



**Kiboko v Osteria Group (Kenya) Limited (Cause E023 of 2022)
[2025] KEELRC 3464 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3464 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E023 OF 2022
SC RUTTO, J
DECEMBER 1, 2025**

BETWEEN

BENSON CHARO KIBOKO CLAIMANT

AND

OSTERIA GROUP (KENYA) LIMITED RESPONDENT

RULING

1. Through a Chamber Summons dated 12th January 2024, the Applicant seeks an order compelling the Directors of the Respondent/Judgment Debtor to personally satisfy the decree issued on 8th November 2023.
2. It is noteworthy that in the same application, the Claimant/Decree Holder also sought an order requiring the Directors of the Respondent to attend Court for examination on the Respondent’s assets and/or means, as well as the production of its books of accounts and other supporting documents demonstrating the same.
3. On 7th February 2024, the Court, noting that the application had not been opposed, allowed it in terms of prayer 1 and directed that the Respondent’s Director attend Court for examination on 13th March 2024.
4. It is noteworthy that at that time, the Respondent was represented by the firm of Gakoi Maina & Co. Advocates. It is further instructive to note that on 13th March 2024, the said firm applied to cease acting for the Respondent on the ground that the Respondent had been uncooperative, thereby making it difficult to properly and effectively represent it.
5. The matter was scheduled for the examination of the Respondent’s Directors on several occasions; however, on each occasion, the Court was informed that the Director had not been served with its orders.



6. Ultimately, on 1st April 2025, the Claimant's advocate informed the Court that the Respondent's Directors had finally been served and applied for warrants of arrest against the Director. At that point, Ms. Aoko, Advocate, indicated that she had received instructions from the Respondent's former Director to come on record on his behalf. She thereafter filed a Notice of Appointment and was granted leave to file a response to the Chamber Summons.
7. The application is premised on the grounds set out on its face and is supported by the averments in the Supporting Affidavit of Benson Charo Kiboko, the Claimant herein. The Claimant states that he obtained a decree for Kshs. 1,737,333 on 27th October 2023, and that the Respondent was duly served with a copy of the decree.
8. The Claimant further avers that, in an effort to defeat the Court's decree, the Respondent moved the hotel's assets from its premises on Lenana Road. He explains that he has engaged various agents, including auctioneers, to trace the Respondent's attachable assets, but these efforts have been unsuccessful.
9. According to the Claimant, the Directors of the Judgment Debtor have fraudulently disposed of or transferred the company's assets with the intention of defeating his claim. He asserts that the Directors have engaged in wrongful trading involving actual dishonesty and moral culpability, and that they have conducted the company's affairs with the intent to defraud him as the decree holder.
10. The Claimant contends that the corporate personality of the Respondent is being abused by its Director and he should therefore be held personally liable to satisfy the decree. He maintains that the corporate veil is being used to perpetuate fraud or other improper conduct.
11. He further states that the examination of the Directors will demonstrate that the Judgment Debtor has the means to satisfy the decree but has willfully refused to do so.
12. In response to the Application, Maurizio Corti, who identifies himself as a former Director of the Respondent, filed a Replying Affidavit dated 10th July 2025. He states that the Respondent ceased its business operations in Kenya during the Covid-19 period due to an unfavourable business environment and cash-flow challenges, following a Board resolution passed on 4th January 2021.
13. He explains that several years passed before he could formally notify the Registrar of Companies of the cessation of business, as he fell ill during the COVID period and remained bedridden for approximately three years. He adds that the other Director resigned shortly after the said resolution.
14. He states that the cessation of business was officially recorded at the Companies Registry on 6th January 2025, after which the Respondent applied to have its name struck off the Register. He avers, on the advice of his Counsel, that once a company is formally closed, it cannot be revived through execution proceedings.
15. Mr. Corti further deposes that the Respondent filed a liquidation petition at the High Court in Malindi, being Insolvency Petition No. E001 of 2025, seeking the liquidation of Osteria Group Kenya Limited.
16. He states, on his Counsel's advice, that no proceedings may continue against a company under liquidation and therefore this matter ought to be suspended pending the determination of the insolvency proceedings.
17. He further avers, on his Counsel's advice, that the orders sought in the Application cannot be granted during the pendency of the insolvency petition.



