

**THE IMPLICATION OF THE VEIL OF INCORPORATION OF
COMPANIES ON MEMBERS**

BY

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**A RESEARCH REPORT SUBMITTED TO THE FACULTY OF
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DECLARATION

I, **WASSWA BENARD**, REG NO. **1153-01024-00807** do hereby solemnly declare that all work contained in this research paper is my original work and the same, to the best of my knowledge has not been submitted to any university, institution or elsewhere by any person for the award of a bachelor of law degree or any other award.

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APPROVAL

I WASSWA BENARD, declare that this is my original work and it has never been produced to any university or institution of learning for any academic award. All references cited have been acknowledged.

Signature

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WASSWA BENARD

Date.....

This is to certify that this research was carried out under my supervision and is ready for submission to the academic board of Kampala International University.

Signature

.....

DR. ADENYUMA IJI GABRIEL

Date 25 June 2019

(SUPERVISOR)

DEDICATION

To daddy and mummy in the advent of many perilously tough events, you were that piece that has performed this miracle I am forever indebted.

ACKNOWLEDGMENT

To God, without him the inspiration to lift my quill would have been none existent. His favor helped stricken a balance between my flood of ideas and the clarity. Finally expressed in this paper.

I am forever grateful to my supervisor DR. Adenyuma Lji Gabriel whose consent but very positive criticism helped shaped the direction of this work. His invaluable counsel will forever be appreciated and the library staff for helping me in sowing many of the material.

I am equally grateful to my entire family for their support and guidance which in a great way helped in a shouldering my burdens. To the entire class of 2015 of their contribution and encouragement which helped me in execution of many of my objective an extremely thankful.

LIST OF ABBREVIATIONS

ALL ER	The Law England Law Report
Lloyds Rep	Lloyd's Law Report
Q.B	Law Report Cases Queen 'S Bench
WLR	Weekly Law Reports
QBD	Law Report Cases Queen's Bench Division
AC	Court of Appeal
N.C.L	North Caroline Law Report
CH	Chancery Division
App	Law Reports Appeal Cases
H.C	High Court

LIST OF CASES CITED

Salomon v Salomon (1897)

Lee Vs Lee Air Farming Ltd (1960)3 ALLR ER 420

Twycross Vs Grant (1877)

Lutaya Vs Gendesha (1987) HCB 49

Macuara Vs Northern Assurance Co. (1925) AC

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Jones Vs Lipman (1962) W.L 2832

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Gilford Motor Co. Ltd V Horne (1933) CH 935

RE F.G (films) Ltd (1953) 1 WLR 483

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LIST OF STATUTES USED

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ABSTRACT

The concept of lifting the veil of incorporation has a really been misunderstood for a great period of time especially by the lay man. It has been called upon even where the necessary statutory as well as common law provision do not necessitate. Even for the legal minds the mechanism for putting this substantive law into procedure have been murky and unclear. This paper is therefore aimed at prounding simplistic elucidation on the whole concept of lifting the veil of incorporation more so in content that satisfies the Ugandan environment.

CHAPTER ONE

1.0 Introduction

This research paper is on the implication of the incorporation of companies on its members.

The concept of lifting the veil of incorporation has for a long time been misunderstood, the problems here is compounded by the fact that the concept of separate personality and limited liability in company law offer wide protection to member of companies incorporates.

In the case of Salomon vs. Salomon¹

It was defined that company is legal entity on its own and it has right to sue and to be sued.

In the case of Lee vs. Lee²

It was had that company is separate entity to its members.

However, those in the control of the companies (director) who are entitled with day to day control of the company.

Some time pretend to have their dealing using the corporate entities to avoid some liability.

The veil of incorporation can provide a mask on which controller hide all in a bid to make the company appear as it is behind all the actual dealing hence there should be remedy for up lifting the veil of corporation so that are personally liable for their deeds.

There for this research paper based upon high lighting of those instances has the paper will not be limited to uplifting veil of corporation but also the requirement by the statute for lifting the veil.

1.1 Background of the study

The concept of lifting the veil of corporation has greatly been misunderstood for a great period of time especially by the layman what is needed and how to proceed before it.

¹ Salomon vs. Salomon and company Ltd 1896

² Lee vs. Lee 1961 AC 12

This paper is therefore aimed at producing a simplistic elucidation on the whole concept of lifting the veil of corporation more so in context of satisfies the Ugandan environment.

Uganda's companies Act 1961 Chapter 110 was based on U.K legislation.³

The company's Act 1948 that had long since been replaced in the UK in 2012 the bill was passed into law and in July 2013 the statutory instrument bringing the companies act of 2012 into force was passed.

The company's bill number 14 of 2009 was read for the first time on 14th august 2009 and was referred to the committee of legal and parliamentary affairs.

While analyzing the bill the committee realized that there were a number of new concept what had been introduced in the bill.

1.2 Statement of the study

This research paper discuss the implication of the veil of incorporation of companies on its members. The paper has been influenced by the fact that directors have been using company for their own benefits.

The concept of limited liability may raise some issue more so in regard to holding the member of such companies personally liable for the companies act.

Due to fact that company can only act through its agent it cannot be neglected since on artificial person is not capable of doing anything illegal have the corporate personally might have to be removed to identify the person who are really guilty.

1.3 Objectives of the Study

1.3.1 General Objectives of the Study

To examine how the legal regime has provided rules for lifting of the corporate veil in limited and collimated liability companies.

1.3.2 Specific Objectives

To examine the law governing veil of incorporation under company law.

³ Sheilokeny blogspot .com

To examine the implication of the veil of incorporation of companies on members.

To provide a simple education on the whole concept of lifting the veil of incorporation.

