



**Kioko & 3 others v Primi Piatti Limited & another (Cause  
1322 of 2016) [2025] KEELRC 2911 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2911 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1322 OF 2016  
AK NZEI, J  
OCTOBER 24, 2025**

**BETWEEN**

**JOHN MUKOSI KIOKO ..... 1<sup>ST</sup> CLAIMANT  
JOSEPH LUSAKA ..... 2<sup>ND</sup> CLAIMANT  
JANE WANGARI ..... 3<sup>RD</sup> CLAIMANT  
GEOFFREY SAFARI NTHENGE ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**PRIMI PIATTI LIMITED ..... 1<sup>ST</sup> RESPONDENT  
ALEXANDER CHOCOLATIERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. According to the Court’s record herein, Judgment was on 24<sup>th</sup> February, 2024 entered for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants against the 1<sup>st</sup> Respondent, and also awarding the said Claimants costs of the suit and interest at Court rates, from the date of Judgment till payment in full. Costs are shown to have been subsequently taxed, and a decision thereon rendered vide the Taxing Officer’s Ruling shown to have been delivered on 19<sup>th</sup> July, 2022.
2. The Court’s record further shows that on 25<sup>th</sup> January, 2024, the Claimant/Decree holders filed an application dated 16<sup>th</sup> January, 2024 seeking the following Orders:-
  - a. Spent.
  - b. That leave be granted to the Claimants to effect service of the application upon the Respondents both through its Counsel on record.



- c. That summons do issue to compel the known 1<sup>st</sup> Respondent/Judgment Debtor's Director, Michel Mouryart, to attend Court on such date as may be ordered, to be orally examined on oath as to the 1<sup>st</sup> Judgment Debtor's means.
  - d. That consequent to the grant of prayer (c) above, the said director be ordered to produce the 1<sup>st</sup> Respondent/Judgment Debtor's books, papers, documents and/or evidence showing the affairs of the 1<sup>st</sup> Respondent/Judgment Debtor company.
  - e. That in default of attendance and/or providing suitable means and assets for the satisfaction of the decree of the Court, the said Director be held personally liable to satisfy the decree of the Court in full including, without limitation, the taking out of warrants of arrest against the said Director and subsequent incarceration.
  - f. That costs of the application be borne by the 1<sup>st</sup> Respondent/Judgment Debtor and/or its Director in any event.
3. The application, expressed to be brought under Order 22 Rule 35 of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#), is anchored on the supporting affidavit of John Mukosi Kioko, the 1<sup>st</sup> Claimant/Applicant, sworn on 30<sup>th</sup> November, 2023. It is deponed in the said affidavit; inter-alia:-
- a. that Judgment in the suit herein was entered on 24<sup>th</sup> February, 2024, in the Claimant/Applicant's favour, and that a decree subsequently issued.
  - b. that execution issued, but the Auctioneers could not locate the 1<sup>st</sup> Respondent/Judgment Debtor.
  - c. that during objector proceedings conducted herein on behalf of the 2<sup>nd</sup> Respondent/Objector, it came to the Claimant/Applicant's attention that directors of the 2<sup>nd</sup> Respondent/Objector and the 1<sup>st</sup> Respondent/Judgment debtor are the same people; that the two companies would operate as one entity; and that the 2<sup>nd</sup> Respondent has carried on with the business of the 1<sup>st</sup> Respondent/Judgment Debtor.
  - d. that the 2<sup>nd</sup> Respondent's director admitted, on oath, to being the director of the 1<sup>st</sup> Respondent/Judgment debtor as well.
  - e. that the decretal sum ordered by the Court remains unpaid, thus defeating the execution ordered by the Court.
  - f. that though the general principle of company law is that a company has a separate personality from its shareholders, the directors can be held personally liable for the company's debt if the directors are involved in fraudulent activities regarding the company.
  - g. that in the present case, directors did not act in good faith.
4. Documents annexed to the said supporting affidavit include copies of the Court's Judgment delivered on 24<sup>th</sup> February, 2024 (Dr. Jacob Gakeri, J), the decree, CR12 on the 2<sup>nd</sup> Respondent herein, and a supporting affidavit of Michel Mouyart sworn on 5<sup>th</sup> October, 2022, among other documents.
5. When the matter first came up before me on 9<sup>th</sup> October, 2024, Counsel for the Claimant/Applicant informed the Court that the Respondent's Counsel had ceased acting and that the application had been served on the Respondent's Director via WhatsApp. I have noted from the Court's record that the Court granted leave for the application to be served by way of substituted service.



