



**Kioko t/a Urbanus K & Associates Advocates v Trident Insurance Company Ltd (Miscellaneous Application E010 of 2024) [2024] KEHC 15828 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15828 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E010 OF 2024  
AN ONGERI, J  
DECEMBER 13, 2024**

**BETWEEN**

**URBANUS REUBEN KIOKO T/A URBANUS K & ASSOCIATES  
ADVOCATES ..... APPLICANT**

**AND**

**TRIDENT INSURANCE COMPANY LTD ..... RESPONDENT**

**RULING**

1. The application coming for consideration in the Ruling is the amended Notice of Motion brought under Article 19, 21, 22, 23, 25, 28, 29, 35, 50, 159, 259 of *the Constitution* of Kenya 2010, under Sections 148, 787, 996 and 1002 of the *Companies Act (Act No. 17 of 2015)*, Section 1A, 1B, 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Section 144, 145, 146, 150 and 151 of the Criminal Procedure Code (Cap.75), and all other enabling provisions of the law dated 31<sup>st</sup> May 2024 seeking the following orders:-
  - i. That this application be certified as urgent and be dispensed ex-parte in the 1<sup>st</sup> instance.
  - ii. That a Notice to Show Cause be and is hereby issued upon the Directors of the Respondent; Trident Insurance Company Ltd, namely: Edith Nyambura Mwangi Kingori, Millania Wanja Wamae Kimani, Prakash Sanas Balu, John Mourice O. Omuga, Shahid Diamond Lalji Nurani And Diamondali Hasham Laiji Nurani, to personally attend court on such date as may be ordered or allocated and be examined on oath as to matters relating to impersonation and forgery of medical tender documents in County Governments in the year 2023/2024, by the Respondent.
  - iii. That upon personal attendance and examination of the Directors of the Respondent, Trident Insurance Company Ltd, namely: Edith Nyambura Mwangi Kingori, Millania Wanja Wamae Kimani, Prakash Sanas Balu, John Mourice O. Omuga, Shahid Diamond Lalji Nurani And



Diamondali Hasham Laiji Nurani in (ii) above, the Honourable Court be pleased to pierce the Corporate Veil of the Respondent herein, Trident Insurance Company Ltd and direct that the said Directors of Trident Insurance Company Ltd may be jointly and severally held personally liable for impersonation and forgery of medical tender documents in county Governments in the year 2023/2024 by the Respondent.

- iv. That upon piercing the Corporate Veil of the Respondent herein, Trident Insurance Company Ltd in (ii) above, the Honourable Court be pleased to grant leave to the Applicant to institute civil suit(s) against the Directors of the Respondent, Trident Insurance Company Ltd, namely: Edith Nyambura Mwangi Kingori, Millania Wanja Wamae Kimani, Prakash Sanas Balu, John Mourice O. Omuga, Shahid Diamond Lalji Nurani And Diamondali Hasham Laiji Nurani for impersonation and forgery of medical tender documents in County Governments in the year 2023/2024 by the Respondent.
  - v. That the costs of this application be provided for.
2. The application is based on the following grounds:-
- i. That the Applicants' signature and official Law firm stamp were used to forge medical tender documents in county governments in the year 2023/2024 by the Respondents.
  - ii. That the Applicants has made an official complaint and statement to the National Police Service over impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the Respondents.
  - iii. That the impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the Respondents, has had a negative impact to his: trade, reputation, integrity, conscience and demeaned professional standing as an Advocate in good standing.
  - iv. That the impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the Respondents has had immense and adverse economic impact to the Applicant.
  - v. That the Applicant is apprehensive and justifiably fearful that unless the Orders sought herein are granted, he may be held criminally liable, thus unjustly and inhumanly depriving his right to liberty.
3. The application is supported by the affidavit sworn on 31<sup>st</sup> May 2024 by Paul Mucai Gitau as follows:-
- i. That I am an Advocate of the High Court of Kenya, currently practicing in person and in the name and style G. P. Mucai & Company Advocates who have the conduct of this matter, on behalf of the Applicant and thus competent to swear this affidavit.
  - ii. That I confirm at all material time, the directors of the Respondents were namely: Edith Nyambura Mwangi Kingori, Millania Wanja Wamae Kimani, Prakash Sanas Balu, John Mourice O. Omuga, Shahid Diamond Lalji Nurani And Diamondali Hasham Laiji Nurani.
  - iii. That I am aware the Applicants' signature and official Law firm stamp were used to forge medical tender documents in county governments in the year 2023/2024 by the Respondents.
  - iv. That I am aware the Applicant has made an official complaint and statement to the National Police Service over impersonation and forgery of medical tender documents in county governments in the year 2023/2024 forgery of his signature and official Law firm stamp by the Respondents.



