



Taslim Transporters Limited v Solfin Solutions Limited (Commercial Miscellaneous Application E603 of 2024) [2025] KEHC 15553 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E603 OF 2024**

**MN MWANGI, J
OCTOBER 24, 2025**

BETWEEN

TASLIM TRANSPORTERS LIMITED APPLICANT

AND

SOLFIN SOLUTIONS LIMITED RESPONDENT

RULING

1. The applicant/decreed holder filed a Notice of Motion application dated 25th July 2024 pursuant to the provisions of Sections 1B, 3 & 3A of the *Civil Procedure Act*, Sections 34, 38, 40 & 42(1) (a) of the *Civil Procedure Act*, Order 22 Rule 35 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The applicant seeks orders for Notice to Show Cause and Summons to be issued compelling the respondent's Directors, Messrs Nabil Badrudin Adamjee and Samiashahwar Naemullah Khan, to attend Court and be examined on oath about the company's means and assets, and to produce accounting records.
2. The applicant also prays for orders that the respondent's corporate veil be pierced so that its Directors are held jointly and severally liable for the decretal sum of KShs.3,384,473.45 plus costs of KShs.223,904.60 and interest, issuance of warrants of attachment and sale of the respondent's Directors' assets to satisfy the decree and/or in the alternative, issuance of a Notice to Show Cause why the Directors should not be committed to civil jail for failure to pay the aforesaid decretal sum, costs and interest.
3. The application herein is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Mohamed Abdi Samad, one of the Directors of the applicant company. Mr. Samad averred that Judgment was entered in favour of the applicant on 14th February 2024, and a decree issued on 21st March 2024, but the respondent has failed to pay despite



being aware of the decision and being served. He stated that attempts to execute the decree through warrants of attachment failed since the respondent closed business, moved premises, and has no known attachable assets. He contended that the respondent's Directors, Messrs Nabil Badrudin Adamjee and Samiashahwar Naeemullah Khan, acted fraudulently by closing the respondent company, dissipating assets and transferring property to themselves to defeat execution. Mr. Samad asserted that the respondent's Directors used the company as a façade to evade liabilities, breached fiduciary duties, and engaged in improper conduct.

4. In response to the application, the respondent filed a replying affidavit sworn on 17th November 2024 by Mr. Nabil Badrudin Adamjee, one of the Directors of the respondent company. He averred that there is no evidence of fraud, dishonesty, bad faith, or use of the respondent company as a sham to warrant piercing of the respondent's corporate veil. He deposed that inability to pay debts or insolvency alone is insufficient. Mr. Adamjee contended that the instant application is defective for citing the wrong legal provisions, being filed in the wrong forum, and for being and improperly brought before the High Court instead of the Trial Court that issued the decree. He deposed that the respondent paid about 70% of the contract sum before being unable to complete payment due to COVID-19 disruptions, KRA Agency Notices freezing its bank accounts and seizure of books of account, leading to cessation of operations.
5. Mr. Adamjee stated that an expired lease forcing closure of premises, personal family health crises, harsh mining regulations and economic downturn contributed to the respondent's inability to pay the decretal sum. He asserted that the respondent facilitated business opportunities for the applicant, saving costs and increasing its profits, but the applicant repaid the said goodwill by ceasing to transport the respondent's cargo and defaming its reputation, contributing to its financial collapse. He denied the applicant's contention that the respondent transferred or hid assets to avoid execution and instead asserted that the respondent has provided some financial records to show its current inability to pay the decretal sum. Mr. Adamjee averred that the respondent is negotiating with potential investors to revive its operations and pay debts.
6. The application herein was canvassed by way of written submissions. The applicant's submissions were filed on 17th January 2025 by the law firm of Ahmednasir Abdullahi Advocates LLP, whereas the respondent's submissions were filed by the law firm of Chianda & Company Advocates on 19th November 2024.
7. Ms Wangui, learned Counsel for the applicant referred to the Halsbury's Laws of England 4th Edition Vol. 7 (1) at paragraph 402, the Court of Appeal case of Githunguri Dairy Farmers Co-operative Society v Ernie Campbell & Co. Ltd & another [2018] KECA 721 (KLR) and the case of Mugenyi & Company Advocates v The Attorney General [1999] 2 EA. 199, and submitted on the circumstances under which Courts may lift a company's corporate veil include, fraud, sham companies, improper conduct, agency, or evasion of obligations. Counsel argued that in this case, the respondent is indebted to the applicant but it has refused to pay the debt due, despite admission and proposals for payment plans. She asserted that the respondent company has no identifiable assets, appears untraceable, and is operating as a "shelf company".
8. Ms Wangui stated that the respondent company abruptly closed without following due process, suggesting deliberate avoidance of legal obligations and fraud. She further stated that efforts to trace the respondent's assets, bank accounts, or documents have failed, indicating concealment of the same by the respondent. Counsel submitted that KRA Agency Notices were issued after the applicant's suit was filed and do not absolve the respondent's debt to the applicant. Further, that the lease annexed to the respondent's replying affidavit is unsigned hence it is not sufficient to prove claims of relocation.