1.4 Signification of the Study

The research study may be used by future researcher who might be interested in related field hence the study will be great source contribution to the academic career of the researcher.

1.5 Methodology

The work will rely on doctrinal research which will be based on cases, statutes.

The library revealed useful information textbooks, newspaper, magazines, journals, and article.

1.6 Scope of the study

The paper attempt to examine the doctrine corporate veil lifting in incorporated companies and it will limit itself to matters concerning lifting of veil and its implication on the company.

The geography scope has been chosen because researcher will be able to get first hand information.

1.7 Literature Review

In Company Law In Uganda by David J Bakubinga⁴ it was cited that a negative consequence of incorporation is that the legal personality of the company may be disregard in certain circumstance by a device known as lifting the veil or mask of incorporation. In such a situation the law looks at the people behind the company rather than the cloak of incorporation is uses for some illegal or improper purpose the court may disregard the principle that a company is an independent entity and lift the veil of corporation identity so that if it is proved that a person used a company he control as cloak for are improper transaction he may be made personally liable to a third party.

Hence according to the David J Bakibinga it is true however there is need of punishment to such person who misuses the company into their personal deal under the company's name so that the punishment must be absolute to such members.

⁴ Company law in Uganda by David J Bakibinga pg8

Smith and Keenan's⁵ it was cited that principle was set out in Salomon V Salomon and Co. Ltd 1897 that a body corporate is a separate entity separate from its members led to the use of the phrase the veil of incorporation which is said to hang between the company and its member and in law at least act as a screen between them.

However the principle can cause difficulty and in a number of cases is lifted by the law so that the human and commercial reality behind the corporate personality can be taken account of the veil may be lifted by the judicial or by statute.

Charles worth's⁶

Lifting the veil of incorporation it was cited that in certain cases the law disregards the corporate entity and pays regard instead to the economic realities behind the legal façade.

These cases are exceptions to the principle in Salomon vs. Salomon & Co. Ltd in these exceptional cases the law either goes behind the corporate personality of each company in favor of the economic reality constituted by a group of associated concerns.

The veil is lifted where a company carries on business for more than six months with less than statutory minimum of members. Every person who is a member during the time that business is so carried on after the end of the six month period there will be liable of the company's debt.

However I disagree with the whereby a person will only be liable for his personal act towards the company.

Company law to corporate finance by Zilis Ferran⁷

It was cited that in limited circumstances company laws prepared to depart from the principle of separate legal personality in a process generally described as lifting the veil of incorporation when the veil of incorporation is lifted the shareholders rather than the company itself are regarded as the relevant actors and therefore the shareholders are personally responsible for any liabilities incurred.

⁵ page 20 10th edition by David Keenan

⁶ Company law by Charles worth's 8th edition pg 12

⁷ Company law and corporate finance by Zilis Ferran pg 15

Specific statutory provision authorize lifting the veil in particular circumstances for example if a public company carries on business for more than six months after the member of its shareholders has fallen by law two the remaining shareholder is personally liable for debt.

The court can lift the veil of incorporation, the precise scope of the courts power is that respect has not been articulated but it has established that the courts do not have a dictionary power to lift the veil of incorporation in the interest of justice.

However for me I agree with this court have dictionary power to uplift the veil of incorporation where there is injustice.

In the 4th edition⁸ it was cited that piercing the veil that corporation veil will be pierced when ever corporate from is employed to evade on existing obligation circumvent a statute, perpetrate fraud, commit a crime or work on injustice.

1.8 Synopsis of chapter

Chapter 1 introduction

This chapter briefly includes the concept of incorporation as well as procedures that ensure this in Uganda. The separate personally and limited liability in company has than it goes head to touch on its background of the study, statement of the study. Objective of the study, signification of the study, methodology and literature review.

Chapter 2 dynamic of company incorporation

This chapter simply gives simple explanation on company incorporation, types of incorporated Companies procedure for incorporation in Uganda, the registration steps, effect of incorporation, merits of incorporation, demerits of incorporation and formality.

Chapter 3 lifting the corporate veil in the contemporary Uganda setting.

The procedural rules as well as any other enabling law necessary in ensuring the lifting of the corporate veil are put into perspective in this chapter.

⁸ Okelley Thompson 4th edition pg 513

Chapter 4 procedures in lifting the veil of incorporation

It provides the laws followed in the uplifting of the incorporate veil and other area of interest.

Chapter 5 reforms, conclusion and recommendations.

This chapter puts the whole research paper into context by discussing wholly and summary.

CHAPTER TWO

DEFINITIONS AND CONCEPTUAL /LEGAL FRAMEWORK

2.1 Dynamic of company incorporation

2.1.1 Company definition

A company as an artificial legal person the word company originates from a Latin word company meaning people sharing together.

It relates to a group of people associating together and sharing resources to pursue a common purpose.

Section 2⁹ companies act defines a company as any company formed and registered under the act or an existing company.

Professor David Bakibinga in his book company law in Uganda defines company as an artificial legal entity separate and distinct from its members or share holders¹⁰.

This legal person is distinguishable from natural personality corporation are created by law, statute and their existence is ended by the law.

The possession of legal personality implies that a company is capable of its rights and being subject to duties separately from the members as an artificial legal person a company is capable of the following;

It has its own name by which is recognized.

It can own its own property. i.e. asset like buildings, land, bank account etc

It can sue or be sued in its own name

Even if a member or all the members die the company will remain in existence in other words it help perpetual succession

⁹ Companies Act 2012

¹⁰ Company law in Uganda by David J. Bakiringa pg 2

It can employ its own employees including its members or shareholders

It can be a creditor i.e. borrow money into own name and use its asset as security and it will be responsible for paying back such debt.

