



**Family Bank Limited v Ceven Limited (Arbitration Cause E084 of 2022)  
[2025] KEHC 10115 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10115 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E084 OF 2022**

**AA VISRAM, J  
JULY 10, 2025**

**BETWEEN**

**FAMILY BANK LIMITED ..... APPLICANT**

**AND**

**CEVEN LIMITED ..... RESPONDENT**

**RULING**

**Introduction and Background**

1. By an Application dated 10<sup>th</sup> August, 2023, the Applicant was granted leave to cross-examine the Directors and shareholders of the Respondent Company. The Court ordered production of the relevant documents and information in relation to the means and assets of the Directors for the purpose of discovery in aid of execution, and in relation to the question of whether the Court ought to lift the corporate veil of the Company and hold the Directors personally liable to satisfy the Decree issued in this matter.
2. By way of the Ruling issued on 18<sup>th</sup> March, 2024, the Court further ordered Michael Muhire, Desmond Maina, Andrew Gitonga, and Henry Waweru to appear for a hearing on 9<sup>th</sup> July, 2024. However, on the said date, none of the individuals had filed any documentation as ordered by the Court. Further, only two of the four Directors of the Company availed themselves for oral examination, namely, Desmond Maina and Andrew Gitonga. The said two were examined under oath, and the matter was thereafter adjourned to 24<sup>th</sup> October, 2024, for oral examination of Henry Waweru and Michael Muhire. On the said date, the said two individuals once again failed to attend court, in breach of the Court orders, and accordingly, the Applicant was directed to file its written submissions.



3. In the Application, the Applicant sought that in default of the Directors complying with the Court's orders, the corporate veil of the Respondent and its corporate shareholders ought to be lifted, holding its Directors/shareholders personally liable for the decretal sum.
4. The Applicant submitted that the Respondent's veil of incorporation was a sham and an illegal cover used by its Directors/shareholders to defraud the Applicant, and thus, the veil should be lifted. It argued that neither the Respondent nor its summoned Directors/shareholders obeyed the Court's order of 18<sup>th</sup> March, 2024, to produce documents concerning the Respondent and its books of accounts, and that Desmond Maina and Andrew Gitonga did not explain their non-compliance, while Henry Waweru ignored the order and failed to appear. Andrew Gitonga, on his part claimed the Respondent had no assets, but this could not be verified because the financial statements, annual returns, and audited accounts, had not been provided.
5. The Applicant submitted that the Directors/shareholders contemptuously withheld information; defied Order 22, rule 35 of the Civil Procedure Rules; and therefore, the veil should be lifted to hold them personally liable. The Applicant submitted that adverse inference ought to be drawn against the Directors/shareholders for failing to produce the documents, suggesting they either did not maintain proper books, or that the books, if revealed would have shown evidence of fraud.
6. The Applicant contended that the Directors/shareholders incorporated the Respondent to illegally and fraudulently obtain money by falsely promising to supply KPLC tokens, which they failed to deliver, and that the Company defrauded the Applicant by crediting fewer tokens than it was paid for, leading to significant financial discrepancies, which Henry Waweru acknowledged during oral examination.
7. The Applicant urged the Court to find that the Statement of Accounts shows that Andrew Gitonga and Henry Waweru, as signatories, frequently withdrew deposited money through cash withdrawals or cheques in their own names, and that these withdrawals, combined with the failure to produce financial statements, indicate that the Directors treated the Respondent's money as their personal property, demonstrating that there was no separation between the Company and the personal affairs of the Directors, which is fraudulent.
8. It submitted that Desmond Maina's was a Director/shareholder when the money was withdrawn, when the arbitration took place, and at the time the award was published. His resignation after execution proceedings began is therefore not a bona fide defense. The Applicant submitted that he also failed to produce the Respondent's documents as per the orders of the Court.
9. The Applicant developed its submission along the lines that the Company was a fraudulent tool used by Directors/shareholders to siphon money directly into their pockets without accountability, and the Directors/shareholders closed their offices to thwart the Applicant's efforts to execute the Decree, which is dishonest and fraudulent.
10. Further, that the Directors/shareholders failed to keep proper accounts, did not file annual returns, treated Company assets as their own, and failed to provide explanations or documents to the Court.
11. It pointed out that the decretal sum was Kshs. 423,976,203.87/- when the Application was filed, and that this amount continues to increase with interest due. The Applicant prayed that this Court lift the corporate veil, and find the said Directors and shareholders personally liable, jointly and severally, to pay the decretal sum.
12. In response to the Application, Desmond Maina deponed that he is not, and has never been a Director or officer of the Respondent, he pointed out that he has never played a role in the day-to-



