



P.I Samba & Company Advocates v Buzeki Investment Group Limited (Miscellaneous Application 1055 of 2020) [2024] KEHC 1061 (KLR) (Commercial and Tax) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 1055 OF 2020**

PM MULWA, J

FEBRUARY 8, 2024

BETWEEN

P.I SAMBA & COMPANY ADVOCATES DECREE HOLDER

AND

BUZEKI INVESTMENT GROUP LIMITED RESPONDENT

RULING

1. Before this court is the Decree Holder's Notice of Motion application dated 23/10/2023 brought under Section 635 of the *Companies Act* 2015, Order 22 Rule 35 and Order 51 Rule 1 of the *Civil Procedure Rules* 2010 and Section 1, 3A, 6 and 63 of the *Civil Procedure Act*.
2. The Decree Holder prayed for the following orders:
 1. Spent
 2. That summons do issue compelling Zedekiah Buzeki Kiprop Bundotich and Diana Jepchumba Bundotich, directors of the Judgement Debtor to attend court on such date as may be ordered to be orally examined on oath as to the Judgement Debtor's means and assets, and production of the books of accounts, audited financial statements, annual returns, bank statements papers, cheque books and other documents of the Judgement Debtor showing the accounts and finances for the past 4 years; for purposes of satisfying the decree dated 12th October, 2023.
 3. That in default of such attendance and or providing suitable means and assets for the satisfaction of the decree dated 12th October 2023, Zedekiah Buzeki Kiprop Bundotich and Diana Jepchumba Bundotich be held personally liable



to satisfy in full the decree dated 12th October 2023 by without limitation, the issuance of Warrants of Arrest in execution of decree.

4. That costs be borne by the Judgement Debtor and or the directors thereof Zedekiah Buzeki Kiprop Bundotich and Diana Jepchumba Bundotich.”
3. The application was anchored on the grounds that by a decree dated 12/10/2023, the Certificate of Taxation dated 31/3/2022, awarding the Decree Holder Kshs. 12,342,858, was adopted as judgement of the court. That the Decree Holder has refused, neglected and or failed to settle the amount of Kshs.12,342,858 in any amount or at all, thereby compelling the Decree Holder to take out the instant proceedings.
4. The Decree Holder contended that the Judgement Debtor is the investment company of the Buzeki Group of Companies, a business conglomerate whose interests cut across Africa and the world in industries including but not limited to Transport, Logistics, Mining and Petroleum, Dairy, Building and Construction and Credit Services. That the chief directors and shareholders of the Judgement Debtor being Zedekiah Buzeki Kiprop Bundotich and Diana Jepchumba Bundotich, are renowned persons both in the political and business spheres, well capable of making the payments decreed.
5. It was further averred that the Judgement Debtor has no known assets that may be attached to realise the decree herein and that the Judgement Debtor has frustrated the execution of this court’s judgement and thus delaying and thereby denying the realisation of the fruits of the judgement and decree herein.
6. The Decree Holder pleaded that it sought the intervention of the court to summon the relevant officers of the company being Zedekiah Buzeki Kiprop Bundotich and Diana Jepchumba Bundotich to examine the books of the Judgement Debtor company and if need be, lift the corporate veil.

Analysis and Determination

7. The instant application is unopposed by the Judgement Debtor despite proof of service. However, the Judgement Debtor’s filed written submissions dated 13/12//2023 in opposition to the application. The Decree Holder relied on its submissions dated 4/12/2023. The court has analysed and considered the same.
8. Order 22 Rule 35 of the *Civil Procedure Rules* provides that:

“where a decree is for payment of money, the decree-holder may apply to the court for an order that –

 - (a) The judgement debtor;
 - (b) In the case of a corporation, any officer thereof; or
 - (c) Any other person, be orally examined as to whether any or what debts are owing to the judgement-debtor, and whether the judgement-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgement debtor or officer, or other person, and for the production of any books or documents.”
9. In *Masifeld Trading (K) Ltd vs Rushmore Company Limited & Another* HCCC No. 1794 of 2000; (2008) eKLR it was held:

“I think the above rule grants this court jurisdiction to summon any officer of a company to attend court so that he may be examined on the assets and means of the company to settle



the sum decreed to be paid by the company. By examining such an officer, the court may or may not lift the veil of incorporation.”

10. It is undisputed that the court issued a decree dated 12/10/2023 and adopted the certificate of taxation dated 31/3/2022 whereby the decree holder was awarded the sum of Ksh.12,342,858.
11. The Judgement Debtor has refused and/or failed to pay the sums in the certificate of taxation and the decree despite being ordered to do so by this court. Under Order 22 Rule 35 of the Civil Procedure Rules the court may summon any officer of a company to attend court so that he may be examined on the assets and means of the company to settle the sum decreed to be paid by the company.
12. It will therefore be in the interest of justice to grant prayer 2 of the application as this will aid in the execution of the decree issued in this matter.
13. As for prayer 3, the court will not grant the same as brought in this application as such a remedy cannot be sought under Order 22 Rule 35 of the Civil Procedure Rules. This was held in the case of Peter O. Ngoge T/A O P Ngoge & Associates V Ammu Investment Company Limited [2012] eKLR, where Justice G. V. Odunga rendered himself as follows:

“...It is however my view that the lifting of a corporate veil is not the same thing as an application under Order 22 rule 35 of the Civil Procedure Rules. In the latter, an officer is examined as an agent of the Company while in lifting the corporate veil, the mask of incorporation is lifted with the result that the shareholders are no longer agents of the company but are treated in their own rights and liability attaches to them not in their capacity as agents of the company but in their personal capacity.”

14. The upshot is that prayer 2 is granted while prayer 3 is declined. Costs of the application to be borne by the Judgement Debtor.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2024.

.....
P. MULWA

JUDGE

In the presence of:

Ms. Samba for the Decree Holder/Applicant

Ms. Nyakoe h/b for Mr. Wandati for the Judgment Debtor

Court Assistant: Carlos

