

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM MISC. APP. NO. 2 OF 2019

MAINA & ONSARE PARTNERS ADVOCATES..... APPLICANT

-VERSUS-

KENPARK HOLDINGS LIMITED.....RESPONDENT

RULING

1. The applicant filed a Notice of Motion application dated 23rd August 2021 under the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Order 22 Rule 35 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The applicant prays for orders that the respondent's Directors, Mr. Kiritkumar Bhagwandas Kanabar and Mr. Harish Kanabar, be summoned to Court for oral examination on whether the respondent has assets or means to satisfy the decree issued on 26th May 2020, that the said Directors be compelled to produce the company's books of accounts and other relevant documents to support their examination and that if they fail to comply with the above orders, the said Directors be held personally liable for the decretal sum and/or be committed to civil jail for at least six (6) months.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Ms Ivy Ngui, an Advocate of the High Court of Kenya practicing in the applicant law firm. Ms Ngui averred that the respondent engaged the applicant's legal services in May 2018 in relation to a commercial transaction involving all that property known as L.R. No. 24968/9, Karen. That following the breakdown

of the Advocate-client relationship, the applicant filed an advocate-client bill of costs on 7th January 2019, which was initially unopposed and subsequently taxed as drawn. She deposed that although the respondent later obtained leave to defend the bill of costs, it failed to file any response, leading the Taxing Master to tax the bill at Kshs.1,338,013.60. Ms Ngui stated that a certificate of taxation was issued on 15th October 2019, and there being no challenge, appeal or application to set it aside, the certificate was adopted as a Judgment and decree of the Court.

3. She averred that subsequently, a decree was duly served on the respondent's Advocates and its Directors via registered post after the respondent vacated its known place of business, but no payment or proposal for settlement has been forthcoming. She asserted that following this non-compliance, the applicant instructed Auctioneers to attach and sell the respondent's assets, but the respondent's whereabouts could not be ascertained and no attachable assets were found. She contended that the applicant believes that the respondent has deliberately ceased operations to evade its obligations to creditors. She prayed for the respondent's Directors, Mr. Kiritkumar Bhagwandas Kanabar and Mr. Harish Kanabar, to be summoned for oral examination on the respondent's means and if the company is unable to satisfy the decree, they be held personally liable.
4. In opposition to the application, the respondent filed a replying affidavit sworn on 3rd March 2022 by Mr. Harish Kanabar. He averred that the instant application is founded on the erroneous assumption that he is a Director of the respondent company. He acknowledged that he was initially a Director and Shareholder of the respondent company at its incorporation, but he resigned from the company on 31st August 2016 and transferred all his shares to the remaining Director on the same date, and the requisite

documents were duly lodged with the Registrar of Companies. He stated that since his resignation, he has not received any remuneration, dividends, or benefits from the respondent company and he cannot make representations on its behalf or be compelled to produce its books of accounts.

5. He noted that while the applicant alleges it was instructed by the respondent company in May 2018, he no longer held any position within the company at that time and could not have engaged Counsel or entered into any contractual arrangements on its behalf. Mr. Kanabar deposed that alternative statutory mechanisms for debt recovery against a limited liability company exist, including those provided for under the Insolvency Act, 2015, none of which include the procedure invoked by the applicant. He challenged the applicant's insinuations of fraud, terming them as speculative, defamatory and unsupported by evidence, noting that allegations of fraud must be strictly proved.
6. On 13th May 2022, the Court allowed the instant application partly by directing that the Directors of the respondent, Messrs Kiritkumar Bhagwandas Kanabar and Mr. Harish Kanabar would be examined on the means of the respondent and to produce all the relevant books of the respondent.
7. It is however noteworthy from the Court record that it is only Mr. Harish Kanabar who was cross-examined on 14th October 2024. Mr. Kanabar adopted the contents of his replying affidavit sworn on 3rd March 2022 as his evidence in Court.
8. During cross-examination, Mr. Kanabar testified that Mr. Kiritkumar Bhagwandas Kanabar is his brother, but he claimed not to know whether the respondent company ever engaged the applicant. He maintained that he

resigned as a Director of the respondent company on 31st August 2016. He acknowledged that he is in possession of a CR-12 dated 27th July 2021 indicating that he was still listed as a Director of the respondent company, but explained that although he filed his resignation in 2016, it appears that the Government had not effected the change by 2021. He stated he had not discussed the applicant's outstanding payment with his brother and insisted that in his view, he ceased to be a Director once he received the receipt confirming lodgment of his resignation documents.

