



REPUBLIC OF KENYA



**Adnan & another v Mbae & 3 others (Civil Case 18 of 2013)  
[2025] KEHC 8908 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8908 (KLR)

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

**CIVIL**

**CIVIL CASE 18 OF 2013**

**LP KASSAN, J**

**JUNE 19, 2025**

**BETWEEN**

**SAKINA NJERI GIKUBU ADNAN ..... 1<sup>ST</sup> DECREE HOLDER**

**JACQUELYN WAMBUI GIKUBU ..... 2<sup>ND</sup> DECREE HOLDER**

**AND**

**PETER GITAU MBAE ..... 1<sup>ST</sup> DEFENDANT**

**BUZEKI ENTERPRISES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ZEDEKIAH BUZEKI KIPROP BUNDOTICH ..... 1<sup>ST</sup> RESPONDENT**

**DIANA JEPCHUMBA BUNDOTICH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is a Notice of Motion dated 16.10.2024 brought under Order 51 Rule 1, Order 5 Rule 17 and Order 22 Rule 35 (b), of the Civil Procedure Rules, Sections 1A, 1B, and 3A, of the Civil Procedure Act, Article 159 (2) (d) of the Constitution wherein the Applicant seeks orders to wit:
  - a. Spent
  - b. Spent
  - c. That an order of this court do issue directed at DIANA JEPCHUMBA BUNDOTICH and ZEDEKIAH BUZEKI KIPROP BUNDOTICH, both care of P.O. Box 85532 Mombasa, requiring them to appear in court and show cause why they should not be held personally liable



for the decree issued in favour of the decree holders against the judgment debtors dated 4<sup>th</sup> May 2021, which decree (with interest) stood at Kshs 47,966,919.20/= as at 20<sup>th</sup> May 2021.

- d. That in default of appearance before the court or upon no sufficient cause being shown as in prayer (1) above, the Decree Holder be at liberty to execute for the decree herein against the person and property of DIANA JEPCHUMBA BUNDOTICH and ZEDEKIAH BUZEKI KIPROP BUNDOTICH.
  - e. That such other orders as are necessary to ensure the effective administration of the justice of this case be made.
  - f. That the costs of this application be borne by the Respondent in any event.
2. The said application is premised on the grounds on its face and further supported by the affidavit sworn by the 1<sup>st</sup> Decree Holder/Applicant. The Applicants state that despite obtaining warrants of attachment and attempting to sell twenty-eight vehicles purportedly belonging to the 2<sup>nd</sup> Judgment Debtor, they were unable to realize the fruits of the judgment because the proclaimed vehicles were charged to a financier. Furthermore, an official search has revealed that the Respondents, Diana Jepchumba Bundotich and Zedekiah Buzeki Kiprop Bundotich, are the directors/shareholders of the 2<sup>nd</sup> Judgment Debtor, and the company has substantial debentures registered in favour of other creditors, leading the Decree Holders to believe the company is being used to defraud creditors and evade financial obligations. They contend that there are no other known assets of the 2<sup>nd</sup> Judgment Debtor. Consequently, the application seeks, among other things, to have the corporate veil lifted and the Respondents, as directors and shareholders, made personally liable for the debts of the company.
  3. In the Replying Affidavit, the 2<sup>nd</sup> Respondent, on his behalf and authorized by the 1<sup>st</sup> Respondent, Diana Jepchumba Bundotich states that the application is an egregious abuse of Court process and is wholly misconceived and legally untenable. The central argument is that the application improperly seeks to pierce the corporate veil of the 2<sup>nd</sup> Judgment Debtor, Buzeki Enterprises Limited, which is a distinct legal entity separate from its directors and shareholders as established in law.
  4. He vehemently opposes the application, stating that the Applicants have not demonstrated any fraudulent conduct or misuse of the company's legal personality to justify lifting the corporate veil, referencing case law Salomon-vs-Salomon. He contends that the 2<sup>nd</sup> Judgment Debtor has operated as a legitimate corporate entity. He further argues that financial encumbrances preventing the attachment of vehicles or the assertion that the company has no assets available for execution do not automatically imply fraudulent conduct by the directors or justify holding the Respondents personally liable for corporate debts. He asserts that the prayer for personal execution against the Respondents is premature and legally flawed, and seeks the dismissal of the application with costs to prevent a dangerous precedent.

