



**Sheman Limited v Palacio Motors Limited (Commercial Miscellaneous Application E991 of 2023) [2025] KEHC 261 (KLR) (Commercial and Tax) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 261 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX**

**COMMERCIAL MISCELLANEOUS APPLICATION E991 OF 2023**

**H NAMISI, J**

**JANUARY 23, 2025**

**IN THE MATTER OF THE COMPANIES ACT NO. 17**

**AND**

**IN THE MATTER OF LIFTING THE CORPORATE VEIL**

**BETWEEN**

**SHEMAN LIMITED ..... CLAIMANT**

**AND**

**PALACIO MOTORS LIMITED ..... RESPONDENT**

**RULING**

1. Before the Court is a Notice of Motion seeking the following orders:
  - i. That Francis Gitau Ngure and Stanley Mwangi Karungu, the Directors of Palacio Motors Ltd, the Respondent herein, do attend this Honourable Court and be examined as to whether the Respondent has any property or means of satisfying the decree dated 3 March 2023 and to produce the Respondent's audited KRA filed books of accounts and other documentary evidence showing the status of the business before the Honourable Court;
  - ii. That the veil of corporation of the Respondent be lifted and the Directors, Francus Gitau Ngure and Stanley Mwangi Karungu, be made personally liable and be ordered to settle the decretal sum of Kshs 374,356/= in this suit with interest thereon from 6 February 2023 jointly and severally until payment in full;
  - iii. That a declaration be made pursuant to Section 1002 as read with Section 996 of the *Companies Act* that the Directors of the Respondent, Francis Gitau Ngure and Stanley Mwangi Karungu, were knowingly party to the carrying on of the business of Palacio Motors Ltd,



with intent to defraud the Claimant/Judgment Creditor of the company and for fraudulent purposes and that they are responsible without any limitation of liability for the debt owed to the Claimant/Applicant with interest thereon from 6 February 2023;

- iv. That the said Directors, Francis Gitau Ngure and Stanley Mwangi Karungu, do immediately settle the said decretal sum with interest thereof from 6 February 2023;
  - v. That in default of the said Directors complying with the above elucidated orders, warrants of arrest be issued and they be imprisoned and committed to civil jail for a period of not less than six months;
  - vi. That the costs of the Application be provided for
2. The Application is supported by the Affidavit sworn by Steve Buya Chivatsi and premised on the following grounds, inter alia:
- i. That a consent judgement was entered mutually by the parties on 6 February 2023 to the effect that the settlement of the amount owed was to be made on or before 9 February 2023;
  - ii. Failure by the Respondent to settle the amount as consented, decree was extracted and issued by the Small Claims Court in SCCOMM No. E6480 of 2022 on 3 March 2023 for payment of Kshs 297,000/- as the principal amount plus costs of the suit assessed at Kshs 58,800/-;
  - iii. We later filed an application for the execution of the decree, issuance of warrants of attachment, which were issued by the Honourable Court and thereafter instructed Beta Base Auctioneers to undertake the execution process;
  - iv. Beta Base Auctioneers did furnish us with a proclamation dated 27 April 2023 with schedule of movable properties as attached, but the same did not settle the decretal amount whatsoever;
  - v. Upon inquiring from the above cited Auctioneers, on the proclamation and status of the execution process, their representative did indicate that the searches conducted at the National Transport Authority of the motor vehicles at the yard revealed that there is none registered in the name of the Respondent, Palacio Motors Ltd, hence no attachment was conducted;
  - vi. A further due diligence of the motor vehicles at the yard indicated that the same are registered in the names of Mercedes Centre Ltd which they have since rebranded to, but affiliated to the two Directors, Francis Gitau Ngure and Stanley Mwangi Karungu;
  - vii. It is upon this very discovery that we have applied before this Honourable Court for Notice to Show Cause, for contempt and committal of the above cited Directors to civil jail;
3. The Supporting Affidavit reiterates the grounds on the face of the Application.
4. The Respondent filed a Replying Affidavit in which they averred that the company is a judicial person duly incorporated and separate from its Directors. The rest of the Replying Affidavit centred on the ownership of the vehicles in the car yard and the provisions of section 38 of the Civil Procedure Act, Cap 21, on the issue of execution.
5. The Applicant also filed a Further Affidavit dated 18 October 2024. It averred, inter alia, that the Respondent is merely an instrumentality or alter ego and conduit to separate the defrauding of motor vehicle owners (its principals) of money under the guise of being sales agents, while keeping their assets separate from the Respondent by registering them under Mercedes Centre Ltd.
6. Parties canvassed the Application by way of written submissions.



