

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**THE CIVIL APPELLATE DIVISION**  
**(Coram: A.C. Mrima, J)**  
**CIVIL APPEAL NO. E950 OF 2023**

***-between-***

**KENDRACOM HOLDINGS LIMITED.....**  
**....APPLICANT**

***-versus-***

**MUSAKA CONSTRUCTIONS & SUPPLY**  
**LIMITED.....RESPONDENT**

**RULING**

1. This is a ruling in respect of an application by way of a Notice of Motion dated 24<sup>th</sup> April 2025. It is supported by the affidavit of *Wilson Kimani* deposed to a similar date. It seeks the following reliefs.

1. *That the Court be pleased to issue summons compelling Mr. Moses Muiruri Kuhuyu, Peter Njuguna Thuku, Christopher Kuntai Sankei, Mary Wanjiru Ndungu and Rosemary Njeri Ndungu, the Directors and shareholders of the Respondent/ Judgement Debtor, Musaka Construction and Supply Limited do appear and attend court on such date as may be ordered or allocated to be orally examined as to the Respondent's means and assets in satisfying the decretal sums and costs owed to the applicant herein in the sum of Kshs. 1,155,869.40/- together with accruing interest.*
2. *That the Court be pleased to make an order against the said Directors and shareholders, Mr. Moses Muiruri Kuhuyu, Peter Njuguna Thuku, Christopher Kuntai Sankei, Mary Wanjiru Ndungu and Rosemary Njeri Ndungu, do produce in court books of accounts, statements, annual returns and any other information relating to affairs of Musaka Construction & Supply Limited for purposes of satisfying the decretal sums and costs herein in the sum of Kshs. 1,155,869.40/- together with accruing interest.*
3. *That upon examination of the said Directors and shareholders in 2 and 3 above and in default of*

*sufficient demonstration of settlement of decretal sum, this Honourable Court be pleased to lift the corporate veil of Musaka Construction & Supply Limited and order that the said Directors and shareholders be personally held jointly and severally liable to pay the Applicant the decretal sums and interests in the sum Kshs. 1,155,869.40/- and execution proceeds against the said directors and shareholders of the Judgment-debtor to satisfy the decretal sums, costs and accruing interests owed to the Applicants herein.*

4. *That the said directors and shareholders do pay the decretal sum being Kshs. 1,155,869.40/- together with costs and interests or they be committed to civil jail.*
5. *Spent*
6. *That costs of this Application be borne by the Defendant.*

2.

3. In the grounds in support of the application, it was stated that the Application was necessitated by the Respondent's failure, neglect and or refusal to satisfy warrants of attachment for sale dated 3<sup>rd</sup> March 2025 of Kshs. Kshs. 1,155,869.40/- as decreed by the Court's judgment of 18<sup>th</sup> December 2024. It was its case that the Respondent's Directors and shareholders ought to appear in person for purposes of examination in order to establish whether the Applicant owns any assets capable of being attached in satisfaction of the decree. The Applicant asserted that the Respondent was a sham and a façade in a well-orchestrated scheme to obtain finances under false pretence to hoodwink the public that it is conducting genuine business but cannot pay its debts.

4. In the supporting Affidavit, *Wilson Kimani*, a Director of the Applicant deposed that when judgment was rendered, it demanded payment but the Respondent refused to pay and applied for warrants of sale and attachment of its movable property. However, upon serving the said warrants, the Respondent failed to honour. It was his case that its Auctioneers (Icon Auctioneers) could not get hold of the Respondent's Directors since they were evasive and that they kept house. He deposed that the Applicant instituted garnishee

proceedings but the Respondent had no funds in its bank account and was unbothered to make payment hence the instant application to hold an inquiry on whether it has any property or means of satisfying the decree.

5. In the end, he deposed that it was in the interests of justice and fair play to allow the Application.
6. In its written submissions dated 2<sup>nd</sup> July 2025, the Applicant argued that the Respondent, despite orders of this Court of 21<sup>st</sup> May 2025, which were duly served, failed to appear in Court to be orally examined on the settlement of the decretal sum. It was its case that the Application was unopposed.
7. It reiterated that the Application was necessitated by need to prevent abuse of the fact that Directors and a company are distinct entities, a position emphatically established by the case in *Salomon & Salomon & Co. Limited -vs- Salomon* (1897) A.C 22 H.L. It urged that the lifting of the corporate veil would open way to know the persons in control of the company in appropriate cases. To temper its case further, the Applicant referred to various authorities among them the one the case of *Multichoice Kenya Ltd -vs- Mainkam Ltd & Anor* (2013) eKLR and *Koloba Enterprises Ltd -vs- Shasudin Hussein Varvani & Another* (2014) eKLR where it was observed that exceptions to the concept of strict corporate personality apply in instances where it is too flagrantly opposed to justice or convenience.
8. In the end, the Applicant submitted that it had met the threshold for the prayers urged.
9. Despite service, the Respondent did not respond to the application.
10. Having appreciated the Applicant's case, the only issue for determination is whether the threshold for the piercing of the corporate veil is for purposes of summoning of Directors to be examined is met. Before interrogating the merits of the question whether to lift the corporate veil, *Order 22 Rule 35* of the *Civil Procedure Rules*, the provision upon which the application is premised, allows for the mechanism through which a Judgment

