

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

MISC. CIVIL APPLICATION NO. E053 OF 2024 AS
CONSOLIDATED WITH
MISC. E004 OF 2025

**MARGARET WAWUDA MWAKIMA.....APPLICANT/DECREE
HOLDER**

=VERSUS=

**SOLFIN SOLUTIONS LTD.....RESPONDENT/JUDGEMENT
DEBTOR**

RULING

1. The application coming for consideration is the one dated 4th November 2025 brought under Orders 51(1) Order 22, Rule 35 of the Civil Procedure Rules 2010, Section 1A, 3A, 6 and 63 of the Civil Procedure Act, Chapter 21 Laws of Kenya and all other enabling provisions of the Law seeking the following orders:-

- (i) The Honourable Court be pleased to issue summons directing SAMIASHAHWAR NAEEMULLAH KHAN and NABIL BADRUDIN ADAMJEE who are Directors of the Respondent/Judgment 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/Judgment Debtor or the**

Respondent's/Judgment Debtor's means of satisfying the decretal sum herein.

- (ii) The Honourable Court be pleased to issue an order directing SAMIASHAHWAR NAEEMULLAH KHAN and NABIL BADRUDIN ADAMJEE in their capacity as the Directors of the Respondent/Judgment Debtor to produce before the Court any books of accounts, cheque books, bank statements and statutory documents relating to the operations and the transactions of the Respondent/Judgment Debtor and the said Directors be examined on oath on the said documents.**
- (iii) The Honourable Court be pleased to issue an Order lifting the corporate veil and directing SAMIASHAHWAR NAEEMULLAH KHAN and NABIL BADRUDIN ADAMJEE in their capacity as the Directors of the Respondent/Judgement Debtor Company to be held personally liable for the decretal sum.**
- (iv) The Honourable Court be pleased to make such further orders in the interest of justice.**
- (v) Cost of this application be provided for.**

2. The application is based on the following grounds:-

- (i) The Applicant/Decree Holder obtained a Judgment against the Respondent/Judgment Debtor on 8th April 2025 for the sum of Kshs. 7,191,649.00 which amount continues to accrue interest at court rates.**
- (ii) The Respondent/Judgment Debtor has not satisfied the decree of the Court and the Applicant/Decree Holder has been unable to trace any attachable assets of the Respondent/Judgment Debtor to satisfy the decree.**
- (iii) The Respondent/Judgment Debtor is still legally subsisting and the Directors are best positioned to explain its operations and current status.**
- (iv) The Directors of the Respondent/Judgment Debtor have refused to cooperate in settling the claim herein therefore they should be held personally liable.**
- (v) The Appellant/Decree Holder is greatly prejudiced by the current circumstances.**
- (vi) It is in the interest of justice that this application be allowed.**

3. The application is supported by the affidavit of the Applicant sworn on 4th November 2025 as follows:-

- (i) I am an adult of sound mind, the Decree Holder/Applicant herein, duly conversant with the facts and matters in issue and therefore competent to swear this affidavit.**
- (ii) I obtained a judgment against the Respondent/Judgment Debtor on 8th April 2025 for the sum of Kshs. 7,191,649.00 which sum continues to accrue interest at court rates.**
- (iii) I began the execution process by appointing Anfield Auctioneers to execute the warrants of attachment.**
- (iv) However, the Auctioneer has been unable to trace any attachable assets of the Respondent/Judgment Debtor and therefore the warrants of attachment have not been executed. The Decree, thus remains unsatisfied.**
- (v) The Respondent/Judgment Debtor is still legally subsisting and the Directors are best placed to explain its operations and current status.**
- (vi) I have been unable to trace any records of the Respondent/Judgment Debtor to ascertain its financial status, means and the manner in which its business operations are conducted.**

(vii) I am advised by my Advocates on record and which advice I verily believe to be true and sound that it is the Respondent/Judgment Debtor\ s Directors who are mandated to keep records relating to the operations of the company and in the circumstances are best placed to explain the affairs of the Respondent/Judgment Debtor.

(viii) The Directors of the Respondent/Judgment Debtor have refused to cooperate in settling the claim herein and should be held personally liable.

(ix) I am greatly prejudiced by the current circumstances.

(x) It is in the interest of justice and fairness that the orders sought be granted.

4. The Respondent filed a Replying Affidavit opposing the application dated 4th November 2025 sworn by **NABIL ADAMJEE** a Director of the Respondent as follows:-

(i) THAT I am a male adult, Director of Solfin Solutions Ltd, competent and duly authorized to swear this affidavit on its behalf and on my own behalf as I hereby do.

(ii) THAT I have read and understood the Notice of Motion dated 4th November 2025 filed by the Applicant and I have been advised by Counsel, which

advice I verily believe to be true that the said application is misconceived, incompetent and an abuse of the court process.