- day management of the Company, and has no responsibility for its actions or liabilities beyond a mere shareholding.
13. He averred that the liability of shareholders is limited to their shareholding, unless there is clear evidence of direct involvement in management. In his view, the allegations of fraud against him were "wild and in bad taste," misconceived, misplaced, and raised at the wrong forum and time (execution proceedings), thus constituting an abuse of court process.
  14. He asserted that the Applicant failed in its duty of prudence and "Know Your Customer" (KYC) in vetting its customers, and was now "mudslinging" against "strangers" like him, who have had no dealings with the Company.
  15. Desmond Maina submitted that the Applicant, as the Bank, has access to all information of the Respondent Company's accounts; including its books, and was in a better position to provide this information to the Court than he was. He submitted that fraud is a substantive matter, requiring a full suit, with proper pleadings and affording him an opportunity to respond. In his view, the allegations could not be subject of execution proceedings, and consequently, the prayer to lift the corporate veil and hold Directors and shareholders personally liable is misconceived and untenable. He pointed out that the arbitration award was issued without any findings of fraud, and that there were no such pleadings in relation to the same filed in the first place.
  16. In response to the Application, Andrew Gitonga asserted that the Application is "hopelessly incompetent, incurably defective and an abuse of the court process" and maintains that the allegations of fraud are "unfounded, unwarranted, improper, unjustified and unreasonable," and a mere afterthought. He argued that his allegations ought to have been raised during the arbitration proceedings.
  17. He denied that the Respondent was an "empty shell or sham," insisting it was a proper corporation, with formal legal separation between itself and its Directors'/shareholders' personal affairs. He further stated that the Arbitral award and its subsequent adoption by the Court did not prove that Directors used the Company as an empty shell to obtain money by false pretense in relation to the KPLC tokens, and that fraud was not the subject matter of the arbitral award.
  18. Andrew submitted that the Bank Statement of the Respondent has been produced but that no specific fraudulent or dishonest withdrawals had been proven. He urged the Court to find that the same was a "fishing expedition". He identified Eunivy Resources Limited, through its Director/Shareholder Henry Waweru, as having a primary and active role in the day-to-day management of the Respondent, and therefore, ought then to be the party, if any, that may incur responsibility for the Company's actions or liabilities.
  19. He pointed out that Eunivy Resources Limited is co-owned by Henry Waweru and his wife, and that Henry, in addition to being a Director of the Respondent, had access to bank accounts, chequebooks, and the Respondent's token vending platform. He submitted that the Respondent's bank account opening form also lists Henry as a Director.
  20. Andrew submitted that there is "clear evidence of Henry Waweru/Eunivy Resources Limited's direct involvement" in the Respondent's management, and that the said individuals handled the arbitration proceedings from commencement to conclusion. He clarified that while Henry /Eunivy Resources Limited were actively involved, this did not however automatically imply, or prove any fraudulent trading alleged by the Applicant.
  21. The Respondent Company further opposed the Application by way of Grounds of Opposition. It averred that the Application indirectly seeks to pierce the corporate veil of Eunivy Resources Limited



and Revodesign Studios Limited by summoning their Directors, and that the Application is "fatally defective" because it seeks to summon shareholders who are not involved in the day-to-day running of the business. It contended that Revodesign Studios Limited is not the custodian of the documents sought by the Applicant because it is merely a shareholder, and not involved in the running of the Company. It further stated that the Application as filed is "incurably defective and an abuse of the court process".

