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Uganda Revenue Authority Versus Crane Autos Limited, Kampala Properties Limited, Punjani Motors Limited, East African Motor Supplies Limited, Autotune And Engineering Limited, The Official Receiver

Miscellaneous Application No. 0372 of 2024

By:
Harold Turigye, Partner

Synopsis

This case was lodged in the High Court by Uganda Revenue Authority for deferral of the certificate of dissolution.

The primary issues revolve around tax assessment and compliance, insolvency and dissolution of companies, as well as the interpretation and application of tax laws in Uganda.

Legal principles covered

- The powers of court to defer the dissolution of a company
- The grounds of deferral of the dissolution
- The tax administration visa vis Insolvency proceedings
- Effect of time on filing applications.
- The effect of effluxion of time for deferring dissolution

Brief Facts

The 1st, 3nd, 4th, and 5th Respondents are private limited liability companies incorporated in Uganda dealing in motor vehicle trade.

In 2018, a whistleblower notified the applicant of the tax evasion scheme by the 1st Respondent and investigations started right away for all the five Respondents. After a tax audit, it was discovered that the 1st Respondent had been evading tax and subsequently a revised tax assessment was issued to the 1st respondent.

On 14th March 2023, the shareholders of the 1st respondent passed a special resolution to voluntary wind up the company and a liquidator was appointed.

On 28th February 2024, the applicant filed Miscellaneous cause No. 026 of 2024 wherein it sought for an order lifting the corporate veils of the five Respondents and on same day filed an application for a deferral order.

Discussion of legal principles covered in the case

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01 The power of court to defer the dissolution of a company

The trial judge relied on the **Sections 67 (6) and 77 (7) of The Insolvency Act** which empower courts, on the application of the Liquidator or of any other person who appears to the court to have an interest in the company, to make an order deferring the date on which the dissolution of the company is to take effect, to a time as the court may think fit.
Further, the trial judge held that the provisions imply that before dissolution but after winding up court may for sufficient cause prolong a company's life as a legal entity or its existence, allowing it to be sued in a court of law or otherwise dealt with as a person.

He relied on **Re Working Project Ltd. (17) [1995] 1 BCLC at 231** which provides for the three-month period that recognises the possibility that other assets of the company might be found or that there might be disagreement between the creditors and the liquidator as to whether his work is truly complete.

02 The grounds for deferral of dissolution

The judge held that deferral may be granted where it will facilitate a more effective, economic or expeditious liquidation of the company in the interests of its contributories and creditors.

Additionally, deferral of the dissolution of a company maybe on account of where there are proceedings, claims or investigations in progress which require the company to remain on the register, such as where new information comes to light.

The judge gave an example of the English Court of Appeal decision of Stanhope Pension Trust Ltd and another v. Registrar of Companies and another [1994] 1 BCLC 628 at 635, where an order for deferral could serve the purpose of enabling a company to claim under an indemnity for rent due. The dissolution may then be deferred until after the outstanding investigations, or obligations and liabilities to the applicant are discharged.

The judge also stated that deferral of the dissolution maybe on account as to investigation of suspected unlawful tax avoidance, tax fraud or evasion.

03 The tax administration vis-a-vis insolvency proceedings

The trial judge explained that many corporations use insolvency proceedings to conduct tax fraud, tax evasion, and tax avoidance. Hon. Justice Steven Mubiru noted that the insolvency-based creditor approach which obligates directors to act in the best interests of the voluntary or involuntary creditors when the company is on the verge of insolvency. He categorizes the state (taxman) as an involuntary creditor who has entered transactions with the company on a non-consensual basis when it comes to levying corporate taxes.

In order to protect the interests of such creditors, the courts may lift the corporate veil to hold individual director's liable, after-tax fraud through insolvency proceedings is uncovered. **Section 77 of the Insolvency Act** can be invoked to defer the dissolution of an insolvent company suspected to have engaged in tax fraud or unlawful tax avoidance. The standard required in such cases shouldn't be as low as one based on a mere shadowy suspicion and neither should it be so high as to hinder bona fide claimants. Reasonably trustworthy evidence sufficient to warrant a reasonable person to believe a particular person has committed or is committing fraud should be presented before the court.

He further stated that several principles have been applied by the courts to determine whether certain business transactions amount to unlawful tax avoidance schemes these include the Substance over form principle, the Step Transaction Doctrine and the Business Purpose Doctrine. Mostly, courts will use these tests for guidance but judge each transaction on a case-by-case basis.

In conclusion, it is illegal for corporations to hide behind insolvency proceedings to conduct tax fraud, evasion, or avoidance.

04 The timing of the application

The judge relied on Section 67(6) and 77(7) of the Insolvency Act which provides that an order can be only made before the end of three months after the lodgment of the return. The respondents in their submissions opposed the deferral application on grounds that it had been brought at the very last minute in circumstances where all the required steps for an orderly dissolution of the 1st respondent had been taken and dissolution was imminent.