### **Applicants' submissions**

5. The Applicants are seeking an order from the court to compel the Respondents, Diana Jepchumba Bundotich and Zedekiah Buzeki Kiprop Bundotich, to appear in court and demonstrate why they should not be held personally liable for the decree issued against the 2<sup>nd</sup> Judgment Debtor, Buzeki Enterprises. The Applicants submit that despite obtaining a judgment and decree in 2018, which remains unsettled, they have been unable to execute against the 2<sup>nd</sup> Judgment Debtor. Their attempts to attach vehicles were frustrated because the assets were charged to a financier. An official search revealed that the Respondents are the sole directors and shareholders of the company, and the company has substantial debentures, leading the Applicants to believe the company is being used to defraud creditors



and evade financial obligations. They contend there are no other known assets of the company available for execution.

6. The Applicants therefore contend that the 2<sup>nd</sup> Judgment Debtor, Buzeki Enterprises Limited, exists merely as a facade, mask, or sham to shield the directors and shareholders from execution. They argue that in such circumstances, the corporate veil should be lifted or pierced to hold the directors and shareholders personally liable for the company's debts. Citing case law, they assert that while companies are separate legal entities, this principle can be overridden when the company is used for fraudulent purposes, to defraud creditors, or evade obligations. The Applicants humbly submit that based on the Respondents' replying affidavit, it is evident the company is operating in a bid to evade financial obligations, and the Respondents have been aware of the outstanding decree for over seven years without settling it, suggesting the company is a "mere scam" for defrauding creditors. They pray that the court allows their application.

### **Respondents' submissions**

7. The Respondents oppose the Applicants' Notice of Motion dated 16<sup>th</sup> October 2024, which seeks to lift the corporate veil of the 2<sup>nd</sup> Judgment Debtor, Buzeki Enterprises Limited, and hold them personally liable for the decree amount. They submit that the application is legally flawed, lacks merit, and is an abuse of the court process. Their primary argument rests on the fundamental legal principle that a company is a distinct and separate legal entity from its shareholders and directors, a principle established in *Salomon v. Salomon & Co. Ltd* and upheld in our courts in the case of *Victor Mabachi & Another v. Nurturn Bates Ltd* [2013] eKLR. They contend that the lifting of the corporate veil is an exceptional remedy applicable only in cases of demonstrable fraud, improper conduct, or misuse of the corporate structure.
8. The Respondents submit that the Applicants have failed to present any evidence demonstrating fraudulent conduct on their part or improper diversion of corporate assets. They argue that mere financial distress or the inability of the company to satisfy a judgment debt or settle its debts, such as when assets are subject to financial encumbrances, does not meet the legal threshold for lifting the corporate veil. Allegations of fraud must be specifically pleaded and proved, which they claim the Applicants have failed to do. Holding them personally liable without such evidence would amount to judicial overreach and an unjust imposition of liability. The Respondents urge the court to dismiss the application with costs, asserting it is legally untenable and speculative.
9. The issues for determination herein are
  - i. Whether the corporate veil of the 2<sup>nd</sup> Judgment Debtor, Buzeki Enterprises Limited, should be lifted.
  - ii. Whether the Respondents should be held personally liable for the judgment debt.
  - iii. Who should bear the costs of this application?
10. It is well-settled law that a company is a separate legal entity from its shareholders and directors. This principle, laid down in *Salomon v Salomon & Co Ltd* [1897] AC 22, has been affirmed repeatedly in Kenyan jurisprudence including *Victor Mabachi & Another v Nurturn Bates Ltd* [2013] eKLR.
11. However, Kenyan courts have held that the veil of incorporation may be lifted in exceptional circumstances, such as when a company is being used as a mask for fraud or to evade legal obligations.