### **Analysis and determination**

22. I have considered the grounds set out on the face of the Application, the responses, and rival submissions together with the applicable law.
23. The primary issue for determination is whether the Court should lift/pierce the Respondent's corporate veil and hold its Directors personally liable for the debt due to the Applicant?
24. It is trite law that a Company is a separate legal entity from its members and shareholders and that this position was espoused by the Court in the English case of *Salmon vs Salmon* [1987] AC 78. However, this position is not cast in stone as there are instances where the corporate veil of a Company may be pierced and/or lifted.
25. In *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR), the Court of Appeal held: -

"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 exercised 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."
26. Further to the above, a court must remain alive to the fact that while a Company is, of course, the separate legal entity, in reality, however, the business of the artificial person is always carried on by, and for the benefit of, some individuals. In the ultimate analysis, some human beings are the real beneficiaries of the corporate advantages; see *Gallagher v. Germania Brewing Company*, where the court stated that: -

"...for, while, by fiction of law, a corporation is a distinct entity, yet in reality, it is an association of persons who are in fact the beneficiaries of corporate property".
27. Therefore, while courts generally uphold the principle that a Company is a separate legal entity from its members, where the corporate structure is misused to commit fraud, conceal improper conduct, or defeat justice, courts may pierce the corporate veil. This principle, as illustrated in *Jones v Lipman* [1962] 1 WLR 833, allows the court to disregard the separate legal personality of a Company that operates as a mere façade. The statutory grounds for lifting the veil include; misrepresentation in a prospectus, use of an incorrect company name, fraudulent trading, and ultra vires acts. Judicial interpretation also recognizes certain relationships such as agency between parent and subsidiary companies, or where an individual is the 'alter ego' or 'controlling mind' of the company as grounds to hold individuals personally liable. The exercise is however, cautious, fact-specific, and rooted in both statutory provisions and equitable principles.
28. The court in *Mugenyi & Company Advocates v The Attorney General* [1999] 2 EA 199, following *Palmer's Company Law* (22nd ed.), listed several circumstances where the corporate veil may be lifted in the following terms: -



- I. Where companies are in the relationship of holding and subsidiary companies;
  - II. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
  - III. In certain matters relating to taxation;
  - IV. In the law relating to exchange control;
  - V. In the law relating to trading with the enemy;
  - VI. In the law of merger control in the United Kingdom;
  - VII. In competition of the European Economic Community;
  - VIII. In abuse of law in certain circumstances;
  - IX. Where the device of incorporation is used for some illegal or improper purpose; and
  - X. Where the private Company is founded on personal relationship between the members.
29. It is therefore evident that Court has jurisdiction to lift corporate veil in an Application under Order 22, rule 35 of the Civil Procedure Rules contrary to the assertion by the Respondent. In this regard, Ringera J (as he then was) in the case of Ultimate Laboratories (supra) stated that: -
- “While I agree with the defendant’s/judgment debtor’s advocate that the objective of an examination of a Company’s Director or officer under Order XXI Rule 36 is to obtain discovery, for the purpose of execution of a decree against the Company, 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, I don’t agree that the court does not have the power in an Application in execution which is grounded under the above provisions as well as the inherent power of the court and all other provisions of the law to lift the corporate veil of the Company and order the Director to personally discharge the debts of the Company”.
30. In the present matter, the Applicant is the holder of a decree in the sum of Kshs. 423,976,203.87/- that remains outstanding, and continues to earn interest. This is not in dispute. Desmond Maina and Andrew Gitonga stated that they are not involved in the day-to-day running of the Respondent, and that accordingly, they were not able to produce the Respondent’s books of accounts. Henry Waweru failed to appear for cross-examination and did not participate in these proceedings despite several opportunities accorded to him by the Court.
31. The Applicant annexed a copy of the Respondent’s bank statement pointing out that whenever the Applicant deposited any money into the said account, the same would be withdrawn by either Andrew Gitonga or Henry Waweru in their own names, and not in the name of the Respondent, implying that there was commingling of the Respondent’s funds with those of the said Directors. On this point, I am persuaded that on a balance of probability, this was the case. I say so because, the said Directors did not produce any financial statements to show otherwise or to rebut this allegation beyond mere denials. The bank statements produced by the Applicant supports its allegation that the line between the Respondent’s corporate identity and its Directors is blurred, at best.
32. Moreover, Directors bear a statutory responsibility for ensuring that books off accounts are kept and financial records are prepared. Sections 635, 636, and 638 of the [Companies Act, 2015](#) impose an express



