



**Dormans Coffee Limited v Njenga & 3 others (Miscellaneous Application E983 of 2023)  
[2024] KEHC 13962 (KLR) (Commercial and Tax) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13962 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E983 OF 2023  
FG MUGAMBI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**DORMANS COFFEE LIMITED ..... APPLICANT**

**AND**

**PHILIP GICHURU NJENGA ..... 1<sup>ST</sup> RESPONDENT**

**PLEASURES QUICK SHOP LTD ..... 2<sup>ND</sup> RESPONDENT**

**CATHERINE NUNGARI KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**DAVIDSON MGHANGA MWAISAKA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Background and Introduction**

1. Before the court is the notice of motion application dated 16/11/2023 filed pursuant to Articles 50 and 159 (2) (d) of *the Constitution*; Sections 23 & 24 of the *Civil Procedure Act* and Order 22 rule 35 of the Civil Procedure Rules.
2. The applicant substantially seeks that summons be issued compelling the directors or shareholders of the judgment debtor namely, Phillip Gichuri Njenga and Catherine Nungari Kamau to attend court and be examined as to the judgment debtor's means and assets and to produce its books of account and other documentary evidence relevant to revealing the assets of the said judgment debtor.
3. Thereafter, the applicant also seeks to have the Court pierce the corporate veil of the judgment debtor and to have its directors held jointly and severally personally liable to pay the decree holder the decretal sum of KShs. 33,595.03 in terms of the decree of the Small Claims Court dated 31<sup>st</sup> August 2023. Consequently, they pray that warrants of attachment and sale of assets of the said directors and shareholders do issue in execution of the said decree.



4. Should the said directors/shareholders of the judgment debtor fail to attend court for examination, the decree holder seeks that a Notice to Show Cause be issued upon them to show cause as to why they should not be committed to civil jail for failure to pay or satisfy the decretal sum of KShs. 33,595.03 in this suit, which is demanded alongside settlement of the decretal amount of KShs. 15,795.03 plus interests at the court rates and further costs of the garnishee proceedings assessed at KShs. 17,800.
5. The application is premised on the grounds that the applicant obtained a judgment against the judgment debtor on 30/5/2023 which remains unsatisfied and that the judgment debtor has by itself and or through its management failed to satisfy the decree.
6. The applicant contends that the judgment debtor has no known attachable assets within the jurisdiction of this court and the books of account of the judgment debtor in the circumstance ought to be produced before this court to ascertain its ability to satisfy the judgment debt. The applicant further contends that the directors of the judgment debtor are vicariously liable and culpable for the fraudulent acts or omissions of the judgment debtor occasioning deliberate default.
7. At the time of writing this ruling, neither the judgment debtor nor its directors had opposed this application despite being served with the same as evidenced by the affidavits of service on record.

### **Analysis and determination**

8. The applicant filed written submissions dated 7/6/2024 which I have duly considered. Order 22 rule 35 of the Civil Procedure Rules states:
  - “(a) Where a decree is for the payment of money, the decree- holder may apply to the court for an order that—
    - a. the judgment-debtor;
    - b. in the case of a corporation, any officer thereof; or
    - c. any other person,
  - b. be orally examined 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, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”
9. The essence of an order sought under Order 22 rule 35 of the Civil Procedure Rules is to assist with discovery. This observation was made by Ringera J, in *Ultimate Laboratories V Tasha Bioservice Limited*, HCCC No. 1287 of 2000 where the Learned Judge emphasized thus:

“The objective of an examination of a company’s director or officer under Order XX1 Rule 36 is to obtain discovery, for the purpose of execution of a decree against the company, 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.”
10. In this case, the judgment debtor has failed to satisfy the decree issued on 31/8/2023, and more than a year has since passed. In the interest of justice, as provided under Order 22 Rule 35 of the Civil Procedure Rules, it is necessary to summon the directors, as identified in the CR12 document marked ‘HK-1’ annexed to the applicant’s supporting affidavit. The purpose of this summons is to conduct an



oral examination regarding the judgment debtor's assets and the means by which the decretal amount can be satisfied.

**Disposition**

11. I therefore find merit in the instant application in terms of prayer 2 for now. Accordingly, the Directors of the said company shall attend Court on a day to be determined, for purposes of examination.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

