



**Jayden Limited v Bradley Limited (Miscellaneous Application E202 of 2019)
[2021] KEHC 127 (KLR) (Commercial and Tax) (30 September 2021) (Ruling)**

Neutral citation: [2021] KEHC 127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E202 OF 2019
WA OKWANY, J
SEPTEMBER 30, 2021**

BETWEEN

JAYDEN LIMITED APPLICANT

AND

BRADLEY LIMITED RESPONDENT

RULING

1. Before this court for determination is the application dated 14th September 2020 wherein the applicant, Jayden Limited, seeks orders as follows: -
 - a. That Notice to Show Cause and for summons to issue compelling the Directors and Shareholders of the Respondent, Bradley Limited, namely; GUERASSIM NIKOLOV, VALENTINA NIKOLAEVA MINEVA GENE GRAND, RONALD KAMWIKO KARAUARI, PAUL WANDERI NDUNGU, DICKSON MWANGI WATHIKA, PAUL MUCHENE KINUTHIA and Directors of Pevan East Africa Limited to personally attend Court on such date as may be ordered or allocated and be examined on oath as to the judgement debtor's means and assets and to produce its books of the account and other documentary evidence relevant to revealing the assets of the said Bradley Limited;
 - b. THAT upon personal attendance and examination of the Directors of the Respondent, Bradley Limited, namely GUERASSIM NIKOLOV, GENE GRAND, VALENTINA NIKOLAEVA MINEVA RONALD KAMWIKO KARAUARI, PAUL WANDERI NDUNGU, DICKSON MWANGI WATHIKA and PAUL MUCI-IENE KINUTHIA and Directors



of Pevans East Africa Limited in (I) above, the Honourable Court be pleased to pierce the Corporate Veil of the Respondent herein Bradley Limited and the said Directors of Bradley Limited be and are hereby jointly and severally held personally liable to pay the Applicant the decretal sum of Kshs. 5,321,573.80 and taxed costs herein in the sum of KShs. 716,791.00 plus interest at 14% p.a from 30/11/2016 in terms of the Decree of this Court dated 27th August 2020;

- c. THAT warrants of attachment and sale of assets of the Directors and Shareholders of the Respondent, Bradley Limited, namely GUERASSIM NIKOLOV, VALENTINA NIKOLAEVA MINEVA, GENE GRAND, RONALD KAMWIKO KARAUARI, PAUL WANDERI NDUNGU, DICKSON MWANGI WATHIKA, PAUL MUCHENE KINUTHIA and Directors of Pevan East Africa Limited do issue in execution of the Decree herein.
- d. THAT in the alternative to (iii) above, a Notice To Show Cause be and is hereby issued upon the said compelling the Directors and Shareholders of the Respondent, Bradley Limited, namely GUERASSIM NIKOLOV, VALENTINA NIKOLAEVA MINEVA GENE GRAND. RONALD KAMWIKO KARAUARI, PAUL WANDERI NDUNGU, DICKSON MWANGI WATHIKA, PAUL MUCI-IENE KINUTI-IIA and Directors of Pevan East Africa Limited to show cause why they should not be committed civil jail for failure to pay or satisfy the decretal sum in this suit.

2. The application is anchored on the supporting and supplementary affidavits of the applicant's Chief Executive Officer and Director, Mr. Peter Mugo, and is based on the following grounds: -

1. THAT by a decree dated 27th August 2020, the Honourable Court decreed as follows:
 - a. The Respondent shall pay to the Claimant a sum of KShs. 5,321,573.80 forthwith;
 - b. The sum of KShs. 5,321,573.80 shall attract interest at the rate of 14% per annum from 30th November 2016 until payment in full.
 - c. The Respondent shall bear all legal costs and the costs of arbitration.
 - d. The Respondent shall pay to the Claimant the sum of KShs. 716,791.00 being legal costs and costs of arbitration by the Claimant forthwith: and
 - e. The Respondent shall bear the Arbitral Tribunal costs which shall be assessed by Nairobi Centre for International Arbitration.
 - a. THAT the Respondent deposits in Court a sum of Kshs. 6,038,328.80 and or furnish security as may be sufficient to satisfy



the decree passed against the Respondent herein within 14 days from the date of this Order.

