



**Njoroge v Baron Capital Limited & another; Ngotho (Interested Party) (Commercial Case E136 of 2023) [2025] KEHC 2125 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E136 OF 2023  
JWW MONG'ARE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**ELIJAH NJORE NJOROGE ..... PLAINTIFF**

**AND**

**BARON CAPITAL LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SPECTRUM AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**SAMUEL KINYANJUI NGOTHO ..... INTERESTED PARTY**

**RULING**

**Introduction and Background**

1. Before the court for determination is the Plaintiff's Notice of Motion dated 12<sup>th</sup> November 2024 made under sections 1A, 1B, 3, 3A & 63 (e) of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya), Article 159 of the *Constitution*, sections 1002 & 1004 of the *Companies Act* (Chapter 486 of the Laws of Kenya) and Order 1 rule 10, Order 45 rules 1, 2 & 3 and Order 51 rule 1 of the Civil Procedure Rules seeking the following orders:-
  1. That the corporate veil of the 1st Defendant be pierced and the Director/Interested Party be added as a necessary party in these proceedings and be enjoined/held personally for the performance of the obligations of the 1st Defendant.
  2. That further and in the alternative, the Directors/Interested Party be summoned to appear before the Hon. Judge to show cause why he should not be held personally liable for the acts of omission or commission by the 1<sup>st</sup> Defendant, pertaining to this suit.



3. That the Applicant be permitted to effect service of the Orders of the Court upon the Director/ Interested Party through his email address bXXXXXXX07@gmail.com and WhatsApp Number 07XXXXXX336, and such service be deemed as sufficient personal service upon the said Director/ Interested Party.
  4. That such further or other orders as are appropriate for the effective and fair administration of justice be issued.
  5. That the costs of this application be provided for.
2. The application is supported by the grounds on its face and the supporting affidavit of the Plaintiff sworn on 12<sup>th</sup> November 2024. It is opposed by the 1<sup>st</sup> Defendant (“the Company”) through the Grounds of Opposition dated 13<sup>th</sup> December 2024. The Company has also supplemented its arguments by filing written submissions.

### **Analysis and Determination**

3. I have carefully gone through the application, the Company’s response and the submissions. I note that the first issue for the court’s determination before determining the substance of the application, if at all, is whether the present application is res judicata as the Company states that this application is similar to the previous one that was dismissed by the court in its ruling of 19<sup>th</sup> September 2024 and that the Plaintiff is seeking to cure the defects of that application. In that application, the Plaintiff sought inter alia to cite the Company’s Director, the Interested Party, for contempt but the court, in the Ruling held that the said order could not be granted as the Plaintiff had not applied to lift the corporate veil. This is what has prompted the Plaintiff to file the present application.
4. While it is correct that the court could not cite the Interested Party for contempt because the Plaintiff had not applied to lift the corporate veil, it is not lost that the court has already pronounced itself on the issue of contempt where it found in the negative and I find that it would be prejudicial to revisit the same issue based on the same facts. The Plaintiff’s application failed because of his own inadvertence not to apply for the lifting of the corporate veil earlier (see Kenya Export Floriculture, Horticulture and Allied Workers Union (KEFHAWU) v Vegpro (K) Limited [2020] KEELRC 478 (KLR))
5. The Court of Appeal in Mburu Kinyua v Gachini Tuti [1976-80] 1 KLR 790 cited the decision of Henderson v Henderson [1843 – 60] ALL E.R. 378 with approval where it was held as follows:-

“where a given matter becomes the subject of litigation in, and adjudication by a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case (emphasis is circumstances) – Courts will not permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, in advertence or even accident, omitted part of their case”.
6. I am inclined to agree with the Company that the Plaintiff’s application is an attempt to cure defects of his previous application and relitigate on an issue that has already been heard and determined and that the issue of lifting the corporate veil so as to cite the Interested Party in contempt ought to have been filed earlier had the Plaintiff been more diligent. In essence, the Plaintiff is litigating his case for contempt against the Interested Party in piecemeal, which the court frowns upon and cannot be determined afresh considering that the court has already



pronounced itself on the issue. The court also pronounced itself that personal service of an order with an endorsement of a penal notice is a mandatory requirement to make out a case for contempt. The court cannot therefore make an order that service through the Interested Party's email address and WhatsApp number be deemed as proper and sufficient personal service. I find this to be a disguised appeal of the court's findings or a re-litigation of the same issue which cannot be countenanced.

7. In the foregoing, I find merit in the Company's objection that this application falls within the realm of res judicata and cannot therefore be determined or allowed.

### **Conclusion and Disposition**

8. The application dated 12<sup>th</sup> November 2024 now stands dismissed. Costs of this application will abide the outcome of the main suit. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

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**J.W.W. MONGARE**

**JUDGE**

In the Presence of:-

1. N/A for the Plaintiffs /Applicants.
2. Ms. Konchella holding brief for Mr. Ouko for the Defendants/Respondents.
3. Amos - Court Assistant

