

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CASE NO. 1458 OF 2014**

**RAMUKA  
LIMITED.....PLAINTIFF/RESPONDENT**

**AGENCIES**

**VERSUS**

**STEPHEN  
KIRIMA.....DEFENDANT/APPLICANT**

**KAMAU**

**RULING**

1. Before this court is the notice of motion dated 4<sup>th</sup> February, 2025 filed by the defendant/applicant, and it is expressed to be brought under **Section 635** of the **Companies Act**, **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**, **Order 22 Rules 26, 27** and **35**, **Order 40 (1)** and **51 (1)** of the **Civil Procedure Rules** seeking the following orders: -

**1. Spent.**

**2. That an order of temporary injunction be issued prohibiting the transfer or disposition of the judgment debtor assets pending the hearing and determination of this application.**

**3. That the honourable court be pleased to issue an order to Eric Kimathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi being respondent/judgment debtor directors to produce before courts books of account, audited financial statements, annual tax returns, bank statements, licenses, audited**

**reports, check books and other statutory documents relating to operations and transactions of the judgment debtor for the last four years and the directors to be examined on oath of the said documents.**

- 4. That in default of compliance of the said directors (Eric Kamathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi) be ordered to personally pay the decretal amount due to the defendant.**
- 5. That warrants of attachment of personal properties of the directors Eric Kimathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi do issue to recover the costs of the decree order and the Auctioneer charges.**
- 6. That alternatively, the said directors (Eric Kimathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi), they be imprisoned and committed to civil jail for a period not less than six months.**
- 7. Costs of application be borne by the judgment debtor and or its directors.**

2. The application is premised on the grounds *inter alia* that a decree order was issued in favour of the defendant/applicant against the plaintiff/respondent in the sum of Kshs.2,266,115.00/-.

3. The application is supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant deposed that judgment was delivered in his favour on 23<sup>rd</sup> September, 2022 and that he was awarded costs in the sum of Kshs.2,266,115.00/-. He deposed that he instructed Betabase Auctioneers who estimated the cost of movable properties to be Kshs.502,869.34/-, and that the Auctioneer was unable to execute due to the unavailability of the judgment debtor's attachable goods.
4. The defendant/applicant deposed that the plaintiff's/respondent's counsel proposed to pay the decree costs in instalments of Kshs.100,000/- beginning 10<sup>th</sup> November, 2024 but failed to do so. Further, that he has not been able to trace any assets of the judgment debtor to satisfy the decree, and yet it subsists and carries on business according to the records held by the company registry as at 15<sup>th</sup> March, 2024. He deposed that the cited directors need to explain the operations and current status of the judgment debtor.
5. The plaintiff/respondent through its director, Franklin Kamathi Kamau filed the replying affidavit sworn on 24<sup>th</sup> March, 2025. He

deposed that the plaintiff/respondent is a limited liability company with a separate legal entity from the directors who are not to be held personally liable for the debts of the plaintiff/respondent. He deposed that the corporate veil can only be lifted in instances of fraud or improper conduct which has not been established in this matter.

- 6.** The plaintiff/respondent through its director further deposed that the defendant/applicant has failed to establish any known and specific assets which renders the prayer for an injunction nugatory. He deposed that contempt of court mechanism cannot be used to enforce the payment of decretal sum and costs, and committing the directors to civil jails would amount to a miscarriage of justice.
- 7.** The defendant/applicant filed his supplementary affidavit sworn on 10<sup>th</sup> February, 2025. He deposed that the directors as per the annexure should be summoned pursuant to the application.
- 8.** The application was canvassed through written submissions. The defendant/applicant filed his written submissions dated 12<sup>th</sup> June, 2025. He submitted that the defendants/respondents possess vital information regarding the company's financial affairs

including its assets, debts and accounts. He submitted that granting the prayers sought in this application aligns with the principles of natural justice and fairness ensuring that he is not denied the fruits of his judgment.

9. The plaintiffs/respondents filed their written submissions dated 7<sup>th</sup> October, 2025 where it raised two issues for determination as listed below: -

**a. Whether the directors should be summoned to be orally examined in respect to the judgment debtor's means and assets.**

**b. Whether the director of the judgment debtor should be held personally liable for the decree or judgment debt.**

10. On the first issue, the plaintiffs/respondents submitted that the letter by Betabase Auctioneers is just a mere letter that does not show proof of the effort made by the auctioneers to trace the judgment debtor's assets. Further, that the Auctioneer has not provided any evidence to show detailed inventory of efforts made or places visited in search of its assets. They submitted that before undertaking the execution process, the defendant/applicant ought to have commissioned investigations on the judgment debtor and its attachable assets, and in the

absence of this, the directors should not be summoned as the defendant/applicant has not exhausted the mode of execution.