- b. THAT in the alternative to (I) above, it is hereby Ordered that a Notice to Show Cause do issue on the Respondent's Directors to show cause why the Respondent should not deposit the said KShs. 6,038,328.80 or furnish security as may be sufficient to satisfy the Arbitral Award and or judgment/decreed passed against the Respondent in this proceedings.
 - c. THAT the Respondent to pay costs of the Chamber Summons application dated 28th May 2019 and Notice of Motion dated 11th October 2019 to Applicant the herein.
2. THAT despite having been served with the Decree herein on 25th August 2020, the Respondent has by itself and or through its management refused and or failed to satisfy the decree and or deposit security in Court in disobedience of the Court Order/decreed hereof.
 3. THAT the Judgment Debtor have no known attachable assets within the jurisdiction of this Court.
 4. THAT the judgment debtor by itself and or through its Director with the object of obstructing, delaying or avoiding execution has since the date of the arbitration proceedings, the Award and the Decree hereof means to pay the said decretal sum but refused and or neglected to pay the decretal sum.
 5. THAT the Judgment Debtor and its Directors as well as Shareholders, with intent to defeat execution of the decree herein closed business of the Company and its holding Company Pevan East Africa Limited, dissipated all attachable assets of the Judgment Debtor and its Holding Company Pevan East Africa Limited by dishonestly and in bad faith transferring, concealing and or removing all the attachable assets from the ownership of the Respondent to the individual Directors and Shareholders.
 6. THAT some of the Directors and Shareholders of the Judgment Debtor deliberately left the jurisdiction of this Court with intent and or objects to frustrate or obstruct execution of the decree.
 7. THAT the book of accounts of the Respondent in the circumstances ought to be produced before the Honourable court to ascertain its ability to satisfy the judgment debt.
 8. THAT the Directors of the Judgment Debtor and the Shareholders have conducted the business affairs of the Respondent in a fraudulent manner solely to defeat the Creditor, the Applicant herein.



9. THAT the Directors of the Respondent are vicariously liable and culpable for the fraudulent acts or omissions of the Respondent occasioning deliberate default.
 10. THAT the decretal sum are monies which the Judgment Debtor, its management and the Shareholders were bound in fiduciary capacity to pay and or make allocation thereof before closing business and or transferring any attachable assets to themselves.
 11. THAT the Directors are using the Company for improper purpose particularly as a mere cloak to shield themselves from contractual obligations and liabilities to 3rd parties such as the Applicant herein,
 12. THAT it is therefore in the interest of justice that the application be allowed and summons be issued as prayed for examination of the Directors as to the means and assets of the Judgment Debtor Company and they be compelled to produce the books of the Company.
3. The Respondent opposed the application through the replying affidavit of its Head of Legal department, Mr. Robert Macharia, who lists the following main grounds: -
- a. That it is not true that the Respondent has deliberately failed to settle the decretal sum in this matter as it is well within the public domain that in 2016 the government of Kenya introduced prohibitive taxes into the Betting, Lottery and Gaming business. Accordingly, it is not true as stated by the Applicant that the Respondent has intentionally closed its business to avoid satisfying the decree herein.
 - b. That the application is misplaced and incompetent for reason that the respondent's directors are separate and distinct legal entities from the Respondent and execution hereof cannot issue against them for liability accrued by the Respondent company save upon a further decree of the court for that purpose.
 - c. That it is not true that the Respondent has transferred, disposed and/or concealed any of its assets so as to defeat the decree herein and that by June 2019, the Respondent had negative balances in its books including an outstanding shareholder loan of more than Kshs. 1.5Billion which it was unable to pay.
 - d. That the Respondent shall endeavor to immediately pay the decretal sum herein upon its resumption of business and the present application is therefore premature in that regard.
 - e. That the allegations of fraud on the part of the Respondent's directors are false and unsubstantiated and the same is only intended to needlessly sensationalize the matter and import bias on the court's part against the Respondent and which constitutes an abuse of the court processes.
4. Parties canvassed the application by way of written submissions.



5. The applicant submitted that the activities of the respondent's Directors reveal that they were engaged in acts of fraud tailored to defeat the realization of the court's decree. The applicant referred to a letter dated 30th April 2019 wherein one of the Respondent's Directors, Mr. Paul Kinuthia, indicates that the money that the Respondent had reserved for anticipated liabilities was fraudulently transferred, without his knowledge or consent, to a company that they did not owe any debt despite the fact that he is a mandatory signatory to the Respondent's accounts.
6. The applicant argued that the contents of the said letter reveal that the Respondent no longer has money to settle its liabilities and is being fraudulently managed through the transfer of funds without compliance with the proper procedure. It was submitted that it is in the interest of justice that the Directors of the Respondent and its parent company, Pevans East Africa Limited, be summoned to personally attend Court to be examined on oath as to the Respondent's means and assets and to produce its book of accounts in order to establish if the judgment debtor has any property or means of satisfying the decree.
7. Reference was made to the decision in *Tropical Wood Limited v Samilis International Investments* [2017] eKLR where, when faced with a similar application, the court quoted, with approval, the case of *Postbank Credit Limited (in Liquidation) vs Nyamangu Holdings Limited* (2015) eKLR and held that: -