In *Kolaba Enterprises Limited v Shamshudin Hussein Varvani & another* [2014] KEHC 7729 (KLR), the Court held:

“Separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or 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.”

12. Similarly, in *Multichoice Kenya Limited v Mainkam Limited & Another* [2013] KEHC 4015 (KLR), the Court emphasized that the veil may be lifted where it is “too flagrantly opposed to justice or convenience.”

13. In the instant matter, the Applicants allege that the 2<sup>nd</sup> Judgment Debtor has no attachable assets and that its only known assets, 28 vehicles, were encumbered to financiers. The Applicants further assert that the company’s directors, the Respondents herein, are using the corporate structure to avoid satisfying the decree.

14. However, this Court finds that while the financial incapacity of a company to settle a decree is unfortunate, it does not, in and of itself, constitute sufficient ground to lift the corporate veil. In *Ameer Shaker t/a Esnad General Trading Ltd v Pundberry Limited (Commercial Cause E900 of 2021)* [2024] KEHC 4133 (KLR) (Commercial and Tax) (30 April 2024) (Ruling), the Court held:

“The veil of incorporation will only be lifted in the face of fraud or some other misconduct of equal gravity... The applicant has not produced any evidence to demonstrate that the judgment-debtor has been used in committing fraud, improper conduct and criminal activities.”

15. Likewise, in *Dormans Coffee Limited v Njenga & 3 others (Miscellaneous Application E983 of 2023)* [2024] KEHC 13962 (KLR) (Commercial and Tax) (8 November 2024) (Ruling) the Court held that the essence of an order under Order 22 Rule 35 is to assist with discovery and that before lifting the corporate veil, the directors must be summoned and examined regarding the company’s assets.

16. This Court therefore aligns with the established principle that examination under Order 22 Rule 35 is a preliminary step, and not an automatic gateway to personal liability of directors.

17. In their Replying Affidavit, the Respondents deny any fraudulent activity or misuse of corporate form. The directors assert that the company was properly incorporated and that its business operations and encumbrances are legitimate.

18. This Court notes that allegations of fraud must be pleaded with particularity and proved to a higher standard than mere balance of probabilities. In *China Wu Yi Company Ltd v Ederman Property Ltd & 2 Others* [2013] eKLR, the Court noted the findings of Ringera J. (as he then was) in the unreported case of *Corporate Insurance Co. Ltd-vs-Savemax Insurance Brokers Ltd & Ano.* HCCC No. 125 of 2002 which held that:

“The veil of incorporation is not to be lifted merely because the company has no assets or it is unable to pay its debts and is thus insolvent. In such a situation, the law provides for remedies other than the director of the company being saddled with the debts of the company.”



19. Similarly, in *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others (Miscellaneous Civil Application 43 of 2023)* [2024] KEHC 2343 (KLR) (8 March 2024) (Ruling) the Court found that mere non-payment of a decree, without evidence of fraud or bad faith, is insufficient to lift the veil.
20. In this case, the Applicants have not satisfied the burden of proof to show that the Respondents have used the company as a vehicle for fraud or that there has been any improper conduct warranting judicial intervention against the corporate structure.
21. In light of the foregoing analysis, the Court finds as follows:
  - i. The Applicants have not presented sufficient evidence of fraud, misrepresentation, or improper use of the corporate entity by the Respondents to justify lifting the corporate veil.
  - ii. The Applicants' prayer for personal liability against the Respondents fails.
  - iii. The application dated 16.10.2024 is hereby dismissed.
  - iv. The Decree Holder is at liberty to initiate examination proceedings under Order 22 Rule 35 of the Civil Procedure Rules for the purposes of asset discovery, should they so desire.
  - v. The costs of this application shall be borne by the Applicants.
22. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF JUNE 2025**

**LINUS P. KASSAN**

**JUDGE**

In the presence of:-

Wafula holding brief Thuraira for Applicant

Owino holding brief Wandwa Respondent

Carol – Court Assistant

