



REPUBLIC OF KENYA



KENYA LAW

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P. M. Wamae & Company Advocates v Wanja & another; Tatu City Limited & 2 others (Garnishee) (Commercial Civil Suit 93 of 2019) [2025] KEHC 12573 (KLR) (Commercial and Tax) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL SUIT 93 OF 2019
H NAMISI, J
SEPTEMBER 16, 2025**

BETWEEN

P. M. WAMAE & COMPANY ADVOCATES PLAINTIFF

AND

ROSEMARY WANJA NJAU ALIAS ROSEMARY WANJA

MWAGIRU 1ST RESPONDENT

STEPHEN MBUGUA MWAGIRU 2ND RESPONDENT

AND

TATU CITY LIMITED GARNISHEE

KOFINAF COMPANY LIMITED GARNISHEE

CEDAR IV LIMITED (MAURITIUS GARNISHEE

RULING

1. The suit herein arises from a dispute between the Plaintiff and Defendants in respect of legal fees following instructions to the Plaintiff to represent the Defendants in winding up petitions of the 1st and 2nd Garnishees, Tatu City Ltd and Kofinaf Company Ltd, in Milimani HCC Winding Up Causes Nos 29 and 30 of 2011.
2. On 7 November 2019, by consent of parties, judgement was entered in favor of the Plaintiff against the Defendants as follows:
 - i. That in full and final settlement of the Plaintiff's remuneration based on Agreements dated 16 September 2015 and the Collateral Agreement dated 4 January 2018 in respect of the



remuneration of the Plaintiff's fees, the Respondents shall transfer to the Plaintiff or its nominees land equivalent to 25 acres, free from any encumbrance, situated within Ruiru area of Kiambu County that is owned by the Defendants in their sole names or where the Defendants have a legal, beneficial or equitable interest in the land within Ruiru area;

- ii. That the Defendants shall within 30 days of the filing the consent:
 - a. Point out all land located within Ruiru area of Kiambu County that is owned by the Defendants in their sole names or where the Defendants have a legal, beneficial or equitable interest in all land within Ruiru area to meet the expectations of the Plaintiff and or its nominees who shall be at liberty to identify the 25 acres of land to be subdivided and transferred to it or its nominees from the various parcels of land shown.
 - b. That the Defendants shall at their absolute costs subdivide and transfer the identified 25 acres of land in favor of the Plaintiff or its nominees within 120 days of the filing the consent;
 - c. That within 14 days of the land being identified the Court be pleased to issue a charging order on the land in accordance with section 52 of the Advocates Act upon application by the Plaintiff;
 - d. That there be liberty to apply.
3. At present, the Plaintiff/Applicant filed Notice of Motion dated 15 February 2023 seeking the following orders:
 - i. Spent;
 - ii. Spent;
 - iii. Spent;
 - iv. This Honourable Court do issue an order directing the Garnishees to furnish within 7 days:
 - a. A schedule of shares owned in Cedar VI Limited (Mauritius) by the 1st and 2nd Respondents, respectively;
 - b. A schedule of property or properties it holds that are attributed to the value of the shares owned by the Respondents and/or any other property registered in favor of the Respondents or to which the Respondents have a legal, beneficial and equitable title over.
 - v. This Honourable Court be pleased to issue an order directing the Garnishees to excise an area measuring 25 acres from the property/properties pursuant to the Respondents shareholding in Tatu City Ltd, Kofinaf Company Ltd and Cedar VI Ltd, and in compliance with order (iii) above, and the same be attached for purposes of execution of the consent judgement;
 - vi. This Honourable Court be pleased to issue an order directing the Garnishees to appear at an appointed date and time to show cause why it should not transfer any property measuring 25 acres in favor of the Applicants;
 - vii. This Honourable Court be pleased to issue an order directing the Garnishee to transfer property/properties measuring 25 acres to the Applicant;
 - viii. All costs and incidentals incurred pursuant to subdivision, transfer, stamp duty, capital gains tax, land rates, land rent and other costs attributed to the conveyance of the property/



properties in favour of the Applicant be borne by the Respondents on their account with the Garnishees;

