



**Skylark Impex Limited v Cytonn High Yield Solutions LLP & another; Dande & another (Interested Parties) (Miscellaneous Application E022 of 2021) [2025] KEHC 13958 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13958 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E022 OF 2021  
FG MUGAMBI, J  
OCTOBER 3, 2025**

**BETWEEN**

**SKYLARK IMPEX LIMITED ..... CLAIMANT**

**AND**

**CYTONN HIGH YIELD SOLUTIONS LLP ..... 1<sup>ST</sup> RESPONDENT**

**CYTONN INVESTMENTS MANAGEMENT PLC ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**EDWIN HAROLD DAYAN DANDE ..... INTERESTED PARTY**

**STANDARD CHARTERED BANK [K] LTD ..... INTERESTED PARTY**

**RULING**

1. This dispute traces its origin to an arbitral award issued against the respondents (CHYS and CIM) in favour of the claimant (SKYLARK) for Kshs. 25,000,000/= together with simple interest at 15.5% per annum from 24<sup>th</sup> December 2019 until payment in full. Skylark thereafter moved the court for recognition and enforcement of the award as a decree. That application was allowed on 14<sup>th</sup> September 2021, and a corresponding decree was subsequently issued on 20<sup>th</sup> September 2021.
2. The present application therefore is in the nature of execution proceedings. It is dated 6<sup>th</sup> October 2021 seeking, among other orders, the examination of Edwin Harold Dayan Dande (Mr. Dande), a partner in CHYS and a director of CIM, on the means through which the respondents intended to satisfy a decree arising from an arbitral award of Kshs. 25 million. Skylark also sought leave to execute the decree against Mr. Dande personally, particularly through the attachment of his property known as Villa No. 7, measuring 495 square feet, situated on IR No. 199616 (the suit property).



3. Upon considering the application together with the responses in opposition, this Court, in a ruling delivered on 30<sup>th</sup> September 2022, directed that summons issue to Mr. Dande requiring him to attend court for examination and to give evidence on oath regarding the respondents' means and assets available to satisfy the decree. This Court further held that the question of lifting the corporate veil, with a view to holding Mr. Dande personally liable for the decretal sum, could only be determined after such an examination.
4. Consequently, Mr. Dande was cross-examined on 26<sup>th</sup> November 2024 and 16<sup>th</sup> December 2024. Thereafter, the parties filed their written submissions which I have carefully considered alongside the pleadings. The sole issue for determination is whether the court ought to lift the corporate veil and hold Mr. Dande personally liable for the decretal amount.

### **Analysis and Determination**

5. The principles governing the examination of directors and the making of consequential orders are well established in judicial pronouncements. By way of illustration, in *Masifield Trading (K) Ltd V Rushmore Co Ltd & Another*, [2008] eKLR the Court held:

“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.”

6. Similarly, in *Valentine Opiyo & Another V Masline Adhiambo T/A Ellyams Enterprises*, [2014] KEHC 8829 (KLR), the Court reaffirmed the principle laid down in *Salomon V Salomon*, [1897] AC 78, noting that while a company is a separate legal person, the veil of incorporation may be lifted in certain circumstances. The Court, citing *Halsbury's Laws of England* (4<sup>th</sup> Edition) para 90, emphasized that the veil may be pierced where there is fraud, improper conduct, or where the character of the company and the nature of those controlling it are material considerations. In such instances, the Court will look beyond the company's separate legal personality.
7. The position was reiterated in *Jiang Nan Xiang V Cok Fas-St Co Ltd*, [2018] KEHC 10230 (KLR), where the Court stated:

“I find that the law on lifting the veil of incorporation is now settled. The circumstances under which a veil of incorporation would be lifted are inter alia where there is no real formal legal separation between the Company and its shareholders' personal financial affairs and/or that the Company is just a sham or the Company's actions were wrongful or fraudulent, or if the shareholders and/or directors act recklessly in the management of the business of the Company and/or design a scheme, to perpetrate financial fraud, and/or if the Company's creditors suffer unjust cost, that is, they did business with the Company and they are left with unpaid bills or unpaid Court judgment. In all these circumstances, the Court will pierce the veil of incorporation and hold the shareholders and/or the directors personally liable.”

