



**Davidson Kariki Maina t/a Bills Consults v Bobmil Properties Limited (Civil Case 1861 of 2001) [2023] KEHC 23701 (KLR) (Civ) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 1861 OF 2001**

**AN ONGERI, J**

**OCTOBER 19, 2023**

**BETWEEN**

**DAVIDSON KARIKI MAINA T/A BILLS CONSULTS ..... PLAINTIFF**

**AND**

**BOBMIL PROPERTIES LIMITED ..... DEFENDANT**

**RULING**

1. The application coming for consideration in this ruling is the one dated 24/4/2023 brought under Order 22 Rule 35, Order 51 Rule 1 of the [Civil Procedure Rules](#) and sections 1A, 1B, 3A, 38 and 44 of the [Civil Procedure Act](#) seeking the following prayers;
  - i. That Jaimin Vipinkumar Nathalala Shah, Milankumar Nathalal Shah and Gita Bharat Shah being the shareholders and directors of the defendant company be summoned to attend court and be examined as to whether the respondent company has any property or means of satisfying the decree, cost and interest in this case now standing at kshs.26,628,829.
  - ii. That in default of the said directors who are also shareholders of the respondent company complying with the above to the satisfaction of the court, they be ordered to personally pay the decretal amount together with costs and interest standing at ksh;26,628,829 as at August 5, 2022 and all accrued interest thereafter to the applicant or to be committed to civil jail for a period of not less than six (6) months.
  - iii. That the costs of this application be provided for.



2. The application is premised on the grounds on the face of it as follows;
  - i. That the applicant herein filed the above case against the defendant/respondent company on March 18, 1999 where he claimed the sum of kshs.7,131,431 being monies outstanding to him for services rendered to the respondent.
  - ii. That the case was heard and judgment was delivered on October 1, 2009 where the court dismissed the plaintiff/applicant's claim.
  - iii. That the plaintiff/applicant appealed against the judgment and on May 24, 2019 the Court of Appeal overturned the Superior Court's judgment and entered judgment in favour of the plaintiff/applicant for the sum of kshs.7,131,431 together with interest and costs.
  - iv. That pursuant to the Court of Appeal judgment a decree was issued in this case on July 9, 2021 and a warrant of attachment in execution of the decree for ksh.26,628,829 were issued by the court on August 5, 2021.
  - v. That the plaintiff/applicant has attempted to attach the properties of the defendant/respondent to settle the decree but the above said directors/shareholder successfully objected to the attachment saying that the assets intended to be attached did not belong to the defendant/respondent herein but to other sister companies.
  - vi. That the defendant/respondent has attachable assets and hence this application for the directors/ shareholders to show cause why they cannot settle the decree themselves.
3. The application is supported by the affidavit of Davidson Kariuki Maina sworn on 24/4/2023 as follows; in it he stated that he filed a suit against the defendant where he sought the sum of Kshs. 7,131,431 being monies owed to him by the defendant for services rendered. The case was heard and judgement was delivered on 1/10/2009 where the court dismissed his claim. He thereafter appealed to the court of appeal which on 24/5/2019 that overturned the judgement and entered judgement in his favor for the claimed sum of Kshs. 7,131,431 together with costs and interest.
4. He embarked on the execution of the decree and on 5/8/2021 warrants of attachment against the defendant/respondent for the sum of Kshs. 26,628,829 were issued. When the auctioneer went to the last known physical address of the defendant and proclaimed assets found therein an objection was successfully filed by a sister company, Bobmil industries Limited through the 1<sup>st</sup> director, Mr. Jaimin Vipinkumar Nathalal Shah who indicated that the assets found therein belonged to the Objector.
5. He indicated that the defendant has no known assets capable of being attached to satisfy the decretal amount and the only people who know where the assets of the respondent company went are the directors and the shareholders of the company. Jaimin Vipinkumar Nathalal Shah, Milankumar Nathalal Shah and Gita Bharat Shah are the directors and shareholders of the respondent company and should therefore explain how they can be attached to satisfy the decree or in the alternative should be held personally liable.
6. The plaintiff/applicant filed a further affidavit sworn on 14/7/2023 in which he deposed that he has never interacted or done any business with any company in Uganda. He contracted with Bobmil



