



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 35 OF 2013**

PETROL OIL (K) LTD .....APPLICANT/DECREE HOLDER

VERSUS

HOSBORNE ARUNGA .....1ST DEFENDANT/RESPONDENT

JACQUELINE ARUNGA.....2ND DEFENDANT/RESPONDENT

MILLENIUM FREIGHT LOGISTICS

LIMITED ..... 3RD DEFENDANT/JUDGMENT DEBTOR

**RULING**

This Notice of Motion application is brought pursuant to order 22 rule 35, order 51 rule 1 of the Civil Procedure Rules section 323 of the Companies Act section 1A 2B and 3A of the Civil Procedure Rules.

It seeks orders for the examination on oath of the Directors of the Respondent Hesborne Arunga and Jacqueline Arunga as to 3rd Defendants assets status and whereabouts and to produce its books of accounts and other documentary evidence.

That the Directors upon failing to provide proper accounts in respect of the Judgment Debtors assets and books of account to lift the veil of incorporation and hold them personally liable to the claim.

The grounds are that Judgment was entered for the applicant against the 3rd Respondent on 22nd August, 2011.

That the said Respondent appears not to be in operation whereas it is the said Hosborne Arunga and Jacqueline Arunga who are the Directors and the 3rd Respondents guarantor prior to the accumulation of the cause of action.

The application is supported by the affidavit of one Daniel Ndungu an accounting officer of Petrol Oil (K) Ltd, the plaintiff in this suit.

This application dated 20th March, 2013 was served on the 1st and 2nd Respondents and there is an affidavit of service to that effect.

A perusal of the affidavit of Daniel Ndungu shows that the Applicant supplied goods on account to the 3rd Respondent as exhibited by annexures marked “MAA 1A” and “1B”.

Subsequently a debt of Ksh. 2,716,600/= did accrue and a letter of demand was issued “**MAA 2**”.

The debt was acknowledged vide letters “**MAA 3A**” “**B**” “**C**” and “**D**” by the 1st and 2nd Respondents.

The Respondents attempted to settle the debt by issuing a cheque for Ksh. 1,800,000/= which cheque was returned unpaid “**MAA 4**”.

Subsequently a suit was instituted and Judgment was entered and decree issued.

A search at the Companies registry annexure “**MAA 7**” shows the Directors of the 3rd Respondent as the 1st and 2nd Respondents.

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.

Costs to the applicants.

Ruling dated and delivered this **28th** day of **October, 2013** .

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**M. MUYA**

**JUDGE**

**28TH OCTOBER, 2013**

**In the presence of:-**

Learned Counsel for the applicants Mr. Ojode.

Court clerk Musundi