



Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Company Limited (Miscellaneous Civil Application 22 of 2018) [2025] KEHC 15812 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 22 OF 2018
S MBUNGI, J
NOVEMBER 4, 2025**

BETWEEN

NGAYWA NGIGI & KIBET ADVOCATES APPLICANT

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Vide a notice of motion application dated 26th October 2023, the applicant filed a notice of motion application seeking the following orders:
 - a. That this application be certified urgent and heard *ex parte* in the first instance
 - b. That the Honourable court be pleased to summon in court Joseph Njogu Mungai, Stephen Wamukoya Murunga, Simon Kimutai Chepkwony, Obadiah Kioko Kaviviya, Albert Karakacha Muhavani And Henry Ng'ang'a for oral examination as to the assets and liabilities of the judgment debtor herein.
 - c. That this Honourable court be pleased to order Joseph Njogu Mungai, Stephen Wamukoya Murunga, Simon Kimutai Chepkwony, Obadiah Kioko Kaviviya, Albert Karakacha Muhavani and Henry Ng'ang'a, the judgment debtor's directors, to produce in court audited books of accounts and all bank statements of the judgment debtor herein.
 - d. That the court be pleased to grant leave to the Applicant/ Decree Holder to serve summons to attend court and court orders to the directors of the Judgment Debtor, namely Joseph Njogu Mungai, Stephen Wamukoya Murunga, Simon Kimutai Chepkwony, Obadiah Kioko Kaviviya, Albert Karakacha Muhavani And Henry Ng'ang'a, by way of substituted service by advertising in a daily newspaper.



- e. That the corporate veil in Invesco Assurance Company Limited be lifted so that execution proceedings can proceed against the Judgment Debtor's directors personally.
 - f. That in default, the Honourable court be pleased to order Joseph Njogu Mungai, Stephen Wamukoya Murunga, Simon Kimutai Chepkwony, Obadiah Kioko Kaviviya, Albert Karakacha Muhavani And Henry Ng'ang'a and/or other director of the Judgment Debtor Company, to satisfy the decree herein amounting to Kenya Shillings Ninety-eight thousand eight hundred and seventy-five (Kshs. 98,875/=) together with accrued interests and that the execution issue against them personally in case of default.
 - g. That the costs of this application be borne by the Judgment Debtor.
2. The application was premised on his sworn affidavit, where they stated that the judgment debtor had instructed the firm of Ngaywa Ngigi & Kibet Advocates to act for the defendants in Kakamega Cmcc 485 Of 2015 Jackline Shitawa Jeremia Vs. West Kenya Sugar Company & Anor.
 3. They aver that the Judgment debtor had failed to pay legal fees, thereby necessitating their filing the bill of costs for taxation, which was taxed at Kshs. 98,875/= and obtained a decree on 17th July 2019.
 4. They are unable to execute the decree and are unaware of the Judgment debtor's ability to satisfy the decree, claiming that the defendant may have transferred, hidden and or sold most of its properties and assets capable of fulfilling the decree.
 5. They aver that the current directors who were managing the judgment debtor's company, Joseph Njogu Mungai, Stephen Wamukoya Murunga, Simon Kimutai Chepkwony, Obadiah Kioko Kaviviya, Albert Karakacha Muhavani And Henry Ng'ang'a, know of the judgment debtor's assets which they were unable to locate, and upon cross-examining the said directors under oath, they would be able to trace and locate the judgment debtor's assets, who could produce the books of accounts and bank statements to enable them to satisfy the decree.
 6. They contend that the judgment debtor is still in business in issuing new insurance policies and collecting premiums, although their assets are unknown.
 7. They aver that this court has jurisdiction to lift the corporate veil of a company and hold the company directors liable to settle the decretal sum decreed against a company where the company is a mask for fraud or improper conduct, and that they don't know the physical address of the directors of the respondent.
 8. They pray that the directors of the judgment debtors be orally examined so that they can satisfy the decree. Unless their orders are granted, they will suffer great injustice and be kept from enjoying the fruits of their judgment.
 9. In response to the application, the deputy legal manager of the respondent dated 15th January 2024, opposing the application, stating that it was prejudicial and malicious to the respondent and further that they did not lay a basis for summoning the defendant's directors to court since the corporate veil had not been lifted yet.
 10. They further hold that there is no provision in law requiring the defendant to avail its book of accounts and statements before the court and that they are using the court to conduct investigations on its behalf.
 11. They assert that no fraud had been alleged against the defendant's directors to warrant the court to lift the corporate veil, and further quoted order 22 rule 35 of the Civil Procedure Rules stating that