“ 14. In the given circumstance, I find that, it is in the interest of justice that the prayers sought for herein be granted. As held in the case of; *Postbank Credit Limited (in Liquidation) vs Nyamangu Holdings Limited* (2015) eKLR,

"A person to be summoned under Order 22 Rule 35 (c) of the Civil Procedure Rules, to provide information on the property of the Company will also be required to produce any relevant documents or copies thereof on the assets of the Company or books of accounts including but not limited to the Judgment Debtor's annual financial statement, documents of title property of the Company in his possession and which he may have obtained as a director and/or shareholder of the judgment-debtor."

8. The applicant submitted that in the event the summoned Directors fail to attend court, the prayer for the lifting of the corporate veil should be allowed and that the Directors should be held jointly and severally personally liable to pay the decretal sum and costs. For this argument, the applicant cited the case of *Petrol Oil (K) Ltd vs Hosborne Arunga & 2 others* [2013] eKLR where a similar application was allowed and the court held thus: -

“ There being no evidence to the contrary I am satisfied that this application has merit. Having failed to provide proper accounts in respect of the Judgment/debtors assets I accordingly lift the veil of Incorporation and hold the Directors personally liable to the claim.”

9. The applicant submitted that the respondent's deponent is dishonest and that the Replying Affidavit consists of a bare denial, devoid of merit and is otherwise an abuse of the court process. The applicant maintained that the said deponent did not tender any evidence to oppose the application thus lending credence to the reports that the Respondent and Pevans East Africa Limited, through their common Directors, are transferring assets and funds from the companies to other entities and jurisdiction to



the detriment of its shareholders and Creditors. According to the applicant, the respondent's actions amount to fraudulent conduct that warrants the lifting of their corporate veil.

10. The applicant further argued that the allegation that the Respondent had negative account balances as at June 2019 is an afterthought, and an outright lie intended to aid the respondent in avoiding to settle the decree.

11. The applicant observed that the respondent's monies were transferred following the publication of the Arbitral award and upon notice of these proceedings for adoption and enforcement of the said award as a decree of the Court with intent to defeat execution. It was the applicant's case that the Directors ought to be held personally liable to pay the debt herein as provided under section 323 of the Companies Act. Reliance was placed on the decision in *The Deposit Protection Fund Board as Liquidator of Trust Bank Limited (in Liquidation) vs Jay Shah & Another* [2013] eKLR where the court held that: -

“ 31. The Director's responsibility or liability under Section 323 arises where the business of the company has been carried out with intent to defraud creditors.”

12. In *Aster Holdings Limited vs City Council of Nairobi & 4 others* [2019] eKLR it was held that: -

“ There is no doubt that a company is at law a separate legal entity which is different from its shareholders and subscribers. However, in some instances, the corporate veil of a company can be pierced. The circumstances under which the corporate veil of company may be pierced were well set out in paragraph 90 of Halsbury's Laws of England 4th Edition Vol 7 (1) which states as follows: -

“Notwithstanding the effect of a company's incorporation, in some cases the Court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the Court will go behind the mere 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.”

13. The Court above went on to add at para 12 thus: -

“ Lifting of corporate veil has nothing to do with whether costs have been taxed or not. Lifting of the corporate veil is concerned with unmasking the veil to see who are the true persons behind the company. The Applicant has raised concerns that it cannot trace the assets of the Respondent. These concerns are raised in an affidavit. The Respondent has not countered the same in a Replying Affidavit. The Respondent has only filed grounds of opposition which cannot answer issues of facts. In as much as I agree with the holding in *Elect watts Limited Vs Countryside Suppliers Limited & Another* [2014]eKLR which quoted the case of *Corporate Insurance Brokers Ltd & Another* where it was held 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 is thus insolvent, the Court went further to state that a corporate veil can be lifted where there are allegations of fraud or dishonesty against the Directors. In the instant case, the Applicant has annexed the Court Judgement where it was found that the Respondent had acted fraudulently in the registration of the title in its name. One of the Directors of the



Respondent is Acres and Homes Limited. It is necessary to lift the corporate veil to see who are the Directors of Acres and Homes Limited which committed the fraud. The CR 12 in respect of Acres and Homes Limited show that one of its Directors is William Kabuga Gateau who came to Court to testify that he was a Director of the Respondent which was not the case. It is therefore clear that the Respondent's corporate veil should be lifted on grounds of fraud and dishonesty. I therefore find that the Applicant's application is well grounded. I allow the Notice of Motion dated 5th March, 2018 in terms of prayers 6,7,8,9, 10 and 11."