- ix. In the event that any property attached is owned or registered in favor of the Garnishee or to which the Respondents have a legal, beneficial and equitable title to, the Deputy Registrar be directed to execute on behalf of the Respondents any consents, transfer, and/or any other conveyance of property/properties in favour of the Applicants;
 - x. Pursuant to the transfer of the property/properties and/or payment of the sums sought hereinabove, the Garnishee be at liberty to amend the shareholding particulars to effect the Garnishee orders issued by this Honourable Court;
 - xi. This Honourable Court be pleased to issue any other order it deems meet and just;
 - xii. The costs of the Application be borne by the Respondent.
4. The Application is brought under sections 63 (b) and (e) of the *Civil Procedure Act*, Order 21 rule 12, Order 22 rules 6,8,9,18,27, 28 & 40 and Order 23 rules 1,3, and 4 of the Civil Procedure Rules. It is supported by a Supporting Affidavit and Supplementary, both sworn by Charles Wamae, Advocate in which the Applicant avers that the Respondents have failed to abide by the terms of the consent judgement, thus necessitating the present Application. The Respondents are some of the promoters turned shareholders of Tatu City Limited and Cedar IV Ltd, and own cumulatively 14.4% of Cedar IV Ltd. The Respondents own 2 shares in Tatu City Ltd and 1 share in Kofinaf Ltd. It is the Applicant's averment that the value of the Respondents' stake in Tatu City Ltd is worth Kshs11.4 billion.
5. In response thereto, the Respondents raised a Preliminary Objection on the following grounds:
- i. This Honourable Court lacks jurisdiction to grant reliefs sought because:
 - a. By virtue of the rule in Salomon -vs- Salomon which has been followed by the Court of Appeal in Civil Appeal No. 139 of 2010, SNK -vs- MSK & Others [2015] eKLR and this Honourable Court in among other decisions NBK -vs- Omondi [2001] EA178; Nairobi HC Succession Cause No. 265 of 2009 In the Matter of the Estate of Giteere Kahura (Deceased); Nakuru HC Civil Case No 455 of 1999 Anil Walia -vs- Vijay Vir Singh & Others [2010] eKLR and Kenya National Capital Corporation Ltd -vs- Integrated Wood Complex Hosea Kiplagat [2005]eKLR the assets of the garnishee taking the form of land do not belong to the Defendants or the Garnishee;
 - ii. The application does not lie as the Defendants share in the Garnishees are not debts;
 - iii. The Applicant has not complied with mandatory provisions application to execution of the decree concerned.
6. Further, the 2nd Defendant/Respondent filed a Replying Affidavit in which he avers that the consent order of 7 November 2019 constitutes an invalid contract since its terms are uncertain. He asserts that order number 1 refers to land situate in Ruiru, Kiambu Couty in which the Defendants have a legal, equitable or beneficial interest but does not describe such land. The consent is, therefore, unenforceable.
7. The 2nd Defendant/Respondent argues that the Application herein is a misapprehension of the law in Salomon-vs-Salomon which mandates that the separate legal persons of the company and shareholders be maintained and that the property of a company does not belong to its shareholders. He contends that pursuant to the decision in Paul Stuart Imison -vs- Jodad Investments Ltd [2019] eKLR, land



must be shown to be registered in the name of judgement debtors, which requirement has not been met herein.

8. Further, the 2nd Defendant/Respondent avers that according to the ruling delivered in High Court Winding Up cases No. 29 and 30 of 2010, the Court ordered the Garnishees to buy the Applicants' shares and the computations were done for the purposes of determination of the purchase price.
9. The Garnishees filed Grounds of Opposition as follows:
 - i. The application is incompetent, bad in law, waste of time and is both frivolous and vexatious;
 - ii. The Garnishees contend that garnishee proceedings can only commence where the Garnishees are holding money for a judgement debtor and where the decree holder has a monetary claim or a debt that is unpaid/outstanding from the decree holder;
 - iii. The order/decreed of 8 November 2019 which the Applicant seeks to enforce through the garnishee proceedings is for transfer of land equivalent to 25 acres situated within Ruiru area of Kiambu County that is owned by the Defendant. The Plaintiff/Applicant can only enforce the order/decreed of 8 November 2019 as it is and the same is incapable of execution or enforcement for want of specificity and clarity;
 - iv. The Garnishees do not hold any money or property of whatever nature that belong to the judgement debtor which in turn make them legally answerable to the Plaintiff/Applicant's demand;
 - v. These garnishee proceedings are incapable of enforcing or cannot be the subject of transfer of immovable property;
 - vi. The Notice of Motion is totally mala fides. It is a conspiracy between the Plaintiff/Decree Holder and the Defendants/Judgment Debtors to harass and vex the Garnishees. It is material to note that the alleged fee agreement between them arose from a vexatious and frivolous suit filed by the Defendants/Respondents to wind up the 1st Garnishee. The Defendants/Respondents and Plaintiff/Applicant having failed in that fraudulent enterprise hatched this scheme jointly to defraud the Garnishees;
 - vii. What is before the Court in the form of garnishee proceedings is an execution process whereby the Plaintiff/Decree Holder is executing the decree in his favor against properties that are unknown, unidentified and not described but alleged to belong to the Garnishees. A full trial between the Plaintiff/Applicant and the Garnishee is necessary for such execution;
 - viii. The Garnishees are under no legal obligation to make the disclosures sought by the Plaintiff/Applicant as this is not a garnishee proceeding;
 - ix. Because of the content of paragraph 5 hereinabove and despite the express clauses of the decree of 8 November 2019, the Plaintiff and Defendants have conspired not to execute the said decree against the Defendants/Respondents' properties and have agreed between themselves to target the Garnishees instead and spare the Defendants/Respondents;
 - x. It is material to note that the Plaintiff/Applicant has not executed the decree against the Defendants/Respondents and these garnishee proceedings are his preferred execution mode.
10. As directed by the Court on 29 May 2023, the Preliminary Objection and the Application were canvassed together by way of written submissions.



