



**Sheikh & another v Mass Constructions Limited & 5 others (Environment & Land Case 1480 of 2014) [2025] KEELC 4237 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1480 OF 2014**

**OA ANGOTE, J  
MAY 29, 2025**

**BETWEEN**

**ABDUL WAHEED SHEIKH ..... 1<sup>ST</sup> PLAINTIFF**

**ABDUL HAMEED SHEIKH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MASS CONSTRUCTIONS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH NDERITU T/A JOGANDRIES AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**HASSAN ABDI SALAN ..... 3<sup>RD</sup> DEFENDANT**

**MAHAT ADAN ABDIRAHMAN IBRAHIM ..... 4<sup>TH</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 5<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion dated 19<sup>th</sup> March 2025, the Plaintiffs have, pursuant to Order 22 Rule 35 of the Civil Procedure Rules, sought the following orders, that:
  - a. An order be and is hereby made directing Chueb Adan Ali, Mustafa Chueb Aden and Mohamed Chueb Aden, being directors of the 1<sup>st</sup> Defendant to attend court on a date to be fixed, for oral examination on the whereabouts of the properties of the 1<sup>st</sup> Defendant or its means of satisfying the decree issued hereon on 27<sup>th</sup> July 2023 for Kshs. 10,000,000.00 together with the Certificate of Taxation issued herein on 10<sup>th</sup> September, 2024 for Kshs. 1,649,291.00.
  - b. The Plaintiffs be and are hereby granted leave to execute the decree issued herein on 27<sup>th</sup> July 2023 for Kshs. 10,000,000 together with the Certificate of Taxation issued herein on 10<sup>th</sup>



September 2024 for Kshs. 1,649,291.00 against Chueb Adan Ali, Mustafa Chueb Aden and Mohamed Shueb Aden.

- c. The costs of this application be provided for.
2. The grounds of the application, as set out on its face and the affidavit sworn by Abdul Waheed Sheikh, are that the Plaintiffs have a decree issued on 27<sup>th</sup> July 2023 for Kshs. 10,000,000 and a Certificate of Taxation issued herein on 10<sup>th</sup> September 2024 for Kshs. 1,649,291/- against the 1<sup>st</sup> Defendant; that the 1<sup>st</sup> Defendant has refused to settle the amounts in the Decree and the Certificate of Taxation and that the 1<sup>st</sup> Defendant has no known assets upon which execution may issue.
3. It is the Plaintiffs' claim that leave of the court is required to enable the execution of the decree and certificate of taxation against Chueb Adan Ali, Mustafa Chueb Aden and Mohamed Shueb Aden, being directors of the 1<sup>st</sup> Defendant.
4. The 1<sup>st</sup> Defendant filed Grounds of Opposition dated 3<sup>rd</sup> April 2025. It contended that the application is incompetent and an abuse of court process as it seeks to extend liability to the directors of the 1<sup>st</sup> Defendant without meeting the stringent legal requirements for lifting the corporate veil.
5. The 1<sup>st</sup> Defendant argued that Order 22 Rule 35 of the Civil Procedure Rules does not provide for the lifting of the corporate veil to enforce a judgment against company directors, and that the rule is confined to the examination of a judgment debtor and where necessary, the production of books of account or other documents to ascertain the company's means of satisfying a decree.
6. The 1<sup>st</sup> Defendant asserted that the Plaintiffs have not demonstrated any prior attempts to trace the 1<sup>st</sup> Defendant's assets or sought the production of such documents, which renders the application premature and procedurally improper. It further contended that it is a distinct legal entity separate from its directors, as enshrined under Section 3(1) of the *Companies Act*, a principle established in *Salomon vs Salomon & Co. Ltd [1897] AC 22*.
7. It is the 1<sup>st</sup> Defendant's plea that the Plaintiffs have not provided any evidence of fraud, improper conduct or misuse of the corporate entity to justify piercing the corporate veil; that the Plaintiffs have not filed a separate application before the High Court's Commercial and Tax Division under the *Companies Act* 2015, seeking to lift the corporate veil and that this court lacks jurisdiction to entertain matters pertaining to company law and the lifting of the corporate veil and enforcement of a decree personally against the 1<sup>st</sup> Defendant's directors.
8. The 1<sup>st</sup> Defendant averred that the application fails to disclose any steps to execute the decree through lawful means and that the Plaintiffs have not demonstrated whether they have attempted to apply for a warrant of attachment and sale of the 1<sup>st</sup> Defendant's assets or whether they have pursued garnishee proceedings to attach funds in the 1<sup>st</sup> Defendant's bank accounts or to charging orders over any land or securities held by the 1<sup>st</sup> Defendant or initiated liquidation proceedings under the *Insolvency Act* 2015.
9. The application was canvassed through written submissions.
10. Counsel for the Plaintiffs submitted that the application seeks oral examination of the 1<sup>st</sup> Defendant's directors for the ultimate purpose of executing the decree and certificate of taxation against them and that the power to order examination of the 1<sup>st</sup> Defendant's directors and to lift the veil of incorporation for execution to issue against them is given by Order 22 Rule 35 of the Civil Procedure Rules 2010.
11. Counsel relied on two decisions to support their request, *Masefield Trading (K) Ltd vs Rushmore Company Limited & Another (2008) eKLR* and *Devnarayan Enterprises Ltd vs Rotice & 6 others (2024) eKLR*.



