



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kartar Singh Dhupar and Co Limited v Kaputei Villas Limited & another (Civil Appeal E244 of 2020) [2023] KEHC 21500 (KLR) (Civ) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21500 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E244 OF 2020**

**CW MEOLI, J**

**JULY 28, 2023**

**BETWEEN**

**KARTAR SINGH DHUPAR AND CO LIMITED ..... APPELLANT**

**AND**

**KAPUTEI VILLAS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**мбака алберт чарлес ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the ruling and order of Honourable L.L. Gicheha,  
CM delivered on 15th September, 2020 in Milimani CMCC No. 704 of 2017)*

**JUDGMENT**

1. This appeal emanates from the ruling delivered on 15<sup>th</sup> September, 2020 in Milimani CMCC No. 704 of 2017. The pertinent background is that Kartar Singh Dhupar and Co. Limited (hereafter the Appellant) lodged a suit against Kaputei Villas Limited (the 1<sup>st</sup> Respondent herein, hereafter referred to as the Respondent) in the Chief Magistrate's Court in Nairobi namely Milimani CMCC No. 704 of 2017 by way of the plaint dated 7<sup>th</sup> December, 2013. Seeking several reliefs including the sum of Kshs. 6,490,073.96, and damages, for alleged breach of contract in respect of construction works undertaken on the property known as L.R. No. 3734/399 off Kaputei Road, Lavington Nairobi, currently known as "Kaputei Villas" (hereafter the subject property).
2. The Respondent filed a statement of defence on 27<sup>th</sup> February 2014 denying the averments in the plaint and liability. The suit eventually proceeded to hearing, following which, the trial court delivered its judgment on 5<sup>th</sup> December 2017 in favour of the Appellant against the Respondent, by awarding the sum of Kshs. 3,079,107/-, costs of the suit and interest thereon.



3. During the course of execution of the decree by the Appellant, Mbaka Albert Charles, the 2<sup>nd</sup> Respondent, (hereafter the Objector) filed a notice of objection dated 13<sup>th</sup> September, 2019 to the proclamation in respect of certain items listed in the Proclamation of Attachment of Movable Property dated 10<sup>th</sup> September, 2019 (the Proclamation) served by Ruol Auctioneers (the Auctioneers) acting on behalf of the Appellant. The Objector subsequently filed the notice of motion dated 16<sup>th</sup> September, 2019 and amended on 27<sup>th</sup> September, 2019 (“the application”) seeking a declaration that all the movable properties listed in the Proclamation belonged to the Objector who had legal and/or equitable interest in the attached properties and an order to set aside the Proclamation.
4. The grounds on the face of the application were amplified in the supporting affidavit of the Objector, who deposed that sometime on or about 11<sup>th</sup> September 2019 the Auctioneers visited his residential home in Lavington area and proclaimed various movable properties purportedly in execution of a decree issued in favour of the Appellant. The Objector swore that the attached items belonged to him and hence the attachment was unlawful. He averred that he has no association whatsoever with the Respondent herein and that he stood to suffer irreparable loss unless the orders sought were granted.
5. The Appellant opposed the application through a replying affidavit sworn on 9<sup>th</sup> October 2019 by its director Nirmal Singh. Therein, he stated that contrary to the averments of the Objector, there was a nexus between the Respondent and the Objector through directorship of the latter in the former. That the Objector was at all material times aware of the existence of the suit against the Respondent and by virtue of being a director, the Objector had through his conduct assumed liability for the unpaid judgment sum.
6. The Objector, in his further affidavit essentially reiterated that he was not a party to the suit and that he had never been a director of the Respondent. That, consequently, the Appellant had no right to attach his properties in satisfaction of the decree. The Appellant too filed a supplementary affidavit through Nirmal Singh echoing his earlier assertions that documentation tendered demonstrated the link between the Respondent and the Objector and hence any assertions to the contrary are misleading. The Appellant therefore urged that the application be dismissed with costs.
7. The trial court by the ruling delivered on 15<sup>th</sup> September 2020 partially allowed the application by setting aside the proclamation notices in respect of the motor vehicles registration numbers KBW 825P and KCC 545P (the first and second motor vehicles), thus provoking the instant appeal which is based on the following grounds:
  - “1. The Honourable Magistrate failed to appreciate the Plaintiffs submissions dated 11 November 2019 on points of law as pertains to the Objector’s Application dated 16<sup>th</sup> September 2019 and the Objection dated 13<sup>th</sup> September 2019.
  2. Motor vehicles registration numbers KBW 825P and KCC 545P belong to the Objector. The Objector assumed liability for the debts of the Defendant as pertains to the contract the subject matter of the suit and is liable for the judgment sum the court having decreed in its ruling of 15<sup>th</sup> September 2020 that the judgment sum has not been paid.
  3. Solomon v Solomon [1897] AC 22 is not applicable in this case and the High Court in its inherent powers may order for the payment of the judgment debt by the Objector based on the evidence on record.