Lee vs. Lee¹¹ others had that company and lee were two operate and distinct person and that the capacity as managing director of a company does not mean that they cannot enter into contractual relationship with the longrang to serve it.

2.1.2 Incorporation; definition

Incorporation is the process that leads to the formation of a legal corporation

This is done by the promoter before a company is registered a promoter must carry out the preliminary work. This work include signing contracts, arrangement for capital and credit facilities, security premises where the company is to be located, machinery, and equipment etc. all this work is done by promoter.

Twycross Vs Grant¹² defined promoter as one who undertakes to form a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose.

A person is prime folic a promoter of the company of he or she has taken part in setting a company formed with references to a given project.

In promoting a company promoter usually enter into contract with third parties and when they do so they purport to do so on behalf of the company before it is incorporated

2.2 Types of incorporated companies

Before commencing the process of incorporation the promoters ought to decide which type of company they wish to incorporate.

¹¹ Lee vs. Lee Air Farming Ltd (1960) 3ALL ER 420

¹² Twycross Vs Grant 1877

Registered companies

A registered company that is registered with the registry of companies the companies act provide for the registration of a company therefore for one to have a company that is loyalty recognized under the companies act that person must register that company with the registry that company with the registry of companies this process is called registration or incorporation of company.

Under the companies act there are two major types of registered companies which can be lawfully formed in Uganda.

Private companies

Section 5¹³ of the companies act define a private company as a company which by its articles.

Restrict the right to transfer shares of the company

Limit the number of its member to 100 not including past, present employees of the company.

Prohibit any invitations to the public to subscribe for any shares or debentures of the company and under company act the minimum number of member is one person this position was laid down in the case of Lutaya¹⁴ Vs Gandesha.

Public companies

Under Section 6¹⁵ states the meaning of public company under section 5 is a public company.

The minimum number for public companies is 7 and goes up to infinity in other words there is no limit as to the maximum number of members a public company can have.

Its registered name normally end with the word public limited company (P/C)

A company which has obtained registration as a public company its original certificate of incorporation must state that it is a public company.

¹³ Companies act 2012

¹⁴ Lutaya Vs Gandesha (1987) HCB 49

¹⁵ Companies Act 2012

Liability of members where the number of member is below legal minimum under Section 49¹⁶ of the companies act of company carries are business for more than 6 month after its member has fallen below the statutory minimum every member during the time the business is carried on after the 6 months and who knows that the company is carrying on business with less than the required minimum membership is individually liable for the company's debt incurred during that time in such a case therefore the corporate veil is lifted in order to help these members personally liable for the company's debt incurred during that time.

Statutory companies

There are formed by acts of the parliament and do not go through the process of incorporation laid out under the companies act there are formal by acts of parliament i.e. NWSCO under national water and sewage corporation cap 317 new vision formed under the new vision printing and publishing corporation cap 230.

Chartered companies

This relates to companies granted a royal charter in England by the crown under the royal prerogative or special powers.

The charter normally confers corporation personality i.e. these are colleges of oxford and Cambridge.

Corporate sole

It is one which consists of one human member at time being the holder of an officer. They are mostly created by acts of parliament but may also be created by the constitution or common law i.e. the president or the Kabaka under constitution the administrator registrar general under the act of parliament.

Under the companies act registered companies may be limited liability companies or limited liability companies under Section 4¹⁷ limited company may be

Liability limited by shares

¹⁶ Companies Act 2012

¹⁷ Companies Act 2012

Liability limited by guarantee

A company limited by shares

This is a company where the members enjoy limited liability. This means in case of winding up of the company if the company's assets are unable to meet the company's debts then the members will only be liable to contribute to the debts of the company only such amount as a member may not have paid for the shares they bought. Thus a member's liability is only limited to the amount of the unpaid share Section 2¹⁸ of companies act.

A company limited by guarantee

This is where the liability of its member to such amount as the member may have undertaken to contribute to the company's assets in the event of its winding up this guarantee must be expressed in the memorandum of association.

An unlimited company

This is a company in which there is no limit to the liability of the members. This means that in the event of winding up the members will be liable to contribute money sufficient to cover all the company's debts without any limitation.

2.3 Procedures for incorporation

In order to be incorporated the promoter of a company must first prepare and register some document with the register of companies.

A company is formed by registering it with the registrar of companies and obtaining certificate of incorporation.

The registration goes through the following steps

Reservation of the company name

Section 18 to section 41¹⁹ has provision in regard to name of companies the promoters must choose a name of their choice and then make an application to the registrar of companies to

¹⁸ Companies Act 2012

¹⁹ Companies Act 2012

reserve their name for their company of the registrar is satisfied that the name meets the above requirement he will approve and reserve the name. The company must then register within 60 days.

Presentation of the required document before the registrar for registration

Within 60 days the reservation of the name the promoter will then present the following document to the registrar to have their company registered.

Memorandum of association

Articles of association

A statutory declaration of compliance

A statement with the names and particulars of directors and secretary

The prospective if a public company

Memorandum of association Section 7 to section 10²⁰ the memorandum of association is the most important of all the company document because it contain the power of the company it describes the company and the nature of activities that the company is authorizes to do or engage in

Articles of association SECTION 11 to SECTION 16²¹

This document regulates the internal activities of the members and the directors it contain information on management who will be the director of the company, who will be the managing director, secretary, appointment of the board directors, qualification of directors the chairperson of the board meetings of the company, the classes and rights of share holders, transfer of shares, borrowing power of the company, properties, control of the company finance, dividend and how they should be distributed, auditing of books the company seal of how it should be used.