14. From the foregoing, the applicant submitted that it has shown that the corporate veil of the Respondent and Pevans East Africa Limited ought be lifted due to the Directors' fraudulent transfer of monies in order to frustrate Creditors including the Applicant herein.
15. The applicant maintained that should he court lift the corporate veil and hold the Directors personally liable to pay the debts, it should also issue warrants of attachment and sale of the assets of the Directors and Shareholders in order to satisfy the debt.
16. The respondent, on the other hand, submitted that directors and shareholders of a company are distinct and separate legal persons from a company and that Order 22 Rule 35 of the *Civil Procedure Rules* is not equivalent to the lifting of corporate veil as it provides for execution of a decree in the case of a corporation, against any officer of the company and not the shareholders and directors personally. It was submitted that the officer(s) contemplated under the above provision must be officers who can be adequately demonstrated to be in actual custody of information relating to the judgment debtor's assets or books of accounts as not all officers of a company are privy to the information and records.
17. The respondent argued that the application is incompetent in so far as it seeks prayers for execution of a decree to issue against the directors and shareholders of the company which jurisdiction and power is not provided for under Order 22 Rule 35.
18. On whether the corporate veil should be lifted, the respondent submitted that the general rule is that a company is a body corporate, with a separate independent identity in law that is distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil. Reference was made to the decision in *Peter O. Ngoge T/A O P Ngoge & Associates vs Ammu Investment Company Limited* [2012] eKLR where the Court observed as follows on the lifting of the corporate veil: -

"It is however my view that the lifting of a corporate veil is not the same thing as an application under Order 22 rule 35 of the Civil Procedure Rules. In the latter an officer is examined as an agent of the Company while in lifting the corporate veil, the mask of incorporation is lifted with the result that the shareholders are no longer agents of the company but are treated in their own rights and liability attaches to them not in their capacity as agents of the company but in their personal capacity. The general law, however, is that a corporation is an artificial legal entity.

It follows that the mere fact that one is a director or shareholder of a corporation does not, ipso facto, make the director or shareholder liable for the actions or omissions of the Company unless the circumstances are such that the corporate veil of the Company can be lifted. The case of *Mugenyi & Company Advocates vs. The Attorney General* [1999] 2 EA 199 following *Palmers Company Law* Vol. I (22 ed) lists 10 instances under which the veil of corporate personality may be lifted or as is sometimes put, look behind the company as a legal persona and these are: -

1. Where companies are in the relationship of holding and subsidiary companies;



2. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
 3. In certain matters relating to taxation;
 4. In the law relating to exchange control;
 5. In the law relating to trading with the enemy;
 6. In the law of merger control in the United Kingdom;
 7. In competition of the European Economic Community;
 8. In abuse of law in certain circumstances;
 9. Where the device of incorporation is used for some illegal or improper purpose; and
 10. Where the private company is founded on personal relationship between the members."
19. The respondent further submitted that the applicant has not satisfied the requirements for the lifting of the corporate veil and cannot bring itself within the exceptions to the corporate personality rule by establishing that the Directors and Shareholders of the Respondent were involved in fraud.
20. The respondent maintained that the applicant's claim that the Judgment debtor has no known attachable assets within the jurisdiction of this court is not a ground for lifting the corporate veil. Reliance was placed on the finding of Ringera J. in the case of *Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd & Anor* [2002] EA 41 (unreported) which was quoted in in *China Wu Yi Company Ltd vs Edermann Property Ltd & 2 Others* (2013) eKLR as follows:
- "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."
21. The respondent further argued that it is trite law that fraud must be specifically pleaded and proved and must not be left to be inferred from the facts. Reference was made to the case of *Pamba Ong'weno Amila Vs. John Juma Kutolo* [2015] eKLR where the court stated that:
- "Fraud is a conclusion of law. The facts alleged to be fraudulent must be set out and evidence led thereon to prove fraudulent intent.... We also bear in mind that allegations of fraud must be proved to a standard above balance of probabilities but below beyond reasonable doubt".
22. The respondent argued that the Applicant did not particularize or explain the date when the Respondent closed its operations, the description of any assets allegedly hidden, the directors who allegedly engaged in fraud or improper conduct and the efforts, if any, made by the Applicant to trace the assets allegedly hidden. The respondent's case was that the mere fact that it closed down its business was not proof of the alleged intention to defeat execution of the decree. According to the respondent, they closed down their business following the introduction of prohibitive taxes. They argued that



insolvency is an ordinary incident in business that does not necessarily connote fraud that warrants the lifting of the corporate veil.

