

REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
KAJIADO**

ELCMISC NO. E005 OF 2020

**IN THE MATTER OF APPEAL NO 7 (WS) OF 2012 BETWEEN
MUEMA KITULU AND NOL TURESH PIPELINE BULK WATER
COMPANY LTD**

AND

**IN THE MATTER OF RULE 34(1) AND (2) OF THE WATER APPEALS
BOARD RULES, 2007**

AND

IN THE MATTER OF THE WATER ACT NO 43 OF 2016

AND

**IN THE MATTER OF ADOPTION OF AN AWARD OF THE WATER
APPEAL BOARD MADE ON 15TH APRIL 2015**

BETWEEN

MUEMA KITULU.....PLAINTIFF/APPLICANT

VERSUS

NOL TURESH PIPELINE BULK WATER –
COMPANY LIMITED.....DEFENDANT

AND

GIDEON KENTETE.....1ST RESPONDENT

JOSEPH MAPENA2ND RESPONDENT

RULING

(In respect of the Notice of Motion Application dated 12th June 2025

seeking to have the Judgement debtor examined pursuant to Order 22 Rule

35 of the Civil Procedure Rules)

Introduction

1. The matter before this Court is the Notice of Motion Application by the Plaintiff/Applicant dated 12th June 2025, brought under the provisions of

Order 22 Rule 35 and Order 51 Rule 1 and 3 of the Civil Procedure Rules and Sections 1A, 3 and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya.

2. The Application is supported by the Affidavit of the Applicant, MUEMA KITULU, sworn on the 12th June 2025, together with the annexures marked "MK 1" through "MK 6 a & b". The Applicant seeks the intervention of this Court to enforce a decree and compel the attendance of the Respondent's directors for examination regarding the means to satisfy the decretal sum.
3. In the said Application, the Applicant prays for the following orders:
 - 1) Spent
 - 2) **THAT** the Honourable Court be pleased to issue summons directing GIDEON KENTETE and JOSEPH MAPENA, the Managing Director and Finance and Administration Director respectively, of the Respondent/Judgement Debtor to attend court on the appointed day, to be orally examined as to the business and affairs of the Respondent/Judgement Debtor and the property or properties of the Respondent/Judgement Debtor or the Respondent/Judgment Debtor's means of satisfying the decretal sum.
 - 3) **THAT** the Honourable Court be pleased to issue an order directing GIDEON KENTETE and JOSEPH MAPENA in their capacity as the

Managing Director and Finance and Administration Director respectively of the Respondent/Judgement Debtor to produce books of accounts, cheque books, bank statements and statutory documents relating to the operations and the transactions of the Respondent/Judgement debtor and the said directors be examined on oath on the said documents from 15th April 2015 to date.

- 4) **THAT** the Honourable Court be pleased to issue an order directing GIDEON KENTETE and JOSEPH MAPENA in their respective capacity as Managing Director and Finance and Administration Director of the Respondent company to pay the decretal sum as per the judgment of the trial court.
- 5) **THAT** the Honourable Court be pleased to grant any other or better order/relief as shall meet the ends of justice.
- 6) **THAT** the costs of the application be provided for.

4. The Applicant avers that on the 29th April 2021, the parties herein entered into a Consent Judgment. Under the terms of this judgment, the Defendant/Judgment Debtor was obligated to:

- i. **Pay the Applicant the specified amount together with the costs of the suit.**

- ii. Relocate the Applicant's water meter to a spot near the Applicant's home.
 - iii. Fit an extra control meter within the Applicant's compound to monitor water consumption for the purposes of resolving disputes regarding monthly consumption.
5. Following this judgment, the Applicant filed a Party and Party Bill of Costs on 25th June 2021. This bill was taxed on the 8th September 2021 by Hon. Edwin Mulochi in the sum of Kshs 305,552.00. A Certificate of Taxation was issued and is annexed to the affidavit as annexure "MK 1".
 6. A decree was subsequently extracted and issued on 1st December 2021 (Annexure "MK 2"). The Applicant states that this decree was served upon the Respondent/Judgment Debtor on 2nd December 2021, accompanied by a letter demanding payment of the decretal sum, which then stood at Kshs 505,025.00 inclusive of the judgment sum and further interest (Annexure "MK 3").
 7. The Applicant contends that despite service, the Judgment Debtor failed to honor the decree by paying the outstanding sum or complying with order regarding the relocation and installation of the water meters.