4. The attachment of household goods is not sufficient for the payment of the judgment debt which exceeds kshs. 7,000,000/=. The court failed to do justice.
5. The admissions of the Objector of ownership of the vehicles justify the lifting of the corporate veil to ensure the ends of justice are met.” (sic)
8. The appeal was canvassed by way of written submissions. In addressing the key issue raised on appeal which is whether the Objector was liable to satisfy the decretal sum, counsel for the Appellant anchored his submissions on two arguments. First, that the trial court ought to have rendered the notice of objection filed by the Objector invalid for not having been clearly brought under the applicable provision which is Order 22, Rule 51 of the Civil Procedure Rules. In support citing the decision in Stanley Kangethe Kinyanjui V Tony Ketter & 5 others [2013] eKLR where the court emphasized the importance of a party invoking the proper legal provisions in a notice of objection.
9. Secondly, that the trial court ought to have acknowledged the clear and existing relationship between the Respondent and the Objector, upon which the Objector would have been found liable to meet the obligations of the Respondent in satisfying the decree. The decisions in Jian Nan Xing v Cook Fast-st Company Limited [2018] eKLR and Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited [2016] eKLR were relied upon, in echoing the principles for consideration regarding the lifting of the corporate veil of an entity. The Appellant therefore urged the court to allow the appeal.
10. For his part, the Objector supported the ruling by the trial court. Through the submissions filed by his counsel, the Objector maintained that no relationship existed between him and the Respondent and that having never been a party to the lower court suit no liability could attach against him in respect of judgment sum. Counsel cited the decisions rendered in Precast Portal Structures v Kenya Pencil Company Ltd & 2 Others (1993) eKLR and Halifax Capital Corporation Limited v Anne Wamani Njoroge & another [2018] eKLR in asserting that the trial court had arrived at a correct finding that the Objector had established a legal and equitable right to the properties attached. It was further contended that in any event, there no grounds existed to justify lifting of the Respondent’s corporate veil to allow execution against the Objector. Counsel concluded by urging the court to dismiss the appeal with costs.
11. The Respondent on its part did not participate in the hearing of the appeal.
12. The court has perused the original record, the record of appeal and considered the material canvassed in respect of the appeal. The duty of this court as a first appellate court is to re-evaluate the evidence adduced in the lower court and to draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify. See Peters v Sunday Post Ltd [1958] EA 424; Selle and Anor. v Associated Motor Boat Co. Ltd and Others [1968] EA 123; William Diamonds Ltd v Brown [1970] EA 11 and Ephantus Mwangi and Another v Duncan Mwangi Wambugu [1982] – 88) 1 KAR 278.
13. The Court of Appeal stated in Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”



14. The Objector's application before the lower court was expressed to be brought inter alia, under Sections 3 and 3A of the *Civil Procedure Act* and Orders 22, Rule 51 and Order 51 of the Civil Procedure Rules. In partially allowing the application, the trial court reasoned that while it was not in dispute that judgment had been entered in favour of the Appellant and against the Respondent, the Objector had proved that he had a legal and equitable interest in the first and second motor vehicles. Further that even if the court were to find that the Objector was a director of the Respondent, under the law a company was a separate legal entity from its directors and shareholders. Hence the subject motor vehicles could not be attached in satisfaction of the decree against the Respondent.
15. There is no dispute that the Objector was not a party to the lower court suit. And that pursuant to the judgment of the lower court, a decree issued in favour of the Appellant against the Respondent for the adjudged sums, and that in seeking to execute in satisfaction of the decree, the Appellant commenced attachment through the Proclamation notice in respect of several properties including the subject vehicles claimed by the Objector through his application. The concurrent questions for determination are whether the trial court arrived at a correct finding by effectively lifting the attachment in respect of first and second motor vehicles, and whether the Objector was liable to satisfy the decree issued against the Respondent.
16. Order 22 Rule 51 (1) of the Civil Procedure Rules provides that:

“ Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all parties and to the decree-holder of his objection to the attachment of such property.
17. The copies of the logbooks exhibited in the Objector's affidavit in support of his application, indicated that the subject motor vehicles were registered in the name of the Objector at the material time. This evidence was not controverted, and pursuant to the provisions of section 8 of the *Traffic Act*, the court is satisfied that the trial court arrived at a correct finding that the Objector had reasonably demonstrated that he had a legal and equitable interest in the subject motor vehicles at all material times.
18. That said, the averments by the Objector that he was not involved in and/or knowledge of the Respondent are doubtful, in the court's considered view. The Appellant exhibited correspondence before the trial court , including letters exchanged between the parties' advocates (found on pages 172, 173, 183 of the record of appeal); a court document (found on page 178 of the record); minutes of meetings (on page 190-201of the record) , inter alia, which indicate that the Objector was in the material period acting as a representative of the Respondent. Moreover, the Objector drew cheques in favour of the Appellant as seen on pages 186 and 189 of the record of appeal. In the absence of any credible material to the contrary, it appears more plausible than not, that in the material period, the Objector indeed held a key position in relation to the Respondent although the capacity is none too clear.
19. The Appellant's apparent contention that the Objector was a director in the Respondent even if established would not be of much avail. Because the Objector could not automatically be held liable to satisfy the legal debts of the Respondent, based on the principles set out in the renowned case of *Salomon v Salomon* (supra), as correctly held by the lower court. The Respondent being a company was a separate legal entity from its directors and/or shareholders.



20. The Court of Appeal emphasized the separation and the principles undergirding the piercing of the corporate veil, in the case of *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] eKLR. The passage deserves reproduction here in extenso: -

“This Court in *Victor Mabachi & Anor & Nurtun Bates Limited* [2013] eKLR while dealing with the issue of the distinct legal entity of corporate bodies held that:

“[A company] as a body corporate, is *persona juridica*, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil.”

A useful discussion on circumstances where a court will be entitled to lift the corporate veil appears at paragraph 402 of *Halsbury’s Laws of England* 4th Edition Vol. 7(1) where the learned authors say:

“.....or where the court will ‘pierce (or lift) the corporate veil’, not because it considers it just to do so but because special circumstances exist indicating that it is a mere façade concealing the true facts. In identifying what is a mere façade, the motive of those behind the company will be relevant. The court will go behind the status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. The device of a corporate structure will often have been used to evade limitations imposed on conduct by law and rights of relief which third parties already possess against a defendant, so justifying the court’s ‘piercing’ (or ‘lifting’) the veil.

Where, however, this is not the position, even though an individual’s connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced. Nor is the court entitled to lift the veil as against a company which is a member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the company will fall on another member of the group rather than the defendant company.

It may be that liabilities or obligations will arise without piercing the corporate veil because there is an agency relationship between a parent company and subsidiary, or between a company and its shareholders, but this may not be inferred merely from control of the company or ownership of its shares or from the level of paid up capital. It will depend on an investigation of all aspects of the relationship between the parties and there is no presumption of such agency.”

The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.

Ringera, J (as he then was) in *Corporate Insurance Company Limited v Savemax Insurance Brokers Limited* [2002] EA 41 found that:

“The veil of incorporation is not to be lifted merely because the company has no assets, or it is unable to pay its debts and is thus insolvent. In such a situation, the law provides for remedies other than the director of the company being saddled with the debts of the company.”



It is obvious, then, from all the issues we have considered that a court can lift the corporate veil subject to strict conditions being satisfied for such action to be taken.”

21. What the court was reiterating here is the separate legal status and protection accorded to incorporated entities and insulation of directors and shareholders thereof from liabilities against the corporate body, and vice versa. Clearly therefore, the lifting of the corporate veil of a company is not an action to be taken lightly. In the present instance, the court upon re-examining the application before the trial court alongside relevant material on record, did not find demonstrated by the Appellant any of the special circumstances listed above to justify lifting of the corporate veil of the Respondent, resulting in the Objector being held personally liable to satisfy the decree on behalf of the Respondent.
22. The lower court properly applied itself to material before it and the law and, in this court’s view, arrived at a well-founded decision. The upshot therefore is that the appeal is without merit and is hereby dismissed with costs to the Objector.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 28TH DAY OF JULY 2023.**

**C.MEOLI**

**JUDGE**

**In the presence of:**

For the Appellant: Ms. Wachira h/b for Ms. Koki Mbulu

For the Objector: Ms. Kinyua h/b for Mr. Mwalo

Respondent: N/A

C/A: Carol