²⁰ Companies Act 2012

²¹ Companies Act 2012

Declaration of compliance

This is a statement declaring that all the necessary requirement of the companies act will regard to the formulation of the company have been duly complied with and that the director agrees to continue complying with them.

A statement of nominal capital

This is a statement which shows the capital with which the company is starting with i.e. initial capital of the company.

List of names and particulars of directors

This document contain the details of the names, addresses occupation of the directors and company secretary of the company 3 payment of stamp duty and registration fees the registrar will then assess how much is to be paid on registration of the company. It is assessed basing on the capital the company is starting with. The more the capital the greater the stamp duty registration fee is also paid.

Issuance of a certificate of registration SECTION 27²²

After all this requirement a certificate of registration is issued of the registrar is stratified.

This is certificate that a company has been recognized as a legal person and accordingly registered

After it been issued private companies can commerce business. However for public company it must in addition obtain certificate of commencement of business.

2.4 Effect of incorporation

If the registrar is satisfied that the document are in order and that stamp duty and fees have been paid.

He enters the name of the company with register of companies issue a certificate of incorporation

²² Companies act 2012

The issue of the certificate of incorporation is conclusion evidence that all registration requirements have been complied with and that association is a company authorized to be registered and is duly registered under the act.

Principally the effect of registration is that from the date mentioned in the certificate of incorporation the subscribers to the memorandum together with such other person that from time to time become member of the company and it becomes a body corporate by the contained in the memorandum capable of exercising all the functions of an incorporation company with power to hold land and having perpetual succession and a common seal.

2.5 Merits of incorporation

The merit of forming an incorporated entity includes the following

Holding property

A company can hold property in its own right as cited in the case of *Macaura Vs Northern Assurance Co AC* Lord Buckmaster²³ of the House of Lords held that no shareholder has right to an item of the property of the company even if he holds all shares in the company.

Liability

The company being a distinct legal person is liable for its debts and obligations and the members or directors cannot be held personally responsible for the company debt.

*Salomon v Salomon*²⁴ held that a company is a legal entity.

Legal proceeding

As a legal person a company can take action to enforce its legal rights or be sued for breach of its duties with courts of law in *Wani Vs Uganda Timber*²⁵ it was held that the company is the right party to be sued not its managing director.

²³ *Macaura Vs Northern Assurance Co* (1925) AC

²⁴ *Salomon v Salomon*²⁴ (1897)

²⁵ *Wani Vs Uganda Timber*²⁵ (1972) HCB

Perpetual succession

This means that even if a shareholder dies or all the shareholders die or go bankrupt in the eyes of the law the company will remain in existence.

Re Nlel Edman holding property all members were killed in a motor accident but court held that the company would survive.

Transfer of shares

A share constitutes an clear of property which is freely transferable except in private companies where there is restriction on the transfer of shares i.e. one may not transfer his share except to an existing member or share holder and not to outsider.

Borrowing

A company can borrow money and provide security in the form of floating charge. A floating charge is a security created over the assets of the company.

2.6 Demerits of Incorporation

Costs of incorporation

There is great expense in regard to amount payable to the advocate ensuring incorporation the dues payable to the registrar of companies including the capital duty on the capital of the company which is based on the registration.

Formality

A complex chain of formalities follows the process of incorporation as seen in the procedure for the incorporation this includes the preparation of the necessary documents that will lead to the grant of a certificate of incorporation.

Lack of privacy

It has been stated that a company enjoys no right of privacy due to the fact that a company is supposed to disclose both its own members and the registrar of companies the detail of its affairs and

accounts. After inspection by the registrar of companies there are open to the public meaning that the company is not subject to privacy in regard to some of the intimate affair.

In *Dunlop Nigerian Industries Ltd Vs. Forward Nigerian Enterprises Ltd and Farore*²⁶ the H.C of Lagos stated that in particular circumstances where the device of incorporation is used for some illegal or improper purpose the court may disregard the principle that a company is an independent entity and lift the veil of corporation identity so that if it is proved that person used a company he controls as a cloak for an improper transaction he may be made personally liable to a thing only the legal techniques of lifting the veil is recognized under two ways;

Statutory lifting of the veil

Case how lifting of the veil

3.1 lifting the veil of incorporation

In Ugandan court lifting the veil of incorporation it is done by statutory lifting of the veil and case how lifting of the veil.

Statutory lifting of the veil

Where the number of members is below legal minimum Section 49²⁷ under the companies act if a company carries on business for more than 6 month after its members has fallen below the statutory minimum (2 for private companies and 7 for public companies) every member during the time the business is carried on after the 6 month and who knows that the company is carrying on business there will be liable for the company's debts incurred during that time.

Solicit its customers where he lifts employment. He then formed a company which solicited the customers both the company and home were held liable for breach of the covenant not to solicit.

*Jone's vs. Lipman*²⁸

Lipman in order to avoid the completion of a sale of his house to Jones formed a company and transferred the house to the company court ordered him and the company to complete the

²⁶ 1976 N.C.L 1 243

²⁷ Company Act 2012

²⁸ (1962) W.L 2832

payment even though the ownership of the house was no longer in his name veil of incorporation was lifted and held liable.

Re William Bro's Ltd²⁹

A company was insolvent but the directors confirmed to carry on its business and purchased its goods on credit it was held that company contrives to carry out business and to incur debts there when there is to knowledge of the director it is general a proper inference that the company is carrying in business within to defraud.

R Vs Graham³⁰ makes it clear that a person is guilty of fraudulent trading if he had no reason to believe that the company will be able to pay its creditors in full by the date when the respective debt becomes due or within a short time

Lifting the veil under case law

Where the company acts as an agent of the shareholders. Where the shareholders of company use the company as an agent they will be liable for the debts of the company.