- (iii) THAT the application seeks inter alia, Orders compelling the Directors of the Respondent to attend court for cross-examination, to produce books of account and financial statements and to lift the corporate veil of the Respondent company.**
- (iv) THAT there is absolutely no legal justification or reasons for piercing the corporate veil because the grounds provided for in law have not been met.**
- (v) THAT I am advised by Counsel the application is fatally defective for having been brought under the wrong provisions of law; principally by failing to cite enabling provisions of law principally Sections 323, 90, 148 of the Companies Act Cap 486. Or even Sections 18 as read with 34 of the Civil Procedure Act dealing with enforcement of Orders.**
- (vi) THAT the Respondent is a duly incorporated Limited Liability company, separate and distinct in law from its directors and shareholders as settled in Salomon v Salomon & Co. Ltd (1897) AC 22 and numerous subsequent authorities.**

- (vii) THAT the application is a thinly veiled attempt to pierce this legal separation without satisfying the stringent legal threshold for lifting the corporate veil, and is thus a fishing expedition unsupported by evidence or law.**
- (viii) THE Applicant has not demonstrated any fraud, improper conduct, or misuse of the corporate form to justify the exceptional remedy of disregarding corporate personality.**
- (ix) THAT in fact there has not been a mention of fraud or substantiated allegation of dishonesty by the Applicant, crucial pre-requisites for consideration of the application by the court.**
- (x) THAT I am advised by Counsel which advise I believe accurate that the corporate persona will only be dispensed with where it is clear the company is being used “as a creature of the controlling director(s), a sham/mask which he holds before his face in an attempt to avoid recognition by the eye of equity”.**
- (xi) THAT I am advised by Counsel which advise I believe accurate that piercing the corporate veil is an equitable remedy and a party seeking to benefit from this extraordinary relief must satisfy the stringent**

requirements set out by law; which the Applicant has not done.

(xii) THAT I am further advised Counsel which advise I believe accurate that 'separate legal personality' is not novel law in Kenya and the law expressly permits incorporation of a business for the purpose of enabling its shareholders and directors to escape personal liability.

(xiii) THAT I have intimated to the Counsel for the Applicant through Anfield Auctioneers my willingness to settle the Decretal sum when we held a bipartisan meeting with Mr. Martin Mwaniki of telephone number 0722222672 - the Director on 27.9.25 where I made a proposal to repay the debt after a period of one year appurtenant to renewing my license with the Ministry of Mines.

(xiv) THAT reasons for failure to complete payment are documented and include vicissitudes that saddled most small and medium enterprises from the advent of Covid-19 a 'force majeure' event.

(xv) THAT there is no evidence adduced of any fraudulent activities undertaken by Directors and the corporate veil is not to be pierced simply because a company

cannot meet its financial obligations and even insolvency or lack of assets for a person juridica does not meet the threshold; it is only fraudulent acts, improper design, bad faith or underhand dealings.

(xvi) THAT Respondent hasn't wailfully refused to settle Decree but wan in fact shut down due to issuance of Agency Notices by the Kenya Revenue Authority Seizure of its books of account and closing its bank accounts and garnisheeing payment of all invoices thereby crippling its financial operations.

(xvii) THAT the said Agency Notice was issued to all the Respondents clients and banks to direct payment to KRA based on alleged tax arrears assessments which were not accurate.

(xviii) THAT in addition the Lease of the Respondents premises expired in February 2024 and the company was unable to renew the same for reasons already stated forcing it to dramatically scale down operations.

(xix) THAT the foregoing has been exacerbated by hostile legislation passed by Parliament recently which has crippled the operation of mining firms.

(xx) THAT indeed the Respondents financial predicaments place it in a situation where it is trying to manage its Creditors.

(xxi) THAT the Respondent company active operations are crippled and it no longer maintains business accounts or financial activities hampering directors' capacity to produce documents, exacerbated by KRA Agency Actions and seizures.

(xxii) THAT the application grossly misapprehends the proper procedure for post-judgment examination under Order 22 Rule 35 of the Civil Procedure Rules, which provides a specific mechanism for examining officers of a judgment debtor. The Applicant has not invoked this rule properly, nor sought leave for the specific relief contemplated therein.

(xxiii) THAT the present motion improperly seeks to convert an execution process into an inquisitorial investigation into the company's affairs - a purpose for which this Honourable Court should not lend its jurisdiction.

(xxiv) THAT the directors of a company cannot be summoned for cross-examination on the company's affairs except in accordance with established

procedure and on credible evidence that such examination will aid execution of a valid decree - none of which has been demonstrated here.

(xxv) THAT the Applicant is seeking an equitable remedy yet is approaching the court with unclean hands since the underlying contract was made by her as 'proxy' for her husband - an official of Taita Development Corporation in breach of the Public Officers Ethics Act.