- v. That I can confirm that the impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the Respondents has had a negative impact to the Applicants; trade, reputation, integrity, conscience and demeaned professional standing as an Advocate in good standing.
  - vi. That I am aware the impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the Respondents, has had immense and adverse economic impact to the Applicant.
  - vii. That I can confirm the Applicant is apprehensive and justifiably fearful that unless the Orders sought herein are granted, he may be held criminally liable, thus unjustly and inhumanly depriving his right to liberty.
  - viii. That what is deponed to herein is true to the best of my knowledge, belief and understanding and on information whose source has been disclosed.
4. The application is opposed by the Respondents who filed a Replying Affidavit sworn on 18<sup>th</sup> June 2024 by Millania Wanja Wamae Kimani, one of the Directors of the Respondents Company as follows:-
- i. That I am an adult female of sound mine and one of the named directors of the Respondent in the application dated 31<sup>st</sup> May 2024 before the court thus competent to make this replying affidavit.
  - ii. That I have read and understood the Applicant's application dated 31.5.2024 and respond thereto as follows:
  - iii. That currently I am not a director of the Respondent Company. I was appointed a director of the company vide an appointment letter dated 11.11.2021 a copy attached hereto marked 'MWWK1'.
  - iv. That I resigned from the position of a director of the Respondent with effect from 3.4.2023 a copy of which resignation letter is attached hereto marked 'MWWK2' and having formally tendered the resignation I was invited for a meeting by the regulator of the Insurance Industry the Insurance Regulatory Authority (IRA) vide an invitation on email of 24.7.2023 which invitation I acted upon attended the meeting and confirmed to the regulator that I had formally resigned from directorship of the Respondent Company. Annexed is an abstract of the email I received from the office of IRA pursuant to tendering of the resignation marked 'MWWK3'.
  - v. That for the time I associated with the Respondent I was not a shareholder director and only attended board meetings by invitation and the last board meeting which I attended was a board meeting held on 8.12.2022 which was by an invitation on email of 5.12.2022 a copy of which invitation I attach hereto marked 'MWWK4'.
  - vi. That I am not privy to the matters subject of the complaint before the court and as at the material time the matters subject of the complaint are alleged to have happened I had long ceased to have any association with the Respondent and in any event I have never been an executive officer of the company and never been involved in its management activities and or operations at any time and I am a total stranger to the complaints allegedly the subject matter of the matter before the court, my name has wrongfully been dragged into the matter before the court.