Agency is a relationship which exists when ever one person authorizes another to act on his or her behalf. The person acting is called the agent and one he is acting for is called principal. Therefore in this an agency relationship the acts of the agent are taken to be acts of the principal in case of liability it is the principal who is held liable and not the agent. This is because of the victim that he who acts through another acts for himself thus through another acts for himself this where shareholder employ or use the company as an agent then those shareholders will be personally liable for the acts of the company as principal behind the agent.

3.1.1 Where there has been fraud or improper conduct in a company

The veil of incorporation may also be lifted where the corporate personality is used as a mask for fraud or illegality in *Gilford Motor Co vs. Home*³¹

Home was the former employee of Gilford Motor Co. he agreed not to where company is not mentioned in bill of exchange under Section 34³² of the Companies Act Cap 110 an officer of the

²⁹ (1932) 2 CH 71

³⁰ (1984) QB 675

³¹ (1933) CH 935.

company is personally liable if he signs a bill of exchange for example cheque on behalf of the company without mentioning the company's name on it clear characters.

Where the company acts as agent of a shareholder.

Where shareholders use company as agent they will be liable for the debts in RE F.G (films) LTD³³

An American company provided all funds of producing a film which it sought to register as a British film on the ground that the film was produced by arrangement with a British company of which the American company owned GBP90 of the GBP 100 capital it was held that the British company was no more than a nominee or agent of the American company which was the true maker of the film.

Where a company is deemed a trustee of shareholders.

Company may hold property in trust for shareholders in order to find out if this is true the trustee company has to be looked through to see who holds the shares.

Where there has been improper conduct.

The veil on incorporation may be lifted where the corporate personality is used as a mask for illegality.

In D.K Construction Company Ltd and another vs. Barclays bank of Uganda Ltd³⁴ Uganda commercial court law report 201 it was held that the veil incorporation can be lifted by court if it satisfied that the company was used as a vehicle for fraud by its directing mind.

Where amounts to fraud was stipulated in the case of Derry vs. Peek³⁵ Where the house of Lord's inter alia noted that in an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is seen that a false representation has been made knowingly or without belief in its truth or recklessly without caring whether it be true or false that a false statement made through carelessness and without reasonable ground for believing it to be true may be evidence

³² Companies Act

³³ (1953) 1 WLR 483

³⁴ (2002-2004)

³⁵ (1889) 14 App case 337.

of fraud but does not necessarily amount to fraud such a statement if made in the honest belief that it is true is not fraudulent and does not render the person making it liable to an action of deceit.

Ratifying Corporate Acts

A company is bound only by resolution of its organs the board of directors or duly constituted meeting so in order to see whether resolution was passed without proper convening veil will be lifted RE GEORGE NEWMAN LTD³⁶ case Lindley L.J indicated thus; individual assents given separately may preclude those who have given them from complaining of what they have sanctioned but for purpose of binding the company in its corporate capacity individual assents given separately are not equivalent to the assent of a meeting however in subsequent case it appears to have been recognized that individual assents of all members given separately are equivalent to assent of a general meeting, irrespective of a formally convened meeting.

3.1.2 Lifting veil for the public interest

Sometimes courts have disregarded the separate legal personality of the company and investigated the personal qualities of its shareholders or the person in control because there was an overriding public interest to be served by doing so in DAIMLER CO. LTD VS CONTINENTAL TYRE & RUBBER CO.³⁷

A company incorporated in England whose shareholders except one were held by German nationals, resident in Germany. All its directors were also German nationals resident in Germany which was an enemy country of the time an action was brought and court disregarded the concept of legal entity.

Taxation

Under the income tax act the veil of incorporation may be lifted to ascertain where the control and management of the company is exercised in order to determine whether it is a Ugandan company for income tax purpose.

³⁶ (1895) 1 CH 674

³⁷ (1961) A.C 307.

Investigation into related companies Section 172³⁸.

Where an inspector has been appointed by the register to investigate the affairs of a company he may if he think it fit al investigate into affair of any other related company and also report on the affairs of that company so long as he feels that the result of his investigation of such related company are relevant to the main investigation veil of incorporation may be lifted

3.1.3 Where the company is avoiding legal obligation

Where the use of an incorporated company is being made to avoid legal obligation the court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

3.1.4 Where the company is being use a mere façade.

Yukong Line Ltd of Korea Vs Rendsurg Investment Corp of Liberia and others.³⁹

It was recognized that is appropriate to piece the corporate veil where special circumstance exist indicating that it is a mere façade concealing the true facts a company will be held as a mere façade in two circumstances firstly in case it has been used as mask mostly for fraudulent reasons. So as to evade limitations imposed on a shareholders conduct by law. Secondly in case such company is a façade in the sense that it is nothing more than a name in the case of Adam's and others V Cape Industries⁴⁰ p/c and another the court used this façade test against one of the American subsidiaries of a larger United Kingdom company. The defendant owned South African companies which mined asbestos and a United States company through which the asbestos was marketed in the United States. Sam 205 plaintiff brought actions in the United States against the defendant and other claiming damages for injuries a caused by exposure to asbestos dusts emanating from an asbestos insulation factory to which the defendant had supplied raw asbestos the trial judge awarded a global sum producing average of \$75,000 for each plaintiff.

³⁸ Companies Act 2012

³⁹ (1998) 1 lloyds rep 322

⁴⁰ PLC (1991)

3.1.5 Company is used to evade limitation imposed on conduct by law.

The veil of incorporation is lifted in a situation where the shareholders use the company to conceal his or her activities which are directly prohibited by law.

Jone's V Lipman⁴¹ in the case involved a vendor of land who attempted to avoid being compelled to convey the land to the purchaser by forming a limited company and transferring the land to the company. The court recognized this company as a vehicle of fraud and ordered specific performance against both vendor and the company notwithstanding the veil of incorporation.

