



REPUBLIC OF KENYA



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**Cradle Elegance Limited & another v Mureithi (Civil Appeal E976 of 2023)
[2025] KEHC 2486 (KLR) (Civ) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E976 OF 2023

AM MUTETI, J

FEBRUARY 5, 2025

BETWEEN

CRADLE ELEGANCE LIMITED 1ST APPELLANT

ALICE NJOKI MAMBO 2ND APPELLANT

AND

ANN MUGURE MUREITHI RESPONDENT

*(An appeal from the Judgment of the Honourable Ruguru N. in Nairobi Chief
magistrate's Court Civil Suit Number E1652 of 2021 delivered on the 25th august 2023)*

JUDGMENT

Introduction

1. The appellant in this appeal is aggrieved by the decision of the learned Honourable Magistrate allowing the respondents claim for breach of contract.
2. The appellant has appealed against the said decision on the following grounds;-
 - a) The Learned Magistrate misdirected herself on several matters of the law and facts;
 - b) The Learned Magistrate erred in law and fact in entering Judgment against both Appellants despite the contract being between the 1st Appellant and the Respondent;
 - c) The Learned Magistrate misdirected herself in entering Judgment against both Appellants and in finding that the Contract was between both Appellants and the Respondent despite the initial Quotation from the 1st Appellant formulating the Contract between the Parties was clearly between the 1st Appellant and the Respondent and signed by the 2nd Appellant as a director of the 1st Appellant;



- d) The Learned Magistrate erred in law and in fact by placing reliance on the Quotation made by the Respondent as an account of the work done and work left undone despite the same being prepared by the Respondent alone without the 1^o Appellant's input;
 - e) The Learned Magistrate erred in law and in fact seeing as despite noting that there was no breach of Contract by the 1st Appellant and noting that there was contribution by the Respondent to the breakdown of the works, still awarded a refund of Kshs. 814,000/- placing reliance on a document that was not agreed upon by the Respondent and the 1st Appellant;
 - f) The Learned Magistrate erred in law and fact in disregarding the evidence on the Scope of Works done by the 1st Appellant and the accompanying photographs showing the works done and in finding in her judgment, that the 1st Appellant had not shown any Quotation for the same despite these Documents being tendered as evidence;
 - g) The Learned Magistrate erred in law in holding that the Respondent had proved her case on a balance of probability without adequate analysis and evaluation of the issues and evidence before her;
 - h) The Learned Magistrate erred in law in failing to appreciate the gist of the Appellants case in her judgment;
 - i) The Learned Magistrate erred in failing to consider the Submissions and Authorities presented by the Appellants to the Court.
3. The parties agreed to have the matter disposed of by way of written submissions.

Appellants' Case

4. The appellants submitted that the Suit herein was instituted vide plaint dated 12th November 2020 where the respondent sought the inter alia against the appellants the reimbursement of Ksh. 814,000/- together with interest from April 2018.
5. The respondent also sought the Costs of the suit together with interest thereon at court's rates
6. The appellants' in response filed its defence dated 28th April 2021 and thereafter the matter was heard to its conclusion and judgment rendered on 25th August 2023.

Brief Facts of the Case

7. The Respondent's case is that it entered into an agreement with the 1st appellant and the 2nd appellant who was a director of the 1st Defendant where the 1st Appellant was to provide services for interior décor for the cost of Ksh. 2,499,000 as per the quotation raised by the 1st Defendant and signed by the 2nd Defendant.
8. The Respondent's further case is that whereas the Appellants were paid the sum of Ksh. 2,300,000, the work was not done to completion as the Appellants in breach of the contract between the parties abandoned site and failed to complete the work.
9. It is the Respondent's case that in spite of the failure to perform its part of the agreement, the Appellants have refused and or declined to reimburse Ksh. 814,000 for work not completed by the said Appellants.



