



REPUBLIC OF KENYA



Solomon v Finezza Capital Holdings Limited alias Finezza Capital Limited (Miscellaneous Civil Application E582 of 2021) [2025] KEHC 16885 (KLR) (Civ) (19 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E582 OF 2021
AC MRIMA, J
NOVEMBER 19, 2025**

BETWEEN

RUTH NIVA ONGACHI SOLOMON APPLICANT

AND

FINEZZA CAPITAL HOLDINGS LIMITED ALIAS FINEZZA CAPITAL LIMITED RESPONDENT

RULING

1. Ruth Niva Ongachi Solomon, the Applicant herein, instituted Milimani Chief Magistrates Civil Case No. E723 of 2020 [hereinafter referred to as 'the suit'] against Finezza Capital Holdings Limited, the Respondent herein, for recovery of Kshs. 10,087,200/-. Judgment in the suit was entered in her favour. The Respondent unsuccessfully appealed against the decision. It further unsuccessfully sought to stay execution. Upon execution, the Respondent lodged an Objectors application which was also dismissed and the Applicant was awarded costs of Kshs. 353,197/-.
2. The Applicant unsuccessfully pursued its costs, prompting the filing of the Notice of Motion dated 11th November 2024, which is subject of this ruling. The application was vehemently opposed.

The Application:

3. The application was supported by the Affidavit and Supplementary Affidavit of Ruth Niva Ongachi Solomon deposited to 11th November 2024 and 10th June 2025 respectively. The application sought the following reliefs: -
 1. Spent.
 2. This Honourable Court be pleased to compel the Directors and shareholders of the Respondent/Judgment Debtor M/S Finezza Capital Limited namely, Peter Njeru



Karuana (Director Shareholder) Hane Judy Wanja Nguku (shareholder), Felicia Chepkurui Muriuki, (shareholder) Zephania Gethi Weru (Director/Shareholder) Rose Munyiva Muiui (shareholder) and Jane Njeri Mutiso (shareholder) to personally attend court on such date as may be ordered to be examined on oath as the Respondent/Judgment-Debtor's means and assets and to produce its books of accounts and other documentary evidence relevant to revealing the assets of the sad Finezza Capital Limited.

3. That upon personal attendance and examination of the Directors and shareholders of the Respondent/Judgment Debtor Finezza Capital Limited namely, Peter Njeru Karuana (Director Shareholder) Hane Judy Wanja Nguku (shareholder), Felicia Chepkurui Muriuki, (shareholder) Zephania Gethi Weru (Director/Shareholder) Rose Munyiva Muiui (shareholder) and Jane Njeri Mutiso (shareholder) the court be pleased to pierce into and lift the corporate veil of the Respondent /Judgment Debtor herein and the said Directors be and hereby jointly and severally held personally liable to pay the Applicant/Decree holder the decretal sum of, amounting to Kshs. 353,197.70/- arising from the High Court of Kenya at Nairobi Civil Appeal Division Miscellaneous Application No. E582 of 2021.
4. The warrants of attachment and sale of assets of the respective Directors and shareholders of Respondent/Judgment Debtor indicated in (2) above do issue in execution of the certificate of taxation dated 12th May 2023 arising from the High Court of Kenya at Nairobi Civil Appeal Division Miscellaneous Application No. E582 of 2021.
5. That in the alternative to (4) above, Notice to Show Cause be issued compelling the said Directors and shareholders of the Respondent/Judgment Debtor namely; Peter Njeru Karuana (Director Shareholder) Hane Judy Wanja Nguku (shareholder), Felicia Chepkurui Muriuki, (shareholder) Zephania Gethi Weru (Director/Shareholder) Rose Munyiva Muiui (shareholder) and Jane Njeri Mutiso (shareholder) to show cause why the said Directors should not be committed to civil jail for failure to pay decretal sum arising from the High Court of Kenya at Nairobi Civil Appeal Division Miscellaneous Application No. E582 of 2021.
6. That costs of this Application be provided for.
4. In the grounds and through the affidavits, the Applicant asserted that the Respondent, upon taxation of the Bill of costs failed to settle the amount of Kshs. 353,191.70/- and has concealed all its assets making execution of Certificate of Taxation by attachment of assets impossible. She deposed that it was apprehensive that the Respondent is no longer operational and its assets have been hidden and as such, it is upon the Directors and shareholders to show the company's assets capable of satisfying the certificate of taxation.
5. The Applicant claimed that the Respondent are acting in bad faith in their attempt to deny her the fruits of her judgement.