the role of the directors was merely supervisory and does not involve the running of the company, and hence the liability of the company does not fall on them.

12. They pray that this court takes judicial notice that the country is going through a tough time financially, and they are no exception, and hence the application is misconceived and an abuse of the court process and prays that the court dismisses the application for lack of merit, agreeing that they are willing to pay Kshs. 150,000/= per month until full payment of the decretal sum.
13. At the time of writing the judgment, none of the parties had filed their submissions.

Analysis and Determination

14. I have carefully considered the application, the supporting and replying affidavits, and the records on the court file and note the following issues for determination;
 - i. Whether the applicant has laid a proper basis for the lifting of the corporate veil of the respondent's company;
 - ii. Whether the directors of the respondent should be summoned and held personally liable for the decretal amount;
15. It is an established principle of company law that a limited liability company is a distinct legal entity, separate from its shareholders and directors. This position was eloquently captured in *Victor Mabachi & Another v. Nurtun Bates Ltd* [2013] eKLR, where the Court of Appeal stated:

“A company is a legal person separate and distinct from its members. Its debts and liabilities are its own and cannot be visited upon its shareholders or directors except in very clear circumstances.”
16. The lifting or piercing of the corporate veil is therefore an exceptional judicial measure. It is only allowed where it has been demonstrated that the company's separate personality is being used as a device for fraud, to evade existing obligations, or to perpetrate injustice. In *Multichoice Kenya Ltd v. Mainkam Ltd & Another* [2013] eKLR, the court underscored that:

“The veil of incorporation is not to be lifted merely because a company has failed to meet its financial obligations. There must be proof of impropriety, fraud or misuse of corporate form.”
17. In the present case, the applicant has not provided any evidence suggestive of fraud, collusion, or diversion of company assets by the respondent's directors. The contention that the respondent has failed to pay a taxed bill of Kshs. 98,875/=, standing alone, does not meet the threshold for lifting the veil.
18. Under Order 22 Rule 35 of the Civil Procedure Rules, the court may summon an officer of a corporation for examination as to its assets, but such examination does not render the officer personally liable unless the corporate veil has first been lawfully lifted. In this case, there exists no finding or order lifting the veil of Invesco Assurance Company Limited, and therefore, the prayer to summon its directors for personal examination is premature and legally unsustainable.
19. I further take judicial notice, under Section 60(1)(o) of the *Evidence Act*, that as at 14th August 2024, Invesco Assurance Company Limited was placed under statutory management as publicly declared by the Insurance Regulatory Authority (IRA). This status places the respondent under the control of a statutory manager, and by law, execution proceedings against a company under statutory management



can only proceed with the leave of the Court and in accordance with the directives of the statutory manager. The attempt to proceed directly against its directors is therefore misguided in law.

20. In the result, I find that the applicant has not established a legal or evidential basis to justify the lifting of the corporate veil of Invesco Assurance Company Limited or to hold its directors personally liable for the decretal sum. The Court further takes judicial notice that the respondent is currently under statutory management, which legally precludes direct execution against its assets or directors without due compliance with statutory procedures.
21. Accordingly, the Notice of Motion dated 26th October 2023 is dismissed for want of merit.
22. Each party shall bear its own costs.
23. Right of Appeal 30 days.
24. File closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 4TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Parties absent though aware of the Ruling date .

Court Assistant to publish the ruling on the CTS forthwith.

