

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISC. APPLICATION NO. E206 OF 2022

HON. JUSTICE ALEEM VISRAM

16TH OCTOBER, 2025

STANBIC BANK LIMITED.....DECREEHOLDER/APPLICANT

VERSUS

LLOYD MASIKA LIMITED.....JUDGMENT DEBTOR/RESPONDENT

RULING

1. The Court has considered the Notice of Motion dated 20th September, 2023, the supporting affidavit of Collins Sabatia sworn on the same date, the Grounds of Opposition dated 4th March, 2024, the replying affidavits sworn on 13th March, 2024, by the directors of the Judgment Debtor, and the written submissions filed by both parties.
2. The Applicant seeks orders under Order 22, rule 35 of the Civil Procedure Rules compelling the directors of the Judgment Debtor to produce company documents and to attend court for oral examination as to the debts owing and means of satisfying the decree. The Applicant further seeks, at a later stage,

orders for lifting of the corporate veil if evidence of fraudulent transfer of assets is established.

3. The background is that pursuant to an arbitral award dated 20th December, 2021, as confirmed by this Court on 27th January, 2023, a decree issued on 5th April, 2023, in the sum of Kshs.58,286,634/= in favour of the Applicant. Execution through public auction realized only Kshs.1,130,500/=, of which Kshs. 706,335.40/= was remitted to the Applicant. The decretal balance remains unpaid.
4. The Applicant states that it is unaware of any attachable assets belonging to the Judgment Debtor, which is a limited liability company. It therefore prays that the directors be ordered to produce books of account, bank statements, title documents, and any other records necessary to ascertain the company's assets and liabilities. It relies on Order 22, rule 35 and the authorities of *Masefield Trading (K) Ltd v Rushmore Company Ltd [2008] eKLR*, *Kenya Bus Services Ltd v Mwaura Karuga [2019] eKLR*, and *Ramaben Patani v Garden Chambers Ltd [2019] eKLR*.
5. The Respondent, through its directors, opposes the application on grounds that it has already instituted Nairobi HCCOM No. E258 of 2023 against UAP Insurance to enforce a professional indemnity policy worth Kshs.

500,000,000/=, taken pursuant to the Service Level Agreement executed with the Applicant. It argues that this policy constitutes a chose in action capable of satisfying the decree and that the application is therefore premature.

6. It is further contended that the Applicant is aware of the existence of this insurance policy as it was a contractual requirement under clause 3.2.8 of the Service Level Agreement. The Respondent asserts that the pending suit against UAP Insurance represents an existing property right protected under Article 40 and Article 260 of the Constitution, and that the present application is intended to embarrass and blackmail the directors.
7. The issue for determination is whether, under the circumstances, the directors of the Judgment Debtor ought to be summoned for oral examination and ordered to produce the company's documents in aid of execution.
8. Order 22, rule 35 of the Civil Procedure Rules provides that where a decree is for the payment of money, the decree-holder may apply for the examination of the Judgment Debtor or, in the case of a corporation, any of its officers, as to whether any debts are owing to the Judgment Debtor and whether it has property or means of satisfying the decree.
9. The rule confers upon the Court a discretionary power to summon any officer of a company to assist in discovery of assets for purposes of execution. The

examination is in the nature of discovery and does not of itself impose liability on the directors. The Court of Appeal in *Kenya Bus Services Ltd v Mwaura Karuga (supra)* emphasized that this process aids in identifying what property or means exist for satisfaction of a decree.

10. The Respondent's argument that it possesses a chose in action through the insurance claim does not, in my view, preclude the decree-holder from invoking Order 22, rule 35. The purpose of this provision is to enable the decree-holder to obtain information on the company's assets and financial affairs. Whether or not the insurance claim ultimately satisfies the decree is a separate question that does not foreclose discovery of other potential assets.

11. The Court in *Robert Kinaga Waweru v Northcorr Enterprises Ltd [2011] eKLR* observed that directors of a Judgment Debtor company must give a full account of the company's assets, and it would be inequitable for the Court to close its eyes to possible concealment of such assets.

12. Accordingly, I find that the Applicant has satisfied the threshold for the Court to invoke its powers under Order 22, rule 35. The process, as correctly submitted by Counsel for the Applicant, is a two-stage one: first, the production of books and documents; and second, the cross-examination of

directors thereafter to determine whether further orders, including lifting of the corporate veil, are warranted.

13. In the result, the Notice of Motion dated 20th September, 2023, is allowed in the following terms: -

(a) The Judgment Debtor shall, within twenty-one (21) days from the date hereof, produce and furnish to the Applicant copies of its books of account, audited financial statements, bank statements, title documents, and such other records relevant to the execution of the decree.

(b) Upon compliance, the Applicant shall be at liberty to apply for the cross-examination of the directors of the Judgment Debtor at a date to be fixed by the Court.

(c) Costs of this application shall be borne by the Judgment Debtor.

14. It is so ordered.

Dated and delivered virtually via Microsoft Teams this 16th day of October, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lisper

.....for Decree Holder/Applicant

.....for Judgment Debtor/Respondent

ORIGINAL