- Properties KE Ltd. He was contracted in 1997 to prepare Bill of Quantities for a project it was to undertake in Kampala, Uganda but the contract was entered, carried out and concluded in Kenya.
7. The defendant filed a replying affidavit and supplementary affidavit and stated that Bobmil Properties (Ug) Ltd, Bobmil Properties (Ke) Ltd and Bobmil Industries (Ke) Ltd are three legally distinct and separate companies, each having its own assets and liabilities. That the defendant Bobmil Properties (Ug) Ltd was a special Purpose Limited Liability Company incorporated in Uganda on 18/3/1996 with the main aim of developing Plot Number 17 Lumumba Avenue situated in Kampala.
  8. The defendant shareholders are the late Bharatkumar Nathalal Shah and the Late Vipinkumar Nathalal Shah and himself. That Milankumar Nathalal Shah, Jaimin Vipinkumar Nathalal Shah and Gita Bharat Shah are the directors and shareholders of Bobmil Properties (Ke) Ltd while the estate of the late Vipinkumar Nathalal Shah is only a shareholder. Gita Bharat Shah is a shareholder and not a director of Bobmil Industries (Ke) Ltd. Therefore contrary to what the Plaintiff stated Jaimin Vipinkumar Nathalal Shah and Gita Bharat Shah have never been directors of the defendant company thus not bound by and are not personally liable for the defendant company's liabilities.
  9. He further deponed that Bobmil Industries (Ke) Ltd is not a sister company to Bobmil Properties (Ug) Ltd. It is a separate entity with a physical address in Nairobi. The plaintiff filed the suit herein against the defendant company Bobmil Properties (Ug) Ltd which is subject to the court of appeal judgement dated 24/5/2019.
  10. The parties filed written submissions as follows; the plaintiff submitted that to prove that he sued a Kenyan Company called Bobmil Properties Limited, the plaint herein describes the defendant as a limited liability company incorporated under the laws of Kenya. The plaintiff has further annexed correspondence between him and the defendant which clearly show that the claim is demanded from Bobmil Properties Limited P.O. Box 48876 Nairobi. The plaintiff argued that throughout this case and up to the appeal the defendant has never complained that it has been wrongly sued. It participated in the proceedings without mention of the alleged Ugandan Company.
  11. The plaintiff submitted that he has successfully obtained a decree against the respondent Bobmil Properties (K) Limited. However following a successful objection of the attachment the plaintiff did not know where else to find the assets of the respondent and has brought this application under the provisions of Order 22 Rule 35 of the *Civil Procedure Rules*. The plaintiff indicated that it is not in dispute that the decree has not been settled and that it is also clear that the directors of the respondent although aware of it have not volunteered to make any offer as to how the decree should be settled. The court is therefore obligated under the provisions of order 22 rule 35 to order for their oral examination regarding any assets or debts owing to the judgement-debtor or any other means of satisfying the decree therein and for the production of books or documents of the judgement-debtor for the satisfaction of the decree owed to the plaintiff. In support the plaintiff cited *Jayden Limited -vs-Bradley Limited* (Miscellaneous Application E202 of 2019) [2021] KEHC 127 (KLR) the Honourable Justice W.A. Okwany held that:

“Order 22 Rule 35 of the *Civil Procedure Rules* allows a holder of a money decree to apply for the oral examination of any officer of a corporation regarding any assets or debts owing to the judgement debtor or other means of satisfying the court Decree and for production of books or documents. I therefore find that the prayer for oral examination at the Respondent's Directors is well anchored in law and that the Applicant has made out a case for the granting of the orders sought. Consequently, I allow the prayer as sought and issue Order of Notice to Show Cause and Summons compelling the Respondent's Directors and shareholders and Directors of Pevan East Africa Limited to personally attend court and be examined on oath



as to the judgement -debtor's means and assets and produce its books of the account and other documentary evidence relevant to revealing the Respondent's assets. "

12. The plaintiff submitted that if the directors of the respondent company fail to appear for examination and/or they fail to satisfy the court with the explanation of the whereabouts of the assets of the respondent or the respondents ability to satisfy the decree in this case, the said directors should be compelled to pay and/or settle the decree personally. In support the plaintiff cited Jayden Limited-vs-Bradley Limited Justice Okwany (*supra*) cited the case of Aster Holdings Ltd-vs-City Council of Nairobi & 4 others [2019] eKLR where it was held that: -

“There is no doubt that a company is at law a separate legal entity which is different from its shareholders and subscribers. However, in some instances, the corporate veil of a company can be pierced. The circumstances under which the corporate veil of a company may be pierced were well set out in paragraph 90 of Halsbury's Laws of England Vol. 7(1) which states as follows: -

“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 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 statutory of the company as a separate legal entity distinct from its shareholders or even agents directing and controlling the activities of the company.”

13. The respondent submitted that Bobmil Properties (UG) Ltd the defendant Company was incorporated in Uganda on March 18, 1996. According to an Official Search at the Uganda Registration Service Bureau conducted on 26th June 2023, the company has 3 Shareholders, namely, Bharat N. Shah, Vipin N. Shah And Milan N. Shah. The previous two are deceased. There are no Directors of the Company. Neither Jaimin Viinkumar Nathalal Shah, Milan Kumar Nathalal Shah nor Gita Bharat Shah are Shareholders or Directors of the Defendant Company.
14. It was therefore the respondent's argument that the two companies are not the same and the Kenyan company cannot be compelled to shoulder the burdens of another company. In support cited Hannah Maina t/a TAA Flower v Rift Vallev Bottlers Limited [2016] eKLR where the Court determined in that case that the Respondent could not be held liable for debts of a subsidiary company the two being distinct and separate legal entities.
15. The respondent argued that it is therefore frivolous for the plaintiff to rely on the address in the letters while the subject matter in the letters refer to Kampala, Uganda where the Plaintiff was providing his professional services. That further lifting of the corporate veil is not done merely because the company has no assets or is unable to pay its debts and therefore the plaintiff has not exhausted all legal recourse before seeking for the corporate veil to be lifted.
16. The issues for determination in the application dated 24/4/2023 are as follows;
- i. Whether the shareholders of the defendant company should be summoned to court and cross examined on the means of the defendant company to satisfy the decree now standing at 28,628,829.
  - ii. Whether the shareholders should be committed to civil jail in default of failing to satisfy the decretal sum.



17. I find that although the plaintiff's claim of ksh.7,131,431 was dismissed by the High Court, the Court of Appeal overturned the judgment of the High Court
18. The defendants are duty bound to settle the decretal sum.
19. The application dated 24/4/2023 is allowed in the following terms;
  - i. That the directors/shareholders to file affidavit of means within 30 days of this date.
  - ii. That the directors/shareholders of the defendant company be summoned to appear before this court to be cross examined on the said affidavits within 60 days of this date.
  - iii. That the said directors/shareholders named in the prayers to be personally served with the summons.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
19<sup>TH</sup> DAY OF OCTOBER, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

**IN THE PRESENCE OF:**

**..... FOR THE PLAINTIFF/APPLICANT**

**..... FOR THE DEFENDANT/RESPONDENT**