11. The Court has had the benefit of extensive written and oral submissions from learned counsel for all parties.

Plaintiff/Applicant's Submissions

12. The Applicant argued that a consent order carries the force of a contract and can only be set aside on very narrow grounds, such as fraud or collusion, which neither have been pleaded nor proved by the Defendants. In this regard, the Applicant placed significant reliance on the Court of Appeal's decision in *Kuwinda Rurinja Company Limited v Kuwinda Holdings & 13 others* [2024] KECA 1397 (KLR), which restated the settled principles on the sanctity of consent orders. The Applicant contended that the Defendants are estopped from challenging the clarity and enforceability of the consent. Attached to the Supplementary Affidavit was email correspondence, including an email dated 4 June 2020, in which the 2nd Defendant/Respondent not only discussed the settlement, but also attached maps of the Kofinaf estates in Ruiru from which the parcel agreed upon in the consent would be hived off. It was the Applicant's submission that this conduct unequivocally demonstrates a clear, shared understanding of the subject matter, thereby invoking the doctrine of estoppel by conduct and barring the Defendants/Respondents from now claiming the consent is vague.
13. The Applicant justified the Application by citing Order 22 Rule 40 of the Civil Procedure Rules for the attachment of the Defendants' shares in the Garnishee companies, and Order 23 for the garnishee orders. The Applicant relied on the case of *International Air Transport Association (IATA) & another v Akarim Agencies Company Limited & 2 others; Equity Bank Limited (Garnishee)* [2021] KEHC 13252 (KLR) for the proposition that shares are attachable movable property.
14. The Plaintiff argued that since neither the Defendants nor Garnishees have filed Replying Affidavits to specifically controvert the averments that the Defendants are shareholders with beneficial interests in the Garnishees' properties, these facts must be deemed admitted.

The Defendants/Respondents' Submissions

15. The Respondents opposed the Application on several grounds. Their primary argument was on the doctrine of separate corporate personality. They submitted that the land and other assets belonging to the Garnishees are the property of those distinct corporate entities, not the Defendants as shareholders. Therefore, any attempt to attach the Garnishees' land to satisfy the debt owed by the Defendants/Respondents is fundamentally misconceived in law. They relied on the case of *Ole Nganai v Arap Bor* [1982] KECA 33 (KLR), arguing that the consent's failure to describe the 25 acres of the land by a specific title number renders the order nebulous, uncertain and indefinite, and thus, a nullity for which no executable decree can be drawn.
16. Further, the Respondents argued that the Applicant failed to follow the correct procedure for attaching immoveable property, which requires the identification of a specific property registered in the judgement-debtor's name. They relied on the *Paul Stuart Imison* case (*supra*).