18. Mr. Corti asserts that he was unaware of the judgment in this matter, as he was never served personally or through any known office. He says he had written multiple times to the Respondent's former Advocate seeking updates on all pending cases, but the information was not provided, as the accountant intended to first record all outstanding liabilities for purposes of preparing a statement of affairs.
19. Mr. Corti reiterates that he fell ill shortly after the closure of the Respondent's restaurants and has since been confined to a wheelchair, having exhausted his savings on medical treatment. He further avers that he has no income or savings and currently survives on a small and irregular stipend from his twin sister.
20. He further states that he has no money or assets to satisfy the decree and would suffer prejudice if the order sought is granted, noting that the business collapsed due to economic downturns worsened by Covid-19 restrictions on restaurants.
21. He further contends that the Claimant was an employee of the Respondent, a limited liability company, and not his personal employee. That he should not be personally condemned for the company's financial collapse during harsh economic conditions.
22. Mr. Corti denies that he, or any past Director, contributed to the collapse of the business and contends that no former Director should be held personally liable for the Respondent's debts. He terms as false the Claimant's allegation that the Respondent concealed assets to delay or defeat execution.
23. He states, on his Counsel's advice, that the Claimant's application effectively seeks to lift the corporate veil, but the Claimant has not met the legal threshold for such relief.
24. He asserts that the Respondent had no significant assets apart from tools of trade such as cookers, fridges, utensils, and furniture, which were already taken by another creditor to settle a debt.
25. He states that he was never served with the judgment or decree until 12th June 2025, when the Claimant's Advocate served his Counsel with the present Application, which included a copy of the decree only.
26. He denies that any auctioneer or "agents" sent by the Claimant ever visited the Lenana Road restaurant prior to its closure on 7th August 2022.
27. He also denies that the Respondent or its Directors conducted business with the intent to defraud the Claimant.
28. He recalls that on 3rd August 2020, the Claimant received two motorbikes registration numbers KMCX 338Q and KMCV 089N belonging to the Respondent, in part satisfaction of his claim. He states that the Claimant accepted and signed for these items, and that the restaurant closed shortly thereafter.
29. Mr. Corti denies the claims that he has abused the corporate personality of the Respondent.
30. He contends that cross-examination of any former Director does not arise, as he was not served with the claim before 12th June 2025, and further because insolvency proceedings are pending before the High Court in Malindi.
31. In a rejoinder, the Claimant filed an Affidavit dated 15th September 2025, in which he avers that the alleged board resolution to close the Respondent's business is fabricated, as the Respondent continued operations post-COVID-19 and still owns hotels in Malindi and Lamu, where he is based.



32. He contends that the notification of cessation of business and the liquidation petition were actions taken in 2025, long after the judgment and the issuance of warrants in this matter.
33. The Claimant asserts that no application has been filed in this Court or elsewhere to stay execution, and no sufficient cause or order exists to prevent this Court from proceeding. He adds that any other court of equal rank cannot restrain this Court from exercising its jurisdiction.
34. He disputes the Respondent's claim of ignorance of this suit, noting that the Respondent only appeared in Court after warrants of arrest were issued, having otherwise treated the matter casually.
35. The Claimant further observes that the Respondent was represented by Gakoi Maina & Co. Advocates throughout the proceedings, and therefore cannot claim lack of awareness of the judgment.
36. He is categorical that the Respondent's admission that there are no attachable assets makes it appropriate for the decree holders to proceed with execution through arrest.
37. The Claimant notes that the Court has already lifted the corporate veil by ordering the Director's arrest for failure to satisfy the decree, and such orders have neither been set aside nor appealed.
38. He further contends that the Respondent's Director is not ill, and no evidence has been presented to prevent the Court from permitting the decree holders to proceed with execution.

