

## *Understanding core duties and liabilities of corporate directors.*

IT is very common in our jurisdiction to hear certain people brag about their enviable positions as directors of certain big companies.

The pride is mainly because such companies are incorporated in the office of the registrar of companies with statutory requirement that their first directors be disclosed at the time of incorporation.

This article seeks to provide brief overview of the potential duties and liabilities of corporate directors. Emphasis shall be made on directors of incorporated companies and not other directors serving in such capacity in government institutions and non-governmental organizations.

Essentially, it is imperative to state at this outset that company is a legal entity distinct from its shareholders or directors or creditors. The company has a mandate to either sue or be sued at its own name.

Further, it has responsibilities to clear its obligations such as payment of duties, payment of salaries, enter into commercial contracts among others. The case of *Salomon vs Salomon* (1897) AC 22, has been the point of reference as landmark case in all common law jurisdiction countries, Tanzania include, regarding legal entity of a company.

One may look at the various duties and responsibilities attached to a company being as good as a human being. However, the only major difference is that day-to-day business and affairs of a company are being managed by corporate directors.

As a matter of law, directors are appointed by the owners or shareholders of such companies. However, in discharging the above major tasks, directors have a mandate either to do themselves or through other appointed officers namely managing director or president of the company.

Due to broad authorities vested upon them by laws, sometimes directors may be referred as ‘directing minds’ of corporations because prospects or failure of companies entirely depends on how they run affairs of such businesses.



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Section 181-213 of the Companies Act, Cap 212 R.E 2019 stipulates various duties of corporate directors. However, after thorough reading the same, we can categorize such duties (i) Fiduciary duty and (ii) Duty of care.

Directors own a fiduciary duty to the company. In the Court of Appeal case, in Civil Appeal No. 183 of 2016 between Joseph Shumbusho vs Mary Grace Tigerwa and two others described fiduciary duty to mean a person having a duty to act for the benefit of another in good faith and honesty. Directors are required to act in good faith and honestly at the benefit of the corporation and not to either shareholders or any other person with interest of the company.

The other one is that directors are required to exercise a duty of care in discharging their day-to-day activities. Duty of care has its roots from a landmark case of Donaghue vs Stevenson (1932) AC 562 which refers to the circumstances in which by virtue of relationship of the parties concerned, give rise to a duty to ensure other person is protected from any foreseeable harm likely to occur.

Also, directors have a duty of care to the corporation and other persons related to it. This duty of care can be broken down into several categories such as (i) duty to ensure either directly or indirectly that the business does not have conflict with their personal interest, (ii) ensure employees of the company are taken care of by making payment of their rights and (iii) duty to act with care, skills and diligence.

In the Supreme Court of Canada, in the case of Peoples Department Stores Inc (Trustees of) vs Wise, 2004 SCC 68 in paragraph 67, the court held that such duty does not require perfection but rather, directors should be able to show that they acted prudently and diligently in discharging their duties. (iv) Duty to disclose age. The law demands that directors should have attained the age of more than 21 years and retire upon reaching 70 years unless further extension is granted. With

regard to liability of corporate directors, generally, directors cannot be liable for the acts done while discharging their duties as directors because, as stated earlier, a company is a legal entity that can be sued on its own name.

However, there are situations or as matters of exception when the above general rule is set aside and directors can be personally liable, particularly when the act or omission is contrary to the duties and obligations vested upon that particular director by the company.

In some circumstances, in case you want to deal directly with directors in their individual capacity, the law demands unveiling of the corporate veil of the company so that you may reach the directors on their personal capacity and mostly in execution of decree.

In the Court of Appeal of Tanzania, case of Yusuf Manji vs Edward Masanja and another, (2006) TLR 127, the directors deliberately concealed the assets and identity of the company for the purposes of obstructing execution process and the court for the best interest of justice opted to lift the corporate veil and held the directors of the company personally liable.

Apart from the above position, both provision of the law and judicial authorities have established various circumstances which make directors of companies liable personally for acts done under the umbrella of the company.

First is liability to pay taxes. The law demands some taxes be paid immediately once commercial transaction is done such as withholding tax, failure of which the directors become personal liable.

Second is commercial agreement entered prior to the incorporation of a company. In some instances, promoters of a company may become directors of the company and during their tenure as promoter, commercial agreements may be entered.



In such instances, failure to ratify the same, after incorporation of the company, then the said director can be personally liable.

Third is liability on tort, namely failure to exercise duty of care by taking reasonable precautions to prevent any negligent acts or omissions on the part of corporation.

The fourth one is acting contrary to court order of disqualification. Once a court of law disqualifies a certain director, he or she is not be allowed to discharge directorship duties otherwise any debts that shall accrue therein they must be personally liable for as stipulated in section 198 of the Companies Act.

In view of the above, what we can sum up herein is that despite some actions or omissions which may result in personal liabilities of the directors, in the modern mercantile world, incorporation of a company is a must to ensure continuity of transactions because serious business persons or government entities are not prepared to enter into commercial transactions with individuals in their personal capacity without limited liability.

What the directors are required to do is to familiarize themselves with the law and understand the extent of their fiduciary duty and duty of care to the company and other persons affiliated to the company.

**Note:** *The material and information contained in this article are for general information purposes only. They only provide either elementary or basic legal knowledge on the above subject. Anyone considering legal action should consult an experienced lawyer to understand current laws and how they may affect a case in question.*