## Analysis and Determination

12. Upon consideration of the application, responses and submissions, there are two issues for this court's determination:
  - a. Whether the 1<sup>st</sup> Defendant's directors should be orally examined on the means of satisfying the decree dated 10<sup>th</sup> September 2024.
  - b. Whether this court should grant leave for the decree and the certificate of taxation to be executed against the 1<sup>st</sup> Defendant's directors.
13. The Applicants in this matter seek to enforce the judgment of this court allowing the Plaintiffs' claim of 27<sup>th</sup> July 2023 and the decree issued on 18<sup>th</sup> September 2023, in which the court ordered, inter alia, that the 1<sup>st</sup> Defendant pay the Plaintiffs damages for trespass of Kshs 10 million. A Taxation Ruling was thereafter issued by the Deputy Registrar of this court dated 10<sup>th</sup> September 2024 in which she taxed the Plaintiffs' Party and Party Bill of Costs dated 3<sup>rd</sup> October 2023 at Kshs. 1,649, 291.33.
14. The application has been filed pursuant to Order 22 Rule 35 of the Civil Procedure Rules which prescribes as follows:

“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.”
15. The Plaintiffs have relied on the case of *Masefield Trading (K) Ltd vs Rushmore Company Limited & Another* [2008] KEHC 798 (KLR) where the court held that:

“I think the above rule grants this court jurisdiction to summon any officer of a company to attend court so that he may be examined on the assets and means of the company to settle the sum decreed to be paid by the company. By examining such an officer, the court may or may not lift the veil of incorporation. Although the 1<sup>st</sup> defendant and the interested party argued that the application was premature, it is evident that such an application can only be made after judgment has been entered in favour of a decree holder.”
16. The Plaintiffs have also relied on the decision of this court in *Devnarayan Enterprises Ltd vs Rotice & 6 Others* (2024) eKLR:

“The purpose of issuing summons under Order 22 Rule 35 of the Civil Procedure Rules is to ascertain the financial position of a Judgement Debtor after a Decree Holder's attempts to execute a decree have been unsuccessful. This is to ensure that the Decree Holder is not left financially frustrated.”



17. In the Devnarayan Enterprises Ltd case, this court considered the case of NBI HCCC No. 1287 of 2000 Ultimate Laboratories vs Tasha Bioservice Limited (unreported) cited by the Court in Tropical Wood Limited vs Samilis International Investments [2017] eKLR, where it was held as follows:

“Two things emerge from the above proposition. One, the power of the court to summon a person to attend and be examined under order 22 rule 35 is circumscribed within the purpose set out in the Rule. That is;

...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.

I therefore, take the view that, as long as the applicant has shown that the respondent is in a position to provide information in the nature of discovery....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, the Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.”

18. In the case of Postbank Credit Limited (in Liquidation) vs Nyamangu Holdings Limited (2015) eKLR, the court persuasively stated thus:

“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.”