The veil of incorporation may be lifted to prevent the deliberate evasion of a contractual obligation.

A company will not hide under the corporate shield where it wants to deliberately evade a contractual obligation.

In the case of Jone's V Lipman 1962

A man contracted to sell his land and thereafter changed his mind in order to avoid an order for specific performance he transferred his property to a company. Hence the veil was lifted.

The veil of incorporation may sometimes be lifted to allow a group of associated companies to be treated as one.

Sometimes in the case of a group of enterprises the Salomon principle may not be adhered to and the court may lift the veil in order to look at the economic realities of the group itself.

In the eyes of law the holding company and the subsidiaries are separate legal entities.

In this case D.H.N Food Distribution Ltd v Tower Hamlets⁴²

It was said that the court may discharge the Salomon case whenever it is just and equitable to do so and the court of appeal thought that the case was one of suitability for lifting the corporate veil.

⁴¹ (1962) W.L 2832

⁴² (1976) 1 W.L.R 862

here the three companies were treated as part of the same economic entity or group and were entitled to compensation.

In the case of *Daimler Co. Ltd Vs Continental Tyre and Rubber Co. (Great Britain) Ltd.*⁴³

In this case a company was incorporated in England for the purpose of selling their tyres manufactured in Germany by a Germany company. Its majority shareholders and all the directors were German. On declaration of war between England and Germany in 1914. The person in central of the affair become alien enemies and accordingly the company was declared to be an enemy company. During the war period the company filed a suit to recover a trade debt, which was dismissed by the court and observed that such payment would be trading with an enemy company and to allow alien enemies to trade under the corporate façade will be against public policy.

S20⁴⁴ of the Companies Act 2012 gives the high court jurisdiction in cases of tax evasion, fraud or the membership of the company falling below the statutory minimum to the corporate veil to provide the following.

“The high court may, where a company or its directors are involved in acts including tax evasion, fraud or where save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil”

In case of *Williams and others vs. Natural Life Health Foods Ltd and another*⁴⁵

The issue was whether the director was personally liable in tort for acts otherwise attributed to the company. It was not a case as to whether the director could be sued. The House of Lords considered the grounds on which a director could be held personally liable and not whether they can be sued.

*HL Bolton CO V TJ Graham & sons*⁴⁶ Lord Denning held at page 630.

⁴³ (1916) ac 307

⁴⁴ Companies Act 2012

⁴⁵ (1998) 2 ALL ER 577

⁴⁶ (1956) 3 ALL ER 624

“A company may in many ways be likened to a human body. They have brain and a nerve centre which control what they do, they also have hands which hold the tools and acts in accordance with directions from the centre. Some of the people in the company are mere servants and agent who are nothing more than hands to do the work and cannot be said to represent the minds or will others are directors and managers who represent the directing mind and will of the company and control what they do. The state of mind this manager is the state of mind of the company and is treated by the law as such.

According to Gower's Principles⁴⁷ and paragraph 3 thereof in certain circumstance directors shall incur personal responsibility notwithstanding that they had express by contracted as agent only especially where they have signed or authorized the signature on behalf of the company and the company name not mentioned in legible characters the statute must clearly state the ground court should consider when lifting the corporate veil.

Require specific statutory provision under S20⁴⁸ the law highlights three grounds upon which court may lift the veil that is

- a. Tax evasion
- b. Fraud
- c. Where the company operates with less member then the statutory minimum

Conclusion

In conclusion, the realities of the situation must be considered to know whether the veil ought to have been lifted hence according to above arguments sets the procedures how the veil fop corporation can be lifted.

⁴⁷ Growers principles of Modern Company Law 4th Edition Page 616

⁴⁸ Companies Act 2012

CHAPTER THREE

PROCEDURES IN LIFTING THE VEIL OF INCORPORATION

This chapter seeks to briefly highlight some of the procedural rules as well as any other enabling have necessary in ensuring the piercing of the corporate veil in either word lifting the veil of incorporation to make the defendant liable for his liabilities towards the company.

According to the case of Adam's vs. cape industries plc⁴⁹ it has provided for the most thorough analysis of this procedure here the court of appeal did not allow the veil to be lifted from an English parent company which had a subsidiary that had been successfully sued in the united states and the subsidiary had sufficient asset to pay off the American litigants. It was also his case that the corporate veil will not be lifted just because it would be more to do so.

There the situation according to Adam's where the veil of incorporation may be lifted are.

First, when the court is interpreting either a statute or a document however under this exception the court may only proceed to treat the group as a single entity where it finds lack of clarity while interpreting a particular statute or document.

The second the court may lift the veil of incorporation where there are special circumstances which exist to show the company is a mere façade concealing the true fact.

The third situation where court may lift the corporate veil group structures is where there has been an express or implies agency agreement.

However under English has there are other statute besides the Companies Act 2012 supporting lifting the veil of corporation.

Reduction of number of member below a legal minimum.

Section 49⁵⁰ member severally liable for debts where a business is carried on with fewer than the required number of members.

⁴⁹ 1991

⁵⁰ Companies Act 2012

Where a company other than private company limited by share by guarantee carried on business without having at least two members and does so for more than six months a person who for the whole or any part of the period that is so carries on business for the whole or nay part of the period that it so carried on business after those sixth months.

Is a member of the company and

Knowing that it is carrying on business with only one member is liable jointly and severally with the company for the payment of the company's debts contracted during the period or as the case may be that part of it.

Section 20⁵¹ of company act provide for lifting the corporate veil.

The high court may where a company or its directors are involved in act including tax evasion, fraud or where save for a single member company the membership of a company falls below the statutory minimum lift its corporate veil.