10. On the other hand, it was the Appellants' case that the 1st Appellant provided services to the Respondent diligently and it is actually the Respondent who instructed the 1st Appellant to leave the site for the reason that the Respondent was short on funds.
11. That the 1st Appellant had provided its services diligently but from the onset, there had been complaints on a daily basis that work was not done properly up until when the Respondent with no notice to the Appellants engaged a new contractor who entered the site and destroyed the work previously done and tools of the 1st Appellant. That all money paid to the 1st Appellant was accounted for.

Issues for Determination

12. The main issues for determination in this appeal are;
 - a) Whether the learned magistrate erred in law and fact by entering judgment against both Appellants
 - b) Whether the Learned Magistrate erred in law and fact in awarding a refund of Ksh. 814,000.
 - c) Who should bear the costs of this appeal.
13. The appellants submitted that the 1st Appellant is a limited liability company and whereas the 2nd Appellant was a director in the company.
14. In this regard, the 2nd Appellant signed the quotation between parties herein in her capacity as a director.
15. It is on that basis that the appellants contend that the trial court erred in holding that it was not in dispute that a contract was entered between the Appellants and the Respondent.
16. The 2nd appellant in her Defence expressly denied having entered into the contract between parties in her personal capacity and clarified that the contract was signed by herself as a director on behalf of the 1st Appellant.
17. The appellants maintain that it is therefore an error on the part of the trial court to hold and base its judgment on the assumption that the contract between the Defendants and the Plaintiff was not disputed.
18. The appellants further submitted that the Respondent in paragraph 4 of its Plea dated 12th November 2020 conceded that the 2nd Appellant's role in the contract was that of a director of the 1st Appellant.
19. The Appellants' submitted that the 1st and 2nd Appellants are two distinct and separate persons and that a contract between the Respondent and the 1st Appellant cannot be enforced against the 2nd Appellant, otherwise the 2nd Appellant cannot be held liable for the liabilities of the 1st Appellant.
20. In support of the above, reliance was placed on the High Court case of *Mark Otanga Otiende v Dennis Oduor Aduol* [2021] eKLR where the court noted that;

“...the law is clear that a company is a separate legal entity or person from its owners unless there has been the lifting of a veil through the established procedure, which is not the case in these proceedings.”



The court further cited the case in *Multichoice Kenya Ltd v Mainkam Ltd & Anor.* (2013) eKLR where Mabeya J stated:

"I agree that directors are generally not personally liable on contracts purporting to bind their company. If the directors have authority to make a contract, then only the company is liable on it. To my mind, there is no doubt that ever since famous case of *Salomon v Salomon* (1897) A.C. 22 Courts have applied the principle of corporate personality strictly. But exceptions to the principle have also been made where it is too flagrantly oppose to justice or convenience. Other instances include when a fraudulent and improper design 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 one entity."

21. The appellants further placed reliance on the High Court case of *Kolaba Enterprise Ltd v Shamsudin Hussein Varvani & Anor.*(2014) eKLR where Gikonyo J. observed that:

"It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of *Salomon & Co Ltd # Salomon* [1897] A.C. 22 H.L that a company is different person altogether from its subscribers and directors. Although it is a fiction of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting of 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. And that development has been informed by the realization by the courts that over time, promoters and members of companies Page have formulated and executed fraudulent and mischievous schemes using the corporate vehicle. And that has impelled the courts, in the interest of justice or in public interest to identify and punish the persons who misuse the medium of corporate personality.

22. In the present case the appellants contend that the corporate veil was not lifted as to necessitate the trial court's holding.
23. Further, it was not proved or even pleaded that the 2nd Appellant was engaged in any fraud or criminal activities through the company or any other reason so as to warrant such lifting of the corporate veil. Thus according to the appellants, the contract herein was between the Respondent and the 1st Appellant.
24. It is the Appellants' submission that the trial court erred in finding and holding its judgment against both the 1st and 2nd Appellant.
25. On whether the Learned Magistrate erred in law and fact in awarding a refund of Ksh. 814,000 , the appellants submitted that the Respondent's case was grounded on breach of contract where the Respondent accused the Appellants of failure to complete the work as agreed, abandoning the work prior to completion of works, failure to reimburse Ksh. 814,000 and failure to complete the work as agreed, and on that basis, the Respondent sought against the Appellants the refund of Ksh. 814,000.
26. The appellants submitted that the trial court in its judgment awarded the refund of Ksh. 814,000 to the Respondent, and this was despite the trial court acknowledging that the performance of the contract



broke down and that the Respondent contributed to the same. In essence holding that it is not the Appellants who breached the contract.

