



REPUBLIC OF KENYA



KENYA LAW
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**PCEA Tumu Tumu Hospital v Medicomp Techno Services (Civil Case
244 of 2012) [2025] KEHC 3053 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE 244 OF 2012
MA ODERO, J
MARCH 17, 2025**

BETWEEN

PCEA TUMU TUMU HOSPITAL APPELLANT

AND

MEDICOMP TECHNO SERVICES DEFENDANT

RULING

1. Before this Court for determination is the Notice of Motion dated 31st August 2018 by which the Applicant/Judgement Creditor PCEA Tumutumu Hospital seeks the following orders:-
 - “1. That this court do please Summon George Jombo to attend court for his examination on the Judgment debtors assets and to produce its books of accounts.
 2. That in the alternative this court do lift the defendants/Judgement Debtor corporate veil to allow execution against George Jombo personally.
 3. That the costs of this application be provided for.”
2. The application which was premised upon Order 22 Rule 35 of the Civil Procedure Rules was supported by the Affidavit of even date sworn by one Hudson Kinyua the Hospital Administrator.
3. The Respondent George Jombo, who was the Director of the Judgment/Debtor Medicomp Techno Services Ltdopposed the application by way of the Replying Affidavit dated 19th October 2018.
4. Prayer (1) of the application is now effectively spent since the said George Jombo was summoned by the court and did appear virtually from his base in Kampala, Uganda. The said George Jombo was cross-examined by counsel for the Applicant on 31st October 2024.



Thereafter parties were invited to file and exchange their written submissions. The Applicant filed the written submissions dated 4th December 2024 whilst the Respondent relied upon his written submissions dated 23rd January 2025.

Background

5. The Applicant had entered into a contract with the Respondent company for the supply and installation of an oxygen plant at the PCEA Tumu Tumu Hospital. The Respondents failed to deliver the equipment leading the Applicant to file this suit. Vide the plaint dated 13th December 2012 the Applicant sought the following prayers;-
 - “(a) Payment of 74309 Euros (Kshs 709,014.80) with interest at bank rates of 18 percent per annum effective from the 23rd November 2011 until payment in full.
 - (b) General damages for breach of contract.
 - (c) Costs of the suit with interest.
6. On 9th July 2014, the Applicant obtained judgment against the Respondent for the principal sum of Kshs 8,709,140.80 plus costs and interest. The Applicant proceeded to execute That judgment by way of attachment and sale of the Respondents moveable assets. However the auction only recovered a paltry sum of Kshs. 72,070.
7. The Applicant avers That the Respondent Company has no other known assets and That the company details could not be traced as the file is missing from the Registrar of Companies.
8. The Applicant states That it all times dealt with one Mr. George Jombo who was the Managing Director of the Company. That is was the said George Jombo who remitted 20% of the purchase price to the manufacturer in France. In the circumstances the Applicant prays That the Court direct That the Corporate Veil be lifted to enable them execute against the said George Jombo by attachment of his personal properties in order to recover the full decretal sum.
9. As stated earlier the application was opposed. In his affidavit the Respondent concedes That he was at the material time the Director of the Defendant Company. He admits That the company entered into a contract with the hospital for the supply and installation of an Oxygen Plant.
10. The Respondent concedes That on 9th July 2014 judgment was indeed entered against them in favour of the Applicant. That a decree was duly extracted. That the Applicants proceeded with execution and attached the Respondents assets which were sold by auction in satisfaction for the decree. The Respondent states That he was never informed how much was realized from That auction.
11. The Respondent avers That due to the attachment and sale of all the company’s assets the company collapsed and indeed it ceased to operate in the year 2014. That the company has no books of Account. The Respondent contends That the company has corporate personality and once legally incorporated it is to be treated as any other independent person with rights and responsibilities. That as a Director he cannot be held liable for the actions and/or omissions of the company. That in any event the present application was selective as it only named him and omitted the names of all the other Directors.
12. The Respondent further argues That the lifting of the corporate veil is only to be done in cases where a fraud has been executed and That such order can only be made after a hearing of a full suit. That the



principles of company law protect him from assuming the debt and/or responsibilities of the company. As such the Respondent urges That the present application be dismissed.

