



**Owino Kojo & Co. Advocates v Sifa Insurance Brokers Limited & 3 others  
(Miscellaneous Application E379 of 2022) [2025] KEHC 13923 (KLR)  
(Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13923 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E379 OF 2022  
MN MWANGI, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**OWINO KOJO & CO. ADVOCATES ..... APPLICANT**

**AND**

**SIFA INSURANCE BROKERS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BELL ESTATE AGENCY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**PAUL DEBACKO GOGO ..... 3<sup>RD</sup> RESPONDENT**

**ROBERT MUMBO GOGO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 3<sup>rd</sup> February 2024 filed by the applicant pursuant to the provisions of Order 1 Rules 3 & 10(2) of the Civil Procedure Rules, Article 159(2) of *the Constitution* and all other enabling provisions of the law. The applicant prays for an order that Bell Estate Agency Limited, Paul Debacko Gogo & Robert Mumbo Gogo be joined to this suit as respondents.
2. The application is anchored on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Owino Kojo, an Advocate of the High Court of Kenya and a partner in the applicant's law firm. Mr. Kojo averred that the applicant was instructed by the respondents to represent the 1<sup>st</sup> respondent in Nairobi HCCC No. 460 of 2007, which led to an Advocate - Client bill of costs dated 14<sup>th</sup> May 2022, which was later taxed at Kshs. 972,710.00 on 24<sup>th</sup> October 2023. He stated that the 2<sup>nd</sup> respondent is a subsidiary of the 1<sup>st</sup> respondent and handled payments through its Directors Messrs Paul Debacko Gogo and Robert Mumbo Gogo, who are both



Directors of the 1<sup>st</sup> & 2<sup>nd</sup> respondents, Sifa Towers Management Ltd and Sifa & Kings Investment Company Ltd.

3. Mr. Kojo stated that the respondents have tried to avoid paying legal fees by claiming that the 1<sup>st</sup> respondent is deceased, alleging separation of legal entities and asserting all legal fees were paid. He contended that multiple documents and Court records show that the respondents used their related entities interchangeably to frustrate debt recovery and execution processes. He deposed that the 1<sup>st</sup> respondent entered into a joint venture with Kings Developers Ltd, resulting in the construction of Sifa Towers and the surrender of two floors to it. He further deposed that initially assets were admitted to belong to the 1<sup>st</sup> respondent, but later claims were made that they belong to the 2<sup>nd</sup> respondent.
4. Mr. Kojo averred that several Court cases and affidavits, including Milimani HCCC No. 417 of 2017, to support the claim that the 1<sup>st</sup> respondent is the registered owner of all the premises known as mezzanine floor & 1<sup>st</sup> floor of Sifa Towers. He stated that the 2<sup>nd</sup> respondent has historically received invoices and issued cheques to the applicant for legal services rendered to the 1<sup>st</sup> respondent, but despite commitments to pay, the respondents defaulted and used litigation tactics to stall execution, delay payments and confuse legal ownership.
5. In opposition to the application, the 2<sup>nd</sup> respondent filed a further affidavit sworn on 10<sup>th</sup> February 2024 by Robert Gogo, a Director of the 2<sup>nd</sup> respondent. He averred that the instant application improperly attempts to pierce the 1<sup>st</sup> respondent's corporate veil without following due legal process or establishing sufficient justification, and that it seeks to add parties to a suit after judgment, contrary to the principle of corporate personality.
6. The 3<sup>rd</sup> & 4<sup>th</sup> respondents in opposition to the application herein filed a replying affidavit sworn on 6<sup>th</sup> June 2024 by Mr. Paul Debacko Gogo, the 3<sup>rd</sup> respondent herein and a co-director and/or shareholder of the 1<sup>st</sup> & 2<sup>nd</sup> respondents. He deposed that in the instant application, the applicant has misapplied the provisions of Order 1 Rule 3 of the Civil Procedure Rules, as the reliefs being sought do not arise from the same transaction. He averred that the 1<sup>st</sup> & 2<sup>nd</sup> respondents are distinct legal entities, only linked by the 3<sup>rd</sup> respondent as a common Director, which means that joining the 3<sup>rd</sup> & 4<sup>th</sup> respondents to this suit in their personal capacity would amount to lifting the corporate veil of the 1<sup>st</sup> & 2<sup>nd</sup> respondents without proper legal basis.
7. He stated that a Director cannot be held personally liable for the acts of a company unless a clear justification for piercing the corporate veil is provided. Mr. Debacko stated that the applicant relies on past transactions and management practices, which were legally executed with Board approval and often with the applicant's involvement as legal Counsel. He however asserted that internal cross-company financial arrangements do not equate to fraud or personal liability.
8. The instant application was canvassed by way of written submissions. The applicant's submissions were filed on 19<sup>th</sup> May 2024 by the law firm of Owino Kojo & Co. Advocates, whereas the 2<sup>nd</sup> & 3<sup>rd</sup> respondent's submissions were filed by the law firm of Wandeto Wachira Advocates on 4<sup>th</sup> February 2025.
9. Mr. Kojo, learned Counsel for the applicant submitted that the respondents jointly instructed him in Nairobi HCCC No. 460 of 2007, which resulted in an Advocate - Client bill of costs dated 14<sup>th</sup> May 2022. He contended that despite owing legal fees, the respondents used various fraudulent tactics to avoid payment. He stated that the 2<sup>nd</sup> respondent was registered by instruction of the 1<sup>st</sup> respondent through the 3<sup>rd</sup> respondent to manage the 1<sup>st</sup> & mezzanine floors of Sifa Towers, where the proclaimed assets are located. Further, that the 3<sup>rd</sup> respondent instructed Prof. Tom Ojienda & Associates to take