9. In re-examination, Mr. Kanabar clarified that although the CR12 dated 27th July 2021 lists him as a Director of the respondent company, he had in fact resigned from that position on 31st August 2016. He stated that he was unaware that his name continued to appear on the company's CR12.
10. Parties were thereafter directed to file submissions. The applicant's submissions were filed on 11th March 2025 by the law firm of Maina & Onsare Partners Advocates LLP, whereas the respondent's submissions were filed by the law firm of Ikua & Nyambane Advocates LLP on 9th April 2025.
11. Ms Onsare, learned Counsel for the applicant relied on the cases of **Jepkemoi v Zaburi Enterprises Company Ltd & 2 others** [2024] KEHC 2343 (KLR) and **Jiang Nan Xiang v Cok Fas-St Company Limited** [2018] KEHC 10230 (KLR) and submitted that the applicant has made out a case to warrant being granted an order lifting the respondent's corporate veil. She further submitted that although the Court had directed the respondent's Directors to appear for oral examination and produce the company's books of account, they failed to provide the required records. Counsel argued that Mr. Harish Kumar's claim of having resigned in 2016 is unconvincing, as the CR12 on record at the time of filing the instant

application still listed him as a Director and changes to the directorship were only effected in 2023, long after the application was filed. Ms Onsare maintained that Mr. Harish Kumar remained a Director when the legal services were rendered and that the timing of his resignation suggests an attempt to evade liability.

12. As for Mr. Kirit Kumar, Ms Onsare submitted that he neither appeared in Court nor filed any response despite having legal representation. Relying on the case of **Zulfikar Ali Hassanally and Rustam Hira (Suing as the Legal Representatives of the late Abdul Karim Hassanally) Nyota Service Station Limited v Westco Kenya Limited & 3 others** [2016] KEHC 7566 (KLR), Counsel argued that Mr. Kumar's failure to file a replying affidavit amounts to an admission of the facts set out in the application and supporting affidavit. She contended that this non-participation demonstrates bad faith and reinforces his continuing responsibility as a Director, particularly since official records still list him as one.
13. Counsel maintained that the respondent's failure to produce its books of account, together with the Directors' evasive conduct, makes it impossible to assess the company's financial capacity and justifies the lifting of the corporate veil. She noted that the decretal sum remains uncontested and no contrary evidence has been tendered. She urged this Court to find that the Directors of the respondent company have abused the corporate structure to evade lawful obligations and should hold them personally liable for the decretal sum.
14. Ms Ikua, learned Counsel for Mr. Harish Kanabar, submitted that the application herein does not meet the legal threshold required for lifting of

the corporate veil. Relying on the English cases of **Re Noble and Sons (Clothing) Ltd** [1983] BCLC 273 and **Glossop v Glossop** [1907] 2 Ch 370, Counsel argued that Mr. Harish's resignation as a Director of the respondent company in 2016 became effective upon communication and acknowledgment by the company pursuant to Section 139 of the Companies Act, 2015, irrespective of whether the CR12 was later updated. She maintained that the respondent is a separate legal entity under Section 20 of the said Act, as affirmed by the Court in the case of **Salomon v Salomon & Co Ltd** [1897] AC 22. She contended that the applicant had failed to demonstrate any fraud, impropriety, or misuse of the corporate structure to justify piercing of the corporate veil.