(xxvi) THAT there is in fact a pending appeal being Civil Appeal Number 70 of 2025 challenging the refusal to review the application for setting aside which is due for hearing at the Mombasa Court of Appeal.

(xxvii) THAT no evidence whatsoever has been presented to prove Respondent company was formed as a sham, to conceal a nefarious intention, or defraud creditors and all dealings have been above-board; the mere fact that the enforcement proceedings are snaking through the judicial hierarchy cannot be evidence of fraud in light of the fact that the wheels of justice are turning, as they

should. The remedy of costs is available to eventually compensate parties aggrieved by delay.

(xxviii) THAT in addition my son has been suffering a chronic medical disorder due to family stresses some of which I have alluded to which has forced me to assume full caregiving responsibilities and hampered my ability to engage in meaningful business.

(xxix) THAT my economic downturn has even forced me to vacate my rental house unit and live with well-wishers who are accommodating me on humanitarian grounds.

(xxx) THAT the Respondent is humbly seeking this courts indulgence to enable him to reconfigure his accounts and crawl out of the current predicament in order to pay its debts.

(xxxii) THAT the orders sought are oppressive, premature and amount to harassment of private individuals who are not judgment debtors in these proceedings.

(xxxiii) THAT in the premises, the entire application is devoid of merit, bad in law and should be dismissed with costs.

(xxxiii) WHEREFORE I humbly pray that the Notice of Motion dated 4th November 2025 be dismissed with costs to the Respondent.

5. The parties filed written submissions as follows; The Applicant submitted that he is seeking orders for the examination of the Respondent company's directors, the production of documents, and ultimately, an order lifting the corporate veil to hold those directors personally liable for the decretal sum.
6. The Applicant submits that this application is squarely founded on Order 22 Rule 35 of the Civil Procedure Rules, which provides a clear mechanism for a decree-holder to examine a judgment debtor, or in the case of a corporation, its officers, regarding its assets and means to satisfy a decree.
7. It is uncontested that the Applicant holds a valid and unsatisfied decree against the Respondent company.
8. Judicial precedent affirms that this alone justifies the summons sought, as the examination is a legitimate step in the execution process to discover the company's means, not an immediate imposition of personal liability.
9. The Respondent's opposition, which prematurely conflates this application with a final order to pierce the corporate veil, is misplaced.

10. The process envisaged is a two-stage one: first, the examination of the directors and the production of the company's books and records; and second, based on the evidence adduced from that examination, a determination on whether circumstances warrant lifting the corporate veil.
11. The directors cannot avoid the examination by invoking the company's separate legal personality, as the rule expressly empowers the Court to summon them for the limited purpose of discovery.
12. Therefore, the Applicant has met the threshold for the orders sought, and the application should be allowed to progress this execution process.
13. The Respondent, Solfin Solutions Limited, vigorously opposes the Applicant's motion, characterizing it as a fundamentally flawed and abusive misuse of the court's process.
14. It contends the application is procedurally incompetent, as the proper legal avenue for examining a judgment debtor's officers, Order 22 Rule 35 of the Civil Procedure Rules, has not been correctly invoked.
15. Instead, the Applicant is accused of embarking on a speculative fishing expedition without demonstrating the necessary and relevant need for the requested information to aid execution.

16. On the substantive merits, the Respondent defends the sacrosanct principle of separate corporate personality, arguing that lifting the corporate veil is an exceptional remedy reserved only for instances of proven fraud, sham, or evasion of legal obligations, which must be strictly pleaded and proved.
17. The Applicant is said to have entirely failed to allege or provide evidence of any such improper conduct, rendering the attempt to pierce the veil untenable.
18. Furthermore, the demand for the company's financial records is deemed unsustainable, as such intrusive disclosure is not available through a post-judgment motion but through proper discovery or insolvency proceedings.
19. The Respondent also notes that compliance is impossible as the company has ceased operations.
20. In sum, the application is portrayed as a misguided attempt to transform execution into a personal investigation of the directors.
21. The Respondent therefore prays for its dismissal with costs.
22. **The issues for determination in this application are threefold:**
 - (i) **Whether the Applicant has satisfied the legal prerequisites for the court to issue summons for the oral examination of the Respondent company's directors pursuant to Order 22 Rule 35 of the Civil Procedure Rules;**

- (ii) Whether the court should grant an order for the production of the Respondent company's books of accounts and other statutory documents;**
- (iii) Whether the circumstances presented justify the drastic and exceptional remedy of lifting the corporate veil to hold the directors personally liable for the decretal sum.**

23. On the first issue, the law is clear. Order 22 Rule 35 of the Civil Procedure Rules provides a decree holder with a powerful tool to interrogate a judgment debtor, or in the case of a corporation, its principal officer, regarding the property or means available to satisfy the decree.
24. The purpose of this examination is discovery, not punishment. The objective is to enable the decree holder to ascertain the nature and whereabouts of the judgment debtor's assets to facilitate execution.
25. It is not a final hearing on liability. The Applicant holds an uncontested decree against the Respondent company, and the affidavit evidence demonstrates that execution through attachment has been futile as no attachable assets have been traced.
26. This constitutes a sufficient basis for invoking the court's powers under this rule.
27. The Respondent's argument that the application is a "fishing expedition" is, at this preliminary stage, untenable.