27. According to the appellants they did not breach the contract between parties, thus they cannot be liable to refund any of the contractual amount as the contract was clearly performed by the 1st Appellant.
28. For the Appellants to be liable to refund the contractual sum or in other words damages, the Respondent was duty bound to prove that the Appellants breached the contract between parties and the appellants maintain that that was not done.
29. The appellants placed reliance on the High Court case of *Barclays Bank of Kenya Limited v Mema (Civil Appeal E011 of 2021)* [2021] KEHC 333 (KLR) (Commercial and Tax) (3 December 2021) (Judgment) where the D.S Majanja J. in overturning an award for damages held that;

“In awarding the Respondent damages, it is clear from the judgment that the trial magistrate did not consider the case pleaded by the Respondent was grounded on breach of contract, that the court could not award damages at large or general damages for breach of contract and that no case was made out for punitive damages. Finally, since the Respondent's case was grounded on the breach of contract, the Respondent was duty bound to plead special damages. He did not. At the end of the day, a party is bound by their pleading and it is this basis that the case must be determined.”

30. Further the appellants relied on Ribiru v Ndung'u (*Suing on Behalf of the Estate of the Late Joram Ndung'u Mwaniki*) & 2 others (*Civil Appeal 37 of 2023*) [2024] KEHC 339 (KLR) (25 January 2024) (Judgment) where the High Court stated that;

It is trite law that special damages must be both pleaded and proved, before the award is made. This was stipulated in the Court of Appeal decision of Hahn V. Singh Civil Appeal No. 42 of 1983 [1985] KLR 716 where the court held:- Special damages must not only be specifically claimed (pleaded) but also strictly proved.....for they are not direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.

31. The court having established that the present case is premised on breach of contract, it was incumbent on the Respondent to specifically prove by way of evidence that there was breach of contract and that it was entitled to a refund. The refund sought ought to have not only been specified in the Plaint but also specifically proved as special damages.
32. As the Honourable Court is drawn to the above authorities, it is noteworthy that the trial court rightly held that the Appellants were not liable for breach of the contract herein as the Respondent played a major role in the stalling of the work.
33. Further the appellants went on to submit that it was clear that the contract was entered between the 1st Appellant and the Respondent. The Respondent agreed to source from the 1st Applicant services at the cost of Ksh. 2,499,000 and only paid to the 1st Appellant the sum of Ksh. 2,300,000. Nevertheless, the 1st Appellant did diligently provide all the agreed services albeit until the Respondent stopped him.
34. the appellant went on to state that the Respondent had not paid the 1st Appellant the whole contractual sum by the time the work stopped. Therefore, there was no chance that the 1st Appellant could have done all the work to its completion.