6. There was no appearance on the part of either the 1<sup>st</sup> Respondent/Judgment debtor or its director named in the application. Counsel for the Claimant/Applicant prayed for issuance of summons on the Respondent's director as sought in prayer (c) of the application, which the Court granted; and ordered that the Respondent's director, Michel Mouyart, do attend Court virtually on 19<sup>th</sup> November, 2024 for purposes of being examined on oath on the Respondent/Judgment debtor's means and assets. Further, the Court directed that summons be extracted by the Court's Deputy Registrar, for service on the Respondent's said Director by the Claimant/Applicant's Counsel.
7. Summons were not served, and on the aforesaid date (19<sup>th</sup> November, 2025) the Court extended the same, and directed that they be served on the said director, to appear virtually in Court for examination on oath on 11<sup>th</sup> February, 2025.
8. On 11<sup>th</sup> February, 2025, Counsel for the Respondent's said Director, Mr. Mungai, attended Court and sought to be granted fourteen (14) days to file response to the Claimant/Applicant's application. The Court granted Counsel's request, and gave the following Orders:-
  - “(a) Mr. Mungai Advocate shall forthwith file and serve an appropriate Notice of Appointment of Advocates.
  - (b) The 1<sup>st</sup> Respondent's Director, Michel Mouyart, shall file and serve response to the Notice of Motion dated 16/1/2024 within 7 days of today's.
  - (c) Hearing of the application on 11/3/2025 when the said Director will also be virtually examined on oath as ordered by this Court on 9/10/2024.”
9. On 11<sup>th</sup> March, 2025, the Court was told that a replying affidavit had been filed outside the time given by the Court, and that the Respondent's Director was virtually present in Court. Counsel for the Claimant, however, objected to the replying affidavit on ground that the same had been filed out of time; and that he had just seen it on the CTS and printed it. There being no request by Counsel for the Respondent's said Director that the replying affidavit be admitted on record out of time, the Court made the following Orders:-
  - “(a) The replying affidavit said to have been filed today (11/3/2025) was filed outside the time given by the Court on 11/2/2025, and was filed without leave. The same is hereby struck off.
  - (b) The Respondent/Judgment debtor's Director shall be (virtually) examined on oath as ordered by this Court, and this shall be done at 12.15 p.m today.”
10. When the matter eventually came up for examination of the Respondent/Judgment debtor's said director on the aforesaid date, the Director's Advocate informed the Court that the said Director's microphone had malfunctioned. The Court gave the following Orders:-
  - “(a) In view of what appears to be a malfunction of the JD's Director's (Mr. Michel Mouyart's) microphone, the examination of the said Director that was scheduled for today is hereby adjourned.
  - (b) The said Director will be virtually examined on oath on 7/5/2025 as earlier ordered.”



11. On 7<sup>th</sup> May, 2025, Counsel for the Respondent/Judgment Debtor's Director, Mr. Mungai, addressed the Court as follows:-

“Pursuant to the striking off of the director's replying affidavit on 11/3/2025, the director is unable to defend himself. We are, therefore, leaving the matter to this Court to make a determination without the director's participation. We have not filed an application for leave to file a replying affidavit out of time. The Court may proceed and give directions on the application dated 16/1/2024.”

12. The Court, upon hearing Counsel for both parties (on 7<sup>th</sup> May, 2025) directed as follows:-

- “(1) In view of submissions presented today by Counsel for the Decree Holder/Applicant and Counsel for the Director/Respondent (Michel Mouyart), the Notice of Motion dated 16/1/2025 shall be canvassed by way of written submissions.
- (2) The Decree Holder/Applicants shall file and serve written submissions on the application within 21 days of today.
- (3) The Director (Michel Mouyart) may file written submissions (possibly on matters of law) within 21 days of today.
- (4) Hard copies of filed written submissions shall be placed in the Court's file.
- (5) Any cited and filed caselaw shall be appropriately highlighted.
- (6) Mention on 17/7/2025 for fixing of a Ruling date.”

13. On 17<sup>th</sup> July, 2025, Counsel for the Claimant/Decree holder informed the Court that he had filed and served written submissions. Counsel for the Respondent/Judgment Debtor's Director, Mr. Mungai, addressed the Court as follows:-

“Submissions were to be filed in respect of an application dated 16/1/2024. We had filed a replying affidavit dated 10/3/2025 which the Court struck off for having been filed out of time. Since the prayers sought (Nos. 4 and 5) are on matters of fact, and our replying affidavit was struck off, we leave it to the Court to make a Ruling without our submissions.”

14. I have deliberately, and for good cause, substantially reproduced the proceedings taken herein since I became seized of the matter herein.

15. In my view, issues that fall for determination are as follows:-

- a. Whether documents filed out of time and without the Court's leave are of any legal validity.
- b. Whether orders sought by the Decree Holder/Applicants are merited.

16. On the first issue, a document filed outside a period of time specifically limited by the Court, if filed without the Court's leave, is invalid and an illegality, and can only be struck off. In the present case, seven days' leave was on 11<sup>th</sup> February, 2025 granted to the Respondent/Judgment debtor's Director to file a replying affidavit. No replying affidavit was filed until 11<sup>th</sup> March, 2025, which was approximately one month later, and without leave. No leave was subsequently sought, orally or formally, to have the replying affidavit deemed as having been filed within time. The Claimant/Applicant objected to the said document and the Court struck it off.



17. Court orders are meant to be complied with. Anything done outside any period of time limited by either the law or by an order of the Court, without the Court's leave, is a nullity and is of no legal consequence.
18. On the second issue, it ought to be noted that the application herein stands unopposed, in view of all the foregoing. On whether the prayer for imposition of personal liability regarding the Court's decree herein should issue against the Respondent/Judgment debtor's said Director, such a prayer can only be granted upon lifting and/or piercing of the Respondent/Judgment Debtor's corporate veil. There is no prayer (in the application) for lifting and/or piercing of the Respondent/Judgment debtor's corporate veil; which is an equitable remedy, and which has to be specifically sought and the matter considered based on principles and considerations established by Courts of equity over the years. Parties will forever be bound by their pleadings.
19. The Notice of Motion dated 16<sup>th</sup> January, 2024 is incompetent and is incapable of being granted; and is hereby struck off with no order as to costs. The Claimant/Decree Holders may file a proper application for consideration by the Court, if they so wish.
20. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Kandere for the Claimant

Miss Wambui for the Respondent