- 11.** On the second issue, the plaintiff/respondent submitted that the defendant/applicant has not met the strict requirements for this court to hold a director personally liable for the debt of the judgment debtor under the decree. To buttress on this issue, they relied on the cases of **Victor Mabachi & Another v Nurturn Bates Ltd [2013] eKLR**, and **Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited [2015] eKLR**. Further, the plaintiff/ respondent submitted that the purpose of **Order 22 Rule 35** of the **Civil Procedure Rules** is to enable the court establish the true financial position of a company and not to penalize any party. Further, that the defendant/applicant has not established to this court any acts of fraud committed by the directors to warrant the lifting of the veil. Reliance was placed in the cases of **Robert Khamala Situma v Afrikon Limited [2022] eKLR**, and **Demutilla Nanyama Purumu v Salim Mohamed Salim [2001] eKLR**.
- 12.** I have considered the application, the replies thereof and the written submissions filed by both parties. In my view, the issue for determination is *whether the application has merit*.

- 13.** A careful analysis of the pleadings herein show that the facts of this application are largely not contested. A decree was issued on 6<sup>th</sup> December, 2022 in favour of the defendant/applicant. Warrants of attachment of movable property in execution of the decree in the sum of Kshs.2,266,115 was issued on 2<sup>nd</sup> December, 2024 as well as the warrants of sale. Betabase Auctioneers moved to proclaim the assets of the plaintiff/respondent who is also the judgment debtor, and thereafter, informed the defendant/applicant that the assets were unavailable for attachment.
- 14.** The plaintiff/respondent has not denied the existence of the execution documents and the fact that they are valid and issued in accordance with the law. Indeed, execution is a lawful process and a successful party ought to enjoy the fruits of its judgment. In contending with the application, the plaintiff/ respondent argued that the defendant/applicant through his auctioneer has not exhausted the mode of execution by conducting investigations on its assets. Further, that the directors of the plaintiff/respondent should not be held liable for the actions of the plaintiff/applicant as it is a separate legal entity.
- 15.** Under **Order 22 Rule 35** of the **Civil Procedure Rules**, the court has the power to summon any officer of a company to attend

before it to be examined on 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. This is a lawful process provided by law. In this case, the defendant/ applicant annexed a copy of the company records showing Eric Mwiti Kamathi, Franklin Kamthi Kamau and Rosemary Wangari Kamathi as the directors of the plaintiff/ respondent. These facts were not rebutted. The argument that the corporate veil of the plaintiff/respondent cannot be lifted, is in my view, an excuse to escape the responsibility of paying the decretal sum owed to the defendant/applicant for the reasons that the persons cited are natural persons who perform functions of the plaintiff/ respondent and are best placed to explain the financial status of the company.

16. In the case of **Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited [2015] KEHC 5964 (KLR)**, Gikonyo, J held as follows:

***“ [13] Having stated the law on lifting the veil, I should state that, this court has jurisdiction to lift corporate veil in an application under Order 22 rule 35 of the Civil Procedure Rules and I am content to cite a work of Ringera J (as he then was) in the case of Ultimate Laboratories (supra) that:-***

***“While I agree with the defendant’s/judgment debtor’s advocate that the objective of an examination of a company’s director or officer under Order XXI Rule 36 is to obtain discovery, for the purpose of execution of a decree against the company, 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 don’t agree that the court does not have the power in an application in execution which is grounded under the above provisions as well as the inherent power of the court and all other provisions of the law to lift the corporate veil of the company and order the director to personally discharge the debts of the company”.***

***However, despite the jurisdiction of the court, the decision to lift the corporate veil should not be undertaken lightly as it opens the directors or members of the company to personal liability. There should be sufficient circumstances provided in statutory law or judicial precedents which allow the court to do so. In the present case, there is no formal request for the lifting of the veil, and also, there is not any material to support lifting of the veil at the moment. The only allegation made in the submissions and on shallow pitch is that the plaintiff is not aware of the assets of the defendant company; in my view, that is a good ground for invocation of***

***the jurisdiction of court under Order 22 rule 35 of the CPR for purposes of examination of Mr. Peter Karing'u rather than lifting of the corporate veil. I have already ordered attendance of Mr. Peter Karing'u for examination. And I quickly, add that, information which may be provided in the examination of a person summoned under Order 22 rule 35 alone or together with other relevant evidence which the judgment-holder may command, could be a basis for the lifting of the veil as long as it satisfies the threshold of the law."***

**17.** From the above, I find merit in the notice of motion dated 4<sup>th</sup> February, 2025 and I proceed to grant the following orders:-

***i. Eric Kimathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi being the respondent/judgment debtor directors to appear before the court on 26<sup>th</sup> January, 2026 and produce before the books of account, audited financial statements, annual tax returns, bank statements, licenses, audited reports, check books and other statutory documents relating to operations and transactions of the judgment debtor for the last four years for examination on oath of the said documents.***

***ii. That in default of compliance with order( i) above, warrants of attachment of personal properties of the directors Eric Kimathi Mwiti, Franklin Kamathi Kamau and Rosemary Wangari Kamathi shall issue to recover the***

*costs of the decree order and the Auctioneer charges.*

*iii. The defendant/applicant is entitled to the costs of this application.*

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
19/11/2025.**

**In the presence of:**

*Mr. Benson Agunga - Court assistant*

*Mr. Felix Muuo for the Applicant*

*Ms. Gikonyo holding brief or Mr. Thuita for the Respondent*