloman v Saloman & Co Ltd* 1897 AC 22 HL is seminal in as far as the distinctiveness of a company from its members is concerned. It is a salutary principle that our courts should not lightly disregard a company's separate persona see *Cape Pacific Ltd v Lubrer Catradling Investments Pvt Ltd and others* 1995 4 SA 790 AD.

There are however exceptions when the corporate veil can be pierced where there is fraud, dishonesty or other improper conduct or a situation when there is a single economic entity which owns all the shares in its subsidiaries and controls every aspect of their operations see *DHN Food Distributors Ltd v London Borough – Tower Hamlets* 1976 3 ALHER 462 CA at 467.

In advocating for the piercing of the corporate veil Mr Ziro for the first respondent contented that Mr Ma Yijian is an employee at Flamboyant Housing Trust and is an director of

the applicant too. Paragraph 4:4:12 the last part of the opposing affidavit reads and I quote verbatim

“If it is accepted that he is the director of Bold Times P/C as the CR 14 form purports then as directors he also has links to Flamboyant Housing Trust hence there is absolute affinity between the two entities”.

I must hasten to say I am not persuaded by this line of thought. No evidence has been put before this court to show that :

- a) Either the applicant or the second respondent is a Holding company or a subsidiary of the other.
- b) That the directors of the applicant are also trustees of the second respondent. Instead evidence before me is that the first respondent was a trustee of the second respondent.
- c) Moreso fraud and or dishonesty have not been proven these are criminal elements which have to be proven beyond a reasonable doubt by a criminal trial court after a report has been made to the police.

In light of the above it is therefore, prudent that the application for a declatur be ventilated before any attachments or executions are carried out. In the result the application for interim relief is hereby granted with costs.

*Mutebere & Partners*, applicant's legal practitioners  
*W.O.M Simango & Associates*, 1<sup>st</sup> respondent's legal practitioners