23. The Respondent urged the court to note that whereas the instant application is founded on Order 22 Rule 35 of the Civil Procedure Rules which is limited to cross examination of an officer of a company, the application seeks the lifting of the Respondent's corporate veil and a finding that the respondent's directors are personally liable for the decree.

Analysis and Determination.

24. I have carefully considered the pleadings filed herein and the parties' submissions together with the authorities that they cited. The main issue for determination is whether the applicant has made out a case for the issuing of Notice to Show Cause and Summons compelling the Respondent's Directors to personally attend Court and be examined on oath as to the judgement debtor's means and assets and to produce its books of the account and other documentary evidence relevant to revealing the respondent's assets. There is also the second issue of whether upon such attendance and examination, the court should pierce the Respondent's Corporate Veil so as to hold its said Directors jointly and severally personally liable to pay the Applicant the decretal sum and taxed costs.
25. The application was brought under Order 22 Rule 35 of the Civil Procedure Rules which states that:
- Where a decree is for the payment of money, the decree-holder may apply to the court for an order that— (a) the judgment-debtor;
- (b) in the case of a corporation, any officer thereof; or
- (c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents".
26. In the instant case, it is not disputed that Judgment was entered against the respondent for the amount claimed. It is also not disputed that the respondent has not settled the decretal sum. Indeed, the respondent concedes that its business was not able to stay afloat for reasons that it attributes to the introduction of prohibitive taxes. I also note that the respondent has not indicated that it is making any efforts to settle the decretal sum. Needless to say, a successful litigant, such as the applicant herein, is entitled to the fruits of its decree.
27. Order 22 rule 35 of the Civil Procedure Rules allows a holder of a money decree to apply for the oral examination of any officer of a corporation regarding any assets or debts owing to the judgement debtor, or other means of satisfying the court decree and for production of books or documents. I therefore find that the prayer for oral examination of the respondent's Directors is well anchored in law and that the applicant has made out a case for the granting of orders sought. Consequently, I allow the prayer as sought and issue order of Notice to Show Cause and Summons compelling the Respondent's Directors and Shareholders and Directors of Pevan East Africa Limited to personally attend Court and be examined on oath as to the judgement debtor's means and assets and to produce its books of the account and other documentary evidence relevant to revealing the respondent's assets.



28. Turning to the prayer for the lifting of the corporate veil, I note that the law is settled on the circumstances under which such an order can be issued. *Halsbury's Laws of England (4th Ed)* at para 90 summarizes the principles governing the lifting of the corporate veil as follows: -

“

“ 90. Piercing the corporate veil.

Notwithstanding the effect of a company's incorporation, in some cases the court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the court will go behind the mere 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. However, where 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.”

29. In the instant case, the applicant seeks the lifting of the corporate so that the Directors and shareholders can pay the decretal sum personally or be committed to civil jail for six months because they have acted dishonestly by obstructing, delaying or avoiding execution since the date of the arbitration. The applicant contended that the respondent's directors, with intent to defeat execution of the decree, closed the business of the Company and its holding Company Pevan East Africa Limited, dissipated all attachable assets of the Judgment Debtor and its Holding Company Pevan East Africa Limited by dishonestly and in bad faith transferring, concealing and or removing all the attachable assets from the ownership of the Respondent to the individual Directors and Shareholders.
30. The applicant singled out a letter dated 30th December 2020 wherein one of the respondents Directors, Mr. Paul Muchene Kinuthia, lodged a complaint against his co-Directors for fraudulent and irregular transfer of about KES. 40.9 million from the Respondent to Kentech, Las Palma, Canary Island without evidence of consideration to the Respondent by the recipient of the said funds. The applicant noted that the contents of the said letter were confirmed by Business Daily Newspaper issue of 3rd December 2020.
31. The applicant accused the Respondent and its Holding Company for engaging in irregular transactions with the intention of evading its liabilities to Creditors and noted that some of the Directors and Shareholders had deliberately left the jurisdiction of this Court in order frustrate or obstruct execution of the decree.
32. In the respondent argued that the mere fact that it had closed its operations did not constitute proof of fraud. The respondent attributed its poor business performance to the introduction of prohibitive taxes into the Betting, Lottery and Gaming business. The respondent indicated that it shall endeavour to immediately pay the decretal sum upon its resumption of business and argued that the application is premature.
33. Regarding the evidence contained in the respondent's Director's letter dated 30th December 2020, the respondent argued that the letter does not specifically prove that the assets of the Respondent that were fraudulently transferred and neither does it show which directors of the Respondent acted fraudulently as alleged. The respondent argued that fraud is a very serious offence which must be



