



**Mohamed v Northwood Development Company Limited & 2 others (Arbitration Cause E050 of 2021) [2025] KEHC 15055 (KLR) (Commercial and Tax) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E050 OF 2021**

**JWW MONG'ARE, J  
OCTOBER 21, 2025**

**BETWEEN**

**SHUAIB WALI MOHAMED ..... APPLICANT**

**AND**

**NORTHWOOD DEVELOPMENT COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ANTHONY MBAU ..... 2<sup>ND</sup> RESPONDENT**

**MARY WANGUI MBAU (AS ADMINISTRATOR OF THE ESTATE OF GEORGE  
NGATIA MBAU) ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction and Background**

1. The Applicant obtained a judgment and subsequent decree on 7<sup>th</sup> December 2022, ordering the 1<sup>st</sup> Respondent (the Company) to pay a total of Kshs.25,755,135.97/=. By the present application dated 31<sup>st</sup> July 2023, the Applicant states that the Company has failed to satisfy the decree and now targets the Company's Directors, that is the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, personally, aiming to pierce the corporate veil and hold them liable for the debt. The Applicant avers that attempts to execute the decree through auctioneers were unsuccessful, as no movable assets belonging to the Company could be found or attached.
2. As such, he seeks inter alia to summon the Directors to Court to be examined under oath about the Company's assets and its ability to pay the decree, an order for them to produce the Company's books of accounts and other business records, the Company's veil of incorporation to be lifted and hold the Directors personally liable for the decretal sum, a formal declaration that the Directors knowingly carried on the business of the Company with intent to defraud Shuaib, making them



personally responsible for the debt without limitation and that in case of non-compliance with the aforementioned Court's orders, the Directors should be imprisoned for at least six months.

3. The Directors have responded to the application through the replying affidavit of the 2<sup>nd</sup> Respondent sworn on 7<sup>th</sup> March 2025. They argue that it is irregular for the Applicant to have included them as parties in the case since they were not parties to the original suit and that he needed to seek and obtain the Court's leave to enjoin them at this execution stage, which he failed to do. They contend that his request to pierce the corporate veil is frivolous and a gross abuse of the process of Court and they assert that a company is a separate legal entity distinct from its Directors and shareholders. Further, that a company's inability to pay its debts or lack of assets is not, by itself, a valid reason to lift the corporate veil and hold Directors personally liable.
4. The Directors state that they have not participated in any fraudulent acts or underhand dealings that would justify making them personally responsible for the Company's debt. They point out that the Company was registered in 2006, which was five years before the transaction that led to the suit occurred. For these reasons, the Directors believe the Applicant has failed to meet the legal threshold required for the extraordinary measure of lifting the corporate veil. They characterize the application as being made in bad faith and malice intended to embarrass and harass them. As such, they urge the Court to dismiss the application with costs.
5. The parties have supplemented their arguments by filing written submissions which are on record and I have considered. I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

6. I have carefully considered the pleadings alongside the submissions by the parties and note that the main issue for the Court's determination is whether the Court should lift/pierce the Company's corporate veil and hold its Directors personally liable for the debt due to the Applicant and; whether the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents should be examined by the Court. This is not to say that I have not considered the Respondents' contention that their joinder is irregular since they were not party to the original suit and leave of the Court has not been sought. It should not be lost that joinder of parties is possible after judgment but any such joinder will have to surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation (see *Bellevue Development Company Limited v Vinayak Builders Limited & another* [2014] KEHC 5507 (KLR)). As the Respondents had notice of the Applicant's application and they have responded accordingly and substantially, I find that they have suffered no prejudice in their joinder as Respondents in this suit.
7. Turning to the merits of the application, the parties agree that a company is a separate legal entity from its members and shareholders and that this position was espoused by the Court in the English case of *Salmon vs Salmon* [1987] AC 78. However, this position is not cast in stone as there are instances where the corporate veil of a company may be pierced and/or lifted. The Court of Appeal, in *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR) held that "The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues."
8. That the Applicant is the holder of a decree in the sum of Kshs.25,755,135.97/= that is yet to be settled by the Company, is not in dispute. Whereas the Applicant alleges fraud on the part of the Company's Directors, I find that this has not been proved. Further, I am unable to find that the Company is a sham,



formed with the sole intention of defrauding the Applicant and I agree with the Respondents that the Company was formed way before the subject transaction between the parties. Thus, I am unable to find a valid reason for the Court to lift or pierce the corporate veil and to hold the Directors personally liable for the unsatisfied decree.

9. However, I tend to agree with the Applicant that the Respondents have not substantially responded to the contention that the Company has no moveable or attachable assets to satisfy the decree and that its solvency is in question. This indeed calls for an explanation by the Company and its Directors as set out by Order 22 Rule 35 of the Rules which provides as follows:

“Where a decree is for the payment of money, the decree- holder may apply to the Court for an order 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.

10. I therefore hold that even though I have declined to pierce or lift the Company’s corporate veil, I find that there is sufficient reason to summon the Company’s Directors to inform the Court and the Applicant about the assets of the Company, if any, as well as the status of its books of accounts. The said information would inform this Court and the Applicant as to the Company’s capacity to satisfy the decree issued on 7<sup>th</sup> December 2022. It has not been denied and the Applicant has annexed the Company’s CR12 confirming Anthony Lee Mbau and the late George Ngatia Mbau as the Directors and shareholders of the Company. Therefore, Anthony and the Administrator of George’s estate will attend Court and avail information as to the solvency and asset-status of the Company and its ability to satisfy the decree.

### **Conclusion and Disposition**

11. In the foregoing, I allow the Applicant’s application dated 31<sup>st</sup> July 2023 to the extent that Anthony Lee Mbau And Mary Wangui Mbau, being the Administrator of the estate of the late George Ngatia Mbau and being Directors of the 1<sup>st</sup> Respondent Company/Judgment Debtor do attend Court on a date to be fixed, for oral examination on the whereabouts of the assets of the Company, the status of its books of accounts and its means of satisfying the decree issued on 7<sup>th</sup> December 2022. The Respondents shall bear the costs of this application assessed at Kshs.20,000.00/= . It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2025**

.....

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Lionel Odhiambo for the Applicant. Decree Holder.



N/A for the Respondents.

Amos- Court Assistant

