



**Njuguna & Partners Advocates v Publi - Craft International  
Limited (Miscellaneous Commercial Application E1140 of 2020)  
[2025] KEHC 13987 (KLR) (Commercial and Tax) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13987 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS COMMERCIAL APPLICATION E1140 OF 2020**

**BK NJOROGE, J**

**OCTOBER 2, 2025**

**BETWEEN**

**NJUGUNA & PARTNERS ADVOCATES ..... ADVOCATE**

**AND**

**PUBLI - CRAFT INTERNATIONAL LIMITED ..... CLIENT**

**RULING**

1. The Ruling is in respect of the Application by way of a Notice of Motion dated 23.10.2023. It is filed by the Advocate/Applicant. It is supported by an affidavit in support of Charles Njuguna sworn on 23.10.2023. It seeks the following orders:
  - 1) That summons do issue compelling the Directors of the Respondent Company namely Simon Ikuu Mbote, Reuben Githinji Nyambura, John Nderitu Ndegwa be orally examined on oath as to the business /affairs of the Defendant Company and or properties of the Defendant Company or the means of satisfying the decretal sum and all books of accounts or documents relating to the operations and transactions of the Defendant Company be produced in this court.
  - 2) That in default of such attendance and/or providing suitable means and assets for the satisfaction of the decree, the Directors be held personally liable to satisfy the Decretal Sum.
  - 3) That the costs of this application be provided for.

**Background Facts**

2. The Applicant filed an Advocate/Client Bill of Costs against the Respondent, it's Client. The Bill of taxed at Kshs. 1,132,503.00/=. The Advocate proceeded to have the judgment entered against the



Respondent in respect of the certificate of the taxed costs. The judgment was entered on 28.9.2022. This was for a sum of Kshs.1,132,503.00/=, plus costs and interest at 14% per annum from 21.06.2021 until payment in full. A decree to that effect was issued on 5.10.2022.

3. Attempts to recover the said amount by executing the Decree against the Respondent have not been successful. The Auctioneers entrusted with warrants of attachment and sale of the Respondent's movable goods were unable to trace any of its assets.
4. The Applicant, seeks the aid of this Court to pierce or lift the corporate veil of the Respondent so that they can proceed against the Respondent's Directors personally.
5. The Respondent appointed the firm of Chris N. Mutuku & Co. Advocates to represent them in these proceedings. The Court notes that save for a Notice of Appointment of Advocates dated 2.4.2024, they have not filed any other documents.
6. One John Ndegwa a Director of the Respondent has filed a Replying Affidavit sworn of 13<sup>th</sup> July 2025 with annexures. The Court will refer to the contents of the affidavit in its analysis.

### **Issues for Determination**

7. Having perused the application, the response filed by a single Director and the submissions of the Applicant, the Court frames two issues for determination:
  - a) Whether the Court should pierce or lift the corporate veil of the Respondent Company.
  - b) Whether the Directors of the Respondent should be held personally liable to satisfy the decretal sum.

### **Analysis**

8. The application is hinged on the provisions of Order 22 Rule 35 of the Civil Procedure Rules, which states as follows:

35. Examination of judgment-debtor as to his property

[Order 22, rule 35.]

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,

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 Applicant relies upon the decision in *Masefield Trading (K) LTD v Rushmore Company Limited & another* [2008] KEHC 798 (KLR). In that decision the Court stated as follows as relates to Order 22 Rule 35 of the Civil Procedure Rules;

“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.”

10. The Applicant also cites the case of *Ultimate Laboratories vs. Tasha Bioservice Limited Nairobi* HCCC No. 1287 of 2000 (unreported) where it was held as follows:

“However, that fundamental principle of incorporation may be disregarded, lifted, or pierced in exceptional circumstances both under express statutory provisions (of which Section 323 of the *Companies Act* is but one example only) and under judicial interpretation or intervention. As regards the latter, English authorities establish the broad principle that the corporate veil will be lifted by the courts if, among other situations, corporate personality is being used as a mask for fraud or improper conduct (See the cases of *Gilford Motor Co. Vs. Horne* [1933] Ch. 935 and *Jones Vs. Hipman* [1962] 1W.L.R. 832).”

11. The Court as a starting point is guided by the principles set out in *Solomon vs A Solomon & Co. Ltd.* [1987] AC 22. This English House of Lords decision has been applied to our jurisdiction. This is to the effect that a company enjoys a separate legal personality from the Directors.