35. The appellants submitted that the trial court's requirement for production of a certificate of completion by the 1st Appellant is an impossible ask on the part of the 1st Appellant in the circumstances.
36. The appellants took issue with the fact that the trial court relied on a quotation made by the Respondent as an account of work done and work left undone despite the same being prepared by the Respondent alone without the 1st Appellant's input.
37. According to the appellants, whereas it was clear that the Respondent was dissatisfied with the work of the 1st Appellant, the quotation showing that the work by the 1st Appellant was not supported by any evidence, actual figures or any methodology.
38. The evaluation of the work done was also not done by an expert and it was not explained how the Respondent arrived at the value of the work done and the value of the work undone.
39. Additionally, the screenshots that the Appellants produced clearly show that the 1st Appellant was diligent in its work and only required to be funded before doing its work. The screenshots also show that it is the 1st Appellant's agents who were pushing for the Respondent to provide materials and facilitation for work to be done
40. Further it was Clear that the Respondent was not forthcoming in consistently funding the operation and ultimately the work had to stop. Further, the correspondence between parties also shows that at some point the Respondent was happy with the work of the 1st Appellant and even recommended its work to a prospective customer.
41. Therefore, it is clearly the Respondent who breached the contract, did not perform its obligations under contract and ultimately frustrated the contract between parties.
42. The appellants took the position that the Respondent did not prove that this work done by the 1st Appellant was not commensurate to the fee paid by the Respondent. It is well settled in law that he who alleges ought to prove.
43. It is not in dispute that by the time the work was stopping, the 1st Appellant had done substantial part of work. The Respondent did not provide a report on valuation of work done by the 1st Appellant to call for a rebuttal from the Appellants.
44. However, the 1st Appellant in support of the support the work done, it produced evidence to prove that they had discharged their obligation under the contract.
45. It is on the basis of the evidence adduced at the trial that the appellants submit that the trial court in disregarded the evidence on the scope of works done by the 1st Appellant leading to the court making a finding that the 1st Appellant had not shown any quotation for the same despite these documents being tendered as evidence.
46. The appellants maintained that the trial court in erred when it observed that the 1st Appellant had admitted to owing the disputed Ksh. 814,000 in stating that the same was used to buy fittings. According to them, this was not an admission as the fittings referred to all the materials that were needed in the construction by the 1st Appellant.
47. It is noteworthy that there was a contract and a quotation that was signed by both parties and that these fittings were required to perform the work by the 1st Appellant. The appellants further submitted that it is clear from the correspondence between parties, the scope of the work as produced by the 1st



Appellant that the said Appellant had performed its obligations and was willing to keep working under the Respondent's instructions and facilitation.

48. The appellants maintain that it is clear that the Respondent is the one who frustrated the contract by not consistently paying and facilitating the work of the 1st Appellant. The appellants also argued that that the Respondent even prior to stopping the work of the 1st Appellant, never actually paid for the whole sum quoted in the quotation as agreed between parties.
49. The appellants have urged this court to find that he Respondent who frustrated and ultimately breached the contract between parties.
50. The appellants concluded by urging this court to find that the trial court erred in finding that the Respondent was entitled to a refund of Ksh. 814,000. Consequently, the appellants urge this court to allow this appeal with costs to the Appellants.

Respondent's Case

51. According to the Respondent, in the judgment, the Learned Magistrate found and rightly so, that the Appellants were in breach of the contract entered into as between themselves and the Respondent herein and ordered that the Respondent herein be: [i] Reimbursement of Ksh. 814,000/= together with interest from April 2018; and [ii] Awarded costs of the suit together with interest thereon at court rates.
52. The Respondent herein entered an agreement with the Appellants herein and in which Agreement, the Appellants undertook to renovate the Respondent's house in Loresho Ridge Estate.
53. Upon entering into the agreement on April 13, 2017, the 1st Appellant herein furnished the Respondent herein with a quotation for interior décor signed by the 2nd Appellant herein. The said quotation detailed the scope of work to be done and the corresponding costs thereto.
54. Pursuant to the said Agreement, the total cost for the work was agreed to be Kenya Shillings Two Million Four Hundred and Ninety-Nine Thousand KES 2,499,000/-).
55. Subsequently, the Respondent herein proceeded pay the Appellants the sum of Kenya Shillings One Million (KES 1,000,000/-) being the first instalment and which payment was made vide a bank transfer from the Respondent's bank account held at Prime Bank to the 2nd Appellants bank account held at Equity Bank (A/C No. 0810xxxxxxxx and Bank Name Alice Mambo; the 2nd Appellant herein.
56. On 14th August, 2017, the Respondent made a further settlement in the sum of Kenya Shillings Nine Hundred Thousand (KES 900,000/-) and subsequently Kenya Shillings Four Hundred Thousand (KES 400,000/-) thus bringing the total amount paid to the Appellants herein to Kenya Shillings Two Million Three Hundred Thousand (KES 2,300,000/-).
57. Upon making the above enumerated payments, the Respondent submitted that he believed in good faith that the Appellants would deliver on the works as was agreed and to the expected standards.
58. However, and much to the disappointment of the Respondent herein, the Respondent discovered on making a site visit that the Appellants had unfortunately abandoned the site and had long stopped working. At the time of abandoning the site, the Appellants had only completed work equivalent to Kenya Shillings One Million Four Hundred and Eighty-Six Thousand (KES 1,486,000/-).
59. The Respondent herein took it upon herself to confront the Appellants, and when he reported the matter to the police, the Appellants undertook to pay back the balance of Kenya Shillings Eight Hundred and Fourteen Thousand (Kshs. 814,000/-).



