



**Dawida Holdigns Limited v Maina & 3 others (Civil Appeal
E007 of 2025) [2025] KEHC 8860 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E007 OF 2025
AN ONGERI, J
JUNE 20, 2025**

BETWEEN

DAWIDA HOLDIGNS LIMITED APPELLANT

AND

PENINAH NJAMBI MAINA 1ST RESPONDENT

PETER NJOGU MAINA 2ND RESPONDENT

FREDRICK KAMAU MAINA 3RD RESPONDENT

ISAAC KARIUKI MAINA 4TH RESPONDENT

*(Being an appeal from the Ruling of Hon. C. K. Kitthinji (PM) in
Voi CMCC No. E033 of 2023 delivered on 18th December 2024)*

JUDGMENT

1. The Appellant filed an application dated 27th August 2024 in the trial court seeking stay of judgment and the striking out of the Appellant from the suit.
2. The Respondents had filed a plaint dated 7th February 2023 seeking for orders of transfer of shares held by the Appellant to the Respondent who are beneficiaries of the estate of their father who was a registered shareholder of the company DAWIDA HOLDINGS LIMITED.
3. The case proceeded ex parte and the Appellant filed the application dated 27th August 2024 post judgment after the trial court issued a Notice to Show Cause against Zacheus Mghanga for his arrest and committal to civil jail in execution of the decree being the sum of Kshs. 1,458,375/=
4. The trial court found that the proper procedure for setting aside the exparte judgment and re-opening the proceedings to examine material questions and to deal with preliminary issues such as joinder sharing holding and change of company names and necessary parties was not followed.



5. The trial court dismissed the application dated 27th August 2024 with costs to the Decree Holders.
6. The Appellant field this appeal on the following grounds:-
 - i. That the learned Honorable Magistrate erred in law and in fact in failing to exercise her discretion in favor of the Appellant.
 - ii. That the learned Honorable Magistrate erred in law and in fact by disregarding the Appellant's evidence and submissions.
 - iii. That the learned Honorable Magistrate erred in law and in fact when she issued warrants of arrest against one Zacheus Maghanga being one of the directors without the corporate veil being listed first.
 - iv. That the learned Honorable Magistrate erred in law by deciding that the Appellant did not prove their application to the required standard despite the overwhelming evidence tabled in court by the Appellant.
 - v. That the learned Honorable Magistrate erred in law and in fact by wearing a hat of the Respondents in the matter thus arriving at a totally wrong decision.
 - vi. That the learned Honorable Magistrate erred in law and misdirected herself by acting on wrong and unsound principles and provisions of the law.
7. The parties filed written submissions as follows:- the appellant submitted that it filed an application in the trial court against the respondent and supplied the court with sufficient evidence that he should be struck out as a party in the suit.
8. It was its contention that the trial court ignored the evidence submitted and made a blanket judgement over the whole claim without scrutinizing the evidence.
9. The Appellant contended that, while acknowledging the principle that a company is a distinct legal entity separate from its directors, directors may nonetheless be held personally liable where there exists a legal basis for piercing the corporate veil. It was submitted that the trial court erred in issuing a warrant against one Zacheus Maganga absent any formal application by the Respondents seeking to lift the corporate veil.
10. The Appellant further asserted that the company in question had multiple directors, yet the Respondents selectively pursued one individual without adherence to the requisite legal procedure.
11. The Appellant argued that the burden was on the Respondents to satisfy the court as to the necessity of lifting the corporate veil, an obligation which, in the present case, was not discharged.
12. The Appellant demonstrated before the Trial Court that the Respondents' father was not a registered shareholder of the Appellant company.
13. The Appellant submitted that the Respondents ought to be struck out as parties to the suit on the grounds that the share certificate furnished by the Respondents bore the name "Dawida Holdings Company Limited" with a stated shareholding of Kshs. 3,000,000, whereas the Appellant company, known as "Dawida Holdings Company," had an authorized share capital of Kshs. 500,000.
14. The Appellant further asserted that one Joseph Maina Kariuki, the Respondents' father, had never been a shareholder in Dawida Holdings Limited, and consequently, the claim as advanced was without merit.



