



**Kitulu v Managing Director, Nol-Turesh Pipeline Bulk Water  
Company Limited (Environment and Land Miscellaneous Application  
E005 of 2020) [2025] KEELC 3406 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3406 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2020**

**MD MWANGI, J**

**APRIL 25, 2025**

**IN THE MATTER OF: SECTION 5 OF THE JUDICATURE ACT  
AND SECTION 3, 3A, 34(3), 63(E) OF THE CIVIL PROCEDURE ACT**

**IN THE MATTER OF: ORDER 52 RULE 2C OF THE  
RULES OF THE SUPREME COURT OF ENGLAND**

**IN THE MATTER OF: DISOBEDIENCE OF A COURT ORDER  
MADE BY THIS HONOURABLE COURT ON 29TH APRIL 2021**

**IN THE MATTER OF: AN APPLICATION BY MUEMA KITULU FOR AN  
ORDER FOR COMMITTAL FOR CONTEMPT OF COURT AGAINST THE  
MANAGING DIRECTOR, NOL TURESH PIPELINE BULK WATER COMPANY LIMITED**

**BETWEEN**

**MUEMA KITULU ..... APPLICANT**

**AND**

**MANAGING DIRECTOR, NOL-TURESH PIPELINE BULK WATER COMPANY  
LIMITED ..... RESPONDENT**

*(In respect of the notice of motion dated 25<sup>th</sup> September 2024 seeking  
that the managing director of the Respondent company be held to be in  
contempt of the Honourable Court orders made on 29<sup>th</sup> April 2021)*

**RULING**

**Background.**

1. This court on 29<sup>th</sup> April 2021 adopted as its judgment, the judgment of the Water Appeals Board in WAB No 7 ( W/S) of 2012: Muema Kitilu v Nol Turesh Pipeline Bulk Water Company Limited



issued on 15<sup>th</sup> April 2015. The court further directed that the party and party costs be taxed as between the parties by the Deputy Registrar of this court. The costs were duly taxed at Kshs 305,552/- on 8<sup>th</sup> September 2021.

2. A decree and a certificate of costs were extracted thereafter; and according to the Applicant, duly served upon the Respondent/Judgment Debtor on 2<sup>nd</sup> December 2021. In spite of service however, the Respondent/Judgment –Debtor has not Honoured the said decree by paying the outstanding decretal amount.
3. The Applicant asserts that the Respondent/Judgment Debtor was further required under the decree to translocate the Applicant’s water meter to a spot near his home and fit a second meter at its costs for purposes of comparing water consumption readings over a reasonable period of time to confirm his monthly consumption.
4. The Applicant avers that the decretal amount has ballooned to over Kshs 505,025/- as at 4<sup>th</sup> April 2024 and continues to attract interest. In the meantime, the Applicant states that the Respondent continues to issue arbitrary water bills against him in an attempt to check off the outstanding amount or to defeat the purpose of the judgment and decree of this court.
5. The Applicant opines that the Respondent’s actions are contemptuous of the orders of this court. The managing director of the Respondent company having therefore failed to comply with the orders of this court is in contempt of court and ought to be punished for his disobedience. His conduct is not only arrogant, but reckless and may bring the sanctity of court orders and the reputation of this court into disrepute.
6. The decree issued by the court and a demand letter by the Applicant to the Respondent are attached as annexures to the verifying affidavit in support of the application.
7. The Applicant prays for orders that;
  - a. The Managing Director Nol-Turesh Pipeline Bulk Water Company Limited be fined Kshs 200,000/- or such sum as this court may deem appropriate for being in contempt of this Honourable Court’s orders made on 29<sup>th</sup> April 2021.
  - b. In the alternative, Managing Director Nol-Turesh Pipeline Bulk Water Company Limited be committed to and or detained in prison for a term of six (6) months or such other term as this Honourable Court may deem appropriate for being in contempt of a valid court order issued by this Honourable Court on 29<sup>th</sup> April 2021.
  - c. The Managing Director Nol-Turesh Pipeline Bulk Water Company Limited pays the costs of this application.
  - d. Such further or other reliefs as the Honourable Court may deem fit and expedient to grant.

#### **Response by the Respondent.**

8. The Respondent responded to the application by way of a replying affidavit sworn by one Gidon Kitente, the Managing Director Nol-Turesh Pipeline Bulk Water Company Limited on 14<sup>th</sup> November 2024.
9. The deponent deposes that he has been in communication with the Manager Commercial and Manager Finance to offset the outstanding water bills. He states that the Applicant has been responsive but failed to acknowledge the water bills (due from him) in this instant application.



