



REPUBLIC OF KENYA



KENYA LAW
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**Kabiruri t/a Janetek Enterprises v Warute & 4 others (Civil Suit
68 of 2020) [2025] KEHC 15407 (KLR) (Civ) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 68 OF 2020

JN MULWA, J

OCTOBER 30, 2025

BETWEEN

JANE WANJIRU KABIRURI T/A JANETEK ENTERPRISES PLAINTIFF

AND

PAUL MWANGI WARUTE 1ST DEFENDANT

MERCY WANGUI GICHEMA 2ND DEFENDANT

JAMES WARUTERE NJEGE 3RD DEFENDANT

TOPMAX MEDIA LIMITED 4TH DEFENDANT

NEWTRAL ENTERPRISES LIMITED 5TH DEFENDANT

RULING

1. The plaintiff herein, by the application dated 11/10/2024 seeks orders of the court to restrain the 2nd and 3rd Defendants Mercy Wangui Gichema and James Warutere Njege from selling charging or transferring properties known as Ngong/Ngong/91031 and Ngong/Ngong/91032 among other for having been acquired fraudulently by the Plaintiff.
2. The Respondents are Director and shareholders of the 4th Defendant Topmax Media Limited which is the judgment Debtor (JD) in the case; and therefore, the Plaintiff also seeks an order to be summoned to attend court to be examined as to the business and affairs of the company including production of its books of accounts of the 4th Defendant, on its means to satisfy the decree date of consent.
3. The application is premised on provisions of Section 18, 787, 996 and 1002 of the *Companies Act* of 2015 and Section 1A, 1B and Order 22 Rule 35 of the Civil Procedure Rules (CPR); and supported by the affidavit sworn on 11/10/2024 by Jane Wanjiru Kabiruri, the Plaintiff herein.



4. The Applicants case as seen from the supporting Affidavit is that upon judgment being entered against the 1st, 4th and 5th Defendants and decree being issued, they have failed to settle the decree yet the applicant believes that they are able and have means to settle the decretal sum.
5. It is further deponed that the Respondents are conduits of the 4th Defendant used to defraud the 4th Defendant company when they were directors, in particular in the acquisition of the two properties aforementioned and registration in their names, hence seeks to have the properties seized and sold to satisfy the decree; and therefore the applicant urges the court to lift the veil of incorporation and order the 2nd and 3rd Directors of the 4th Defendant be examined by the court as to the companies means to satisfy the decree.
6. The application is opposed. The 2nd Defendant swore the Replying Affidavit on 14/04/2025. It is her depositions that the application ought to be struck out for reasons that she was not a party to the consent judgment recorded on 17/02/2023, having been discharged from liability together with the 3rd defendant.
7. She posits that she is not a Director of the 4th Defendant having ceased from being a shareholder in the year 2020 and therefore the Plaintiffs attempt to lift the veil of incorporation of the 4th Defendant is misleading and abuse of court process to the two properties, the deponent states that the properties were acquired long before the dispute arose in 2017 and 2018 respectfully and that the Plaintiff has failed to show how they were acquired fraudulently, and that she bears no liability in her personal capacity under the consent judgment.

Finally, the 2nd Defendant/Respondent depones that the Applicant has not met the threshold for lifting the corporate veil of incorporation of the 4th Defendant.
8. In rejoinder to the Replying Affidavit, the Plaintiff swore a supplementary affidavit on 26/06/2025 reiterating her depositions in the supporting affidavit, that the 2nd Defendant was a director in the period 2017 and 2018 when the properties were acquired by using the 4th Defendant as a conduit to defraud her for which it is her deposition that she has not provided evidence to the contrary; and therefore in the circumstance, the application ought to be allowed.

Applicant's/Plaintiff's Submissions

9. By her submissions dated 28/04/2025, one issue is flagged for determination;- Whether the court should lift the veil of incorporation of the 4th Defendant and the directors be personally held liable to settle the decretal sum.

Citing the case of *Salmon V. Salmon* (1987) AC 78, and *Jones & Another* (1962) 1 WLR 833, wherein the court held that where it is shown that a company is incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from eyes of equity, the veil of incorporation ought to be lifted.
10. The Applicant in arriving at the conclusion that the company was used as conduit for fraudulent dealings, it relies on criminal cases against the Director, being Nairobi Criminal case No. 2155 of 2019; and Judicial Review No. E 190 of 2024 wherein the JR proceedings were dismissed as their claim of not being directors and/or involved in fraudulent conduct.
11. The Applicant further relies on the Court of Appeal case of *Riccatti Business College of East Africa Ltd. V. Kyanzavi Farmers Company Ltd* (2016) eKLR for the holding that the court may use its inherent jurisdiction to lift the veil of incorporation of a limited liability company when it is found to



be a sham, and acting as an agent of the shareholders or to evade tax revenues and thus urged the court to allow the application with costs being borne by the 2nd and 3rd Respondents.

