

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMMISC. CASE NO. E788 OF 2023**

**HON. JUSTICE ALEEM VISRAM**

**25<sup>TH</sup> NOVEMBER, 2025**

**BETWEEN**

**SKY FUEL LIMITED.....APPLICANT/DECREE HOLDER**

**AND**

**BRAIN FIELD OIL AND GAS LTD.....RESPONDENT/JUDGMENT**

**DEBTOR**

**MOLLY WANJUGU MUTA.....2<sup>ND</sup> RESPONDENT**

**AGNES KAGURE KARIUKI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. I have considered the Application dated 28<sup>th</sup> October, 2024, together with the affidavit sworn in support of the same, the replying affidavit sworn in opposition to the same, the rival submissions and the applicable law.
2. The Applicant seeks orders that the Directors of the Judgment Debtor, be examined under oath as to the means and assets of the Judgment Debtor Company, and in default of payment of the decretal amount, the Court be pleased to lift the corporate veil and hold them personally liable for satisfaction of the decree.

3. The Applicant avers that a decree was issued arising out of an arbitral award recognized and enforced as a decree of the court on 5<sup>th</sup> April, 2024. I note that evidence of the same is found as Exhibit GODO 7 of the supporting affidavit. The Applicant further stated that the debt is not disputed, and remains unsatisfied. Attempts at execution have been unsuccessful as no attachable assets have been traced.
4. The Respondent opposed the Application primarily on the basis that the application is an abuse of court process; Counsel submitted that a previous application had been before a court of concurrent jurisdiction seeking similar prayers, which had thereafter been withdrawn. He clarified that the said application was however never heard and determined.
5. Based on the record, it is however evident that the Final Award dated 7<sup>th</sup> September, 2023, was adopted as a judgment and decree of the court, and that the decretal sum remains due and payable. I am persuaded that the Respondent is a limited liability company whose assets, if any, are unknown, and that its directors may have relevant information that could aid discovery for the purpose of execution.
6. Order 22, rule 35 expressly empowers this Court to summon company officers for examination where a decree remains unsatisfied. In the circumstances, the

examination sought serves a limited purpose, to obtain discovery of the company's means, and does not, at this stage, amount to imposing personal liability.

7. The applicable rule states as follows: -

**Where a decree is for the payment of money, the decree-holder may apply to the court for an order that- the Judgment Debtor; in case of a corporation, any officer thereof; or 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. (Emphasis mine)**

8. Moreover, the rule is wide enough to allow the court to summon any person so long as he or she has relevant information that may aid in discovery for the purpose of execution. See *Tropical Wood Limited v Samilis international Investments [2017] eKLR*.

9. The applicable principles upon which this Court ought to exercise its jurisdiction in relation to Order 22, rule 35 is found in *Masefield Trading (K) Ltd v Rushmore Company Limited & Another Civil Suit No. 1794 of 2000; [2008] eKLR*, where the court stated as follows:-

*“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.”*

10. The court in *Robert Kinaga Waweru v Northcorr Enterprises Ltd [2011] eKLR* observed that directors of a Judgment Debtor company must give a full account of the company’s assets, and it would be inequitable for the Court to close its eyes to possible concealment of such assets.
11. Accordingly, I find that the Applicant has satisfied the threshold for the Court to invoke its powers under Order 22, rule 35. The process, is however as the Respondent stated, a two-stage one: first, the production of books and documents; and second, the cross-examination of directors thereafter to determine whether further orders, including lifting of the corporate veil, are warranted.

**Disposition**

12. Based on the foregoing reasons, I am satisfied that the Application has merit.

The Application is allowed in the following terms:-

- a. The Judgment Debtor shall, within twenty-one (21) days from the date hereof, produce and furnish to the Applicant copies of its books of account, audited financial statements, bank statements, and other records relevant to the execution of the decree as prayed for by the Applicant.
- b. Upon compliance, the Applicant shall be at liberty to apply for the cross-examination of the directors of the Judgment Debtor at a date to be fixed by the Court.
- c. Costs of this Application shall be borne by the Judgment Debtor.

*Dated and delivered virtually via Microsoft Teams this 25<sup>th</sup> day of November, 2025*

**ALEEM VISRAM, FCI Arb  
JUDGE**

**In the presence of;  
Court Assistant: Lispa**

.....for Applicant/Decree Holder  
 .....for Respondent/Judgment Debtor  
 .....for 2<sup>nd</sup> Respondent  
 .....for 3<sup>rd</sup> Respondent