- vii. That I am advised by my lawyer on record which advise I believe to be correct that the application before the court is bad in law and incompetent and should be struck out, and I shall at the first opportunity apply to strike out the application for being incompetent in law.
  - viii. That I make this affidavit in reply to the application before the court and pray that my name be struck out of the proceedings before the court and the application be dismissed with costs.
  - ix. That what is stated herein is true to the best of my knowledge information and belief having had the conduct of the proceedings on behalf of the Claimant.
5. The parties submitted as follows:- the applicant submitted that they seek to lift the veil of the respondent and leave to institute civil proceedings against the directors of the respondent for impersonation and forgery of medical tender documents in county governments in the year 2023/2024 by the respondent.
6. The applicant argued that the civil consequences of breach of general duties of Director of a company are stated in Section 148 of the *Companies Act*;
- (1) The consequences of breach (or threatened breach) of the general duties of directors set out in this Division are the same as would apply if the corresponding common law rule or equitable principle applied.
  - (2) Those duties (with the exception of the duty set out in section 145) are enforceable in the same way as any other fiduciary duty owed to a company by its directors
7. The applicant submitted that the liability of officers who are in default is further provided at section 996 of the *Companies Act* as follows;
- (1) If a provision of this Act provides that an officer of a company who is in default commits an offence, the officer commits the offence only if the officer—
    - (a) authorizes or permits;
    - (b) participates in; or
    - (c) fails to take all reasonable steps to prevent, the contravention of the act or conduct, or the failure to comply with the requirement, that constitutes the offence.
  - (2) If a company is an officer of another company, the first-mentioned company commits an offence as an officer in default only if at least one of its officers is in default.
  - (3) If a company that is an officer of another company commits an offence because of subsection (2), the officer in default also commits the offence and is liable to be proceeded against and punished accordingly
    - (1) If a business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, each person who knowingly participates in carrying on the business in that manner commits an offence.
    - (2) Subsection (1) applies whether or not the company has been liquidated or is in liquidation.



8. In regarding the circumstance under which the corporate veil may be lifted the applicant placed reliance in the case of *Kolaba Enterprises Ltd v Shamsudin Hussein Varvani & Ano* [2014] eKLR, the Court held as follows;

“It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of *Salomon & Co Ltd V Salomon* [1897] A.C. 22 H.L that a company is different person altogether from its subscribers and directors. Although it is action of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities”

9. The applicant submitted that once leave is granted to institute civil proceedings, against the individual directors, evidence shall be tendered to support the extent of each director’s liability or absence of the same. therefore, no respondent shall be prejudiced by the application herein being allowed.
10. The respondent conversely submitted that whereas the motion is brought in the names of the applicant, the supporting affidavit has been sworn in the names of the advocate acting in the case. It is an established principle of law that the advocates should not enter into the arena of the dispute by swearing affidavit on contentious matters of fact. By swearing an affidavit on contentious issues, an advocate makes himself a viable witness for cross examination on the case which he is handling merely as an agent which practice is irregular.
11. The respondent argued that the applicant is on a fishing expedition and wants to proceed as if liability has already been established. The applicant has further failed to inform the court what civil remedy he is seeking from the respondent when at face value the of the application he has alleged fraud/forgery which squarely fall within the ambit of the criminal court and the National Police Service.
12. The applicant by seeking to cross examine directors and establish their liability the respondent argued that these are final orders that can only be issued through filing a proper suit with a known cause of action that could then impute liability on the said directors. Further the applicant is an outsider in the respondent organization and it is not known under which limb of the law he required leave to sue a company or its directors.
13. I have considered the submissions filed by the parties.
14. The sole issue for determination is whether the corporate veil should be lifted.
15. 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”

16. In *Ukwala Supermarket v Jaideep Shah & another* [2022] eKLR it was held as follows;

“In general, therefore, Courts in Kenya will only allow for the piercing of the corporate veil when two requirements are met:

- a) First, the company is a mere instrumentality or alter ego of the shareholder or director in question such that there is such unity of interest and ownership that one is inseparable from the other; and
- b) Second, the facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice.

17. Some of the factors the Court would likely look at to determine if the two requirements have been met include the following;

- i. Whether the company is adequately capitalized;
- ii. Whether there is a failure to maintain adequate corporate records or to comply with corporate formalities;
- iii. Whether there has been demonstrated commingling of funds or assets between the company and the asserted alter ego;
- iv. Whether the alter ego has treated the assets or finances of the corporation as his own.”

18. I find that the Applicant is attempting to prosecute a criminal case through this application which is seeking to lift corporate veil.

19. I find that none of the conditions stated above have been fulfilled in the current case.

20. There is no evidence that the matter has been investigated or the allegations proved.

21. I dismiss the application dated 31st May 2024 for want of merit with no orders as to costs.

**DATED, SIGNED AND DELIVERED THIS 13<sup>TH</sup> DAY OF DECEMBER 2024 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Maina/Trizah