15. Ms Ikua cited the case of **Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd** [2002] 1 EA 41 and submitted that neither inability to satisfy a decree nor administrative delays constitute exceptional grounds for disregarding corporate personality. She argued that the instant application is speculative, devoid of evidentiary support and amounts to an improper attempt to impose corporate liabilities on former Directors of the respondent company, contrary to the doctrine of limited liability and judicial caution against the abuse of Court processes as underscored by the Court of Appeal in the case of **Uhuru Highway Development Limited v Central Bank of Kenya & 7 others** [2002] KECA 219 (KLR). Ms Ikua urged this Court to uphold the sanctity of corporate personality, reject the applicant's claims and dismiss the application with costs.

ANALYSIS AND DETERMINATION.

16. I have considered the instant application, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying

affidavit filed by the respondent and the written submissions by Counsel for the parties. The issue that arises for determination are whether this Court should lift/pierce the respondent's corporate veil and hold its Directors, Mr. Kiritkumar Bhagwandas Kanabar and Mr. Harish Kanabar, personally liable for the company's debt due to the applicant.

17. A company is a separate legal entity distinct from its members and shareholders, a principle firmly established in the English case of **Salomon v Salomon** (supra). This principle is however not absolute, as there are instances in which a Court may pierce or lift a company's corporate veil. In the case of **Jones and another v Lipman & another** [1962] 1 WLR 833, the Court identified situations that justify disregarding the corporate personality, by stating as follows-

Whereas a registered company is a legal person separate from its members, the veil of incorporation may, however, be lifted in certain cases for instance, where it is shown that the company was incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from the eyes of equity. Corporate vehicle has been used to commit serious and mega frauds and corruption. And that realization has impelled the courts, in the interest of the law, the members in general, or in public interest to identify and punish the persons who misuse the medium of corporate personality for fraudulent, or proper or illegal acts. This act of removing the façade of corporate personality to identify the persons who are really guilty is what is known as lifting or piercing the corporate veil.

18. Further, the Court of Appeal in the often-cited case of **Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited** [2016] KECA 763 (KLR) in addressing the issue of lifting the corporate veil of a company held that-

The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.

19. In light of the foregoing decisions, in determining whether this Court should lift or pierce the respondent's corporate veil and hold its Directors personally liable for the respondent company's debts, I will consider the following: whether Mr. Harish was a Director of the respondent at the time the debt arose; whether there is evidence of fraudulent conduct by the respondent's Directors; whether there is proof of improper conduct by the company's Directors or members; and whether the circumstances of this case justify piercing the respondent's corporate veil in order to achieve justice.
20. The applicant contended that the respondent deliberately ceased operations to evade its obligations and that the conduct of its Directors, including the timing of Mr. Harish's resignation, justified lifting its corporate veil. Mr. Harish however maintained that he resigned as a Director of the respondent company on 31st August 2016 and transferred his shares to the remaining Director, with the resignation duly communicated to, and acknowledged by the company. He asserted that the continued appearance of his name on the respondent's CR12 is merely an administrative lapse that does not affect the

legal validity of his resignation. He emphasized that he had no involvement with the respondent when the legal services were rendered in May 2018.

21. In support of the assertion that he resigned as a Director of the respondent company on 31st August 2016, Mr. Harish produced the Notice of the Special General Meeting at which his resignation was tabled. He also provided a share transfer instrument dated the same day showing that he transferred his shares in the respondent company to the remaining Director. Further, in a bid to demonstrate that these documents were duly lodged with the Registrar of Companies within the prescribed timelines and that the requisite fees were paid, he produced a receipt issued by the Registrar General to the respondent company dated 13th October 2017.
22. On perusal of the minutes of the Special General Meeting held by the respondent company on 31st August 2016, it is clear that the meeting resolved, among other matters, to accept the resignation of Harish Bhagwandas Kanabar as a Director of the respondent company with immediate effect and to approve the transfer of his 500 ordinary shares to Kirit Bhagwandas Kanabar.
23. It is however worthy of note that the applicant produced the respondent's CR12 dated 27th July 2021. It is now well settled that in Kenya, a CR12 is an official document issued by the Registrar of Companies reflecting the identity of Directors of a company and shareholding as recorded at a specific date. It serves as *prima facie* evidence of a company's directorship. The foregoing notwithstanding, a CR12 is not conclusive proof of a Director's current status where there is evidence that an individual had resigned or had been lawfully removed as a Director in accordance with the provisions of Section 139 of the Companies Act, 2015. This position was affirmed by the

Court in the case of **Muchina & 2 others v Mathenge & 4 others; Kimani & another** [2024] KEHC 16683, where the Court held that CR12 records are presumed accurate and authoritative unless contradicted by cogent evidence.