- over all matters handled by the applicant, including HCCC No. 460 of 2007, on behalf of all the respondents. Mr. Kojo asserted that the Auditor's report relied on by the respondents is insufficient to prove ownership of property, as Auditors base their reports on information provided by their clients.
10. Mr. Wachira, learned Counsel for the respondents relied on the decisions in *Peter O Ngoge t/a Ngoge & Associates v Ammuj investment Company Limited* (Miscellaneous civil application 745 of 2009) (2012) KEHC 1133 eKLR and *Ukwala Supermarket v Jaideep Shah & Kamal Shah* (Civil Suit 7 of 2016) [2022] KEHC 2207 (KLR), and submitted that the 1<sup>st</sup> respondent is a separate and distinct legal entity from the 2<sup>nd</sup> respondent, with the 3<sup>rd</sup> respondent and the now-deceased 4<sup>th</sup> respondent. He stated that it is improper to claim that the 2<sup>nd</sup> to 4<sup>th</sup> respondents also issued instructions on behalf of the 1<sup>st</sup> respondent. He submitted that the 1<sup>st</sup> & 2<sup>nd</sup> respondents are not subsidiaries of each other, as the existence of a common Director does not justify personal liability unless grounds exist for lifting the corporate veil. Counsel argued that the applicant has neither sought nor justified the lifting of the 1<sup>st</sup> respondent's corporate veil, and that the joinder of the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents to this suit is improper.
  11. Counsel cited the case of *Mugenyi & Company Advocates v The Attorney General* [1999] 2 EA 199 and contended that the applicant has accused the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents of fraud but has failed to meet the legal threshold required to prove such allegations or justify the piercing of the corporate veil. In submitting that fraud must be specifically pleaded and strictly proved, with a standard of proof higher than the balance of probabilities but lower than that of beyond reasonable doubt, Counsel referred to the Court of Appeal case of *MWK v SKK and 5 others* NRB ELC No. 32 of 2017 [2018] eKLR. He maintained that there is no evidence of fraud or improper conduct by the 3<sup>rd</sup> & 4<sup>th</sup> respondents, as to the contrary, the transactions and company structures were legitimate, properly documented, and sometimes executed with the applicant's legal advice. Mr. Wachira asserted that the applicant has not justified the lifting the corporate veil of the 1<sup>st</sup> respondent, thus the 2<sup>nd</sup> to 4<sup>th</sup> respondents should not be held personally liable for its acts and/or omissions.

### **Analysis And Determination.**

12. I have considered the application filed herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the 3<sup>rd</sup> & 4<sup>th</sup> respondents, as well as the further affidavit by the 2<sup>nd</sup> respondent, alongside the written submissions made by Counsel for the parties. The issue that arises for determination is whether the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents should be joined to this suit as respondents.
13. A Court's discretion to make an order for joinder of parties is derived from the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 which states that –

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”



14. Commenting on the provisions for joinder of parties, the learned authors of Sarkar’s Code of Civil Procedure (11<sup>th</sup> Ed. Reprint, 2011, Vol. 1 P. 887), state as follows-

