

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISCELLANEOUS APPLICATION NO. E253 OF 2022

**STRATHMORE RESEARCH AND CONSULTANCY
CENTRE LIMITED.....PLAINTIFF/RESPONDENT**

VERSUS

**NAMU
LIMITED.....DEFENDANT/APPLICANT** **TECHWORKS**

RULING

1. Before this Court is the Defendant/Applicant's Notice of Motion dated 4th December 2024, brought under sections 4, 5, 24 and 29 of the Contempt of Court Act, section 36(4) of the Civil Procedure (Court-Annexed Mediation) Rules, sections 1A, 1B and 3A of the Civil Procedure Act, and Article 159 of the Constitution of Kenya, 2010.
2. The Applicant seeks orders lifting the corporate veil of the Plaintiff/Respondent company and citing its named directors, George Ngethe Njenga, Da Silva Izael Pereira, Pratap Kumar, Charles Njiru Kanjama, James Nyiha Wanjohi, Ann Patricia Gathiru Kamiri, Paul Kioko Mbithi, and Anthony Kahindi Mutune, for contempt of court, together with committal to civil jail or, in the alternative, the imposition of fines.
3. The application is supported by the affidavit and supplementary affidavit of Rohit Reddy, sworn on 13th December 2024 and 25th March 2025 respectively.

Applicant's Case

4. The Applicant contends that the Respondent has willfully and persistently failed to comply with the decree issued on 7th August 2024, which decree adopted a mediation settlement reached through court-annexed mediation.
5. It is averred that the parties were bound by a Teaming Agreement dated 24th February 2016, under which the Applicant rendered services, but the Respondent failed to remit payments due, necessitating court intervention. The mediation settlement imposed specific obligations, including disclosure of accounts, facilitation of audits, appointment of agreed debt collectors, and structured sharing of county remittances.
6. The Applicant alleges that despite the clarity of the decree, the Respondent has failed to comply with its express terms, including appointing the agreed auditor, providing complete financial records, notifying the Applicant of county remittances, and facilitating reconciliation and audit.
7. It is further alleged that the Respondent has deliberately frustrated the audit process through selective disclosure, delay, and pretexts not contemplated by the decree, thereby rendering compliance illusory and undermining the authority of the Court.
8. On that basis, the Applicant urges the Court to lift the corporate veil and hold the Respondent's directors personally accountable for contempt.

Respondent's Case

9. The application is opposed through the affidavit of Dr. Joseph Sevilla, sworn on 3rd March 2025. The Respondent contends that the application is misconceived, abusive of the court process, and intended to re-litigate matters conclusively settled through mediation. It asserts that it has at all times acted in good faith and substantially complied with the decree.
10. The Respondent disputes the alleged audit obligations, contending that no binding audit mandate was incorporated into the mediation settlement, and that the Applicant's demands amount to an impermissible unilateral variation of a consent order.
11. On contempt, the Respondent maintains that there has been no willful disobedience of court orders, and that any delays or disagreements relate to implementation challenges rather than defiance of judicial authority.
12. The Respondent further argues that no basis has been laid for piercing the corporate veil, there being no evidence of fraud, bad faith, or abuse of the corporate form.

Analysis and determination

13. Having considered the pleadings, affidavits, submissions, and authorities cited, the Court finds that the following issues arise for determination:
 - i. *Whether the Respondent is in contempt of the decree issued on 7th August 2024;*

- ii. Whether a basis has been established for lifting the corporate veil and holding the Respondent's directors personally liable.*
14. Contempt of court is a serious matter that goes to the heart of the administration of justice and the authority of the courts. The power to punish for contempt must therefore be exercised cautiously and only where the requisite threshold has been met.
15. In **Mutitika v Baharini Farm Ltd [1985] KLR 227**, the Court of Appeal held that the standard of proof in contempt proceedings is higher than on a balance of probabilities, though not as high as beyond a reasonable doubt. The applicant must demonstrate, with clarity and precision, the existence of a valid court order, knowledge of that order by the alleged contemnor, and willful disobedience thereof.
16. It is not in dispute that a valid decree was issued on 7th August 2024, adopting the mediation settlement. Equally, there is no dispute that the Respondent was aware of the decree, having been a party to the mediation and subsequent adoption by the Court.
17. The central question, however, is whether the Respondent's conduct amounts to willful and deliberate disobedience of the decree. A careful reading of the mediation settlement and the decree reveals that the obligations imposed on the parties were framed in

cooperative and facilitative terms, requiring engagement, disclosure, and implementation over time.

18. The material placed before the Court demonstrates that there have been disagreements between the parties on the scope, sequencing, and modalities of implementation, particularly regarding audits and disclosure of records. While the Applicant characterizes these disagreements as deliberate obstruction, the Respondent maintains that they stem from genuine differences in interpretation and practical challenges.
19. Contempt proceedings are not the appropriate forum for resolving contested interpretations of a consent decree or for supervising its granular implementation. As the Court of Appeal observed in **Ochino & Another v Okombo & 4 Others [1989] KLR 165**, a party should not be cited for contempt where the order is ambiguous or where compliance depends on further agreement or clarification between the parties.
20. On the evidence before this Court, I am not satisfied that the Applicant has demonstrated, to the required standard, that the Respondent's conduct amounts to willful and contumacious defiance of the decree as opposed to disputed compliance and implementation challenges.
21. Turning to the prayer for lifting the corporate veil, it is settled law that a company is a separate legal entity distinct from its shareholders and directors, as established in **Salomon v Salomon & Co Ltd [1897] AC 22**. The veil of

incorporation will only be lifted in exceptional circumstances, such as where the corporate form is used as a façade to perpetrate fraud, evade legal obligations, or defeat justice.

22. In **Victor Mabachi & Another v Nurturn Bates Ltd [2013] eKLR**, the Court of Appeal emphasized that personal liability of directors cannot be inferred lightly and must be grounded on clear evidence of misuse of the corporate entity.

23. In the present case, the Applicant has not placed before the Court cogent evidence of fraud, bad faith, or abuse of the corporate form by the named directors. Allegations of non-compliance with a decree, without more, do not of themselves justify piercing the corporate veil, particularly where contempt has not been established.

24. In light of the foregoing analysis, I find and hold that the Applicant has failed to establish, to the requisite standard, that the Respondent is in contempt of the decree issued on 7th August 2024. And that no legal or factual basis has been laid for lifting the corporate veil of the Respondent company or for holding its directors personally liable.

25. Consequently, I find the Notice of Motion dated 4th December 2024 is without merit and is hereby dismissed.

26. Given the nature of the dispute and the ongoing relationship between the parties under the mediation settlement, I direct that each party shall bear its own costs.

It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Mwanza h/b for Ms. Njueini for Plaintiff/Respondent

Ms. Anyango for Defendant/Applicant

Court Assistant: *Carlos*