creditor applies to Court for purposes of examining the judgment-debtor. It provides thus;

**35. Examination of judgment-debtor as to his property [Order 22, rule 35]**

*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.*

11. This Court has previously been faced with the question as to whether a corporation's corporate veil can be outrightly lifted before the examination of its officers as provided under Order 22 Rule 35 of the Civil Procedure Rules. That was in *Nairobi [Milimani] High Court Civil Appeal No. E042 of 2023 **Africa Energy Development Corporation-Versus-Chevron Africa Limited*** [unreported] where this Court rendered itself as follows: -

6. *The above provision clearly establishes two parameters within which a judgment debtor may be summoned for examination in Court. They are to determine whether there are 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 provision does not, therefore, provide for the lifting of a company veil. An order for lifting of the veil usually comes at the tail-end and upon satisfying well established legal principles including that there is no any other way in which the judgment debtor may satisfy the decree. Therefore, the judgment debtor is jumping the gun. Its submissions are, hence, premature.*

7. **The foregoing was also discussed and buttressed in *Tropical Wood Limited v Samilis International Investments* [2017] eKLR as follows: -**

*... 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.*

8. *In this matter, there is no dispute that the Decree-holder/Applicant has an unsatisfied decree to the tune of Kshs.1,800,000/= plus costs and interests against the judgment-debtor. The Applicant is, however, apprehensive that it is unable to execute the said decree for reasons that the judgment-debtor could not be traced. It is for this reason that the Applicant moved this Court to have the judgement-debtor's Director[s] be examined within the confines of Order 22 Rule 35 of the Civil Procedure Rules. To that end, the application is partially successful and the rest of the prayers sought cannot be dealt with at this point in time.*
12. In this instance, the Applicant has satisfied the criteria for the examination of the Respondent's officers. For avoidance of doubt, judgment was rendered on 18<sup>th</sup> December 2024 in favour of the Applicant and a decree accordingly issued on 21<sup>st</sup> February 2024. Thereafter execution ensued by way of warrants of attachment of movable property in execution. As nothing was realized, the Applicant undertook garnishee proceedings and eventually established that the Respondent had no funds in its account.
13. When the instant application was filed, the Respondent was duly served and an Affidavit of Service sworn to by one

*Fredrick Mararo*, a Licenced Process Server, on 12<sup>th</sup> June 2025, was filed. On further orders of this Court, the application was also served upon the Respondent's Advocate, *M. P Mwangi & Co. Advocates* and *Kamuiru Muibu & Co. Advocates* as well as upon each of the Respondent's Directors *via* registered post.

14. Despite the foregoing, the Respondent did not make any effort to satisfy the decree or to further participate in this matter. Therefore, to this Court, the Respondent's officers ought to be, in the first instance, summoned for purposes of examination of the Respondent's ability or otherwise to satisfy the decree. To that end, the aspect of the lifting of the corporate veil will be held in abeyance.
15. Consequently, the following orders hereby issue: -

**[a] Summons shall issue to *Moses Muiruri Kuhuyu, Peter Njuguna Thuku, Christopher Kuntai Sankei, Mary Wanjiru Ndungu* and *Rosemary Njeri Ndungu*, the Directors of *Musaka Constructions & Supply Limited* to attend Court on a date to issue to be examined in line with Order 22 Rule 35 of the Civil Procedure Rules.**

**[b] Prayers 3, 4 and 6 of the Notice of Motion dated 24<sup>th</sup> April 2025 are hereby held in abeyance pending further orders and/or directions.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 12<sup>th</sup> day of November, 2025.**

**A. C. MRIMA  
JUDGE**

**Ruling virtually delivered in the presence of:**

**No appearance** for the Applicant/Decree-holder.

**No appearance** for the Respondent/Judgment-debtor.

**Michael/Amina** – Court Assistants.