



**Wainaina & 2 others v Decon Enterprises Limited; Kamotho & another (Applicant) (Environment and Land Case 455 of 2017) [2025] KEELC 7379 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7379 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 455 OF 2017  
JA MOGENI, J  
OCTOBER 29, 2025**

**BETWEEN**

**PETER KIMANI WAINAINA ..... 1<sup>ST</sup> PLAINTIFF**

**PETER NJOROGE NGANGA ..... 2<sup>ND</sup> PLAINTIFF**

**SUSAN WANGARI MITHAMO ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**DECON ENTERPRISES LIMITED ..... DEFENDANT**

**AND**

**EUNICE WAMBUI KAMOTHO ..... APPLICANT**

**CHARLES GITHII KAMOTHO ..... APPLICANT**

**RULING**

1. Peter Kimani Wainaina (hereafter the Applicant on behalf of the other Plaintiffs/Applicants) took out the Notice of Motion dated 27.02. 2024 (the Motion) expressed to be brought under Order 22, Rule 35 and Order 51, Rule 1 of the Civil Procedure Rules (CPR) and Sections 1, and 1A of the *Civil Procedure Act* (CPA); and seeking the following orders:-
  1. That the Directors of the Judgment Debtor, namely Mrs Eunice Wambui Kamotho, Ruiru Muchohi Gikonyo, Marianne Nyokabi Kamotho and Charles Githii Kamotho being administrators of the estate of JOHN Joseph Kamotho, do appear in Court and be orally examined under the provision of Order 22, Rule 35 of the Civil Procedure Rules, 2010. Concerning their ability to settle the Judgment debt in this matter.



2. That the Directors of the Judgment Debtor do provide the Court with the necessary details regarding their properties, assets liabilities, and any debts owed to them or by them, which may be used to satisfy the decree in this matter.
  3. That the Directors of the Judgment Debtor do attend Court for cross-examination regarding the means by which the decree can be settled, including any available property or other assets under their control.
  4. That in the event the Directors of the Judgment Debtor fail to attend Court as directed or provide sufficient information, the Court do issue further orders to ensure that the decree is satisfied in accordance with the law.
  5. That the costs of this Application be provided for.
2. The Motion is premised on the grounds on its face and the depositions in the Affidavit of the Applicant. To the effect that he obtained Judgment in the present suit, against Decon Enterprises Limited and its Directors, and a Decree was issued, which (hereafter 'the Respondent'), which remains unsatisfied to date. The Applicant further stated that his attempts at executing the resultant decree have borne no fruit since the Defendant Company no longer operates and its assets are insufficient to satisfy the decree.
  3. That the Judgment Debtors are the legal representatives of the Estate of John Joseph Kamotho (Deceased) who are Directors of the Defendant Company and they have failed to comply with the obligations in respect of the debt owed by the Defendant Company.
  4. That it is therefore apparent that the Defendant Directors are not keen on settling the decretal sum, necessitating the instant Motion; and that unless the orders sought therein are granted, the Applicants/ Plaintiffs stand to suffer irreparable loss arising from the inability to obtain the fruits of their Judgment.
  5. On their part the 1<sup>st</sup> Respondent Eunice Wambui Kamotho swore a 27 paragraphed Replying Affidavit dated 7/04/2025 and opposed the application stating that the application is irregular and has completely defied the essence of Order 22 Rule 35 since the application has failed to cite the officers of the Defendant Company but instead it has irregularly and illegally sneaked in the 1<sup>st</sup> and 2<sup>nd</sup> Applicants who are neither the officers of the Defendant Company nor its affiliates.
  6. That there has been no evidence produced by the Plaintiffs to support their claim of suing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that show that they have in any way been involved with the Defendant Company.
  7. It is her averment, evidenced by annexure 'EWK-1' that the two Defendants are Administrators of the Estate of the late John Joseph Kamotho who was one of the Directors of the Defendant Company.
  8. It is averred that the Company has a separate legal personality from its officials and so the debts of the Company are not debts of the individual Directors. Further that Order 22 Rule 35 is not meant for condemning individual Directors to settle the debts of a Judgment Debtor Company but to ascertain if the Company owns other assets that can be used to settle the debt of the Judgment Debtor Company.
  9. That the debt accrued by the deceased if at all should have been included in the Certificate of Confirmation as per annexure 'EWK-3'. That Section 83 of the Succession Act is the one that would govern debts accrued by John Joseph Kamotho and only before his death. That infact the estate application is premature; the application has been brought in bad faith; the application has no merit; and that the application is misconceived and no proper basis has been laid in support.