The Garnishees' Submissions

17. The Garnishees argued that this application represents a fundamental misuse of garnishee proceedings. They submitted that Order 23 of the Civil Procedure Rules is a specific remedy confined to the attachment of debts, such as money held in a bank account, and cannot be lawfully extended to attach shares or land, which are distinct forms of property. The Garnishees cited a wealth of authorities, including *Barclays Bank of Kenya Ltd v Kepha Nyabera & 191 others & another* (Civil Appeal 169 of 2007) [2013] KECA 349 (KLR) (12 April 2013), to demonstrate that a garnishee order can only issue



where there is a debt due or accruing from the garnishee to the judgement-debtor, a condition not met herein. They further relied on the Plaintiff's counsel's own article titled "Two Wrongs Do Not Make a Right – the Mutation of Garnishee Orders to Yokes of Injustice", which criticises the very abuse of process they allege to be perpetuated by this Application.

Analysis & Determination

18. Having carefully considered the Application, the Affidavits and rival submissions, the first issue for determination is the Preliminary Objection.

19. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

20. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR made the following observation as relates to Preliminary Objections:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

21. The legal threshold for a preliminary objection to lie is well settled. Hon. Gikonyo J in *Catherine Kawira v Muriungi Kirigia* [2016] eKLR put it succinctly thus;

“(5) I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of *Mukisa Biscuit Manufacturing Company Limited V West End Distributors Limited* (1969) EA 696 where it was stated as follows:

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



22. The Objection raised herein is based on the principle of corporate personality, which is a point of law. This Court will, therefore, determine the preliminary objection first.
23. It is trite law, settled for over a century since the House of Lords decision in *Salomon -vs- A. Salomon & Co. Ltd*, that a company is a legal entity separate and distinct from its shareholders. Its assets belong to it, and not to its shareholders. A shareholder's interest is in the shares they hold, which constitute a bundle of rights, but this does not give them legal, beneficial or equitable interest in the company's specific assets. This position is consistently upheld in Kenyan jurisprudence, including *SNK -vs- MSK & Others* (supra) and *NBK -vs- Omondi EA 178*.
24. The Applicant seeks to excise an area measuring 25 acres from the property/properties pursuant to the Respondents' shareholding in the Garnishee companies and that the same be attached for purposes of execution. This constitutes an attempt to execute against the physical land assets of the Garnishee companies based on the Respondents' shareholding in those entities. While the Applicant asserts that information regarding property attributable to the Respondents' shareholding is held by the Garnishees, this argument does not provide a basis for disregarding the corporate veil. The circumstances under which a Court will pierce the corporate veil are exceptional and narrowly defined, typically involving fraud, a sham or the use of the company as a mere facade to evade existing legal obligations.
25. In *Stephen Njoroge Gikera & another v Econite Mining Company Limited & 7 others* [2018] KECA 25 (KLR), the Court of Appeal opined thus:

“As rightly submitted by the appellant, it is indeed a well established principle of law that a company is a separate juristic person in the eyes of the law; capable of acting in its own name, suing and/or being sued (See *Salomon vs. Salomon & Company Limited* [1897] AC 22. In this regard, the company is said to be cloaked in a ‘veil of incorporation’ which means that in its dealings, it is directly and independently responsible for its acts and its directors are not personally liable.

- (11) However, there are instances when the veil of incorporation may be lifted. In such instances, the law goes behind the corporate personality to attach responsibility to the individual shareholders or directors; thereby ignoring the separate personality of the company in favour of the economic reality prevailing in the circumstance. The *Halsbury's Laws of England*, 4th Edn para. 90; addresses the issue of piercing the veil of incorporation and states that;

“Notwithstanding the effect of a company's incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case, the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction



with that company to be subjected to strict scrutiny, the corporate veil will not be lifted”

26. The Applicant has not made any substantive application to lift the veil, nor have they pleaded or proven facts that would meet this high threshold. The corporate veil thus remains an impregnable fortress protecting the Garnishees’ assets from execution in this matter. On that basis alone, this application must fail.
27. Before I pen off, I must add this. The Application herein is broadly framed, seeking multiple reliefs including disclosure of shares and properties, excision of land, transfer, and various costs. This Court has often cautioned against such omnibus applications, that combine distinct orders governed by different legal principles. While this procedural aspect might be overlooked under Article 159 of the Constitution, the substantive legal barriers presented by the nature of the reliefs sought and the legal status of the Garnishees remain insurmountable.
28. In the premise, I uphold the Preliminary Objection. The Notice of Motion dated 15 February 2023 is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Plaintiff/Applicant: Mr. Otieno h/b Githinji

Defendants: Mr. Ndungu Kuria h/b Dr. Kuria, SC

Garnishees: Mr. Ahmednassir Abdulahi, SC

Court Assistant: Lucy Mwangi