60. According to the respondent, the promise proved to be nothing but empty and contemptuous promises to settle the said amount. The Respondent herein made every effort(s) to have the Appellants return to work in vain and the consequence of which the Respondent herein sued the Appellants in Civil Suit No. E1652 of 2021 in the Chief Magistrate's Court seeking reimbursement of Kenya Shillings Eight Hundred and Fourteen Thousand (Kshs. 814,000/-) with interest and cost of the suit.
61. The appellants have challenged the decision of the learned honorable magistrate for holding both appellants liable to settle the disputed amount. The appellants have taken the position that there was no doubt a contract in place between the 1st appellant and the Respondent. The appellants argue that the 2nd appellant merely signed the contract as director thus it was improper for the trial court to hold the 2nd appellant for what would strictly be a breach of contract by the 1st appellant who was for all intent and purpose a separate legal entity.
62. It was the Respondent's submission that the Learned Magistrate entered the judgment as against both the Appellants in accordance with the law.
63. According to the respondent the nature of the transaction between the parties reveals that both Appellants had crucial roles in sealing the contract as between themselves and the Respondent herein.
64. The Respondent herein with the express agreement of the 2nd Appellant herein paid all the amounts payable to Appellants vide Bank Transfers from the Respondent's bank account held at Prime Bank to the 2nd Appellants' bank account held at Equity Bank (A/C No. 0810xxxxxxxx and Bank Name being Alice Mambo, the 2nd Appellant herein.
65. The 2nd Appellant negotiated the agreement for the Appellants collectively and received the consideration amount. This is an occurrence that was not denied by the Appellants in the Magistrates Court. According to the respondent the conduct and nature of the 2nd Appellant herein is so fundamental in the transaction and therefore she cannot be excused under the veil of being a director.
66. The respondent further argued that the 2nd Appellant herein being the director and agent of the 1st Appellant represents the directing mind and will of the 1st Appellant herein and thus controls what the 1st Appellant does. Therefore, the state of the mind of the 2nd Appellant translates to the state of the mind of the 1st Appellant herein.
67. In support of that submission the Respondent placed reliance on the case of *Gilgil Telecoms Industries Limited v Duncan Nderitu & 57 others* [2016] eKLR, where the character of a company, or the nature of the persons who control it, is a relevant feature the court will go behind the mere status of the company as a legal entity, and will consider who are the persons as shareholders or even as agents who direct and control the activities of a company which is incapable of doing anything without human assistance.”
68. Further, the respondent cited the case of *Arun. C. Sharma v Ashana Raikundalia & 5 others* [2015] eKLR, the Court held as follows:

....for, while, by fiction of law, a corporation is a distinct entity, yet in reality, it is an association of persons who are in fact the beneficiaries of corporate property'.

The statute law and judicial interpretation has developed instances when corporate veil will be lifted for purposes of doing justice. See para 90 of *Halsbury's Laws of England* 4th Edition (supra) that:

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.

And the instances when corporate veil will be lifted are not limited to fraud or improper conduct of the directors but also include all cases where the character of the company, or the nature of the persons who control it, is a relevant feature.