19. From these authorities, it is clear that the basis of an application made under Order 22 Rule 35 of the Civil Procedure Rules is for a judgment-debtor or as in this case where the judgment debtor is a company, its officials, to present information to the court, as to its capability to satisfy the decree.
20. Such an application can only be made after judgment has been delivered by the court. The law does not require the Applicant to show that they have previously tried and failed to trace the assets of the judgment debtor. In that respect, it cannot be said that this application is premature for failure to show prior attempts to execute against the 1<sup>st</sup> Defendant.
21. It is not disputed that there is before this court an unsatisfied decree of the sum of Kshs 10 million, which sum the 1<sup>st</sup> Defendant owes the Plaintiffs pursuant to the Judgment and Decree of this court, together with the taxed costs of Kshs. 1,649, 291.
22. The Plaintiffs have adduced the records of the 1<sup>st</sup> Defendant from the companies’ registry which shows that the Directors of the 1<sup>st</sup> Defendant are Chueb Adan Ali, Mustafa Chueb Aden and Mohamed Shueb Aden. Being Directors of the 1<sup>st</sup> Defendant, the former are the only ones who can inform the court and the Plaintiffs about the assets of the company, if any, as well as the status of its books of accounts.
23. The said information would inform this court and the Plaintiffs as to the 1<sup>st</sup> Defendant’s capacity to satisfy the decree dated 18<sup>th</sup> September 2023 and the Certificate of Taxation dated 10<sup>th</sup> September 2024.
24. This court therefore affirms that it would be essential to the execution of the decree to summon the 1<sup>st</sup> Defendant’s directors for oral examination to testify as to the financial status and capacity of the 1<sup>st</sup> Defendant to satisfy the decree and certificate of taxation.



25. The next issue is whether this court should grant leave to execute the decree and the certificate of taxation against the 1<sup>st</sup> Defendant's directors. The Plaintiffs have in effect sought this court to order that the 1<sup>st</sup> Defendant's corporate veil be lifted so that its directors are held liable for the decree.
26. It is a fundamental principle of company law that a company is a body corporate with a separate legal personality from its directors. This was the holding in the seminal case of *Salomon & Co Ltd vs Salomon* [1897] A.C. 22 H.L.
27. There are, however, some instances where the court may lift or pierce the corporate veil of a company. Halsbury's Laws of England 4<sup>th</sup> Edition at paragraph 10 addressed lifting of the veil 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 persons who control the 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 cases, 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.”

28. In the case of *Peter O. Ngoge T/A O P Ngoge & Associates vs Ammu Investment Company Limited* [2012] eKLR, the court rightly opined that an application under Order 22 Rule 35 of the Civil Procedure Rules is not the same as an application for lifting the corporate veil. It then proceeded to consider the various instances in which a court may direct that it is necessary to lift the corporate veil. In that matter, the court held as follows:

“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. Accordingly, it must of necessity act through agents, usually the Board of Directors.

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 *Palmer's Company Law Vol. 1* (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.”

29. The court also considered other circumstances under which the corporate veil of a company may be lifted:

“In *Salomon vs. Salomon* (supra) and *Jones & Another vs. Lipman & Another* [1962] 1 WLR 833 it was held that whereas a registered company is a legal person separate from its members this 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. Therefore, if a company is thought to be a mere cloak or sham, a device or a mask which the defendant holds to his face, in an attempt to avoid recognition by the eye of equity, the court will grant summary judgement even against the person behind the said company.”

30. In this case, the Plaintiffs have neither alleged nor brought any evidence that there is any occurrence of fraud or improper conduct in the management of the 1<sup>st</sup> Defendant’s company that would, in the interest of justice, require this court to treat the 1<sup>st</sup> Defendant and its directors as one and the same.

31. Accordingly, there is no basis, as at now, for this court to allow the lifting of the 1<sup>st</sup> Defendant’s corporate veil. The Plaintiff’s third prayer is therefore disallowed.

32. In conclusion, the Plaintiff’s application is partially allowed as follows:

- a. Chueb Adan Ali, Mustafa Chueb Aden and Mohamed Chueb Aden, being directors of the 1<sup>st</sup> Defendant Company (Judgement Debtor) do attend court on a date to be fixed, for oral examination on the whereabouts of the properties of the 1<sup>st</sup> Defendant or its means of satisfying the decree dated 18<sup>th</sup> September 2023 and the Certificate of Taxation issued herein on 10<sup>th</sup> September, 2024.
- b. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**O. A. Angote**

**Judge**

In the presence of;

Mr. Otieno for 1<sup>st</sup> Defendant

Mr. Ang’awa for Havi for Plaintiff



Court Assistant: Tracy