8. From the foregoing authorities, it is clear that the decision whether or not to pierce the corporate veil is fact-specific, to be made upon careful scrutiny of the evidence presented in each case. It is against this background that I now turn to consider the pleadings, testimony, and submissions before me.
9. During cross-examination, Mr. Dande testified that as of December 2019, the respondents possessed sufficient resources to pay premiums on the investments made by investors such as the claimant.



However, the onset of the COVID-19 pandemic, coinciding with the maturity of Skylark's security, triggered a surge of withdrawals which impaired their ability to meet financial obligations.

10. Mr. Dande explained that the 2<sup>nd</sup> respondent was tasked with managing projects undertaken by various Special Purpose Vehicles (SPVs) in which CHYS had invested. From this mandate, CIM earned management fees. Together with his partnership interest in CHYS, these formed the basis for issuing a Deed of Guarantee to investors, with the expectation of honouring it if called upon.
11. However, the subsequent liquidation and preservation orders from the insolvency court froze the assets of the SPVs, depriving CIM of both its management fees and access to partnership interests, which are now under the control of the Official Receiver. This effectively prevented the respondents from satisfying the decree.
12. He further testified that CIM is a partner in Cytonn Partners Three LLP, the entity from which he purchased the suit property. He stated that the acquisition was financed by a loan from the 2<sup>nd</sup> interested party (the Bank), and that the same was undertaken lawfully.
13. The record indeed confirms the existence of a charge dated 11<sup>th</sup> March 2019 registered against the suit property in favour of the Bank with Mr. Dande as the Chargor. A facility offer letter dated 20<sup>th</sup> November 2018 for Kshs. 55,796,000/= was also produced in support of the interested party's application dated 15<sup>th</sup> May 2023. I am satisfied that although Mr. Dande was a director of CIM, this did not preclude him from purchasing property from one of the SPVs, provided the transaction was above board. At least no evidence to the contrary has been presented before me. There is no evidence of fraud or illegality in the acquisition of the suit property.
14. The objective of the cross-examination was to have Mr. Dande account for the respondents' capacity to satisfy the decree. From the record, his testimony sufficiently explained the circumstances that impeded payment of the decretal sum. Skylark did not present any evidence to controvert or displace that account. In the result, Skylark has failed to establish the exceptional conditions necessary to justify piercing the corporate veil as set out in the authorities earlier cited.
15. It is also trite that the corporate veil cannot be pierced merely because a company lacks assets or is unable to meet its debts. On this point, I am guided by the holding in *Carey Ngini V Dennis O. Ogolla & Another*, [2010] eKLR, where the Court, citing *Corporate Insurance Co Ltd V Savemax Insurance Brokers Ltd & Another*, [2002] 1 EA 41, stated:

“The veil of incorporation is not to be lifted merely because the company has no assets or is unable to pay its debts and thus insolvent. In such a situation, the law provides a remedy other than the director of the company being saddled with the debts of the company.”
16. Moreover, the examination revealed that CIM has more than one director. It would be inappropriate to isolate a single director for personal liability. To do so would offend Article 27 of *the Constitution*, which guarantees equality and freedom from discrimination. This position was affirmed in *Peter O. Ngoge T/A O.P. Ngoge & Associates V Ammu Investment Co Ltd*, [2012] KEHC 1133 (KLR).
17. In the end, I find that Skylark has not discharged the burden of proving fraud, impropriety, or other grounds sufficient to warrant lifting the veil of incorporation. The cross-examination of Mr. Dande equally did not reveal such factors. I agree with the submission made by Mr Dande that Skylark, as a creditor of CHYS now in liquidation, must pursue its claim through the liquidation proceedings alongside other creditors.



**Disposition**

18. Accordingly, I decline to grant the order to lift the corporate veil in order to hold Mr. Dande personally liable for the decretal amount. The application dated 6<sup>th</sup> October 2021 is dismissed with costs. The interim orders restraining Mr. Dande from dealing with the suit property are hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

**F. MUGAMBI**

**JUDGE**