8. The Applicant submits that reasonable efforts to execute the judgment have been frustrated by the Judgment Debtor. The Applicant attempted to attach the moveable assets of the Judgment Debtor. However, this exercise resulted only in the collection of "worthless furniture" that could not even cover the Auctioneer's fees, leading to the abandonment of the attachment. A copy of the Proclamation is annexed and marked as "MK 4".
9. A subsequent attempt to serve a Notice to Show Cause upon the Judgment Debtor was also in vain (Annexure "MK 5"). The Applicant's investigations into other assets of the Defendant available for execution have borne no fruit.
10. The Applicant alleges that the 1st and 2nd Respondents, being the Managing Director and Finance & Administration Director respectively, have failed to facilitate the payment of the debt or the relocation of the meter as required to under the terms of the judgement in favour of the Applicant. Instead, the Applicant claims that they have persisted in "arrogant and/or reckless behavior," specifically by continuing to serve the Applicant with "grossly inflated water bills" in an apparent attempt to offset the decretal amount owed to him.

11. It is the Applicant's assertion that the 1st and 2nd Respondents are the controlling officers of the Judgment Debtor. The Applicant relies on previous documents filed in court, including a Replying Affidavit sworn in November 2024 and a letter dated 12th September 2024 (Annexure "MK 6 a & b"), to demonstrate the active roles of the Respondents in the company's management.

12. Consequently, the Applicant avers that he has no other means to realize his lawfully obtained judgment. He invokes the provisions of Order 22 Rule 35 of the Civil Procedure Rules to compel the attendance of the said directors for oral examination regarding the company's means to satisfy the decree and to produce the relevant books of accounts and statutory documents for the period running from 15th April 2015 to date.

13. The Applicant contends that unless the orders sought are granted, the Respondents will continue with their contemptuous acts, condemning the Applicant to irreparable loss.

14. The application is unopposed in spite of service upon the Respondents.

Analysis and Determination

15. Having carefully considered the Application, the Supporting Affidavit, and the annexures thereto, this court finds that the singular issue that arises for determination is whether this Court should grant the orders sought; specifically summoning the directors of the Respondent company for examination regarding the company's means to satisfy the decree.

16. The Application is anchored on **Order 22 Rule 35 (1)** of the **Civil Procedure Rules**, which provides a mechanism for a decree-holder to orally examine a judgment debtor, or in the case of a corporation, any officer of the corporation, where a decree for the payment of money remains unsatisfied, as to the Judgment Debtor's means to satisfy the decree. The rule states, in the relevant part that:

"(1) 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; or

(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..."

17. The record confirms that a decree was indeed issued on 1st December 2021 and served upon the Respondent. The Applicant has demonstrated that ordinary execution processes have been frustrated and borne no fruits. The attempted attachment of movable assets of the Defendant yielded only "worthless furniture," and the Respondent has failed to comply with the court's orders for over three years now.

18. The Applicant contends that the 1st and 2nd Respondents, being the Managing Director and Finance Director of the Defendant respectively, are the controlling minds of the company and are best placed to explain the company's financial status. The refusal to pay the decretal sum, coupled with the alleged "arrogant" conduct of inflating water bills in an apparent effort to offset the debt, suggests an attempt to obstruct the course of justice.

19. Courts in Kenya have consistently held that where a corporate judgment debtor claims inability to pay or frustrates execution, the veil of incorporation may be pierced to examine the directors. This principle

ensures that the separate legal personality of a company is not used as a cloak to evade lawful obligations.

20. In the case of *Essential Drugs Limited v OSS Chemie (K) Limited (Civil Miscellaneous Application E 202 of 2021) [2022] KEHC 237 (KLR)*, the High Court, faced with a similar scenario, where a decree remained unsatisfied by a corporate debtor, emphasized the necessity of examining the directors in the following words:

"That it is only fair and to the interest of justice that the directors of the said company be examined by this Court on the ability of the Respondent to settle the said costs; and the corporate veil of the Respondent be so pierced so as to make the directors... liable for the settlement of the judgment and decree."

21. I am satisfied that the Applicant has laid a sufficient basis for the invocation of the provisions of Order 22 Rule 35 of the Civil Procedure Rules. The directors of the Respondent company have a duty to account for the affairs of the company, especially where there are allegations of asset concealment or willful refusal to settle a judgment debt, as in this case.

22. Accordingly, I find merit in the Application and allow it in the following terms:

- A. The Application dated 12th June 2025 is allowed.
- B. Summons do issue to GIDEON KENTETE (Managing Director) and JOSEPH MAPENA (Finance and Administration Director) of the Defendant Company to attend this Court personally on a date to be fixed, to be orally examined as to the business, affairs, and means of the Respondent/Judgment Debtor to satisfy the decree of this court.
- C. The said Directors GIDEON KENTETE (Managing Director) and JOSEPH MAPENA (Finance and Administration Director), are hereby ordered to produce books of accounts, cheque books, bank statements, and statutory documents relating to the operations of the Respondent company from 15th April 2015 to date during the said examination.
- D. The costs of this Application are awarded to the Applicant.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 11th Day of December 2025.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Kiamba h/b for Mr. Kitulu for the Applicant

Ms. Ngetich for the Respondent

Court Assistant: Mpoye

M.D. MWANGI
JUDGE

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