**a) Whether the Court should pierce or lift the corporate veil of the Respondent company.**

12. The reasons advanced by the Applicant is that it is unable to trace any of the Respondent’s assets. So it intends to go against the Directors of the Respondent personally. For that reason, it seeks for leave to lift the corporate veil. This will enable it peer into the structure and personalities behind the company. This is with a view to tracing any attachable assets.
13. On 27.11.2024, this Court granted the Applicant prayers to serve summons upon the Directors of the Respondent named. This was for purposes of having them cross-examined as to the affairs of the company.
14. Save for the Replying Affidavit filed by John Ndegwa, the Directors did not honour the summons. The other Directors have not filed any responses.
15. This therefore set the stage for the lifting of the corporate veil.
16. The Court refers to the decision in *Nyaga v Nyapela & another; Chhabhadiya Enterprises Limited (Third party)* [2025] KEHC 6150 (KLR). *Omido J* citing *Palmers Company Law Vol. 1 (22nd Ed)* cites 10 instances in which the corporate veil of a company may be lifted as follows:

- “1. Where companies are in the relationship of holding and subsidiary companies;
2. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
3. In certain matters relating to taxation;



4. In the law relating to exchange control;
5. In the law relating to trading with the enemy;
6. In the law of merger control in the United Kingdom;
7. In competition of the European Economic Community;
8. In abuse of law in certain circumstances;
9. Where the device of incorporation is used for some illegal or improper purpose; and
10. Where the private company is founded on personal relationship between the members.”

17. The Court also went on to set out the proper procedure to be followed as follows:

“The court in *Jepkemoi* (supra) then went on to observe as follows while considering the text in *Palmer's Company Law Vol. 1* (22nd Ed) and as discussed in the case of *Mugenyi & Co. Advocates* (supra):

22. It is therefore evident that in a case such as the instant one, the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smacks of bad faith and that the corporate veil is being used as a mask to fraudulently shield such directors or shareholders from execution of the decree. The veil may therefore be pierced where it appears that the business of the company has for instance been carried on with intent to defraud creditors of any other person or for any fraudulent purpose. Only where justice of the case demands should the corporate veil be disregarded and lifted.
23. The proper procedure before a Court determines whether to lift the veil of incorporation is to first summon such directors to Court to be orally examined as to whether it has any and/or what property and/or means of satisfying the decree. The directors may in the process be also called upon to produce any books of accounts or documents, for purposes of scrutiny. It is during this process that the Court may then determine whether the directors are guilty of bad faith, or willful acts meant to avoid settlement of the decree or even outright fraud. Should the existence of such circumstances be established, then the Court may go ahead to lift the corporate veil and hold the directors or shareholders personally liable to settle the decree.”

18. In *PCEA Tumu Tumu Hospital v Medicomp Techno Services* [2025] KEHC 3053 (KLR) Lady Justice Maureen Odero stated as follows:

- “16. It is a well-established principle of law and indeed is a foundation of company law That a company has corporate legal personality. In other words, a company is recognized as a legal entity separate and distinct from its members [see *Salmon v Salmon Company Limited* 1897 AC 22].
17. As a general rule the Directors/Shareholders of a company will not be held liable for the debts or other obligations of the company due to the principle



of separate corporate legal personality. Therefore, one cannot pursue the Directors for a debt owed by the company.

18. However in certain cases upon application the courts may 'lift the corporate veil' i.e go behind the company to identify its Directors/shareholders who can then be held personally liable for the debts for the debts of the company.

19. In the case of *Jones and Another v Lipman & Another* [1962] 1WLR 833 it was held:

“Whereas a registered company is a legal person separate from its members, the veil of incorporation may, however, be lifted in certain cases for instance, where it is shown That the company was incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from the eyes of equity”.

20. Halsburys Laws Of England 4th Edition at Paragraph 90 reads 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 status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as 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 pierced.”

21. The doctrine of lifting the corporate veil was discussed widely in *Banks on Sentence: Volume 1, 22 Confiscation: Proceeds of Crime Act 2002 22.47 Evidence - Companies - Piecing/lifting the corporate veil* as follows:

“.....In each case the prosecution invited the court to pierce the corporate veil. Held para 76 This legal principle is That a duly formed and registered company is a separate legal entity from those who are its shareholders and it has rights and liabilities That are separate from its shareholders, *Salomon v A Salomon and Co Ltd* [1897] AC 22 and *Customs and Excise v Hare* [1996] 2 All ER 391 at 401F. A court can ‘pierce’ the carapace of the corporate entity and look at what lies behind it only in certain circumstances. It cannot do so simply because it considers it might be just to do so. Each of these circumstances involves impropriety and dishonesty. The court will then be entitled to look for the legal substance, not just the form. In criminal cases the courts have identified at least