15. It was further established that the Respondents failed to tender any documentary evidence before the Trial Court substantiating their father's alleged shareholding in Dawida Holdings Limited.
16. The respondents opposed the appeal and seek its dismissal with costs. The appeal arises from the magistrate's ruling on 18th December 2024, which dismissed the appellant's application dated 27th August 2024.
17. That application had sought to stay execution of a judgment and strike out the appellant from the suit, despite the judgment having been regularly entered after the appellant failed to enter an appearance.
18. The respondents argue that the magistrate properly exercised discretion by considering all evidence, including share certificates from 1994 and the appellant's own correspondence which interchangeably used company names, confirming the respondents' late father was a shareholder.
19. The respondents contended that striking out a party post-judgment is legally untenable as the court becomes functus officio after delivering judgment.
20. The appellant neither challenged service of pleadings nor sought to set aside the judgment, which remains valid. Regarding the corporate veil, the respondents clarify that warrants were issued against a director for non-compliance with court orders to transfer shares, not to pierce the corporate veil. Directors, as company representatives, are obligated to obey court orders, and failure to do so attracts consequences under the law.
21. The respondents asserted that the appeal is a delaying tactic to deny them their inheritance, as they have been deprived of their father's property since 1996.
22. They emphasize that courts must uphold the rule of law and dismiss attempts to frustrate legitimate claims. Costs should follow the event, and the appeal, being devoid of merit, should be dismissed to allow the respondents to reap the fruits of their judgment.
23. The respondents, as orphans, have endured prolonged injustice, and the appellant's conduct warrants no exercise of discretion in its favor.
24. This being a first appeal, the duty of the first appellate court is as follows:- In *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

25. The issues for determination in this appeal are as follows;



- i. Whether the ex parte judgment in Voi CMCC No. E033 of 2023 should be set aside.
 - ii. Whether the Appellant should be struck out from the suit.
 - iii. Whether the warrant of arrest issued against Zacheus Maghanga should be vacated.
 - iv. Who pays the costs of this appeal?
26. The Appellant's primary contention is that the trial magistrate erred in dismissing its application seeking a stay of execution and striking out its name from the suit.
 27. The Appellant argued that the Respondents failed to prove their late father's shareholding in Dawida Holdings Limited, as the share certificate presented bore a different company name and share capital.
 28. Further, the Appellant asserted that the trial court improperly issued a warrant of arrest against one of its directors, Zacheus Maghanga, without first lifting the corporate veil.
 29. It is trite law that a company is a distinct legal entity separate from its directors and shareholders, as established in *Salomon v Salomon & Co Ltd* [1897] AC 22, a principle consistently upheld in Kenyan jurisprudence (see *Krystalline Salt Limited v Attorney General & 3 Others* [2019] eKLR).
 30. However, courts may pierce the corporate veil where fraud, improper conduct, or statutory exceptions are demonstrated (*Trust Bank Limited v Paramount Universal Bank Limited & 2 Others* [2009] eKLR).
 31. In this case, the Respondents did not file any formal application to lift the corporate veil, nor did they provide sufficient evidence to justify personal liability against the director.
 32. The issuance of a warrant of arrest against Zacheus Maghanga without proper legal foundation was therefore erroneous.
 33. On the question of whether the Appellant should have been struck out from the suit, the trial court held that the proper procedure for setting aside an ex parte judgment was not followed.
 34. Order 12 Rule 7 of the Civil Procedure Rules allows a defendant to apply to set aside an ex parte judgment, but such an application must be made promptly and with sufficient cause (*Shah v Mbogo* [1967] EA 116).
 35. In the current case, the Appellant filed its application post-judgment, after execution proceedings had commenced.
 36. While the trial court correctly observed that the Appellant ought to have sought to set aside the judgment first, the peculiar circumstances of this case—particularly the apparent discrepancy in the company names and shareholding details—warranted a closer examination of whether the Appellant was indeed a proper party to the suit.
 37. The Respondents contended that the judgment was regularly obtained and that the Appellant's belated attempt to challenge its inclusion in the suit was an afterthought.
 38. However, the evidence presented raises legitimate doubts as to whether the Respondents' claim was properly directed against the Appellant.
 39. The share certificate referenced "Dawida Holdings Company Limited," whereas the Appellant is "Dawida Holdings Limited," with a significantly different authorized share capital.



40. I find that the Respondents did not provide conclusive proof linking their late father to the Appellant company, nor did they explain the discrepancy in the company names.
41. In *Independent Electoral and Boundaries Commission v Stephen Mutinda Mule & 3 Others* [2014] eKLR, the court emphasized that a party seeking relief must establish their claim through credible evidence.
42. The Respondents' failure to do so undermines the basis of the ex parte judgment.
43. Regarding the trial court's exercise of discretion, while judicial discretion is broad, it must be exercised judiciously and not arbitrarily (*Mbogo v Shah* [1968] EA 93).
44. The trial court's dismissal of the Appellant's application without adequately addressing the substantive issues raised—particularly the misalignment between the company named in the share certificate and the Appellant—amounts to a failure to consider material facts.
45. In light of the foregoing, this court finds that the appeal has merit. The ex parte judgment was entered against the wrong entity, and the trial court erred in failing to scrutinize this fundamental defect.
46. Consequently, the ruling of the trial court dated 18th December 2024 is set aside.
47. The ex parte judgment in Voi CMCC No. E033 of 2023 is hereby set aside, and the Appellant is struck out from the suit.
48. The warrant of arrest issued against Zacheus Maghanga is likewise vacated.
49. Each party shall bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JUNE, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