Criminal liability

Of any business of a company is carried on with the intend to defraud creditors of the company or creditors of any other persons or for nay fraudulent purpose who was knowingly a party to the carrying on of the business in that manner is liable for his or her act and the veil will be lifted.

Abuse of a company name or employment of disqualified directors

Section199⁵² of the companies act provides for disqualification of directors.

A person shall be disqualified from acting as a director for a period of three years if he or she fail to

Keep proper accounting records

Prepare and file accounts

Send returns to registrar

⁵¹ Companies Act 2012

⁵² Companies Act 2012

File tax returns and pay tax or

Allows a company to trade while insolvent

A person disqualified as director shall not

Be a director of any company

Act as director before the expiry of the disqualifications period.

Influence the running of company through the directors

Be involved in the formation of a new company

Act in a way that promotes a company

Section 38⁵³ of the companies act provide for prohibition on trading under misleading name.

A person who is not public company commits an offence if he or she carried on any trade, profession or business under a name which includes as its last parts the word public limited liability company.

Misdescription of the company

The company is legally known by the name which appears on the certificate of incorporation.

Where the company name is not used in the directors who used the fictitious name will be held liable hence the corporate veil only protects those who use the company's legal name.

Investigation of affairs or ownership

Section 174⁵⁴ provide for the inspectors power to lift the corporate veil of another company which is part of the same group of companies.

Revenue collection

The corporate veil may be lifted for tax purposes or to prevent tax evasion.

⁵³ Companies Act 2012

⁵⁴ Companies Act 2012

The directors and share holders may be liable to pay tax. This provided for under S20⁵⁵ of the companies act which authorize the high court to uplift the corporate veil.

Holding and subsidiary companies are defined under Section 161⁵⁶ of the Companies Act provide that (1) for the purpose of this act company shall subject to subsection (1) be taken to be subsidiary of another

If

That other company either

Is a member of it and controls the composition of its board of directors or

Holds more than half in nominal value of its equity share capital or

The first mentioned company is a subsidiary of any company which is that others subsidiary.

For the purpose of subsection (1) the compensation of a company's board of directors shall be taken to be controlled by another company only if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or majority of the directorship.

A subsidiary company is one that is controlled by another company called a holding company or its parent. Therefore one that controls another and its memorandum must give it power to do so the most common way that control of a subsidiary is achieved is through the ownership of majority shares in the subsidiary by the holding company.

Adam's Vs. Cape Industries plc⁵⁷

It was held that has recognizes the creation of subsidiary companies which are considered as separate legal entities from their parent companies.

⁵⁵ Companies Act 2012

⁵⁶ Companies Act 2012

⁵⁷ PLC (1991)

They have all the rights and liabilities of separate entities however the corporate veil of the subsidiary company will be lifted when the holding company appoint the officers of the subsidiary company.

Ishasha Mines Ltd Vs National Enterprises Corporation⁵⁸

The plaintiff sued the defendant a parent company of a subsidiary Medime Dura Limited.

Held a subsidiary company has a separate legal existence and can be sued in its own capacity however an action can be instituted against the parent company if it conducts its business through the subsidiary.

Corporate liability

A company is liable under criminal and civil law. For crimes committed through its agent liability under the contract is established if the company acted through it against

Liability a tort arises under primary or vicarious liability the primary liability arises where the company is deemed to have committed the offence and vicarious liability arises where a company is liable for its servants or agents act and the element of the mens rea and actus reus have to be proved under the criminal law.

Companies can only be liable for crime where express provision in a statute making the company liable for its officers act.

In the case of Tesco Supermarkets Ltd Vs Nattrass⁵⁹

Lord Reid said a living person has a mind which can have knowledge or intention to be negligent and has hands to carry out his intentions. A corporation has none of these and must act through living persons who act speaking or acting for the company, he is acting as the company and his mind is the mind of the company.

Rationale for lifting the corporate veil

The need to protect third parties dealing with the company.

⁵⁸ (1994)

⁵⁹ (1972)

Avoid the abuse of the concept of corporate personality by people with fraudulent intent.

In the case of *Re Darby*⁶⁰ provide for rationale for lifting the corporate veil

Two probate undischarged bankrupts purported to incorporate a company with a share capital of 30,000 pound. They sold their own property 3000 pound to the company at 18,000 pounds. They then invited the public to sub scribe for shares and the company went into liquidation shortly after.

Although the company was a separate distinct person the corporate veil would be lifted due to fraud.

Conclusion

The concept veil piercing is execute through a number of varied ways this chapter illustrate that both civil and criminal procedure are followed to ensure veil piercing from the use of a plaint in institution of civil proceeding to ensure veil piercing in S20 of the companies act provide for the circumstance of lifting the veil of corporation and all this chapter discuss the procedure for the management of the company as noted above.

⁶⁰ (1911)

CHAPTER FOUR

REFORMS, RECOMMENDATION AND CONCLUSION

5.0 Introduction

It cannot be said that Ugandan cases has generally tended to be in motivated in the generation of principles relevant to the area of company law. Our court have fashioned their decision according to English laws without particular emphasis on what is relevant to Uganda in the wake of calls for reforms in other areas of company law this area has remained stagnant despite constant abuses of the principle of separate personality and limited liability on a statutory note Ugandans companies act which is a replica of the English Companies Act of 1998 has failed to attract reforms despite constant reform on the parent act for this particular reason miserably fails to measure up to the English act more so in regard to lifting the veil of incorporation.