2nd Defendant's Submissions dated 18/04/2025

12. This Defendant flagged the issue for determination thus;

Whether the 4th and 5th Defendants veil of incorporation should be lifted to impose personal liability against her; citing several decisions in the cases; Salmon V. Salmon (Supra); Victor Mabachi & Another v. Nurtun Bates Ltd [2013] eKLR, Multichoice Kenya Ltd V. Mainkam Ltd & James Maina Kamau Hcc. No. 492/2012; and Riccatti Business College (Supra).

13. The 2nd Defendant urged in many words that the veil of incorporation ought to be lifted on very special circumstances, in case of fraud or where it is a vessel for fraud, to defraud shareholders and where cogent evidence is provided that the company was used as mere façade for fraudulent purposes.

14. She further submitted that the Applicant has failed to establish fraud, dishonestly or misconduct against her to warrant lifting of the 4th and 5th Defendants veil of incorporation to hold her personally liable; citing decisions in cases :- Koinange & 13 others v. Charles Karunga Koinange[1986] KLR; and Charles Ray Makuto v. Almakony Ltd & Alphonse Masika Kongani (Civil Appeal No. 328 of 2013] for learned holdings that allegations of fraud must be strictly proved against the person sought to be held personally liable for acts that led to the loss or injury alleged.

15. Lastly, the 2nd Defendant submits that lifting of corporate veil and attachment of private property and examination of directors is a drastic remedy that should only be granted upon trial not as interim measure as held in Jepkemoi V. Zaburi Enterprises Co. Ltd & 2 Others [2024] KEHC 2343; and Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others [2014] eKLR.

Re-Edition of issues for Determination

- a. Whether the veil of incorporation of the 4th and 5th Defendants should be lifted, and the Directors be examined to hold them personally liable to settle the decretal sum.
- b. If the answer to (a) above is in the affirmative, whether the two properties Ngong/Ngong/91031 and 910332 should be attached and sold to satisfy the decretal sum.
- c. Who shall bear costs of the application

Analysis and Determination.

a. Whether the veil of incorporation of the 4th and 5th Defendant should be lifted, and the Directors be examined to hold them personally liable to settle the decretal sum.

16. It is trite that a company is a separate legal entity from its members and shareholders as ably held in the case of Salmon v. Salmon (Supra). That said, in this case, there is a consent Judgment and decree of the court dated 17/02/2023 as hereunder:-

By consent:-

1. That judgment is hereby entered against the 1st, 4th and 5th Defendants for the sum of Kshs. 15,400,000/= with interest at court rates from date of filing tis suit until payment in full.



17. By this application, it is evident that the judgment/debtors- 1st, 4th and 5th Defendants have failed to settle the decretal sum. The consent judgment has not been set aside or varied.

The Directors of the 4th Defendant Topmax Media Limited as at 9/09/2019 as per CR12 – Plaintiff’s Exhibit “JWK” are stated as Paul Mwangi, James Warutere and Mercy Wangui Gichema.

These Directors are the 1st and 2nd Defendants in the suit.

As at February 16, 2018 – CR12 exhibit “BK 4” – Mercy Gichema and Paul Mwangi were the Directors of Topmax Media Limited, the 4th Defendant.

The Newtral Enterprises, the 5th Defendants Directors as at 9/09/2012 CR12 “Exhibit 1B” were – Paul Mwangi and James Njenge.

It therefore evident that at the material times of this suit filed in 2020, the 1st, 2nd and 3rd Defendants were Directors of the 4th and 5th Defendants.

18. By the consent judgment entered on 17/02/2023, the 1st, 4th and 5th Defendants were held liable to the Plaintiff in the sum of Kshs. 15,400,000/= with interest at court rates.

Whereas, the 2nd Defendant Mercy Wangui Gichema in her replying affidavit to the instant application posits that the court absorbed her from liability, she was a Director of the 4th Defendant at the time.

19. Further, the two properties Ngong/Ngong/91031 and Ngong/Ngong91032 as per official searches dated 16/01/2020 exhibit BK”43” show the proprietor as Mercy Wangui Gichema, having been registered in her favour on 16/01/2020. Further whereas the said Mercy Wangui Gichema by the consent judgment, she was absorbed from liability, that did not negate the fact that she was a Director of the 4th Defendant. This was further confirmed by the court in the Judicial Review Application No. E190 of 2023 wherein the court affirmed by dismissal of her application that indeed as at 2024 she was a Director of the 4th Defendant.

20. It is therefore in order that the Plaintiff in pursuit of settlement of the decretal sum in her favour approached the court by the instant application to have the Directors of the 4th and 5th Defendants be examined as to the two companies means to satisfy the decretal sum.