Analysis And Determination

13. I have carefully considered this application the reply filed thereto the record of the court as well as the written submissions filed by the parties.
14. As stated earlier Prayer (1) which sought to have the Respondents summoned for purposes of cross-examination is now spent. The Respondent did appear before the court and was cross-examined by counsel for the Applicant.
15. The only issue now for determination is whether a satisfactory case has been made to order the lifting of the corporate veil.
16. It is a well established principle of law and indeed is a foundation of company law That a company has corporate legal personality. In other words a company is recognized as a legal entity separate and distinct from its members [see *Salmon v Salmon Company Limited* 1897 AC 22].
17. As a general rule the Directors/Shareholders of a company will not be held liable for the debts or other obligations of the company due to the principle of separate corporate legal personality. Therefore one cannot pursue the Directors for a debt owed by the company.
18. However in certain cases upon application the courts may ‘lift the corporate veil’ i.e go behind the company to identify its Directors/shareholders who can then be held personally liable for the debts for the debts of the company.
19. In the case of *Jones and Another v Lipman & Another* [1962] 1WLR 833 it was held:

“Whereas a registered company is a legal person separate from its members, the veil of incorporation may, however, be lifted in certain cases for instance, where it is shown That the company was incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from the eyes of equity”.
20. Halsburys Laws Of England^{4th} Edition at Paragraph 90 reads 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 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 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. However, where this is not the position, even though an individual’s connection with a company may cause a transaction with That company to be subjected to strict scrutiny, the corporate veil will not be pierced.”



21. The doctrine of lifting the corporate veil was discussed widely in *Banks on Sentence: Volume 1*, 22 Confiscation: Proceeds of Crime Act 2002 22.47 Evidence - Companies - Piercing/lifting the corporate veil as follows:

“.....In each case the prosecution invited the court to pierce the corporate veil. Held para 76 This legal principle is That a duly formed and registered company is a separate legal entity from those who are its shareholders and it has rights and liabilities That are separate from its shareholders, *Salomon v A Salomon and Co Ltd* [1897] AC 22 and *Customs and Excise v Hare* [1996] 2 All ER 391 at 401F. A court can ‘pierce’ the carapace of the corporate entity and look at what lies behind it only in certain circumstances. It cannot do so simply because it considers it might be just to do so. Each of these circumstances involves impropriety and dishonesty. The court will then be entitled to look for the legal substance, not just the form. In criminal cases the courts have identified at least three situations when the corporate veil can be pierced. First, if an offender attempts to shelter behind a corporate facade or veil to hide his crime and his benefits from it, see *Customs and Excise v Hare* 1996 2 AER 391, at 402A, *CPS v Compton* [2002] EWCA Civ 1720, paras 44-48, and *R v Grainger* [2008] EWCA Crim 2506, PARA 15. Second, where an offender does acts in the name of a company which (with the necessary mens rea) constitute a criminal offence which leads to the offender’s conviction, then ‘the veil of incorporation if not so much pierced as rudely torn away’, *Jennings v CPS* [2008] UKHL 29 para 16. Third, where the transaction or business structures constitute a ‘device’, cloak’ or ‘sham’, i.e an attempt to disguise the true nature of the transaction or structure so as to deceive third parties or the courts separate legal personality is being abused for the purposes of some relevant wrongdoing. The difficulty is to identify what is relevant wrongdoing. Two principles lie behind the terms. First, the concealment principle, which enables the court to identify the real actors where they are being concealed. This does not involve piercing the corporate veil. The evasion principle is different and does involve piercing the corporate veil. There is a legal right against a person in control of ‘it’ 1 which exists independently of the company’s involvement, and a company is interposed so the separate legal personality of the company will defeat the right or frustrate its enforcement. (The court then listed case examples.) para 34 The corporate veil may be pierced only to prevent the abuse of corporate legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control, the court may pierce the corporate veil. That is only for the purpose of depriving the company or its controller of the advantage That they would otherwise have obtained by the company’s separate legal personality. This principle is a limited one. If it not necessary to pierce the corporate veil it is not appropriate to do so.”

22. Lifting of the corporate veil involves a situation where the court will disregard he principle of separate legal personality in respect of a company and will hold the Directors and/or shareholders of said company personally liable for the company’s actions or debts. However courts are normally very cautious in lifting the corporate veil and will only take such action in particular circumstances. e.g. in cases where there is proof of fraud a sham company etc.
23. In *Ricatti Busienss College Of East Africa v Kyanza V Farmers Company Limited*[2016] eKLR, the court of Appeal in discussing the issue of lifting the corporate veil stated as follows:-

“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 excised 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.”

