



**Elton John Aids Foundation v Amara BB Limited & another (Miscellaneous Application E337 of 2024) [2025] KEHC 1163 (KLR) (Commercial and Tax) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1163 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E337 OF 2024**

**BM MUSYOKI, J  
FEBRUARY 20, 2025**

**BETWEEN**

**ELTON JOHN AIDS FOUNDATION ..... APPLICANT**

**AND**

**AMARA BB LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BARNABAS KIPRONO BWAMBOK ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter was commenced by way of a notice of motion dated 15<sup>th</sup> April 2024 said to be brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 3 and 6, Order 22 Rule 35, Order 51 Rule 1 of the Civil procedure Rules, 2010, Section 1002 of the Companies Act 2015 and All other Enabling Provisions of the Law. The application which is supported by affidavit of Lucy Maikweki sworn on 15<sup>th</sup> April 2024 prays for the following orders;
  1. Notice to show cause and for summons to issue compelling the 2<sup>nd</sup> respondent who is the director and shareholder of the 1<sup>st</sup> respondent, Amara BB Limited namely: Barnabas Kiprono Bwambok to personally attend court on such date as may be ordered or allocated and be examined on oath as to the judgment debtor's means and assets and produce its books of accounts and other documentary evidence relevant to revealing the assets of the said Amara BB Limited.
  2. Upon personal attendance and examination of the director of the 1<sup>st</sup> defendant Amara BB Limited namely Barbanas Kiprono Bwambok in (1) above, this Honourable Court be pleased to lift/pierce the corporate veil of the 1<sup>st</sup> respondent herein Amara BB Limited and the said director of Amara BB Limited be and is hereby held personally liable to pay the applicant the decretal sum of Kshs 8,254,600.48 and taxed costs hereto in the sum of Kshs 330,476.92 plus



interest at 12% p.a. from judgment date of 28<sup>th</sup> February 2023 in terms of the decree of the Honourable Court issued on 18<sup>th</sup> May 2023.

3. Warrants of attachment and sale of assets of the director of the 1<sup>st</sup> respondent Amara BB Limited namely Barnabas Kiprono Bwambok do issue in execution of the decree herein.
  4. In the alternative to (3) above, a notice to show cause be hereby issued upon the said respondents compelling the director and shareholder of the respondent, Amara BB Limited, namely Barnabas Kiprono Bwambok to show cause as to why he should not be committed to civil jail for failure to pay or satisfy the decretal sum in this suit.
  5. Costs of this application be awarded to the applicant.
2. When the matter came for mention before me on 18-11-2024, I observed that the respondent had not filed a notice of appointment of advocates and for reasons I recorded, I expunged the submissions which the respondents had improperly filed then I reserved the matter for ruling on 28-02-2025. The respondent by application dated 20<sup>th</sup> January 2025 made an attempt to file a replying affidavit and submissions which for reasons recorded, I disallowed. This application is therefore considered as unopposed.
  3. I do not see the relevance of Order 1 Rule 3 and 6 of the Civil Procedure Rules to this application. Those Rules provide for joinder of parties to a suit. The nature of this application is not a suit because a suit cannot be commenced by way of a notice of motion. Similarly, there is no relevance of Section 1002 of the Companies Act to this application. That Section deals with and creates an offence of fraudulent dealing with the business of a company and punishment for the same which in my view has no relevance to this application. The Section states;

"If a business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, each person who knowingly participates in carrying on the business in that manner commits an offence.(2)Subsection (1) applies whether or not the company has been liquidated or is in liquidation.(3)A person found guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding ten years or a fine not exceeding ten million shillings, or to both."
  4. That leaves me with assumption that the application is brought under Order 22 Rule 35 of the Civil Procedure Rules which provides 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.'
    5. The application is clearly seeking lifting of the 1<sup>st</sup> respondent's corporate veil against the 2<sup>nd</sup> respondent in an effort to execute a court decree in another suit. The decree the application is seeking to execute is not disclosed on the face of the application. One cannot tell from the prayers of the application, the



case details or even the station the decree was passed but it is clear that the decree is not in this cause as no judgment has been passed in this matter. Only after going through the supporting affidavit one can discern from paragraphs 16 and 17 that the suit whose execution is being pursued is Milimani Chief Magistrate's Court civil suit number E11428 of 2021. This is as per judgement and decree exhibited as annexures 'LM-7' and 'LM-8'.

6. I must express my disappointment at the poor way the application is drafted. A party approaching the court must be clear and explicit on the issues and orders they are inviting the court to consider and grant. Vague and ambiguous pleadings serve no purpose and inevitably attract instant dismissal. The orders being prayed in this matter, if they were to be allowed would be in vain as they make no reference to any case and are therefore bereft of sense.
7. Be that as it may, even if the application had been properly drafted, I would not have granted the same because I find it incompetent. For all intents and purposes, it is an application for execution of a court decree in a different suit. A party should not be allowed to execute a decree of a court by filing a separate cause or proceedings. The application should have been filed in Milimani Chief Magistrates Court civil suit number E11428 OF 2021. Execution of a court decree is a process which goes on with supervision of the court which passed the decree and it is only that court which can make a decision against whom the process should commence and proceed. That is the gist of Order 22 of the Civil Procedure Rules.
8. My above position is fortified by the holding of Honourable Justice in Wanada in *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others (Miscellaneous Civil Application 43 of 2023)* [2024] KEHC 2343 (KLR), where the learned Judge held as follows;

“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.”

9. Again, when faced with similar application in *Sheman Limited v Palacio Motors Limited* [2025] 261 (KLR) Honourable Lady Justice Helene R. Namisi held as follows;

“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.’

10. For the above reasons, I find the application wanting in merits and it is hereby dismissed with no orders as to costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Muga for the applicant and Miss Musando for the respondent.

