

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(CIVIL DIVISION)**

MISC CIVIL APPLICATION NO 576 OF 2016

KABUNDU HOLDINGS LIMITEDAPPLICANT

VERSUS

RICHARD M GITHUI

RESPONDENT

RULING

1. On 23rd October 2025, this court found that the notice of motion dated 18th March 2025 had merit. It was ordered that Mr. Patrick Mukiri Kabundu attend court on 5th November 2025 for cross-examination, so that the court could determine whether he should be held personally liable for the debts of the company, Kabundu Holdings Ltd, of which he is a director.
2. Mr. Kabundu did not attend court on 5th November 2025. The cross-examination was thus stood over to 27th November 2025. On that day, Mr. Kabundu sought an adjournment on the grounds that he was ill. The court allowed the application for adjournment and fixed the matter for hearing on 22nd January 2026. As before, Mr. Kabundu was unavailable. Satisfied that Mr. Kabundu had been served, the court allowed Mr. Oddiaga, learned counsel for the respondent, to prosecute the application.

3. Mr Oddiaga prayed that the corporate veil be pierced and that the court be pleased to order that execution do issue against the director of the applicant, Mr Patrick Mukiri Kabundu. He submitted that what was sought was execution for unpaid costs arising from an appeal that was dismissed. It was submitted that Mr Kabundu should pay the said costs, as he filed the appeal. Mr Oddiaga prayed that the application be allowed
4. I have considered the application and the annexed documents. Although Mr. Kabundu didn't attend court, I must nevertheless determine whether a case for lifting or piercing the corporate veil was made and whether the orders sought should issue.
5. The decision to lift the corporate veil is not one that the court makes lightly. It is granted sparingly to prevent injustice, fraud, or misuse of the corporate structure. In the case of **Jepkemoi v Zaburi Enterprises Company Ltd & 2 others [2024] KEHC 2343 (KLR)**, it was held that:

“It is therefore evident that in a case such as the instant one, the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smack of bad faith and that the corporate veil is being used as a mask to fraudulently shield such directors or shareholders from execution of the decree. The veil may therefore be pierced where it appears that the business of the company has, for instance, been carried on

with intent to defraud creditors of any other person or for any fraudulent purpose. Only where justice of the case demands should the corporate veil be disregarded and lifted.”

6. In the case of *Ultimate Laboratories v Tasha Bioservice Limited*, Nairobi HCCC No. 1287 of 2000, Ringera, J, as he then was, stated as follows:-

“However, that fundamental principle of incorporation may be disregarded, lifted, or pierced in exceptional circumstances both under express statutory provisions (of which Section 323 of the Companies Act is but one example only) and under judicial interpretation or intervention. As regards the latter, English authorities establish the broad principle that the corporate veil will be lifted by the courts if, among other situations, corporate personality is being used as a mask for fraud or improper conduct (See the cases of GILFORD MOTOR CO. VS. HORNE [1933] Ch. 935 and JONES VS. HIPMAN [1962] 1W.L.R. 832).”

7. The burden of proof lies with the applicant to establish, to the satisfaction of the court, that, in the given circumstances, the corporate veil should be lifted. In this case, the respondent’s counsel’s evidence and submissions that Mukiri Holdings Ltd was a façade used by Mr Patrick Mukiri Kabundu to evade his obligations were not controverted. In the circumstances, I am persuaded that it

would be fair and just to hold that Mr Patrick Mukiri Kabundu is personally liable for the debts of Kabundu Holdings Ltd arising out of the appeal and that execution can issue against him personally.

8. Costs follow the event. I find and hold that the respondent/applicant shall have the costs of the application.

9. It is so ordered.

Dated and signed in Mombasa, this 5th day of February 2026.

Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of:

Mr Oddiaga, for the Respondent/Applicant;

No appearance for the Applicant/Respondent; and

Bancy- Court Assistant.