24. In the case of *Finezza Management Solutions Ltd v Joseph Ogero Nyakundi* [2024] eKLR Hon. Justice K. Magare stated as follows:-

“Lifting of the corporate veil is done in circumstances where the Directors are unable to show That the company is a legitimate enterprise. One of the things That show legitimacy of an enterprise is its books of account and evidence of assets owned. It is not enough to lift a corporate veil because a company is unable to pay its debts.

(25) It is when a company a shell, sham and meant to defraud creditors thus it is said to be a sham. The court lifting the veil should never limit liability of the directors to shareholding. It should be to the fullest extent possible to pay the judgment debt.....’

25. During cross-examination the Respondent who was the Managing Director of the company told the court That the company collapsed after all its assets were taken away and auctioned. The Respondent stated;

That he was not in a position to produce the books of account for the company as he claims these were carried away by the auctioneers. The Respondent’s position therefore is That the company has no assets with which to satisfy the decree.

26. As a general rule courts in Kenya are reluctant to move to pierce the corporate veil so as not to water down the principle of limited liability.

In the case of *Lucy Mukembura Kimani v Nzuri Feed Suppliers Ltd* [2021] eKLR, the court stated as follows

“In Kenya, courts have a strong presumption against piercing the corporate veil, and will only do so if there has been serious misconduct or if the company shareholders or directors who are asserted to the company’s alter ego have acted in fairly egregious manner. This is because the courts understand the benefits of limited liability as expressed in the statute. In general therefore, courts in Kenya will only allow for the piercing of the corporate veil when two requirements are met. First the company is a mere instrumentality or alter ego of the shareholder or director in question such That there is such unity of interest and ownership That one is inseparable from the other. Second, the facts must be such That adherence to the fiction of separate entity would, under the circumstances sanction as fraud or promote injustice. Some of the factors the court would like to determine if the two requirements have been met include the following:-

- a. Whether the company is adequately capitalized.
- b. Whether there is a failure to maintain adequate corporate records or to comply with corporate formalities.
- c. Whether there has been demonstrated co-mingling of funds or assets between the company and the asserted alter ego.
- d. Whether the alter ego has treated the assets or finances of the corporation as his own.” [Own emphasis]



27. There has been no allegation of fraud made (much less proved) against the Respondent in this case. Likewise no evidence was tendered to suggest or prove That the Respondent engaged in any suspicious acts or That the Respondent exceeded its powers in any way.
28. This was a straight forward contract between two parties and just as happens in many contracts one party breached the terms of the contract. There is no evidence to show That the Respondent was pushing a false contract. Indeed the Applicant concedes That 20% of the money was forwarded to the manufacturer of the Oxygen Plant in France.
29. The main purpose of cross-examining the Respondent was to enable the Applicant to establish whether the company owned other assets which could be sold to satisfy the decretal sum.
30. To this end the Respondent was asked to avail the books of account of the company. The Respondent claimed That he was unable to produce the company books of account as the same had been carted away by the auctioneers.
31. I find it difficult to see why an auctioneer would carry away the books of account of the company. Books of Account are not assets which are capable of being proclaimed and auctioned. Moreover the Respondent made no move to have the said Books of Account returned to the company.
32. The Respondent told the court That the company ceased operating in the year 2014 after all its assets were auctioned. However the Respondent confirms That the company has not been formally wound up i.e no winding up proceedings have taken place. This means That the Respondent company still exists as a legal entity and can be pursued for settlement of the decree.
33. Be That as it may the Respondent had a legal obligation to maintain proper records of account for the company. The obligation to keep accounts and the sanction for failure to do so are contained in Section 628 – Section 631 of the Companies Act Cap 486 Laws of Kenya Section 631 of the Act makes it an offence for a company to fail to preserve its records.
34. The Respondent has made a bare assertion That the company is now bankrupt. The court has no way to determine if this claim is factual as whether by design or otherwise the company’s Books of Account are conveniently unavailable.
35. In my view the blanket denials offered by the Respondent are not persuasive. This court cannot rule out the very real possibility That the corporate Shield is being used as a tool to evade satisfaction of the decree. In the circumstances I would be inclined to lift the corporate veil.
36. Based on the foregoing I allow this application and hereby lift the corporate veil of Medicomp Techno Services and direct That George Jombo be held personally liable to pay the decretal sum. Each party to meet its own costs.

DATED IN NYERI THIS 17TH DAY OF MARCH, 2025.

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MAUREEN A. ODERO

JUDGE

