



REPUBLIC OF KENYA



**Jiwa v Idrata Developers Limited (Commercial Miscellaneous Application E1119 of 2020)
[2025] KEHC 13007 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13007 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E1119 OF 2020**

AA VISRAM, J

SEPTEMBER 18, 2025

BETWEEN

NAJMUDEN DHANJI JIWA APPLICANT

AND

IDRATA DEVELOPERS LIMITED RESPONDENT

RULING

1. Before this Court is the Applicant's Notice of Motion dated 19th October, 2023, seeking, inter alia, orders to summon the directors of Idrata Developers Limited for examination on oath, orders to pierce the corporate veil and hold them personally liable for the decretal sum of Kshs. 27,500,000/=, and in the alternative, orders of attachment, committal, or mandamus against certain apartments forming part of the subject joint venture.
2. The Application is opposed by the Respondent through affidavits sworn by its director and detailed submissions.

Issues for determination

3. From the pleadings and submissions, the following issues arise for determination:-
 - a. Whether execution is barred by Section 94 of the *Civil Procedure Act* in the circumstances of this case;
 - b. Whether the Applicant has laid a proper basis for examination of the Respondent's directors under Order 22, rule 35 of the Civil Procedure Rules;
 - c. Whether the circumstances warrant piercing the corporate veil and execution against the Respondent's directors personally.



4. The Applicant submitted that costs have been expressly waived, rendering Section 94 inapplicable. Reliance was placed on decisions such as *Joel Mutuma Kirimi v The Standard Digital* [2020] eKLR, where it was held that Section 94 does not apply where costs have been waived.
5. The Respondent contended that no order of waiver has been formally recorded, that taxation of arbitral and court costs remains pending, and that the matter is *res judicata* by virtue of a ruling of the court dated 1st April, 2022, declining leave to execute before taxation.
6. I note that Section 94 serves the purpose of preventing multiple executions. However, in my view, where costs have been expressly waived, the mischief is obviated. However, waiver must be clear and sanctioned by the Court. In the present matter, the Applicant has indicated waiver, but no order of Court has yet recorded such waiver. In the circumstances, I find that execution cannot issue until this Court records such waiver formally.

Examination of Directors under Order 22 Rule 35

7. Order 22, rule 35 empowers the Court to summon officers of a judgment debtor company for examination on means and assets. The power is discretionary and need not await exhaustion of all other execution steps. Considering that the decretal sum remains unpaid since 2021, I am persuaded that the Applicant is entitled to seek information regarding the Respondent's means through director examination. This is in line with the purpose of the rule which allows the court to summon any person so long as he or she has relevant information that may aid in discovery for the purpose of execution. See *Tropical Wood Limited v Samilis international Investments* [2017] eKLR and *Masefield Trading (K) Ltd v Rushmore Company Limited & Another Civil Suit No. 1794 of 2000; [2008] eKLR*, in which the court stated:-

“I, therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery ...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, the court should summon the person to attend and be examined in relation to the purpose stated in the rule.”

8. I accordingly allow this limb of the Application.

Piercing the Corporate Veil

9. The Applicant urged the Court to pierce the veil on the basis of perjury and improper conduct relating to transfer of Apartment A1. The Respondent maintained that it remains a going concern, that its assets remain intact, and that there is no evidence of fraud or misuse of the company structure.
10. The law is clear that piercing the veil is an exceptional remedy, applied only in cases of fraud, impropriety, or where the company is a mere façade (*Vimal Velji Shah v Chemafrica Ltd* [2016] eKLR; *Lucy Mukembura Kimani v Nzuri Feeds* [2021] eKLR). On the evidence before me, I am not satisfied that the high threshold has been met at this stage.
11. The prayer to pierce the veil and hold directors personally liable is premature and is therefore declined at this stage. In my view such an order ought to be considered only after oral examination of the directors, and if, the appropriate grounds are made out during the course of such examination. The applicant is at liberty to revisit this prayer after examination is complete.



Conclusion and Orders

- 12. In the result, the Application dated 19th October 2023 succeeds in part:
 - a. The Applicant’s indication to waive costs is noted. For avoidance of doubt, the Court hereby records that the Applicant has waived all costs, whether arbitral or court, or in relation to enforcement of the decree dated 23rd November, 2022. Execution shall proceed only for the principal decretal sum and interest.
 - b. An order is issued summoning the directors of the Respondent, namely Tariq Nazir Ahmed and Idris Ismail Mohamed, to personally attend Court for examination on oath pursuant to Order 22 Rule 35 of the Civil Procedure Rules.
 - c. Prayers seeking to pierce the corporate veil, attach directors’ personal assets, commit them to civil jail, or issue mandamus against the Land Registrar are declined at this stage with liberty to apply if appropriate after completion of oral examination of the said Directors.
 - d. Costs of the Application shall be in the cause.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 18TH DAY OF SEPTEMBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lisper

..... for Applicant

..... for Respondent