Counsel contended that the medical condition of the respondent Director's son though sympathetic, does not negate the respondent's legal obligations.

9. Mr. Chianda, learned Counsel for the respondent submitted that the doctrine of separate legal personality, as established in the case of *Salomon v Salomon* [1897] AC 778 remains a foundational principle in Kenyan company law. He contended that piercing of a company's corporate veil is an exceptional remedy only available where it is demonstrated that a company is a mere alter ego or instrumentality of its Directors and that adherence to the corporate form would sanction fraud or promote injustice, as outlined in the case of *Ukwala Supermarket v Jaideep Shah & another* [2022] KEHC 2207 (KLR). He argued that the burden lies on the party seeking the remedy to tender concrete evidence of such misconduct as mere inability to satisfy a debt does not suffice.
10. Mr. Chianda stated that no evidence of fraud, bad faith, or egregious conduct has been adduced to warrant the lifting of the respondent company's corporate veil. He submitted that the instant application is procedurally defective as it has been filed in the wrong forum. Counsel relied on the provisions of Sections 18, 29 & 34 of the *Civil Procedure Act* and Order 22 Rule 35 of the Civil Procedure Rules, 2010, and argued that all questions relating to execution must be determined by the Court that issued the decree, which in this case is the Magistrate's Court. He submitted that the High Court has no original jurisdiction to entertain execution proceedings arising from a decree of a subordinate Court save for when the High Court sits in its appellate capacity. Mr. Chianda asserted that the Trial Court is not functus officio, neither is there justification for the High Court to usurp its role in overseeing enforcement of the subordinate Court's decree.

Analysis And Determination

11. I have considered the instant application, the grounds on the face of it, and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the respondent and the written submissions by Counsel for the parties. The issues that arise for determination are –
 - i. Whether this application is fatally defective for citing the wrong legal provisions and for being filed in the wrong forum;
 - ii. Whether the respondent's Directors, Messrs Nabil Badrudin Adamjee and Samiashahwar Naemullah Khan, should be examined on oath as to the respondent's means and assets to satisfy the decretal sum in issue and produce the respondent's accounting records; and
 - iii. Whether the respondent's Corporate veil should be lifted and the respondent's directors, Messrs Nabil Badrudin Adamjee and Samiashahwar Naemullah Khan, held personally liable for the respondent's debt to the applicant.

Whether this application is fatally defective for citing the wrong legal provisions and for being filed in the wrong forum.

