



**Treat of The Day (EA) Limited v Utility Trading Limited (Arbitration Cause E006 of 2021) [2025] KEHC 12702 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12702 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E006 OF 2021**

**F GIKONYO, J**

**JULY 24, 2025**

**BETWEEN**

**TREAT OF THE DAY (EA) LIMITED ..... APPLICANT**

**AND**

**UTILITY TRADING LIMITED ..... RESPONDENT**

**RULING**

1. The respondent filed the notice of motion dated 18<sup>th</sup> December 2024.
2. The application is made under sections 1A and 1B of the *Civil Procedure Act*, Order 22 Rule 35(b) and Order 51 Rule 1 of the Civil Procedure Rules.
3. The respondent seeks an order to summon the applicant's present and past directors for their examination as to the judgment debtor's assets and to produce all its books of account.
4. It also seeks that in case of non-compliance, the applicant's corporate veil be lifted and the directors be held personally liable for the amount due under the certificate of costs passed.
5. On 20<sup>th</sup> February 2025, the court directed that the application be served.
6. The respondent's counsel, Ms. Chepkoyo, indicated to the court on 24<sup>th</sup> March 2025 that she served the application and filed an affidavit of service.
7. The court slotted the matter for hearing on 13.5.2025.
8. The ruling on the application was set for 24<sup>th</sup> July 2024 after the hearing.
9. There was no appearance for the applicant and its directors on both occasions.



10. Upon a perusal of the file, I noted that there is no affidavit of service in respect of the application. On the Judiciary's Case Tracking System (CTS), there are two affidavits of service in respect of hearing notices dated 28<sup>th</sup> April 2025 and 26<sup>th</sup> March 2025.
11. In the circumstances, the court is unable to confirm that the application was served upon the applicant and its directors. Lack of service would lead to the applicant's directors being condemned unheard. This is contrary to the principle of fairness and the rules of natural justice.
12. Accordingly, I direct the respondent to serve the application upon the applicant and its directors and file an affidavit of service.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE  
APPLICATION THIS 24<sup>TH</sup> DAY OF JULY, 2025**

.....

**F. GIKONYO M**

**JUDGE**

In the presence of: -

Ms. Chepkoyo for Dalila for Respondent

No appearance for applicant

CA - Kinyua