24. A Director's removal under Section 139 of the Companies Act takes effect internally once the relevant resolution is passed and proper notification is given, irrespective of whether the Registrar of Companies has updated the CR12. Accordingly, this Court finds that where a Director resigns or is removed under Section 139 of the Companies Act, but the company fails to update its CR12, the outdated CR12 remains only *prima facie* evidence of directorship and may be rebutted by supporting documentation such as board minutes, resolutions, or a notice of resignation as is the case herein. This Court therefore holds that a company's CR12 does not constitute conclusive proof of a Director's current status in all circumstances, particularly, where as in this case, the company has not updated its records with the Registrar of Companies.
25. In view of the minutes of the Special General Meeting held by the respondent company on 31st August 2016, the share transfer documents and the receipt of payment to the Registrar of Companies, together with the respondent's CR12 dated 17th October 2023, I am satisfied that Harish Bhagwandas Kanabar ceased to be a Director of the respondent company at 31st August 2016, when his resignation was accepted and his shares were transferred to the remaining Director. Consequently, since the transactions giving rise to the decretal sum in this matter began in the year 2018, when Harish Bhagwandas Kanabar was no longer a Director of the respondent company, this Court finds that he cannot be held personally liable for the respondent company's debts to the applicant.

26. In respect to Mr. Kiritkumar Bhagwandas Kanabar, this Court notes that despite being duly served with Summons to attend Court to be examined regarding the respondent's assets and means to satisfy the decretal sum, and produce the respondent company's books of account to enable the Court to determine its capacity to satisfy the decree herein, he failed to attend Court.
27. In the premise and in the absence of any other evidence to the contrary, this Court is satisfied that the applicant has demonstrated that a Certificate of Taxation was issued in its favour against the respondent on 15th October 2019 and as there was no challenge or application to set it aside, it was adopted as a Judgment and decree of the Court. The applicant further demonstrated through warrants of attachment of movable property, warrants of sale, and an affidavit sworn on 23rd August 2021 by Mr. Stevenson Mwendwa Mulwa, a Licensed Auctioneer, that attempts to execute the decree were unsuccessful because the respondent had vacated its premises, could not be traced, and had no identifiable attachable assets. Furthermore, the applicant deposed that despite service of the decree on the respondent's Advocates and its Directors, no payment or settlement proposal has been made.
28. In view of the foregoing, this Court is satisfied that Mr. Kiritkumar Bhagwandas Kanabar, the respondent's Director, engaged in improper conduct and that the respondent's corporate veil is being used to shield him from execution of the decree in favour of the applicant.
29. This Court further finds that Mr. Kiritkumar Bhagwandas Kanabar acted in bad faith, thereby denying the applicant the benefit of its Judgment. Accordingly, the circumstances of this case justify the Court to exercise its discretion to lift the respondent's corporate veil and hold Mr. Kiritkumar

Bhagwandas Kanabar, personally liable for the respondent company's debt to the applicant.

30. In the end, this Court finds that the applicant's Notice of Motion dated 23rd August 2021 is merited. As a result, I make the following orders –

- i) I hereby order that Mr. Kiritkumar Bhagwandas Kanabar, the Director of the respondent company, shall personally satisfy the decree issued on 26th May 2020 in favour of the applicant as against the respondent company; and**
- ii) That the costs of the application herein are awarded to the applicant and shall be borne by Mr. Kiritkumar Bhagwandas Kanabar in his personal capacity.**

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI on this 23rd day of January 2026. Ruling delivered through Microsoft Teams Online platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Ngui for the Advocate/applicant

Mr. Omondi h/b for Ms Ikua for the respondent

Ms B. Wokabi – Court Assistant.