

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM NO. E050 OF 2023

COPY CAT LIMITED.....PLAINTIFF/APPLICANT

-VERSUS-

NETRONICS COMMUNICATIONS LTD.....DEFENDANT/RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 4th November 2024 filed by the plaintiff pursuant to the provisions of Order 22 Rule 35 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act, and all other enabling provisions of the law. The plaintiff prays for orders that this Court summons the current Directors of the defendant company, Mr. Opondo Isaac Ochieng and Ms Cynthia Awino Allan, to personally attend Court to be examined under oath regarding the debtor's assets and produce the company's books of accounts, and following their examination, the Court be pleased to pierce the defendant's corporate veil and hold the said Directors personally liable for the debt of Kshs.36,644,353.00, plus interest, from 2nd September 2023, and issue warrants to attach and sell the Directors' assets to satisfy the debt.
2. The application 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. Stephen Nyaboro Masaga, the plaintiff's Credit Control and Collections Manager. Mr. Masaga averred that the plaintiff obtained Judgment against the defendant on 2nd September 2023 for Kshs.36,644,353.00 with costs and interest, but despite repeated demands, the defendant has failed to satisfy the decree and the

plaintiff has been unable to trace its assets. He deposed that the Directors of the defendant, Mr. Opondo Isaac Ochieng and Ms Cynthia Awino Allan, were confirmed through a Companies' Registry search dated 16th October 2024. He deposed that the plaintiff seeks to lift the defendant's corporate veil, hold its Directors personally liable and have them orally examined regarding the defendant company's assets and to produce its books of accounts.

3. In opposition to the application, the defendant filed a Notice of Preliminary Objection dated 10th February 2025, raising the following ground-

i) The application is incompetent having been filed by the firm of Peter Maina and Company Advocates in breach of Order 9 Rule 9 of the Civil Procedure Rules.

4. The defendant also filed a replying affidavit sworn on 25th July 2025 by Mr. Isaac Opondo, the defendant's Director. Mr. Opondo averred that the defendant is a going concern with registered offices in Nairobi and that the plaintiff has not provided evidence of attempts to execute the Judgment. He further averred that lifting of a company's corporate veil requires proof of fraudulent or improper conduct by Directors, which has not been shown in this case. He denied that the defendant engaged in any conduct to defeat its obligations and asserted that it is currently involved in ongoing disputes, including **Insolvency Petition No. E002 of 2024**, where it was liquidated by a Judgment delivered on 21st July 2025, but a stay of execution was issued until 22nd September 2025. He contended that the reliefs being sought herein are misplaced and stated that any claims by the plaintiff ought to be pursued within the insolvency proceedings.

5. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed on 28th July 2025 by the law firm of Peter Maina & Company Advocates, whereas the defendant's submissions were filed by the law firm of TripleOKLaw LLP Advocates on 23rd September 2025.
6. Mr. Maina, learned Counsel for the plaintiff cited the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010, and the case of **Masefield Trading (K) Ltd v Rushmore Company Limited & another** [2008] KEHC 798 (KLR), and submitted that summoning of officers of a company for oral examination and production of documents relevant to the company's assets and means of satisfying a decree by a decree holder is a legitimate post-judgment discovery procedure to uncover hidden, undisclosed, or misappropriated assets.
7. He argued that the defendant company through its Directors, has provided inconsistent statements regarding its solvency and operations, suggesting opaqueness and possible misuse of the corporate structure to evade the Kshs. 36,644,353.00 decree. To buttress these submissions, he relied on 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 **Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited** [2015] KEHC 5964 (KLR).
8. Mr. Njuguna, learned Counsel for the defendant relied on the cases of **Hoggers Limited (In Administration) v John Lee Halamandres & 11 others** [2021] KEHC 12561 (KLR) and **Michael Kadowe Karisa v African Safari Club (In Liquidation through its Liquidator, Official Receiver) Interested Party UAP Provincial Insurance Co. Ltd**

[2019] KEHC 10653 (KLR), and submitted that under Section 432(2) of the Insolvency Act, once a company is in liquidation, any proceedings against it may only be instituted with leave of the Court and failure to obtain such leave renders proceedings void and legally incompetent. He further submitted that Section 430 of the Insolvency Act voids any attachment, sequestration, distress, or execution against a company in liquidation. He stated that since the defendant was liquidated on 21st July 2025, with a stay of execution until 22nd September 2025, the instant application is statutorily barred.

9. Mr. Njuguna cited the cases of **Ultimate Laboratories v Tasha Bioservice Limited** [2000] HCCC No. 1287 of 2000 and **Musyoka & 33 others v Insulae Africana Limited & 2 others** [2025] KEELRC 385 (KLR), to support his contention that piercing a company's corporate veil is an exceptional remedy requiring strict proof of fraud, sham transactions, or abuse of the corporate form. He argued that the plaintiff has not pleaded or proved fraud, misconduct, or any nexus between the Directors of the defendant and the judgment debt and has not demonstrated any attempts to execute the decree. Additionally, Counsel asserted that the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010, cannot override the statutory provisions of the Insolvency Act, thus any examination should be directed to the Liquidator/Official Receiver, not the defendant's former Directors.