5.1 Reforms

Some of the reform proposal may seem controversial or even unwelcome due to the concept of separate personality and limited liability. However it should be noted that the veil of incorporation is lifted not as means of ignoring these concepts but as way of providing checks on abuses that often attend upon those very concept. Therefore in a bid to point out the necessary reforms and the required changes.

Amendment of Ugandan companies act

There is need for the amendment of the companies act so as to give court the discretion to order a company which is in the group entity for example the holding company and subsidiary company to make contribution to the assets of another company in the same group (company) which has become insolvent or to make orders which ensure that liquidation of two companies in the same company proceed jointly so that their assets ad liabilities are pooled together such as more has been adopted in Zealand ad Ireland.

Power of court

According to Section 20⁶¹ of the companies act provide for lifting the corporate veil that the high court may, where a company or its directors are involved in act including tax evasion, fraud or where save for a single-member company the membership of a company fall below the statutory minimum lift the corporate veil hence there is need to give procedure and jurisdiction of courts in handling such procedure and how and the punishment of the person liable for such of the circumstance as provided in S20 of the Companies Act.

Insolvency

This is a situation where by a company is unable to pay to debt in full in Uganda. This stand a ground on which a company may be wound up by the court although the veil of incorporation is lifted in various situation during winding up. According to S108⁶² provide for pooling of asset of associated companies on application of the liquidation or nay creditor or shareholder the court may of satisfied that it is just and equitable to do so, lift the veil of any associated company on terms and conditions as it may consider fit to facilitate and ensure due completion of the liquidation process in a just and equitable manner and may order that.

A company that is or has been an associated company of the company in liquidation way to the liquidator the whole or part of any or all of the claim made in the liquidation or.

Where two or more associated companies are in liquidation the liquidation or each of the companies extend as the court orders and is subject to the term and conditions imposed by the court.

Public policy

Public policy may generally be said to entail the principle and standards regarded by the legislature or the courts as being of fundamental concern to the state it is the principle that a person should not be allowed to do anything that would tend to injure the public at large.

⁶¹ Companies Act 2012

⁶² Insolvency Act 2011

The companies act ought to empower the court to consider this around as an emphasis for lifting veil of incorporation.

It should be noted that due to the principle of public policy must be also good ground for uplifting the veil of incorporation due to fact that the public will be affected by the fake companies hence leading to damage towards the public at large.

Insolvency

The term insolvency conceives a situation where a company is unable to pay its debts in full under the Insolvency Act provide under S.3⁶³ inability to pay debts (1) subject to subsection (e) and unless the contrary is proved a debtor is presumed to be unable to pay the debtors if

- (a) The debtor has failed to comply with a statutory demand
- (b) The execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part or
- (c) All or substantially all the property of the debtor in the possession or control of a receiver or some other person enforcing a charge over that property.

On a petition to the court for the liquidation of a company or bankruptcy order, evidence or failure to comply with a statutory demand by the creditor, shall not be admissible as evidence of inability to pay debts unless the application is made with 30 working days after the court date for compliance with the demand.

Hence in Uganda this stands as ground to wound up company by court or voluntary winding up although the veil of incorporation is lifted in various situation during winding some of the procedures are not properly followed hence there must be amendments on the proper way of lifting up veil of incorporation if the company is insolvent.

⁶³ Insolvency Act 2011

Holding and subsidiary companies

These group entities hold the curse of creating confusion and enabling a murky environment devoid of clear stipulation as to when the veil of incorporation should be lifted that must be reform so as to give the courts the discretion to order a company which is in group entity to make contribution to the asset of another company in the same group which has become insolvent or to make orders which ensure that liquidation of two companies in the same group proceed jointly so that their asset and liability are pooled together such a more had been adopted in new Zealand and Ireland. So as to enable the both the holding company and the subsidiary company to have proper management through its directors.

Observation

The foregoing chapter have essentially been bound within the scope of demystifying the concept of piercing the veil of incorporation more so in a context that satisfies the Ugandan environment, they have been executes in a manner require all the necessary procedures in the uplifting the veil of incorporation.

This paper has been instrumental in defining the procedure that ensures incorporation of companies in Uganda by taking closer look into the Companies Act of Uganda. This process entails preparation and registration of documents namely the memorandum of association, article of association, statement and postal address and the particulars of directors and secretaries if those document are in order it enable the register to grant the company a certificate of incorporation from the company shall be a body corporate by the name contained in the memorandum of association, capable of performing all function of a incorporated company hence this paper has been prudent enough to highlight the some merits and demerits of incorporation.

This research has had delight of engaging in the critique of instances that necessitate veil lifting for instance situation such as when the company structure is being used as a more façade to conceal the true facts, where the company structure is being used to evade tax and where the company structure is being used to evade limitations imposed on conduct by law.

Act these apply by being of a common law nature hence Ugandan courts have the onus of lifting the veil of incorporated other circumstances that necessitate veil piercing are of statutory nature and they include those contradictory to the Companies Act 2012 they include those in regard to reduction of the number of members of the company to below two members in private company and below seven members to the public company and this continues for more than six months while such company is still doing business instances in regard to fraudulent trading whereby it appears that any business of the company were carried out with intention of defrauding creditors of the company or creditors of any other person or for any fraudulent purpose, instances in regard to improper accounts of any fraudulent purpose instance in regard to improper account for deprives of two years preceding commencement of winding up of the company or the period between incorporation and winding up.

Mostly the research has discussed the circumstances for up lifting the veil of incorporation.

Conclusion

Having considered all the above arguments it would be conclusive to hold that towards finding suitable reforms in the area of lifting the veil of incorporation the reforms may be limited to the extent that they are not exhaustive hence there is need for room for further investigation. However it can be said that this chapter has various reforms more so in regard to a amendment of the Companies Act 2012 in relation to the uplifting the veil of incorporation.