

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
CAUSE NUMBER E021 OF 2022**

BETWEEN

KENYA CHEMICAL AND ALLIED WORKERS UNION CLAIMANT

VERSUS

KENYA FLEXOGRAVURE LIMITED RESPONDENT

RULING

1. Through its application dated 14th March 2025, the Claimant wishes to have the Respondent's Directors, Mahendra Chandulal Patel, Sejal Ashish Patel and Ashish Rasikbhai Patel summoned before the Court, to show cause why they have failed to pay the Claimants' members a sum of Kshs. 1,710,130 as granted in the Judgment on record, delivered on 7th February 2023.
2. The sum represents 10 months' salary to former Employees of the Respondent, granted as compensation for unfair and unlawful redundancy, against the Respondent.
3. The parties indicated that some amount of money had been paid, and that a cheque had been drawn in favour of the Claimant, but returned to

the Respondent unpaid, because it contained some errors. They did not inform the Court if the errors were corrected, and the cash received.

4. They were referred to the Deputy Registrar for reconciliation of accounts, but seem not to have agreed, on what remains unpaid.
5. The Court had directed that the application is served upon the individual Directors. There is no affidavit of service, showing that individual Directors were served.
6. The Counsel on record for the Respondent indicated at some point, that some of the Directors were in their native India, while another, was said to be at a hospital in ICU.
7. The Court notes that the Claimant refers to various modes of execution available to it, at paragraph 5 of the Notice of Motion dated 14th March 2025. They include attachment of the Respondent's properties and garnishment.
8. The Claimant has not established why the Directors, should be summoned from India and ICU, while other modes of execution have not been exhausted, and while it is acknowledged that some part of the decree was satisfied.
9. In its submissions dated 4th August 2025, the Claimant invokes the ruling of the Court in **Maatchappij N.V. v. Africair Management & Logistics Limited e-KLR** [year not cited], on piercing the corporate veil. It is

submitted that the Court will dispense with the corporate personality of a company, where it is shown that the company is being used as a creature of the controlling Directors as a device, a mask, in an attempt to avoid legal liability.

10. In **Supreme Court of Kenya Petition No. E023 of 2023, Simon Wairobi Gatuma v. Kenya Breweries Limited & 3 Others**, the Court underscored that corporate veil can only be lifted, where it is shown that the company is being used as a mere façade to perpetrate fraud, avoid legal obligations or achieve some improper purpose, and when it can be established that the company is an authorized agent of its controllers or its members, corporate or human.
11. Beyond making the bare submissions, there is no evidence presented by the Claimant in the application, showing that the Directors have used the Respondent, as a device, a sham and façade, to evade legal responsibility.
12. Part of the decree had been paid by the Respondent, so where do the Directors come in?
13. The Claimant is not clear in its application what orders exactly, are sought. The application and the submissions contain prayers that do not match.
14. The Claimant needs to go back to the drawing board, and decide what is the most helpful mode of execution for the balance of the decree, short

of bringing in Directors, who are not even shown to have been served individually with the application as ordered by the Court. The Claimant, as observed above, has suggested that there are other modes of execution, short of pursuing the Directors.

IT IS ORDERED: -

- a. The application filed by the Claimant dated 14th March 2025 is declined.***
- b. The Claimant to explore and exhaust other available modes of execution of the decree.***
- c. No order on the costs.***

Dated, signed and released electronically at Nakuru, this 28th day of November 2025.

James Rika

Judge