10. The deponent asserts that the court decree issued on 1<sup>st</sup> December 2021 clearly states that the costs of relocating and fitting the meter is the Applicant's responsibility. The Applicant is therefore to blame for his failure to provide the necessary funds for this relocation.
11. The deponent states that he is ready and willing to offset the balance and any amounts over and above shall be postpaid from the metered water bill as per the decree of the court. He alleges that the Company is owed by the Applicant the sum of Kshs 257,285/- as at 30<sup>th</sup> September 2024 being outstanding water bills.
12. The deponent further states that the Applicant has not demonstrated that the terms of the order (decree) were clear and unambiguous and binding on him; that he had knowledge of or proper notice of the terms of the order; and that he has acted in breach of the terms of the order and finally that his conduct is deliberate.
13. The deponent however acknowledges that the order was served and that was why he continued discharging his obligations of water supply to the Applicant. The deponent concludes that the application is unmerited and must therefore fail.

#### **Directions by the court.**

14. The directions by the court were that the application be canvassed by way of written submissions. Both parties complied filing their respective submissions and which the court has had an opportunity to peruse and consider in writing this ruling.

#### **Issues for determination**

15. From my perusal of the court record, the judgment and the subsequent decree issued in this case, the judgement – debtor is Nol Turesh Pipeline Bulk Water Company Limited; a limited liability company from its description. The Applicant herein seeks to cite for contempt the Managing Director of the company for failure to honour and or satisfy the judgment/decree of this court. I note that the Managing Director has not been named in person.
16. The application present before this court a fundamental age-old legal question as to whether the Managing Director of a limited liability company, or any other Director for that matter, is personally liable for the debts/liabilities of the company or for contempt committed by or in name of the limited liability company. That is the question that the court must first address before delving into the merits of the case if at all.

#### **Analysis and Determination.**

17. The land mark decision of the House of Lords in the case of *Salomon v A. Salomon & Company Limited* (1897) AC 22, settled the law on the 'corporate personality' of limited liability companies. The Lords in the said case were categorical that;

“The company is at law a different person altogether from the subscribers to the memorandum; and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them, nor are the subscribers as members liable, in any shape or form; except to the extent and in the manner provided by the Act.



Among the principal reasons which induce persons to form private companies as is stated very clearly by Mr. Palmer in his treatise on the subject, are the desire to avoid the risk of bankruptcy, and the increased facility offered afforded for borrowing money. By means of a private company as Mr. Palmer observes, a trade can be carried on with limited liability and without exposing the persons interested in it in event of failure to the harsh provisions of the bankruptcy law. A company, too, can raise money on debentures, which an ordinary trader cannot do. Any member of a company acting in good faith is as much entitled to take and hold the company's debentures as any outside creditor. Every creditor is entitled to get and to hold the best security the law allows him to take."

18. In the case of *Moir v Wallersteiner* (1975) 1 ALLER 849 at page 857 Lord Denning affirmed the legal position in the following words;

"It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled."

19. Mativo J (as he then was), in *Katsuri Limited v Kapurchand Depar Shab* (2016) eKLR, while considering a similar application against a director of a company rightly observed that;

"The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the Applicant was first to apply to lift the veil then go for the directors in their personal capacities."

20. The Court of Appeal on its part in the case of *Geoffrey Kathuri Kison & 10 others v East African Portland Cement Company Limited* (2021) eKLR, affirmed the decision by Mativo J holding that the directors of a company cannot be held personally liable for contempt committed by and in the name of the company without lifting the corporate veil.

21. Consequently, and guided by the above cited decisions, my finding is that the application before me is incompetent and untenable in law. The Applicant jumped the gun by seeking to cite for contempt the Managing Director of the Respondent company without first seeking to lift the corporate veil of the company.

22. Having arrived at the above finding, I will refrain from going into the merits or otherwise of the application for contempt in order not to prejudice the position of either party should the Applicant in future choose to pursue the same course after complying with the lawful procedures.

23. I hereby strike out the application dated September 25, 2024 with costs to the Respondent.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Mwaniki h/b for Mr. Kitulu for the Applicant/Decree Holder

Mr. Kurgat h/b for Mr. Langat for the Respondent



Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