28. The very nature of an examination under Order 22 Rule 35 is to "fish" for information legitimately required to execute a judgment.
29. The threshold is low: a valid decree and a demonstration that execution has been unsuccessful. Both conditions are met herein.
30. Consequently, the application for summons directing the directors, Samiashahwar Naeemullah Khan and Nabil Badrudin Adamjee, to attend court for examination as to the Respondent's affairs, property, and means of satisfying the decree is merited and is hereby allowed.
31. Regarding the second issue for the production of documents, the same legal logic applies.
32. The examination process under Order 22 Rule 35 is inquisitorial and can extend to an order for the production of relevant documents that may shed light on the company's financial position and asset base.
33. The court's powers in aid of execution are wide and discretionary. The court can make such orders as are necessary to do justice, including orders for discovery.
34. The directors, as the persons responsible for the management and records of the company, are the proper parties to produce such documents.

35. Their claim that the company's operations are crippled and records seized by the Kenya Revenue Authority may be a factor to be considered during the examination, but it is not a bar to the issuance of the order.
36. The directors will be required to attend court and, to the best of their ability, produce the books of accounts, bank statements, and statutory documents in their possession or control, or provide a sworn account of their whereabouts.
37. The order for production is hereby granted.
38. The third and most substantive issue is the plea to lift the corporate veil and hold the directors personally liable.
39. This is an equitable remedy of last resort, not granted lightly. The foundational principle of corporate separate personality, established in *Salomon v Salomon & Co. Ltd* [1897] AC 22, is firmly entrenched in Kenyan law under the Companies Act.
40. The veil will only be pierced in exceptional circumstances where the company is used as a facade to conceal fraud, improper conduct, or the evasion of a legal obligation.
41. The separate legal entity doctrine will be disregarded only where special circumstances exist indicating that the company is a mere sham or is being used as an instrument of fraud or injustice.
42. The burden of proof rests squarely on the party seeking to pierce the veil. In the present application, the Applicant's supporting

affidavit and submissions are bereft of any particularized allegations of fraud, dishonesty, or improper design by the directors in their use of the corporate form.

43. The depositions speak only to the inability to trace assets and the directors' refusal to cooperate.
44. While frustrating, insolvency or an inability to pay debts, as deponed by the Respondent due to agency notices, lease expiry, and hostile legislation, does not by itself justify piercing the veil.
45. The fact that a company has no assets to satisfy a decree is not a ground for lifting the corporate veil.
46. The Respondent's affidavits, though detailing financial distress, have not been controverted on the specific point of fraudulent design.
47. The Applicant's application on this limb is therefore premature. The proper sequence is to first conduct the examination and production of documents ordered above.
48. The evidence gleaned from that process may then provide a foundation for a subsequent application to pierce the veil, if warranted.
49. On the material currently before the court, the stringent legal threshold for granting such an extraordinary final order has not been met.

50. In conclusion, and in the exercise of the court's discretion under Order 22 Rule 35 of the Civil Procedure Rules and its inherent jurisdiction to ensure the execution of its decrees is not rendered nugatory, the following final orders are made:

51. Summons shall issue directing SAMIASHAHWAR NAEEMULLAH KHAN and NABIL BADRUDIN ADAMJEE, the directors of the Respondent/Judgment Debtor Solfin Solutions Ltd, to attend court on a date to be fixed for oral examination on oath as to the business, affairs, property, and means of the said Respondent for satisfying the decretal sum herein.

52. The said directors are further ordered to produce before the court, on the date of the examination, all books of accounts, cheque books, bank statements, and statutory documents relating to the operations and transactions of the Respondent company that are within their possession, custody, or control.

53. The prayer to lift the corporate veil and hold the said directors personally liable for the decretal sum is hereby declined at this stage, with liberty reserved for the Applicant to revisit the issue upon conclusion of the examination process, should evidence warranting it emerge.

54. The costs of this application shall be borne by the Respondent/Judgment Debtor.

**Dated, signed and delivered this 29th day of January 2026
virtually via MT Teams at Voi High Court.**

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/ Mabishi

.....**for the Applicant/Decree Holder**

.....**for the Respondent/Judgement
Debtor**

ORIGINAL