



REPUBLIC OF KENYA



**Lodenyo v Abdi & another (Environment and Land Case Civil Suit
E099 of 2022) [2022] KEELC 15519 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E099 OF 2022**

J OMANGE, J

DECEMBER 8, 2022

BETWEEN

DR HUDSON AUBREY LODENYO PLAINTIFF

AND

DAHIR ABDI 1ST DEFENDANT

SAMMY PETER GIOCHE 2ND DEFENDANT

RULING

1. The applicants Chamber Summons application dated September 26, 2022 is brought under section 1A, 1B, 3A and section 63 of the *Civil Procedure Act* and order 1 rule 10 (2) of the *Civil Procedure Rules*. The applicant prays for the following reliefs:-
 - a. That the court be pleased to grant an order that the 1st defendant was wrongfully enjoined to the suit and hence there has been a misjoinder of parties.
 - b. That the court grant an order to strike out the 1st defendant for having been wrongfully enjoined.
 - c. Costs of the application.
2. The application is premised on the grounds that there has been a misjoinder of parties as the 1st defendant is known as Abdidahir Mohamed Sirad and not Dahir Abdi.
3. The applicant further contends that he is a director at Rabat Properties which is the registered owner of the suit property. As he is a director, he avers that he is wrongly sued in his personal capacity. He depones that it is unfair to sue him in his own capacity when the construction is being carried out by the company.



4. The application was not opposed. As such the averments by the 1st defendant/ applicant are uncontroverted.
5. Counsel for the applicant in his submissions urged the court to exercise its discretion as provided by order 1 rule 10 (2) to strike out the claim against the 1st defendant. He cited various authorities which I have duly considered.
6. The issues that arise for determination are was the 1st defendant properly enjoined and with what consequence? and secondly who should bear the costs of the application.
7. In the first instance the 1st defendant insists that he is not Dahir Abdi who is sued as the contractor, owner and occupier of the property Plot LR 36/VII/593. He produces his identification card which bears a different name. He further alleges that the suit property is not registered in his name. He produces a CR 12, transfer, indenture to confirm this.
8. The 1st defendants averments were uncontroverted in their entirety. I find that the identify card is sufficient proof that he is known as Abdidahir Mohamed Sirad and not Dahir Abdi. However even more significant is the fact that he has provided undisputed evidence that the suit property belongs to a company in which he is a director. Can he thus be sued in his personal capacity when he is a Director?
9. The celebrated case of *Salomon & Co Limited Versus Salomon* [1897] AC 22 HL clearly defined the legal position of a company. The court opined that: -

“A company is a different person all together from the subscribers and directors.....That separate legal personality of a company can never be departed from except in instances where the statutes or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities”.
10. This decision was given local interpretation in the case of “*Multi choice Kenya Limited Versus Mainkam Limited & Anor* (2013 eKLR which held:- “To my mind, there is no doubt that ever since the famous case of Salomon versus Salmon, courts have applied the principles of corporate personality strictly, but exceptions to the principles have also been made where it is too flagrantly opposed to justice. Other instances include when a fraudulent and improper decision by scheming directors or shareholders is imputed. In such exceptional cases, the law either goes behind the corporate personality to the individual members or regards the subsidiary and its holding company as an entity”.
11. The question which then arises is whether in the instant case there are reasons to lift the veil and sue the 1st defendant on behalf of the company. I find that there are no such circumstances that have been proved that would enable the court to find that this is a case in which the veil needs to be lifted.
12. Order 1 A and B of the *Civil Procedure Rules* places on the courts a responsibility to give effect to the overriding objectives which include; the just determination of the proceedings; the efficient disposal of the business of the court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties.
13. The efficient disposal of the business of the court requires that the suit proceed against the correct defendant against whom any orders of the court can be enforced. On the issue of costs, I find that this is a case where costs should follow the event.
14. Taking into the account the foregoing the application is allowed in the following terms;



- a. The 1st defendant has been wrongfully enjoined to this suit, accordingly he is struck out from the suit.
- b. Costs are awarded to the 1st defendant/ applicant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF DECEMBER 2022.

JUDY OMANGE

JUDGE

In the presence of: -

No appearance for the applicant

Mr. Lusumbi holding brief for Mr Saad for the defendant

Steve - Court assistant