69. The respondent further submitted that the 2nd Appellant was properly joined in the proceedings as a party and that the Learned Trial Magistrate did not error in finding so. The facts of the case points to the very fact that the 2nd Appellant was in fact the brainchild of every action of the 1st Appellant and in fact was the recipient of the consideration amount. A fact not disputed by the Appellants herein.
70. As to whether the Learned Magistrate erred in law and fact in awarding a refund of Kenya Shillings Eight Hundred and Fourteen Thousand (KES 814,000/=), the Respondent submitted that he brought the instant cause of action as against the Appellants in the Magistrates Court and the case revealed breach of contract by the Appellants.
71. The Respondent's case in Magistrates Court did not seek the compensation for breach of the contract but a refund of what the Trial Court identified as an amount not accounted for by the Appellants in the sum of Kenya Shillings Eight Hundred and Fourteen Thousand (KES 814,000/-).
72. The Appellants did not dispute the existence of the contract and breach thereof. What is vehemently disputed and the central pillar of the Appellant's Appeal is that the learned Magistrate erred in law and fact in awarding the Respondent herein Kenya Shillings Eight Hundred and Fourteen Thousand (KES 814,000/-) as compensation for monies not accounted for.
73. The Appellants informed the trial court that they had performed their end of the bargain and went further to claim that all monies paid being Kenya Shillings Two Million Three Hundred Thousand (KES 2,300,000/-) had been accounted for.
74. However, the Respondent argued that he provided to the Honourable court a Supplementary Bundle of Documents dated 19th April 2022 and which bundle contained consistent exhibits evidencing payment of the Kenya Shillings Two Million Three Hundred Thousand (KES 2,300,000).
75. The respondent contended that the documents in the Respondent's Supplementary List of Documents dated 19th April, 2022 are three (3) copies of RTGS slips with the first one dated 17th May, 2017 disbursing Kenya Shillings One Million (KES 1,000,000/-), the second one dated 14th August 2017 being payment for Kenya Shillings Nine Hundred Thousand and the last one dated 7th November, 2017 and being payment for Kenya Shillings Four Hundred Thousand (KES 400,000/-) thus making the total amount paid Kenya Shillings Two Million Three Hundred (2,300,000/-).
76. It is that string of evidence that the learned trial Magistrate noted remained uncontroverted.
77. According to respondent, the Appellants herein furnished the trial court with inconsistent pieces of evidentiary material that were incapable controverting the Respondent's RTGS slips.
78. Under Section 109 of the *Evidence Act* the appellants assumed the obligation of furnishing the trial court with conclusive evidence pointing to the fact that the they had completed the task as per the terms of the Agreement. It is that evidential burden that the appellants were unable to discharge.
79. The Appellants according to the respondent, made attempts to dispute the amount of Kenya Shillings Eight Hundred and Fourteen Thousand (KES 814,000/-). In their pleadings, the Appellants told the trial court the amount claimed was in fact used for the house fitting. The appellants did not however, provide any quotation to support the said Claim and neither is there any evidence on the record to



account for the amount awarded to the Respondent herein on account of non compensation of the work.

80. The 2nd Appellant herein expressly admitted to have received an amount of Kenya Shillings Two Million Three Hundred Thousand (KES 2,300,000), and when the Respondent herein reported the matter to Kabete Police Station on 12th April, 2018 vide OB Number 44, the 2nd Appellant herein expressly admitted to the facts giving rise to this suit and undertook to pay absent any reservations an amount of Kenya Shillings of Eight Hundred and Fourteen Thousand (KES 814,000/-) being the amount that is now the subject of this instant appeal. The respondents argued that the appellants were estopped from denying liability.
81. In the case of *Serah Njeri Mwobi v John Kimani Njoroge* (2013) eKLR the Court of Appeal held that:
- “The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.”