The submissions

6. In her written submissions dated 11th June 2025, the Applicant posited that this Court, by virtue of the powers under Order 22 Rule 35 as appreciated alongside its interpretation in the decision *Tropical Wood Limited -vs- Samilis International Investment (2017) eKLR*, can order the Director and shareholders of the Respondent to be examined. The Applicant submitted that the Directors bear a fiduciary responsibility as officers of the company to ensure that the decretal sum is satisfied. It was her case that they have been elusive since the decree was issued in 2023 and no explanation, proposal or attempts have been made to settle the amounts owed.



7. The Applicant further stated that the Respondent's audit reports of the year 2017 -2019 are outdated and of little probative value in assessing the company's present assets and capacity to satisfy a 2023 decree. The Applicant drew support from the decision in *Maaralink Tours & Photography Company Limited -vs- Dawagi Investments Limited (2025) KEELC 879 (KLR)* and asserted that the circumstances of the case warranted the piercing of the corporate veil.
8. The Applicant also submitted that this Court ought to issue warrants of attachment and sale against the personal assets of the identified directors in order to ensure an unchallenged court decree is not rendered nugatory. On whether the directors should show cause why they should not be committed to civil jail, the Applicant submitted that under section 38 of the *Civil Procedure Act*, committal to civil jail is a lawful remedy for the enforcement of a monetary decree.

The Respondent's case:

9. The Respondent challenged the application through the Replying Affidavit of Francis Mathenge Kigo, a Director of the company, deposed to on 16th April 2025. It was his case that when the company encountered loss in the year 2019, it outsourced the service of a Certified Public Accountant who audited its financial statements. It was its position that in a bid to settle the debts owed to its investors and lenders, including the Applicant, it offered them equity in the company. He deposed that he loaned the company Kshs. 9,160,339/- as capital investment in the Respondent and was offered equity in the company but the company has been unable to make profits.
10. Leveraging on the concept of distinct corporate identity of the company, he deposed that the veil ought not to be lifted merely because the Respondent has no assets capable of satisfying the decree. It was his position that the conditions necessary for lifting of corporate veil, including fraud, tax evasion, criminal activity and improper purpose of the company had not been achieved. He deposed that the Court, in addition to the foregoing requirements ought to consider whether the company is adequately capitalized, whether there is failure to maintain adequate corporate records, whether there has been demonstrated co-mingling of funds between the company and the alter ego and whether the alter ego has treated the assets or finances of the corporation as his own.
11. With the foregoing, the Respondent submitted that the Applicant had not satisfied the criteria for lifting of corporate veil.

The submissions

12. The Respondent filed written submissions dated 10th July 2025. It largely reiterated the deposition in the affidavit of Francis Kigo and claimed that the Applicant had not discharged the burden of establishing that the Respondent was not operational. It asserted that it has been well capitalized since its inception and has kept its books of accounts giving full and detailed information of the company's records of accounts for the year 2017, 2018 and 2019.
13. Further to the foregoing, the Respondent submitted that there had been no co-mingling of funds and as such it would be a travesty of justice of lift the corporate veil.
14. In conclusion, it was its case that the Applicant had not made effort to consider any other avenues under the *Companies Act* and had turned down the request to convert the debt into equity.

Analysis:

15. The only issue for determination is whether the application is merited. Before interrogating the issue of lifting of 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.

16. 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.

7. 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.



17. On a careful and wholesome consideration of the application and the history of the litigation, this Court finds that the Applicant has satisfied the criteria for the examination of the Respondent's officers. However, the examination shall precede the decision on whether the Respondent's corporate veil will be lifted. As such, the part of the application seeking the lifting of the corporate veil will, for now, be held in abeyance.
18. Consequently, the following orders hereby issue: -
- (a) Summons shall issue to the Directors and Shareholders of Finneza Capital Limited namely, Peter Njeru Karuana, Jane Judy Wanja Nguku, Felicia Chepkurui Muriuki, Anwar Mahendra Pandya, Francis Mathenge Kigo, Zephaniah Gethi Weru, Rose Muniyiva Muiu and Jane Njeri Mutiso 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, 5 and 6 of the Notice of Motion dated 11th November 2024 are hereby held in abeyance pending further orders and/or directions.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF NOVEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Miss. Nyanchera, Learned Counsel for the Applicant/Decree-holder.

Mr. Gitonga, Learned Counsel for the Respondent/Judgment-debtor.

Michael/Amina – Court Assistants.