three situations when the corporate veil can be pierced. First, if an offender attempts to shelter behind a corporate facade or veil to hide his crime and his benefits from it, see *Customs and Excise v Hare* 1996 2 AER 391, at 402A, *CPS v Compton* [2002] EWCA Civ 1720, paras 44-48, and *R v Grainger* [2008] EWCA Crim 2506, PARA 15. Second, where an offender does acts in the name of a company which (with the necessary mens rea) constitute a criminal offence which leads to the offender's conviction, then 'the veil of incorporation if not so much pierced as rudely torn away', *Jennings v CPS* [2008] UKHL 29 para 16. Third, where the transaction or business structures constitute a 'device', cloak' or 'sham', i.e an attempt to disguise the true nature of the transaction or structure so as to deceive third parties or the courts separate legal personality is being abused for the purposes of some relevant wrongdoing. The difficulty is to identify what is relevant wrongdoing. Two principles lie behind the terms. First, the concealment principle, which enables the court to identify the real actors where they are being concealed. This does not involve piercing the corporate veil. The evasion principle is different and does involve piercing the corporate veil. There is a legal right against a person in control of 'it' 1 which exists independently of the company's involvement, and a company is interposed so the separate legal personality of the company will defeat the right or frustrate its enforcement. (The court then listed case examples.) para 34 The corporate veil may be pierced only to prevent the abuse of corporate legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control, the court may pierce the corporate veil. That is only for the purpose of depriving the company or its controller of the advantage That they would otherwise have obtained by the company's separate legal personality. This principle is a limited one. If it not necessary to pierce the corporate veil it is not appropriate to do so."

22. Lifting of the corporate veil involves a situation where the court will disregard the principle of separate legal personality in respect of a company and will hold the Directors and/or shareholders of said company personally liable for the company's actions or debts. However, courts are normally very cautious in lifting the corporate veil and will only take such action in particular circumstances. e.g. in cases where there is proof of fraud a sham company etc."
19. The Court notes that by failing to appear in honour to the summons; the Directors of the Respondent have paved the way for the piercing of the corporate veil.



**b) Whether the Directors of the Respondent should be held personally liable to satisfy the decretal sum.**

20. The Court refers to the decision in *Jayden Limited v Bradley Limited* [2021] KEHC 127 (KLR) which cited the case of *Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd & Anor* [2002] EA 41 (unreported) as follows:

“The veil of incorporation is not to be lifted merely because the company has no assets or it is unable to pay its debts and is thus insolvent. In such a situation, the law provides for remedies other than the director of the company being saddled with the debts of the company.”

21. The Court has perused the Replying Affidavit of John Ndegwa filed in response to the application.

22. The Director owns up to the fact that the Applicant is owed legal fees for work done. This issue had been actively discussed among the Directors of the Respondent as per the WhatsApp messages attached.

23. The Respondent did recover fees of Kshs.6,537,323.60 from the Nyandarua County Government. These fees were channeled to the Respondent’s DTB Account No. 0277xxxxxx to which John Ndegwa was not a signatory. This was instead of the Equity Account No. 1620278xxxxxx where all Directors were signatories.

24. John Ndegwa further deponed as follows:

“This action of my co-directors was in breach of trust and undermined the integrity of the company and its creditors. It is in violation of the agreement that any payment made to the Judgment Debtor would be prioritized towards off setting pending debts, including the decretal sum owed to the decree holder”

25. John Ndegwa goes on to depone that significant portions of the monies deposited into the DTB account was later transferred to personal accounts. This includes a sum of Kshs.3,587,127/= transferred to Simon Mbote’s Personal Account No. 024029xxxxxx held at Equity Bank. Simon Mbote is a director of the Respondent.

26. From the response filed, the Court is satisfied that the funds of the Respondent which ought to have been used to pay off the creditors were utilized by some of the Directors.

27. A proper case for holding the Directors of the Respondent liable to answer to the company’s debts has been made out. The funds of the company were converted to some of the Directors personal use instead of being used to settle liabilities. Some of the Directors of the Respondent did not respect the boundaries between company funds and personal funds. The company was therefore used as a vehicle to spirit away monies earned and channel them to the Directors. By this admission by one of the Directors, this was a sham arrangement. The Company was being used as an alter ego of these Directors. To them the Company and the Directors were one and the same thing.

28. As to costs, the same are awarded to the successful Applicant to be recovered in the same manner as the Decree herein.

**Determination**

29. The Application by way of a Notice of Motion dated 23.10.2023 is allowed as follows



- 1) That the Court allows the piercing and or lifting of the corporate veil of the Respondent company.
- 2) That in default of the Directors of the Respondent's to attend Court and/or provide suitable means and assets for the satisfaction of the decree, as previously directed through Court Summons, the Directors be held personally liable to satisfy the Decretal Sum.
- 3) That the costs of this application are awarded to the Applicant to be recovered in the same manner as the Decree herein.

29. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 02<sup>ND</sup> DAY OF OCTOBER, 2025.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Miss Mwangi for the Applicant.

N/A for the Respondent.

Mr. Peter Wabwire - Court Assistant.