Submissions

39. The Application was canvassed by way of written submissions. The Court has duly considered the parties' respective submissions.

Analysis and Determination

40. The twin issues for determination are: whether the Court should stay further proceedings pending the Respondent company's liquidation, and whether the corporate veil should be lifted.
41. On the first issue, Mr. Corti, the Respondent's Director, has stated in his Replying Affidavit that the Respondent filed a liquidation petition at the High Court in Malindi, being Insolvency Petition No. E001 of 2025.
42. Section 428 of the *Insolvency Act* provides as follows:
 - “(1) At any time after the making of a liquidation application, and before a liquidation order has been made, the company, or any creditor or contributory, may—
 - (a) if legal proceedings against the company are pending in the court—apply to the court for the proceedings to be stayed; and
 - (b) if proceedings relating to a matter are pending against the company in another court—apply to the court to restrain further proceedings in respect of that matter in the other court.
 - (2) On the hearing of an application under subsection (1)(a) or (b), the court may make an order staying or restraining the proceedings on such terms as it considers appropriate.”
43. Fundamentally, the insolvency court has discretion to stay proceedings against a company in another court once a liquidation petition is filed. Accordingly, a stay of proceedings is not automatically granted



upon the filing of a liquidation petition; instead, the Court is required to consider the facts and circumstances before determining whether a stay is appropriate.

44. Therefore, the mere fact that the Respondent has initiated liquidation proceedings does not automatically operate to stay the present proceedings.
45. With respect to the second issue, the Claimant contends that the Respondent is concealing its assets to delay or defeat execution of the judgment.
46. The Claimant further avers that the corporate veil is being used to facilitate fraud or improper conduct.
47. These claims are strongly disputed by Mr. Corti, the Respondent's Director, who states that the Respondent's restaurant businesses failed due to a slow economy, compounded by the strict COVID-19 restrictions that forced closures.
48. He further avers that the Respondent had no assets other than tools of trade, such as cookers, fridges, utensils, and furniture, which had already been seized by a creditor to satisfy a debt.
49. As earlier adverted, on 7th February 2025, the Court issued an order for the examination of the Respondent's Directors.
50. The examination of judgment debtors under Order 22, Rule 35 of the Civil Procedure Rules forms part of the process of executing decrees. The order is framed as follows:

“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.”
51. The foregoing rule confers on this Court the jurisdiction to summon any officer of a company to attend Court for examination concerning the company's assets and means, with a view to satisfying a decretal sum. Such examination may also inform the Court's determination on whether it is appropriate to lift the corporate veil.
52. In the present case, it is undisputed that the decree of this Court remains unsatisfied. The Respondent's Director, Mr. Maurizio Corti, has deposed under oath that the company's restaurant business collapsed following the COVID-19 pandemic.
53. In light of the above, the Court finds no reason to doubt the Claimant's assertion that he has been unable to identify any attachable assets of the Respondent to satisfy the decree.
54. Accordingly, before making any determination on lifting the corporate veil, it is imperative for the Respondent's Director, Mr. Maurizio Corti, to appear before the Court and provide information regarding the company's assets, if any, and the status of its books of accounts.
55. To this end, the Director of the Respondent, Mr. Maurizio Corti, is hereby ordered to appear before this Court for examination under oath concerning the means and assets of the Respondent. He



is further required to produce all relevant documents, or copies thereof, relating to the company's assets and books of account that are in his possession or obtainable in his capacity as Director of the Respondent.

56. The costs of this application shall be borne by the Respondent.

57. The orders herein shall apply to ELRCC No. E002/2022-Charles Benard Ogonda v Osteria Group Limited.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF DECEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance for the Claimant/Decree Holder

Ms. Achieng' instructed by Ms. Aoko for the Respondent/Judgment Debtor's

Mohamed Court Assistant

order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

