



Kenafri Diaries Manufacturers Ltd v Christian Partners Development Agency; Loboyi & 5 others (Applicant) (Commercial Case E348 of 2020) [2026] KEHC 810 (KLR) (Commercial and Tax) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E348 OF 2020
PM MULWA, J
JANUARY 29, 2026**

BETWEEN

KENAFRIC DIARIES MANUFACTURERS LTD PLAINTIFF

AND

CHRISTIAN PARTNERS DEVELOPMENT AGENCY DEFENDANT

AND

HAGGAI ASENSA LOBOYI APPLICANT

NAMADA SIMONI APPLICANT

DAVID CHAI AGOLI APPLICANT

EMMY SUMBEIYWO APPLICANT

CAROLINE AYUMA APPLICANT

SALATIEL NYABERA APPLICANT

RULING

1. Before this Court are two related applications. The first is the Notice of Motion dated 30th January 2025 filed by the Defendant, Christina Partner Development Agency, pursuant to Order 10 Rule 11, Order 22 Rule 22, Order 51 of the Civil Procedure Rules, sections 1A, 1B and 3A of the *Civil Procedure Act*, and Article 159(2) of *the Constitution*. The Defendant seeks, inter alia, an order of stay of execution, the setting aside of the default judgment and decree entered on 19th July 2021, and leave to defend the suit.



2. The second is the Notice of Motion dated 5th June 2025 filed by the named Board Members of the Defendant, challenging the orders made on 28th July 2023 lifting the corporate veil. They seek a stay of execution, setting aside of the said orders, and protection from personal execution.
3. The two applications were canvassed by way of affidavits and written submissions. Owing to their factual and legal interdependence, the Court directed that they be heard and determined together.

Background

4. The Plaintiff instituted this suit on 9th September 2020, seeking payment for goods allegedly supplied to the Defendant. The Defendant neither entered an appearance nor filed a defence.
5. The Plaintiff avers that summons to enter appearance and pleadings were duly served upon the Defendant at its known offices in Chavakali, in compliance with Order 5 Rule 14 of the Civil Procedure Rules. Upon default, judgment was entered on 19th July 2021, followed by the issuance of a decree and commencement of execution proceedings.
6. The Defendant disputes service and contends that the judgment is irregular. It alleges fraud, forgery of tender documents, and collusion by third parties, and urges the Court to set aside the judgment to enable the dispute to be determined on the merits.
7. Following unsuccessful execution against the Defendant, the Plaintiff applied for examination of the Defendant's officials and for lifting of the corporate veil. Orders were issued on 28th July 2023, followed by substituted service through newspaper advertisement pursuant to leave of the Court.
8. The Board Members now contend that they were never personally served, that the Defendant is a non-profit organization whose mandate does not permit trading activities, and that the corporate veil was lifted without proof of fraud, impropriety, or personal benefit on their part.
9. The Plaintiff maintains that service was proper, that the Defendant and its officials were aware of the proceedings, and that the applications before the Court are dishonest, inordinately delayed, and intended solely to frustrate lawful execution of a valid decree.
10. It is against this procedural and factual background that the two applications fall for determination.

Issues for determination

11. Having considered the pleadings, affidavits, and submissions, the Court frames the following issues for determination:
 - i. Whether the default judgment entered on 19th July 2021 was regular and whether it ought to be set aside;
 - ii. Whether the Defendant's application dated 30th January 2025 was brought after inordinate delay;
 - iii. Whether the orders lifting the corporate veil against the Board Members were lawfully issued; and
 - iv. Whether the Applicants are entitled to the discretionary reliefs sought.