Determination

82. The appeal is fairly limited to determining whether the learned honorable magistrate was correct in law by holding the two appellants liable for the sum awarded.
83. The appellants do not deny entering into the contract but maintain that the 2nd appellant should be excused from liability since when he signed the contract. All that he wishes the court to find is that when he did so he was simply acting in his capacity as a director thus the liabilities of the company should not be visited on him.
84. In the recent decision of *IBM United Kingdom v LZLABS GmbH and others* [2022] EWHC 844 (TCC), the English High Court examined the circumstances in which a director may be liable for a company's breach of contract. The court had this to say about holding directors liable for company's breach of a contract;- that from the rule derived from *Said v Butt* [1920] 3 KB 498 is that they cannot be liable for inducing a breach of contract by the Second Defendant unless they are shown to have been acting in bad faith or outside the scope of their authority
85. The record before me bears no evidence to show that the 2nd appellant acted beyond the responsibility she holds as a director of the company 1st appellant. In *Said v Butt* [1920] 3 KB 497 a landmark English case established the principle that a servant (employee) acting within the scope of their authority and in good faith is not personally liable in tort for inducing a breach of contract between their employer and a third party; essentially meaning that an employee cannot be sued directly for actions taken on behalf of their employer, even if those actions breach a contract, as long as they were acting within their job duties and with honest intentions.
86. The respondent did not demonstrate that the 2nd appellant was acting without honest intentions and or she exceeded her powers as a director. The 1st appellant did not disown the contract meaning therefore they acknowledged that when the 2nd appellant executed the contractual documents she was acting within her mandate as director.
87. This court therefore agrees with the appellants counsel that the finding by the learned magistrate finding was erroneous to the extent that she found both appellants jointly and severally liable to settle the sum in issue. To that extent the appellants appeal succeeds partially in that liability for the sum in question should have been visited upon the first appellant.



88. However, the factual matrix presented to the lower court pointed to the fact that the contract giving rise to the suit was valid and duly recognized by both parties.
89. It is difficult for the court to tell whether when the 2nd appellant signed the contract the intention was not to have the 1st appellant perform their part of the bargain. The state of a man's mind is difficult to prove thus in the absence of evidence to show that the 2nd appellant signed the contract with some mischievous intention, this court must infer that the director of the company was acting in good faith. In *Eddington Vs, Fitzmaurice (1985)* 29 Ch D 459 Lord Bowen stated "there must be a misstatement of an existing fact: but the state of a man's mind is much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else."
90. The appellant in the instant case in order to succeed in holding the 2nd appellant for the breach of a contract by the 1st appellant who enjoys a distinct legal personality from her directors who include the 2nd appellant. It is the view of this court that if courts were to accept to lift the veil every time they are invited to do so without good reason, the essence of corporate legal personality would be watered down thus distorting relationships between persons and companies. The jurisprudence that has developed since the days of *Salomon Vs Salomon & Co ltd (1897)* AC 223 has continued to celebrate the place of companies as separate legal entities from their directors, shareholders and promoters.
91. A party desirous of going after company directors over breaches of the company must be able to prove that the directors went beyond their mandate as directors and were personally responsible for the breach of contract either because of fraud, deceit or misrepresentation to the third parties.
92. In the present case that burden was not discharged by the respondent as against the 2nd appellant.
93. Lastly, the evidence before the learned honorable magistrate was clear that the sum demanded by the respondent had been received by the appellants for the works. The appellants have not denied that fact. The fact of the appellants not completing the works was also not in dispute. The appellants blame the respondent for their inability to perform a fact denied by the Respondent.
94. Upon evaluation of the entire evidence, I am inclined to find and hold that the respondent was entitled to the sum claimed thus the learned honorable magistrate was correct in arriving at that conclusion.
95. It thus the decision of this court that the appeal by the appellants partially succeeds. The judgment against the 2nd appellant is set aside. The appeal by the 1st respondent is dismissed. The 1st appellant shall settle the decretal sum plus the costs of this appeal.
96. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF FEBRUARY, 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Kimondo Gachoka absent for the /appellant

Nguma for the 1st & 2nd Respondent