duty upon Directors to maintain proper books of account and prepare financial statements in the following terms: -

Section 635(1) provides: The Directors of a Company must ensure that accounting records that comply with this Part are kept.

Section 636(1) mandates that: The accounting records must be sufficient to show and explain the Company's transactions.

Section 638(1) states: The Directors of every Company must prepare financial statements in respect of each financial year.

33. These records must be kept at the Company's registered office or another prescribed location under the Directors' supervision. Where Directors fail to produce such documentation, and do not offer any cogent explanation for their failure, the Court is entitled to draw adverse inferences. No such explanation has been offered, and accordingly, I draw adverse inferences arising from the failure on the part of the Directors. In particular, I infer that the said books or statements if produced, would support the allegations of fraud, commingling of accounts, and illegalities on the part of the Directors.
34. Moreover, the fact that the withdrawals were not accounted for by any financial statements constitutes a clear breach of Directors' statutory duties under the said provisions of the *Companies Act*.
35. Additionally, during oral examination, Mr. Andrew Gitonga admitted that he and Mr. Henry Waweru were signatories to the Company's bank accounts. The logical conclusion is that the shortfall in funds could only be, and were, in fact, withdrawn irregularly by them. His deposition also directly implicated Henry Waweru (who failed to appear) for oral examination. Based on his testimony and the evidence on record, I am persuaded that Andrew Gitonga was involved in managing the affairs of the Respondent, and perpetrated the fraud and illegalities in question.
36. Mr. Desmond Maina, on the other hand, claimed he was a non-executive Director, had no access to accounts, and was unaware of the dealings with the Applicant. I am persuaded that this was the case. I find his testimony to be credible and consistent with the view that he was more likely no more than an investor, and was not involved in the running of the business. He did not have access to, and was not a signatory to the bank accounts. Nor does the evidence concerning illegal withdrawals of Company funds and deposit of the same into the personal names of Directors implicate him.
37. Mr. Henry Waweru, who appears to have been the principal actor, failed to attend court and remains unaccounted for.
38. Having considered the above, I make the following findings which are set out below for ease of reference.

#### Summary of Findings

- a. The Respondent's Directors breached Court orders and failed to comply with statutory obligations.
- b. The Respondent operated as a shell to receive funds from the Applicant, which were misappropriated.
- c. The veil of incorporation was used as a mask to defeat justice.
- d. There is insufficient evidence to show that Mr. Desmond Maina participated in or benefitted from the acts. He was a passive investor without access to accounts.



**Disposition**

- 39. The corporate veil of Ceven Limited is hereby lifted.
- 40. Mr. Andrew Gitonga, Mr. Michael Muhire, and Mr. Henry Waweru are held personally liable, jointly and severally, for the decretal sum of Kshs. 423,976,203.87/-, together with interest as awarded in the decree of 11<sup>th</sup> July, 2023.
- 41. Leave is granted to the Applicant to execute the decree against the personal assets of the said Directors.
- 42. Mr. Desmond Maina is exempted from personal liability.
- 43. The costs of the Application are awarded to the Applicant, to be paid by the said Directors in their personal capacities.
- 44. It is so ordered.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 10<sup>TH</sup> DAY OF JULY, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

Court Assistant: Sakina

..... for Applicant

..... for Respondent