Default judgment entered on 19th July 2021

12. The record shows affidavits of service indicating that the Defendant was served at its admitted offices and, subsequently, through substituted service sanctioned by the Court. The Defendant's denials of service are general and do not, without more, displace the affidavits of service on record.
13. On the material before it, the Court is satisfied that the default judgment entered on 19th July 2021 was regular. The burden, therefore, lay upon the Defendant to demonstrate sufficient cause for setting it aside, including the absence of inordinate delay and the existence of a plausible defence raising triable issues.
14. The judgment sought to be impugned was entered more than three years before the filing of the application dated 30th January 2025. The delay is substantial and, on the face of it, inordinate.
15. The alleged defence grounded on fraud, lack of mandate, and absence of contractual privity was, on the Defendant's own showing, available from the inception of the suit. Ordinarily, such delay would weigh heavily against the exercise of discretion in favour of the Defendant.
16. The power of the Court to set aside a default judgment is conferred by Order 10 Rule 11 of the Civil Procedure Rules. The discretion is wide but must be exercised judiciously, bearing in mind the interests of justice.
17. In *Patel v E.A. Cargo Handling Services Ltd* [1974] EA 75, the Court held that the primary concern is to do justice between the parties, and that errors should not necessarily be visited upon a litigant if they can be adequately compensated by an award of costs.
18. The Court of Appeal in *James Kanyita Nderitu & another v Marios Philotas Ghikas & another* [2016] eKLR drew a distinction between regular and irregular default judgments, and held that even where a judgment is regular, the Court retains discretion to set it aside where the interests of justice so demand.
19. In the present matter, there remains considerable dispute as to service and, more importantly, the consequences of the judgment have extended beyond the Defendant to its Board Members through the lifting of the corporate veil.
20. The Defendant has raised allegations of fraud, lack of authority, and absence of contractual privity. While these allegations are yet to be proved, they are not frivolous. As was stated in *Tree Shade Motors Ltd v D.T. Dobie & Co. (K) Ltd* [1995] eKLR, a defence that raises even a single triable issue is sufficient to justify setting aside a default judgment.
21. In the totality of the circumstances, and mindful of the need to accord parties an opportunity to be heard on the merits, the Court is persuaded that the interests of substantive justice favour setting aside the default judgment.

Was the Defendant's application dated 30th January 2025 brought after inordinate delay?

22. The Plaintiff submitted that the application was brought after inordinate and unexplained delay. Delay is a relevant consideration in applications of this nature, though it is not, of itself, decisive.
23. In *Sebei District Administration v Gasyali & others* [1968] EA 300, it was held that delay must be considered together with the explanation offered and weighed against the demands of justice in the particular case.



24. Given the contested service, the subsequent execution proceedings, and the serious personal consequences visited upon the Board Members, the Court is not persuaded that the delay, in the peculiar circumstances of this case, should operate as an absolute bar to the Defendant being heard.

Whether the orders lifting the corporate veil against the Board Members were lawfully issued

25. The second application challenges the propriety of the orders made on 28th July 2023 lifting the corporate veil and exposing the Board Members of the Defendant, a non-profit organization, to personal liability.
26. The doctrine of separate legal personality is a foundational principle of company law. In *Salomon v Salomon & Co. Ltd* [1897] AC 22, it was affirmed that a corporation is a legal person distinct from its members. Kenyan courts have consistently upheld this principle.
27. The corporate veil may only be lifted in exceptional circumstances, including fraud, improper conduct, or where the corporate form is used as a façade to evade legal obligations. This position was reiterated in *Victor Mabachi & another v Nurtun Bates Ltd* [2013] eKLR.
28. In the context of non-profit organizations and public benefit entities, the threshold for lifting the veil is particularly high. Board members are not guarantors of organizational debts and cannot be held personally liable absent cogent evidence of fraud, ultra vires conduct, or personal benefit.
29. From the material placed before Court, it is not apparent that the stringent threshold required to justify lifting the corporate veil was met at the time the impugned orders were issued. There is insufficient demonstration, at this stage, that the Board Members acted fraudulently, improperly, or for personal gain.
30. In the circumstances, and guided by Article 50(1) of *the Constitution* on the right to a fair hearing and Article 159(2)(d) on the imperative of substantive justice, the Court is satisfied that the orders lifting the corporate veil cannot be allowed to stand without the matter being fully ventilated on the merits.

Disposition

31. In light of the foregoing, the Court makes the following orders:
- i. The default judgment entered on 19th July 2021, together with all consequential orders and the decree arising therefrom, is hereby set aside.
 - ii. The Defendant is granted leave to enter appearance and file its defence within fourteen (14) days from the date hereof.
 - iii. The orders issued on 28th July 2023 lifting the corporate veil and permitting execution against the Board Members are hereby set aside.
 - iv. There shall be a stay of execution pending the hearing and determination of the suit on the merits.
 - v. The costs of the two applications shall be in the cause.

It is so ordered. Top of Form

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 29TH DAY OF JANUARY 2026.

P.M. MULWA



JUDGE

In the presence of:

Mr. Adoli for Plaintiff/Respondent

Mr. Ochieng for Board Member(s)

Court Assistant: Carlos

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