7. The Applicant submitted that the parameters upon which a Court can order the lifting of the corporate veil are well elucidated in Halsbury's Laws of England, 4th Edition, Vol. 7 (1), Paragraph 90 that states 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 person or persons who control that 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 case the court will go behind the mere status of the company as a 2 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.”

8. The Applicant relied on the cases of case of Jiang Nan Xiang v Cok Fas-St Company Limited; Miscellaneous Application [2018] eKLR and Riccati Business College of East Africa Limited v Kyanzavi Farmers Company Limited [2016] eKLR.
9. On its part, the Respondent submitted that it is a principle of law that a company is a *persona juridica* with separate independent identity in law, distinct from its shareholders, directors and agents. The Respondent argued that the Applicant had not provided any evidence to demonstrate their due diligence conducted in respect of the ownership of the motor vehicles or that the said motor vehicles belong to Mercedes Centre Ltd. The Respondent relied on the case of Corporate Insurance Brokers Ltd [2002] EA 41 and Jian Nan Xiang case (Supra).

### **Analysis & Determination**

10. I have read the Application, Affidavits and respective submissions extensively. The main question that arises therefrom is whether this Court has jurisdiction to entertain this Application considering that the decree sought to be enforced is from the Small Claims Court. If answered in the affirmative, then the next question would be whether this Court should lift the veil of incorporation over the Respondent and allow the Applicant to execute the decree against the Directors of the Respondent company.
11. In addressing the issue of jurisdiction, I am guided by the reasoning of Justice Wananda in the case of *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others (Miscellaneous Civil Application 43 of 2023)* [2024] KEHC 2343 (KLR), where the learned Judge opined thus:

“In this instant matter, it is not in dispute that the decree sought to be enforced through the present Application was issued in Eldoret Chief Magistrates Court Civil Case No. 1224 of 2017. When I first laid my eyes on the Application therefore, my first question was, why has the Application been filed here in the High Court? For this reason, I painstakingly combed through the Application and the Supporting Affidavit with a view to finding out whether any explanation had been given for the choice of the High Court as the forum to hear the Application rather than the same being filed before the same Magistrate's Court that issued the decree. I was also curious to understand why the Application has been filed before the High Court as a Miscellaneous Cause. To my disappointment, there was absolutely no explanation. The Applicant's Further Affidavit filed subsequently similarly had no mention of the issue of choice of forum.

I therefore had to go through the sections of the *Companies Act* and the other provisions of law cited as supporting the Application, to try and find out whether the trial Court has been divested of jurisdiction or whether there is any provision requiring the Applicant to come



to the High Court for the relief sought. There, too, I came to nought. As it stands therefore, this Court has not been presented with any justification why it should usurp the role of the trial Court which issued the decree and which is the one possessed with the jurisdiction to oversee the execution and/or enforcement of its orders, including decrees. It has not been demonstrated or even alleged, for that matter, that the trial Court is now functus officio.”

12. It appears that the matter herein lends itself to the same reasoning. The decree herein emanated from the Small Claims Court. There is no dispute between the parties that the same is yet to be settled fully. The question then begs why the Applicant chose to file a Miscellaneous Application in the High Court in order to execute the decree yet the trial court has the power to execute.

13. Section 39 of the Small Claims Act provides as follows on the issue of execution:

Where a judgment debtor fails to pay to the decree holder any sum specified in a decree or order, the Court may—

- (a) where the judgment debtor's movable property is insufficient to satisfy the decree, order execution by attachment and sale of the judgment debtor's immovable property;
  - (b) order the attachment of the salary of the judgement debtor; or
  - (c) suspend the execution of the warrant and the order either wholly or in part on such conditions as to security or otherwise as the Court may determine.
- (emphasis mine)

14. The Applicant herein has not provided any reason why the jurisdiction of the trial court is ousted in hearing and determination of an application of this nature. In deed, nothing in the *Small Claims Court Act* prevents the court from hearing an application relating to execution of its decree. That being the case, it is my considered view that this application is not properly before this Court, in spite of the unlimited jurisdiction that the High Court enjoys. The same ought to be pursued in the trial court.

15. In the premise, I dismiss the Application. Bearing in mind the circumstances that led to the filing of the application, I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF JANUARY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

.....for the Claimant

.....for the Respondent

Libertine Achieng .....Court Assistant