12. The respondent averred that the instant application is defective for citing the wrong legal provisions. On that issue, this Court is guided by the provisions of Sections 1A & 1B of the *Civil Procedure Act*, which enjoin Courts to give effect to the overriding objective. The said objective encompasses the just determination of proceedings, the efficient resolution of disputes, the optimal use of judicial and administrative resources and the timely as well as cost-effective disposal of cases. The effect of the



overriding objective was considered by the Court of Appeal in the case of Stephen Boro Gitiha v Family Finance Building Society & 3 others [2009] KECA 44 (KLR), as hereunder –

The overriding objective overshadows all technicalities precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way... I must warn litigants and counsel that the courts are now on the driving seat of justice and the courts in my opinion have a new call to use the overriding objective to remove all the cobwebs hitherto experienced in the civil process and to weed out as far as it is practicable the scourge of the civil process starting with unacceptable levels of delay and cost in order to achieve resolution of disputes in a just, fair and expeditious manner. If the often talked of backlog of cases is littered with similar matters, the challenge to the courts is to use the new “broom” of overriding objective to bring cases to finality, by declining to hear unnecessary interlocutory applications and instead to adjudicate on the principal issues in a full hearing if possible.

13. Bound by the aforementioned decision, this Court finds that whether or not the instant application has been filed under the wrong provisions of the law affects its form rather than its substance. This is especially so, given that the substance and content of the application herein would remain the same even if it was brought under the correct legal provisions.
14. This Court is persuaded that the issue of the application having been brought under the wrong provisions amounts to a procedural technicality within the meaning of Article 159(2)(d) of *the Constitution* of Kenya, hence it does not constitute a fatal defect. This Court’s finding is that the present application cannot be rendered fatally defective solely on the basis that it was brought under the wrong provisions of the law.
15. On the second issue as to whether the instant application is fatally defective for having been filed in the wrong forum, the respondent contended that it ought to have been filed before the Trial Court that issued the decree rather than the High Court. The applicant however argued that the High Court is the proper forum for determining matters relating to the lifting of the corporate veil. It further submitted that under Section 3 of the *Companies Act*, the term “Court” refers to the High Court unless expressly stated otherwise.
16. It is not in contestation that the decree sought to be executed by the applicant was issued by the Court in Milimani MCOMMSU Case No. E081 of 2023 – Taslim Transport Limited v Solfin Solutions Limited. Examination of a judgment debtor as to his means and/or assets to satisfy a decree is provided for under Order 22 Rule 35 of the Civil Procedure Rules, 2010, which states 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.
17. A review of the proceedings before the Trial Court discloses no evidence or indication that the Chief Magistrate’s Court is divested of jurisdiction to entertain an application that has been brought



pursuant to the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010, seeking to lift a company's corporate veil. Further, Section 34(1) *Civil Procedure Act* provides that –

All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit. (Emphasis added).

18. Section 29 of the *Civil Procedure Act* defines the term “court which passed a decree” as hereunder –

The expression “court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include -

- a. where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance; and
- b. where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

19. This Court concurs with the holding in the case of *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others* [2024] KEHC 2343 (KLR), wherein the Court explained the provisions of Section 29 of the *Civil Procedure Act* and held that –

Explanation (a) above points to the trial Court as the Court to oversee execution of its decree and the situation cited in (b) above does not arise in the instant situation since the trial Court has not ceased to exist nor has it been alleged or demonstrated that it has since been divested of jurisdiction. In the circumstances, I find that this Court has no original jurisdiction to deal with matters arising out of execution of the decree of the Magistrate's Court. This Court's jurisdiction is only on appeals. Although the High Court has inherent powers, the same has to be exercised within procedural boundaries.

20. In this instance, it is my finding that there is no reason and/or justification as to why the application herein was not filed in the Chief Magistrates Court where it ought to have been filed, as this Court does not have original jurisdiction to deal with matters arising out of execution of decrees, issued or passed by the Chief Magistrate's Court. Further, the circumstances of this case do not provide for a scenario where this Court's inherent jurisdiction provided for under Section 3A of the *Civil Procedure Act* can be invoked.

21. As such, I am not persuaded that this Court has the requisite jurisdiction to hear and determine the instant application. Accordingly, I down my tools in line with the holding by the Court in the case of the Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1, where Nyarangi, JA., held that –

...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

22. The upshot is that the applicant's application dated 25th July 2024 is fatally defective. It is hereby struck out with costs to the respondent.

It is so ordered.



**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM**

NJOKI MWANGI

JUDGE

In the presence of;-

No appearance for the applicant

Mr. Chianda for the respondent

Ms B. Wokabi - Court Assistant.