specifically pleaded and proved and that the Applicant cannot merely rely on general statements to infer fraud on the part of the directors.

34. This court upholds the respondent's position on the individuality and distinct nature of a company from its directors and shareholders as espoused in the landmark case of *Salmon and Salmon and Co. Ltd* (1897) A.C. 22HL where the court upheld the doctrine of the corporate veil and limited liability of a company. I however note that courts have also taken the position that there are instances that call for the piercing of the corporate veil to see what is happening behind it if there is evidence that the corporate veil is being used to shield fraud and improper conduct on the part of the shareholders and/or the controllers of the company. In other words, where it is established that there is fraud or improper conduct, the corporate veil may be lifted.
35. In *Victor Mabachi & Another vs Nurtum Bates Ltd*, Civil Appeal No. 247 of 2005 [2013] eKLR, the Court held that:
- “a company as a body corporate, is a persona juridica, with separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil.”
36. The above legal position notwithstanding, there have been other developments in law that have had effect of piercing or lifting the corporate veil in recognition of the fact and reality that the business of a company, as an artificial entity, is carried on by and for the benefit of living persons.
37. In the case of *Jones and Another vs Lipman & Another* [1962] I WLR 833 it was held: -
- “Whereas a registered company is a legal person separate from its members, the veil of incorporation may, however, be lifted in certain cases for instance, where it is shown that the company was incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from the eyes of equity. Corporate vehicle has been used to commit serious and mega frauds and corruption. And that realization has impelled the courts, in the interest of the law, the members in general, or in public interest to identify and punish the persons who misuse the medium of corporate personality for fraudulent, or proper or illegal acts. This act of removing the façade of corporate personality to identify the persons who are really guilty is what is known as lifting or piercing the corporate veil.”
38. The lifting the corporate veil is however a delicate and strict exercise regulated by either statutory provisions or through judicial interpretation. Courts have over time identified the specific circumstances which warrant the lifting of the corporate veil in order to directly deal with the individuals behind the fraudulent schemes within the company.
39. In the present case, there was uncontroverted evidence that the respondent's own Director, one Mr. Paul Muchene Kinuthia, lodged a complaint against his Co-Directors for fraudulent and irregular transfer of about Kshs. 40.9 million from the Respondent to Kentech, Las Palma, Canary Island without evidence of consideration to the Respondent by the recipient of the said funds. In my considered view, the allegations by Mr. Kinuthia raise serious questions on the integrity of the respondent's financial transactions and lends credence to the applicant's claim that there may have been fraudulent dealings intended to frustrate the applicant's realization of the fruits of its decree. In the circumstances of this case, I am satisfied that the applicant has made out a strong case for the lifting of the corporate veil.

Disposition



40. For the reasons that I have stated in this ruling, and considering that the law allows for examination of Directors of a company on the credit worthiness of a judgment debtors, I make the following orders: -
- a. The Directors and Shareholders of the Respondent, Bradley Limited, namely; GUERASSIM NIKOLOV, VALENTINA NIKOLAEVA MINEVA GENE GRAND, RONALD KAMWIKO KARAUARI, PAUL WANDERI NDUNGU, DICKSON MWANGI WATHIKA, PAUL MUCHENE KINUTHIA and Directors of Pevan East Africa Limited to personally attend Court and be examined on respondent/judgment debtor's property and/or means of satisfying the decree herein and to produce the respondent's books of accounts and other documentary evidence showing the same before the court.
 - b. In default to comply with order in (a) above, the court shall make further or other orders as may be appropriate including lifting the respondent's Corporate Veil and pursuing the individual Directors/Shareholders.
 - c. The applicant is granted the costs of the application.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Litoro for Applicant.

Ms Kihara for Respondent.

Court Assistant: Sylvia.