10. She avers that since they were not officials of the Judgment Debtor Company then the proper party to summon for cross-examination would have been Ruiru Muchohi Gikonyo the sole remaining Director of the Defendant Company as per annexure 'EWK-2' which is a copy of the CR 12.
11. It is her contention that by the time they were served with Warrants of Attachment in November 2023 they had long concluded administration of the deceased's estate and as such the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant were functus officio in so far as the estate of the late J.J Kamotho is concerned.
12. That Order 22 rule 35 is not meant for fishing for personal properties of 3<sup>rd</sup> parties like the Applicants have tried to do by trying to ascertain the properties of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It is limited to establishing the assets of the Judgment Debtor Company. Also, that the corporate veil of the Judgment Debtor Company has not lifted since on 30/09/2024 the Court varied the Ruling of the order made on 26/09/2023 that had lifted the corporate veil to allow for the exhaustion of the procedure provided for under Order 22 Rule 35.
13. Thus, the Respondents/Defendants have sought for dismissal of the application for being a blatant abuse of the Court process meant to harass, intimidate, embarrass innocent parties.
14. The application was canvassed through written submissions.
15. I have considered the Notice of Motion and the Affidavit in support. I have also considered the written submissions and the authorities cited. The issue for determination is whether this application is merited.
16. At the same time, I have also considered the position held by each party on this matter. The Respondents argue that they have been wrongly sued since they are administrators of John Joseph Kamotho who was one of the Directors of the Company. That if anything they are functus officio having administered the Estate of John Joseph Kamotho (Deceased) to the logical conclusion. That they have never been Directors to the Judgment Debtor Company.
17. The Law, under Order 22 Rule 35 of the Civil Procedure, provides 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." (Emphasis mine)
18. The import of the above provisions was considered in the case of Ultimate Laboratories v Tasha Bio Service Limited NBI HCCC No. 1287 of 2000 (unreported) cited by the Court in Tropical Wood Limited v Samilis International Investments [2017] eKLR wherein the Court stated as follows:–
  - a. Two things emerge from the above proposition. One, the power of the Court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed within the purpose set out in the Rule. That is; ... 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. I therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery .... 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, the Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.” [Emphasis added]

19. In *Corporate Insurance Company Ltd v Savemax Insurance Brokers Ltd* (2002) 1 EA 41, the Court pronounced itself as follows:

“Further, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants maintained that in accordance with the principles expounded in the well-known case of *Saloman v Saloman & Co Ltd* (1897) A C 22 HL the veil of incorporation could not be lifted as against them unless there were allegations of fraud brought by the Plaintiff. To this end, the Court’s attention was drawn to the finding of Ringera J (as he then was) in *Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd & Anor.* HCCC No. 125 of 2002 (unreported) when he stated:

“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.”

20. Further, in *Halsbury’s Laws of England*, 14th Edition Volume 7, Paragraph 90 it is stated that:

“Piercing the corporate veil 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 purposes of litigation before it as identical with a 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 person who controls it is a relevant feature. In such a 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 agents, Directors and controlling the activities of the Company.”

21. It is a well settled principle of law that a Company is a separate legal entity from its Shareholders and Directors as enunciated in the locus classicus decision of *Salomon v Salomon & Co Ltd*, [1897]AC 22. Even then, it is also a well-known fact that the Company, being an artificial person, has no hand and mind of its own and that the Board of Directors are the mind of the Company for purposes of executing the Company’s objects. It is for this reason that the law allows for the lifting of the Company’s veil and personal liability of Directors where circumstances so allow.

22. The Court in *NBI HCCC No. 1287 of 2000 Ultimate Laboratories Vs. Tasha Bioservice Limited* (unreported) cited by the Court in *Tropical Wood Limited Vs. Samilis International Investments* [2017] eKLR thus;

“(a) Two things emerge from the above proposition. One, the power of the Court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed within the purpose set out in the Rule. That is;



(b) ... 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 (c)I therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery .... 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, the Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.”

23. It is now well settled that this Court has the power to summon any Officer of a Judgment Debtor Company to be examined on oath about the debts owed by the Company and to determine whether the Company has property or means to satisfy the Decree. See the oft cited case of Masefield Trading (K) Ltd v Rushmore Company Limited & another Civil Suit No. 1794 of 2000.
24. Order 22 Rule 35 (c) states that the Court can summon any person meaning any person may be summoned under the rule, and such person need not have any or direct connection with the issues in the case whatsoever as urged by the Respondents. What needs to be satisfied is the threshold mentioned above.
25. Bearing in mind that a Company is a separate legal entity distinguishable from its Directors, and further taking into account the fact that the Plaintiff has a Decree in their favour that is overdue for execution, it would only be fair and just that those mentioned being any person as Order 22 Rule 35 provides can be called upon to shed light on the Company's assets, and the deceased Director's bank accounts and assets, in order to assist in the execution. After all, the Respondent has stated that Ruiru Muchohi Gikonyo is one of the surviving Directors.
26. Therefore, it is in order to have the following summoned to be cross-examined; Mrs Eunice Wambui Kamotho, Ruiru Muchohi Gikonyo, Marianne Nyokabi Kamotho and Charles Githii Kamotho.
27. From my own analysis of the circumstances of this case it is my considered view that justice will be served by allowing the Notice of Motion dated 27/02/2024, as prayed which I hereby do with costs to be borne by each party.
28. The Court directs that the Directors attend Court with the necessary documentation on 17/11/2025 for mention and further directions.

Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**MOGENI J**

**JUDGE**

In the presence of:-

Ms. Njeri holding brief for Mr. Koceyo for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs

Ms. Small holding brief for Ms. Wanyonyi for the Objector/Applicant

Defendant – Absent

Mr. Melita – Court Assistant



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**MOGENI J  
JUDGE**