A liquidator or of any other person who appears to the court to have an interest in the company must make the application for deferment prior to the expiration of the three months period after the lodgment of the relevant documents by the liquidator as the company would cease to exist after that. The power of deferment prior to the expiration of the three months acknowledges that valid justifications or extraordinary circumstances may justify a deferral of an event and hence court must weigh the balance between the applicant's and the respondent's interest in bringing the winding up to an end.

The honorable judge gave the circumstances that qualify as exceptional for purposes of tolling time which include two categories that is discrete events and particularly complex cases. The judgement on this issue was based on reason of public interest and effect of proper tax administration towards the well-being or welfare of citizens.

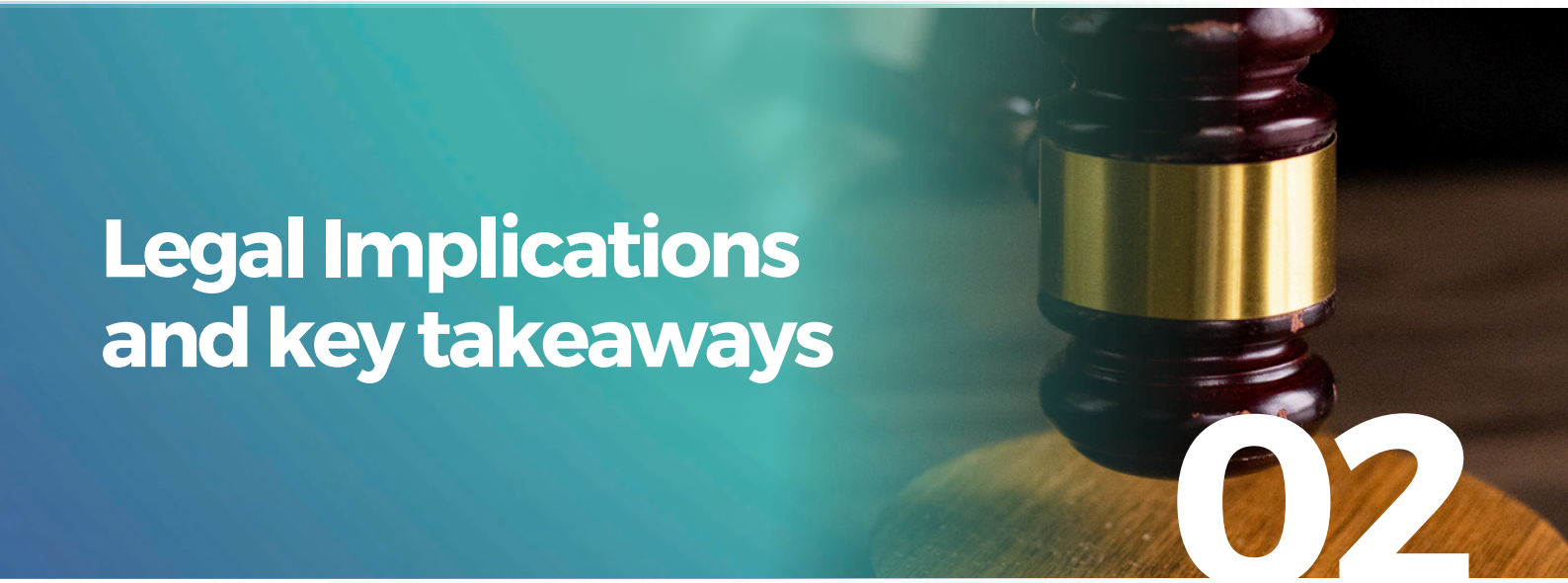
05 The effect of effluxion of time for deferring dissolution

Under common law and the statute, a company ceases to exist as an entity upon the effective date of its dissolution and that by virtue of **sections 67 (6) and 77 (7)** of The Insolvency Act on the expiration of three months after the Liquidator's lodgment of the return with the Registrar of Companies and the Official Receiver, and no further formality is required relying on the cases of **Vasudevan v. Icab Pte Ltd [1987] SLR(R) 46** and Re Steel master Pty Ltd (in liq) ; Kenney v. McCann (as liquidator of Steel master Pty Ltd) [1992] 6 ACSR 494).

However where a company has been dissolved, the Court may at any time within two years after the date of dissolution, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved relying on -

the restorative powers of court under English legislation specifically sections 651(5) and (6) of the Companies Act 1985.(Also see the law in Cayman's Island)

The judge also clarifies on the role of the Official Receiver under Section 199 to investigate the directors, shareholders, contributories and all present and past officers of an insolvent company or of a company which is being wound up or liquidated; not for the repayment of or recovery of assets for creditors, but for the purpose of establishing any fraud or impropriety. It is incumbent upon the Official Receiver to conduct such an investigation in cases of the liquidation of companies that present the greatest risk of harm to the public, before issuing the Certificate of Dissolution.



Legal Implications and key takeaways

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- In case of tax fraud and evasion, the taxman has the right to lift the veil and go against the individuals behind the face of the company to recover.
- Where a defaulting company forms subsidiary companies to invade taxes through suppressing the tax returns in the other companies, the same is deemed a form of fraud and tax evasion.
- Court will exercise its powers to revoke dissolution of a company in exceptional circumstances such as fraud and grounds of public interest against unlawful tax avoidance schemes.

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