

KOLOLEANA DEVELOPMENT COMPNAY LIMITED AND MEGA CORPORATION LIMITED (JUDGMENT DEBTORS) .V. OLUPATI AND OTHERS (JUDGMENT CREDITORS).

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Civil Case No. 83 of 1998.

Date of Hearing: 20th February 2006.

Date of Ruling: 22nd February 2006.

C. Ashley for the Judgment Creditors.

D. McGuire for Mega Corporation Limited.

RULING

Kabui, J.: The Managing Director of Mega Corporation Limited is Hii Yii Ging, a national of Malaysia. He holds one share in trust in Yonwell Investment Limited incorporated in Hong Kong being the majority shareholder in Mega Corporation Limited. Mega Corporation Limited is incorporated in Solomon Islands. It is currently indebted to the creditors in Civil Case No. 83 of 1998 by way of a High Court judgment in the sum of \$4,451,559.72 plus interest at five percent.

Mega Corporation had failed to pay up the judgment debts and so execution process was taken out against Mega Corporation Limited to recover its outstanding debt. The problem is that attempts to speak with Mr. Ging had not been successful because he appeared to be avoiding the Solicitor for the judgment creditors. To counter this situation, the judgment creditors came to Court by way of summons seeking an order to restrain Mr. Ging from leaving Solomon Islands and that his passport should be surrendered to the Registrar of the High Court so that he can be easily located and spoken to in Honiara for the purpose of being available for oral examination in Court. No affidavit was filed to support the application except a certificate of urgency filed on 20th February 2006. The certificate of urgency cited above however appears to be in an affidavit form without being styled as an affidavit in support of this application. I will regard it as the affidavit evidence supporting this application.

The Writ of Fieri Facias.

The above Writ was filed in the High Court on 19th December 2005, accompanied by the normal praecipe. The execution of the Writ of Fieri Facias is the function of the Sheriff. Mr. Koilo who is a clerk in the High Court Registry is not the Sheriff of the High Court. The fact that he accompanied Mr. Ashley, the Solicitor for the judgment creditors to the Ranadi premises being the head office of Mega Corporation Limited (the judgment debtor) on 13th and 14th February 2006 to enforce the judgment debt was a mistake. Mr. Ashley, the Solicitor for the judgment creditors, is not the High Court Sheriff. He and Mr. Koilo have no power to perform the functions of the High Court Sheriff.

Mr. Kwaimani is the High Court Sheriff. There is no evidence to show that he has been seized of the writ of execution in this case. Mr. Kwaimani is yet to act under the writ of execution. Mr. Ashley as the Solicitor for the creditors will have to wait for the next step, if that is necessary, after Mr. Kwaimani has acted under the writ of execution. Mr. Ashley had apparently acted prematurely in this case. The application is misconceived and is dismissed. No order as to costs.

F.O.Kabui, J.