



**Wanjiku & Wanjiku Associates v Manu Holdings Limited (Environment and Land
Miscellaneous Application 243 of 2017) [2023] KEELC 489 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 489 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 243 OF 2017
LN MBUGUA, J
FEBRUARY 2, 2023**

BETWEEN

WANJIKU & WANJIKU ASSOCIATES APPLICANT

AND

MANU HOLDINGS LIMITED RESPONDENT

RULING

1. Before me is the applicant's (advocate's) notice of motion application dated July 29, 2022 seeking orders for Francis Saint Njuguna and Joyce Njoki Mwangi, the known directors of the respondent's (client) company to attend court for oral examination on the assets and the means by which the respondent intends to satisfy the decree herein and in default to be held personally liable for the debt and be committed to civil jail.
2. The applicant also seeks orders that the said directors be ordered to produce the respondent's books of accounts, up to date bank statements, audited accounts, papers, documents and/or evidence showing the affairs of the company.
3. The application is based on grounds on its face and on the supporting affidavit sworn on July 29, 2022 by Naomi Wanjiku Maina, an advocate formerly practicing as a partner in the applicant's firm.
4. She deposes that there is an advocate/client Bill of costs taxed against the respondent at Kshs 878,235/= and a certificate of taxation was issued on December 8, 2020 for work done pertaining to development of the property known as Land Reference No 209/8546.
5. That the respondent had then filed a reference to the aforementioned taxation, but in a ruling dated October 25, 2021, the court affirmed that taxation.
6. Further, the applicant avers that the respondent has no traceable assets. A search conducted at the Registrar of Companies offices on July 25, 2022 revealed that Francis Saint Njuguna and his wife Joyce



Njoki Mwangi are both directors and shareholders of the respondent. She contends that they are hiding behind the corporate personality to escape liability by evading to pay for legal services offered. She further contends that the respondent has not given any undertaking to the claimant on how and by what means it intends to satisfy the outstanding amount of the court decree.

7. Thus in the interest of justice, the respondent's directors should be cross-examined to establish whether the respondent has any means of satisfying the decree in tandem with the procedure provided under order 22 rule 35 of the [Civil Procedure Rules](#).
8. The issue for determination is whether the directors/shareholders of the respondent should be examined on the assets and the means by which the respondent intends to satisfy the decree herein and whether they should be held personally liable in default and be committed to civil jail.
9. The provisions of order 22 rule 35 of the [Civil Procedure Rules](#) stipulate that where the decree of the court is for money, the decree holder can apply to the court for oral examination of any officer of a corporation regarding any assets or debts owing to the judgment debtor, or other means of satisfying the court decree and for production of books or documents.
10. In a similar case, NBI HCCC No 1287 of 2000 *Ultimate Laboratories v Tasha Bioservice Limited* (Unreported) cited in [Tropical Wood Limited v Samilisinternational Investments \[2017\] eKLR](#), the court held;

“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.”

11. Since the application is unopposed and the procedure is anchored in the law as stated above, then the request to summon the two directors is merited.
12. On the issue of lifting the corporate veil to hold the directors of the respondent liable and to commit them to civil jail, the general principle is that a company is in law a separate person from its members as held in *Salomon Co Ltd v Salomon [1897] AC 78*. There are exceptions to the rule. The Court of Appeal in the case of [Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited \[2016\] eKLR](#) held;

“The court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.”

13. Has the applicant established special circumstances to warrant lifting the veil? She deposes that the respondent has no traceable assets. While these facts were not controverted, they do not in my view constitute special circumstances to warrant lifting the corporate veil at this stage. It is only after the officers of the respondent are examined that the court can make further orders on that issue unless the said officers default in attending court.



14. The application is therefore allowed in terms of prayer numbers a), b), c) and e).

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N MBUGUA

JUDGE

In the presence of:-

Muthoni for Decree Holder

Court assistant: Eddel

