



**KMK Law LLP v Kanuri Limited & 2 others (Miscellaneous Cause E228 of 2022)
[2024] KEHC 3552 (KLR) (Commercial and Tax) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E228 OF 2022**

MN MWANGI, J

MARCH 8, 2024

BETWEEN

KMK LAW LLP APPLICANT

AND

KANURI LIMITED 1ST RESPONDENT

BILDAD KANURI KAGAI 2ND RESPONDENT

JOHN KAGAI KANURI 3RD RESPONDENT

RULING

1. Before this Court is the applicant’s Notice of Motion dated 6/3/2023 filed under the provisions of Sections 1A, 1B, 3A of the *Civil Procedure Act* and Order 22 Rule 35 of the *Civil Procedure Rules*, 2010. The applicant prays for the following orders-
 1. Spent;
 2. An Order be and is hereby issued to the effect that the 2nd and 3rd respondents being the Directors of the 1st respondent/judgment debtor, to attend this Honourable Court and be examined as to whether the 1st respondent/judgment debtor has any properties or means of satisfying the decree herein, and to produce (for the period between 2015 to 2023) the Audited Books of Accounts, Tax Returns, Bank Statements and other documentary evidence, showing the same before this Honourable Court;
 3. In default of Order 2, the Directors herein, being the 2nd and 3rd respondents be held personally liable for the satisfaction of the decretal amount due to the applicant, or to be committed to civil jail for a period of not less than six (6) months; and



4. Cost of this application.
2. The background of the application is that that the Court delivered judgment on 30/9/2022 in which it awarded the applicant the sum of Kshs.1,905,082.50 together with interest at the rate of 12% from 18/3/2022 until payment in full, which amount has not been settled by the respondent.
3. The applicant averred that attempts to trace the 1st respondent's properties and bank accounts have been futile, and have made it impossible to execute warrants of attachment. That the actions of the 1st respondent, which is run by the 2nd and 3rd respondents, are a fraudulent attempt to avoid settling the decretal sum.
4. It was averred that the respondents denied access to Auctioneers and closed offices in an attempt to defraud the applicant and to avoid settling the decretal sum.
5. The applicant pleads that it is in the interest of justice for the directors of the 1st respondent to be ordered to come to this Court and produce documents and explain how they intend to settle the decretal amount.
6. In opposition to the instant application, the respondents lodged a replying affidavit sworn on 26/4/2023 by the 2nd respondent, who is the Managing Director of 1st respondent. He swore the affidavit on behalf of the all the respondents.
7. He averred that the application is premature, and is an abuse of the Court process as the said application disregards the procedure set out in Order 22 of the [Civil Procedure Rules](#).
8. That the applicant is urging this Court to lift the 1st respondent's corporate veil, yet it has not been diligent in recovering costs awarded to it. That failure by the applicant to recover the decretal sum does not amount to fraud on the part of the 1st respondent, and that failure to pay is not criminalized under any statutory law.
9. The 2nd respondent averred that the allegations that the 1st respondent is in the process of transferring money and its assets in an effort to avoid settling the decretal sum is untrue as no evidence has been produced before this Court to that effect.
10. The respondents contended that the applicant has not laid out a basis for granting the prayers sought.

Analysis And Determination.

11. I have considered the application and the replying affidavit filed, as well as the written submissions filed by the Counsel for the parties. The issue for determination is whether the 2nd and 3rd respondents, as directors of the 1st respondent, should be summoned to appear before this Court to be orally examined on the means of the 1st respondent to satisfy the decretal sum owed to the applicant.
12. Order 22 Rule 35 of the [Civil Procedure Rules](#), 2010 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.” (emphasis added).

13. In the case of *Masifield Trading (K) Ltd vs Rushmore Company Limited & another* [2008] eKLR, the Court when referring to the provisions of Order 22 Rule 35 of the *Civil Procedure Rules*, 2010 stated as follows-

“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.”

14. A decree in the matter in this matter was issued on 12/10/2022 in favour of the applicant as against the 1st respondent to the tune of Kshs.1,905,082.50, together with interest thereon at the rate of 12% per annum from 18/3/2022 until payment in full. The applicant was also awarded costs of the application assessed at Kshs.20,000/-.
15. The 1st respondent has refused and/or failed to pay the amount awarded as per the Certificate of Taxation dated 18/3/2022 and the decree issued on 12/10/2022, despite being ordered to pay by this Court. Although payment is still outstanding, the 1st respondent has not given any undertaking to the applicant as to how it intends to satisfy the decretal sum.
16. Under Order 22 Rule 35 of the *Civil Procedure Rules*, 2010, a 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 so as to settle the sum decreed to be paid by the company.
17. In the circumstances of the instant application, it will 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.
18. It is after examination of the directors of the 1st respondent that this Court will consider if it will lift the corporate veil of the said respondent in order to hold the directors of the 1st respondent herein, namely, Bildard Kanuri Kagai and John Kagai Kanuri, the 1st and 2nd respondents, respectively, personally liable to satisfy the amount decreed to be paid.
19. The upshot is that the following orders are hereby granted–
- i. That the 2nd and 3rd respondents being the directors of the 1st respondent/judgment debtor, shall attend this Court to be examined as to whether the 1st respondent/judgment debtor has any properties or means of satisfying the decree herein, and to produce (for the period between 2015 to 2023) the audited books of accounts, tax returns, bank statements and other documentary evidence, showing the same before this Court; and
 - ii. Costs are awarded to the applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF MARCH, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:



No appearance for the decree holder/applicant

Ms Mary Munjogu for the respondents

Ms B. Wokabi – Court Assistant.

