

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMMMISC. NO. E520 OF 2024

**AVEEJOY INNOVATIONS CO.
LTD.....APPLICANT**

-VERSUS-

**CADVISION MOULD SERVICES LTD.....
.....RESPONDENT**

RULING

1. The matter before me is the application dated 26th June 2024 and concerns the determination of costs following the settlement of the decretal sum by the Respondent.
2. On 22nd December 2023, the Small Claims Court entered judgment in favour of the Applicant in SCCCOMM/E3063/2023 for Kshs.1,106,313.10/= together with costs and interest. The Respondent was subsequently allowed to liquidate the decretal sum in four instalments, the last of which was due on 28th June 2024.
3. The Respondent defaulted in complying with the instalment plan, prompting the Applicant to instruct Mbeki Auctioneers to execute warrants of attachment. The Auctioneer's Supplementary Affidavit dated 30th June 2025 confirms that, despite several attempts, no attachable property was found.
4. Faced with non-compliance, the Applicant filed the present proceedings seeking to pierce the corporate veil and obtain warrants of arrest

against the Respondent's directors. It was only after the filing of these proceedings that the Respondent settled the decretal sum.

5. The parties are now at variance on the issue of costs. The Applicant seeks costs of the application, while the Respondent contends that the application was frivolous and a non-starter, hence costs should be awarded to them.
6. The matter proceeded by way of written submissions.
7. The Applicant filed submissions dated 2nd July 2025, arguing that they were forced to institute these proceedings because the Respondent failed to comply with court-ordered installments and moved assets to evade execution. They contend that the Respondent only panicked and settled the debt after these proceedings were filed. Thus, they are entitled to legal fees and filing costs.
8. The Respondent, on the other hand, in their submissions dated 15th October 2025, argued that the application was a non-starter as they were already in the process of paying and experiencing financial challenges. They further argue that the Applicant filed the motion on the same day the proclamation notice was served, failing to exhaust remedies under Section 39 of the Small Claims Court Act. They seek for the application to be dismissed with costs.

Analysis and Determination

9. Having carefully considered the application, the response thereto, and the parties' rival submissions, I find that the only issue for determination is whether the Applicant is entitled to the costs of the application.
10. It is trite law that the issue of Costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action and proceedings in any litigation. The

proviso of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that Costs follow the events. By the event, it means the outcome and the results of the legal action.

11. In the present case, it is clear from evidence that the Respondent was granted leave to liquidate the decretal sum in instalments but defaulted. The Auctioneer's affidavit demonstrates that execution by attachment was frustrated as no attachable property was found.
12. The Applicant was therefore entitled to seek alternative modes of execution, including lifting the corporate veil. While the threshold for piercing the veil is high, the application was not frivolous as alleged by the Respondent. It was a legitimate attempt to enforce a valid decree.
13. The Respondent's argument that the application was a non-starter is weakened by the fact that their default and evasive conduct necessitated the proceedings.
14. Section 27 of the Civil Procedure Act provides that costs follow the event unless the Court orders otherwise for good reason. The "event" here is the Respondent's eventual settlement of the decretal sum, albeit belatedly and only after the application was filed.
15. Accordingly, the Court allows the present application and issues the following orders:
 - i. The Respondent shall bear the costs of the application dated 26th June 2024, which is hereby assessed at Kshs.75,000/=.
 - ii. Interest on costs shall accrue at court rates from with effect from the date of this Ruling until payment in full.
16. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

15TH JANUARY 2026

A handwritten signature in blue ink, appearing to read 'ADO MOSES', is written over a light-colored rectangular background.

**ADO MOSES
JUDGE**

In the presence of: -

C/A - Moses

N/A.....for the Applicant.

Ms. Muthii..... for the Respondent.

ORIGINAL FILE