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

15. The Court in the case of *Civicon Limited v Kivuwatt Limited & 2 others* [2015] eKLR, addressed the import of the aforesaid provisions in the following terms -

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

16. The background of the dispute herein is that the 1<sup>st</sup> respondent instructed the applicant to represent it in Nairobi HCCOMM No. 460 of 2007, resulting in an Advocate –Client Bill of Costs dated 14<sup>th</sup> May 2022, which was taxed at Kshs. 972,710.00 on 24<sup>th</sup> October 2023. In executing the judgment, the applicant proclaimed assets that the 2<sup>nd</sup> respondent claims to own, prompting the 2<sup>nd</sup> respondent to file objection proceedings vide a Notice of Motion application dated 29<sup>th</sup> January 2024. However, before the objection proceedings could be determined, the applicant filed the current application seeking to join the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents on grounds that they all participated in instructing the applicant, that the 2<sup>nd</sup> respondent is a subsidiary of the 1<sup>st</sup> respondent and that the 3<sup>rd</sup> & 4<sup>th</sup> respondents are directors of both the 1<sup>st</sup> & 2<sup>nd</sup> respondents.

17. The applicant herein contends that the respondents have used fraudulent tactics to evade payment of debts, thus joining all the respondents to the suit will allow the Court to settle all questions involved in this matter. The applicant asserts that the 3<sup>rd</sup> respondent has consistently issued instructions on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, Sifa Towers Management Limited, and Sifa & Kings Investment Company Limited. Additionally, the applicant claims that the 2<sup>nd</sup> respondent manages the 1<sup>st</sup> respondent’s finances and has previously paid all legal fees owed to the applicant in this matter and in all other matters in which the applicant has represented the respondents.

18. The conditions for determining an application for joinder of parties were restated by the Court in the case of *Kingori v Chege & 3 others* [2002] 2 KLR 243. They are-

- i. He must be a necessary party;
- ii. He must be a proper party;



- iii. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;
  - iv. The ultimate order or decree cannot be enforced without his presence in the matter; and
  - v. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
19. A company is a separate legal entity from its members and shareholders, a position that was espoused by the Court in the English case of *Salomon v Salomon* [1987] AC 78. As such, the 1<sup>st</sup> respondent being a limited liability company is capable of suing and being sued in its own name.
  20. The 3<sup>rd</sup> & 4<sup>th</sup> respondents are co-directors of the 1<sup>st</sup> & 2<sup>nd</sup> respondents. It is therefore not far-fetched that the 3<sup>rd</sup> respondent more often than not gave instructions on behalf of the 1<sup>st</sup> respondent company in his capacity as a Director of the said company. That being the case, he cannot be faulted and/or held liable for the acts and/or omissions of the 1<sup>st</sup> respondent, simply by executing his duties and/or functions as the company's Director.
  21. Nevertheless, this Court notes that in as much as the applicant claims that the 3<sup>rd</sup> respondent consistently issued instructions on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, Sifa Towers Management Limited, and Sifa & Kings Investment Company Limited, no evidence has been adduced in support of this allegation, contrary to the provisions of Sections 107, 108 & 109 of the *Evidence Act*, which provides that he who asserts must prove. For this reason, I find that the applicant did not discharge its burden of proving that the 3<sup>rd</sup> respondent consistently issued instructions on behalf of the aforementioned companies.
  22. The allegation that the 2<sup>nd</sup> respondent is a subsidiary company of the 1<sup>st</sup> respondent, and that it has been managing the 1<sup>st</sup> respondent's finances and previously paid all legal fees owed to the applicant in this matter and in all other matters in which the applicant has represented the respondents, has little to no probative value in the application herein. If the said allegation is proven to be true, it can form a sound argument in an application seeking to lift the corporate veil of the 1<sup>st</sup> respondent company, but not for joinder of parties, more so because this suit is at the execution stage.
  23. In view of the foregoing, I am not persuaded that the applicant has made out a case to warrant being granted the orders being sought herein. To the contrary, I the instant application is an improper attempt to lift the corporate veil of the 1<sup>st</sup> respondent company, which this Court frowns upon as the application does not seek such prayers.
  24. In the end, this Court finds that the application dated 3<sup>rd</sup> February 2024 is devoid of merits. It is hereby dismissed with costs to the respondents.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Kojo for the applicant

Ms Kamau h/b for Mr. Wachira for the respondent

Ms B. Wokabi – Court Assistant.



**NJOKI MWANGI, J.**