21. Order 22 Rule 35 of the CPR provides:-

35: where a decree is for the payment of money, the decree Holder may apply to the court for an order;

- a. ...
- b. In the case of Corporation any officer thereof; or
- c. Any other person

Be orally examined as to whether 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 or any book or documents.

22. The court therefore finds the 2nd defendant’s replying affidavit to be full of untruths and misleading. In addition, whereas she states that as at date of the consent judgment was entered she was not a Director the 4th Defendant, she did not provide a CR12 for the year 2023 or 2024. In any event, the



consent judgment entered into on 17/02/2023 has not been challenged in any manner to the best of the court's knowledge.

23. The two properties stated in the motion were acquired by the 2nd Defendant in the year 2020. She was then a Director of the 4th Defendant. The only issue in respect of the properties is whether they were fraudulently acquired from the 4th Defendant's funds and assets. The Plaintiff is under obligation to not only state, but to strictly prove her allegations as held in the case of *Jebkemoi V. Zaburi Enterprises Co.* (Supra) wherein the court held that:-

“ the lifting of the corporate veil, attachment of private property and examination of directors are drastic remedies that should only be granted upon trial not as interim measure.

24. As earlier stated, pursuant to Order 22 of the CPR, a judgment holder may seek court orders to have directors or officers of a company attend court for cross-examination on the company's assets or means to satisfy the decree; or hold the directors personally liable to settle the decretal sum.

The Court of Appeal in *Riccatti Business College of East Africa Ltd* (Supra) while addressing the matter of lifting the veil of incorporation had this to say:-

“The court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. Thus jurisdiction may be exercised only in special circumstances where the court finds improper conduct, fraud or where a company is a sham, acting as an agent of the shareholders or evading tax revenue”.

25. The above sediments were earlier held in the case of *Jones & Another v. Lipman* (Supra) that:-

“...where it is shown that the company was incorporated with or was carrying on business as no more than a mask of device for enabling the directors to hide themselves from the eyes of equity. Corporate vehicle has been used to commit serious and mega frauds and corruption. And that realization has impelled the courts, in the interest of the law, the members in general or in public interest to identify and punish the persons who misuse the medium of corporate personality for fraudulent or improper or illegal acts...” (emphasis added.)

26. The court finds it quite inquisitive that among the directors of the two companies - the 4th and 5th Defendants only the 2nd Defendant has put up quite spirited submissions to absorb herself from any illegalities and or fraud as alleged by the plaintiff. The court gathering that the two properties are registered in her name, and the Plaintiff seeking an order restraining her from transferring or dealing adversely with the same says quite a lot, not in the negative manner but as evidenced in her submissions, noting that the said properties were acquired at the time the suit was filed, and while being a director of the two companies.

27. The court has taken judicial notice of the various court cases being criminal in nature against the Directors of the 4th and 5th Defendants. Of relevance is Nairobi Criminal case No. 2155 of 2019 and Criminal case No. E. 533 of 2024, as well as the JR application no. E190 of 2024 which was an attempt to have the criminal proceedings against them terminated but which was dismissed and the court holding that the respondents were not only directors of the companies but also that they were involved in fraudulent conduct.

28. It is to be noted that there is already a consent judgment against the Defendants herein. The judgment is live with no legal challenge pending in any court. It is therefore the obligation of the Defendants;



the Judgment Debtors to settle the decretal sum as per the judgment of the court dated 17/02/2023 and the decree arising therefrom.

29. A Decree Holder under provisions of Order 22 CPR is at liberty to take out execution proceedings as may be available under the various modes, attachments of the J/D's property – movable and immovable properties examination of J/D's directors to its property and committal to civil jail of a J/D who fails to pay are some of the various modes as provided under Order 22 CPR.

In the end, the flagged issues for determination in the courts view have been sufficiently determined in the affirmative.

30. For the foregoing the court is persuaded that it would be in the interest of justice and fairness in exercise of the courts inherent powers donated by Sections 1A, 1B and 3A of the Civil Procedure Act to allow the Applicants application dated 11/10/2024.

31. Consequently, prayer numbers 3 and 5 are granted. The named persons; Paul Mwangi Warutere, Mercy Wangui Gichama and James Waruter Njege are hereby directed and ordered to attend court on a date to be taken by their Advocates in court to be orally examined as to the 4th and 5th Defendant companies/ Judgment Debtors businesses and affairs and or their properties, as well as their means to satisfy the decretal sum.

32. It is important to state here that in default and or non-compliance of these orders, prayer No. 7 and 8 thereof shall take effect.

33. In the meantime, in respect of the two properties, Ngong/Ngong/91031 and Ngong/Ngong/91032, the 2nd Defendant is hereby restrained by an order of this court from disposing, charging and or transferring them pending further orders of the court.

34. Costs of the application shall be borne by the 2nd 3rd, 4th and 5th defendants in equal measure as may be taxed to the Plaintiff.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025

.....

JANET MULWA.

JUDGE