ANALYSIS AND DETERMINATION

10. 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 Notice of Preliminary Objection and the replying affidavit filed by the defendant,

together with the written submissions filed by Counsel for the parties. The issues that arise for determination are –

- i) Whether the defendant’s Notice of Preliminary Objection is merited;**
- ii) Whether this application is statutorily barred in light of the provisions of Section 432 of the Insolvency Act;**
- iii) Whether the defendant’s Directors, Mr. Opondo Isaac Ochieng and Ms Cynthia Awino Allan, should be examined on oath, as to the defendant’s assets and produce the defendant company’s books of accounts; and**
- iv) Whether the defendant’s corporate veil should be lifted and the defendant’s Director, Mr. Opondo Isaac Ochieng and Ms Cynthia Awino Allan, be held personally liable for the defendant’s debt to the plaintiff.**

Whether the defendant’s Notice of Preliminary Objection is merited.

11. The defendant’s Preliminary Objection contends that the application herein is incompetent having been filed by the firm of Peter Maina and Company Advocates in breach of Order 9 Rule 9 of the Civil Procedure Rules, 2010, which provides that –

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court -

- a) upon an application with notice to all the parties; or*

b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

12. Prior to the hearing of the instant application, a Notice of Motion application dated 14th March 2025 under *inter alia*, the provisions of Order 9 Rule 9(a) of the Civil Procedure Rules, 2010, was filed, seeking leave for the law firm of Peter Maina & Company Advocates to come on record for the plaintiff after Judgement. From the Court record, the said application was allowed as prayed on 3rd April 2025, thereby curing any defect in respect to the plaintiff's legal representation in the instant application.
13. In the premise, this Court finds that the defendant's Notice of Preliminary Objection dated 10th February 2025 has been rendered moot by subsequent events and is therefore without merits.

Whether this application is statutorily barred in light of the provisions of Section 432 of the Insolvency Act.

14. Section 432 of the Insolvency Act states that –
 - 1) ***Within seven days after a liquidation order is made in respect of a company, the company shall lodge a copy of the order with the Registrar for registration and also lodge a copy of it with the Official Receiver.***
 - 2) ***When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.***

3) An order for liquidating a company operates in favour of all the creditors and of all contributories of the company as if made on the joint application of all of them.

15. In this case, the plaintiff obtained a Judgment against the defendant and thereafter a decree was issued on 2nd September 2023. The plaintiff contended that despite repeated demands, the defendant has failed to satisfy the decree and that it has been unable to trace the defendant's assets. Consequently, the plaintiff filed the instant application as a further attempt to execute the decree.
16. As at the time of filing the application herein, it was neither barred by limitation nor statutorily incompetent. However, prior to the determination of the instant application, the defendant company was placed under liquidation pursuant to a Judgment delivered in **Insolvency Petition No. E002 of 2024 – Episdon Distribution (Pty) Limited T/A First Distribution v. Netronics Communications Limited** on 21st July 2025, and the Insolvency Court issued a stay of execution of the said Orders until 22nd September 2025.
17. Under the provisions of Section 432(2) of the Insolvency Act, once a Liquidation Order has been issued, no legal proceedings may be commenced or continued against the company without leave of the Court. This position has been consistently affirmed by Courts in several cases, including the case of **Republic v Official Receiver and Liquidator & another Ex parte Transmatter Kenya Company Limited** [2020] KEELC 2876 (KLR) and **Karuturi Limited (In Receivership) & 2 others v Shri Krishna Overseas Limited** [2024] KEHC 6359 (KLR).

18. Therefore, any attempt to execute against the defendant's property, including praying for the examination of its Directors or attempting to pierce the defendant's corporate veil in aid of execution, without such leave is statutorily void.
19. Consequently, this Court is of the view that although the application herein was filed timely, prior to the Liquidation Order being made, any further prosecution of the same is now incompetent without first obtaining leave from the Insolvency Court to continue with this suit. The plaintiff has neither alleged nor shown that such leave was sought or granted and in the absence of this, this Court cannot validly proceed to determine the instant application on its merits.
20. As a result of the foregoing, this Court will not address substantive issues raised herein due to the statutory bar.
21. Accordingly, this Court finds that the instant application in its current form, is statutorily barred under the provisions of Section 432 of the Insolvency Act. It is therefore fatally defective and it is hereby struck out. Each party shall bear its own costs.

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI on this 7th day of November 2025. Ruling delivered through Microsoft Teams Online platform

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Odhiambo h/b for Mr. Maina for the plaintiff

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Mr. Njuguna for the defendant

Ms B. Wokabi - Court Assistant.

ORIGINAL