

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL CASE NO. 611 OF 2010

C.J. SECURITIES.....PLAINTIFF/DECREE HOLDER
VERSUS
S.S. SEHMI GENERAL BUILDING & CIVIL
CONTRACTORS LIMITED...DEFENDANT/JUDGEMENT DEBTOR

RULING

1. The application for consideration is the Notice of Motion dated 6th March 2024, brought by the Plaintiff/Decree Holder under Sections 3A and 38 of the Civil Procedure Act, Order 22, Rules 35 and 51, of the Civil Procedure Rules, and all other enabling provisions of the law. The Applicant seeks the following substantive orders as set out on the face of the Motion:

- i. That the Honourable Court be pleased to order that Saranjit Singh Sehmi and Gurmukh Singh Sehmi, being the Directors/Shareholders of S.S. Sehmi General Building & Civil Contractors Limited, do attend Court and be orally examined on oath as to the assets and means of the Judgment Debtor and do produce books of accounts and other documentary evidence showing the same,*

ii. That the Directors/Shareholders of S.S. Sehmi General Building & Civil Contractors Limited, being the Judgment Debtor herein, to personally satisfy the decree issued on 11th December 2019 in Nairobi High Court Civil Suit No. 611 of 2010 for Kshs. 3,546,000/= plus interest and costs.

iii. That the costs of the application be provided for.

2. The application is premised on the grounds on the face of the record and supported by the sworn affidavit of Christo Desa contending that judgment was entered in favour of the Plaintiff on 11th December 2019 for the sum of Kshs. 3,546,000/=. That warrants of attachment were issued and, as at 19th December 2022, the decretal sum had risen to Kshs. 9,092,240.82/=. He further contends that execution was halted by stay orders issued during objection proceedings, as a result, the Judgment Debtor has concealed assets to defeat execution. He contends that the directors/shareholders have frustrated execution and that the said directors possess crucial information on the Judgment Debtor's assets and means. The Applicant urges that it is in the interest of justice that the orders be granted to facilitate effective execution.

3. The record shows that the Defendant/Judgment Debtor did not file any replying affidavit in response to the application. Directions were taken that the application be disposed of by

way of written submissions. Only the Decree holder complied.

Analysis and determination

4. Order 22 Rule 35 of the Civil Procedure Rules provides that where a decree is for payment of money, the decree holder may apply to the court for an order that the judgment debtor, or in the case of a corporation, any officer thereof, be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what property or means of satisfying the decree. Section 38 of the Civil Procedure Act further empowers the Court to employ all lawful modes to ensure satisfaction of a decree, while Section 3A reserves the Court's inherent power to make orders necessary for the ends of justice.
5. The purpose of examination proceedings is to enable the court and the decree holder to ascertain the assets and means of the judgment debtor and to prevent the corporate form from being used to defeat lawful decrees. That discovery in aid of execution is an essential tool to ensure that decrees are not rendered nugatory by deliberate opacity on the part of judgment debtors.

6. In the present case, it is not disputed that a valid decree exists and has remained unsatisfied for a considerable period. The Applicant has demonstrated, through uncontroverted affidavit evidence, that attempts at execution were frustrated by objection proceedings and stay orders, and that the Judgment Debtor's assets have not been disclosed. The failure by the Defendant to respond to the application means that the factual depositions in the supporting affidavit remain unchallenged. In **Trust Bank Limited v Paramount Universal Bank Limited & 2 Others [2009] eKLR**, the Court held that where no response is filed, uncontroverted affidavit evidence may properly be accepted as truthful unless it is inherently incredible.
7. The Court is satisfied that the Applicant has established a proper basis for invoking Order 22 Rule 35. The examination sought is confined to ascertaining the assets and means of the Judgment Debtor and is necessary to facilitate execution. To decline the application in the circumstances would be to render the decree nugatory and undermine the principle that a successful litigant is entitled to the fruits of judgment.
8. However, while the Court may order examination of directors and production of documents, the prayer that the directors "personally satisfy" the decree cannot be granted at this stage. Personal liability of directors does not arise merely by virtue of their office and would require a proper legal basis

and evidentiary foundation, which is not the object of proceedings under Order 22 Rule 35.

9. In the result, the Court finds the Notice of Motion dated 6th March 2024 is partly successful and makes the following orders:

- i. Saranjit Singh Sehmi and Gurmukh Singh Sehmi, being directors/shareholders of S.S. Sehmi General Building & Civil Contractors Limited, shall attend Court on a date to be fixed for oral examination on oath regarding the assets and means of the Judgment Debtor satisfying the Decree;***
- ii. The said directors shall produce books of account and such documentary evidence as relates to the assets, liabilities, and financial position of the Judgment Debtor;***
- iii. The prayer seeking an order that the directors personally satisfy the decree is declined.***
- iv. The costs of the application shall be borne by the Judgment Debtor.***

It is so ordered.

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

This **12th** day of **February** 2026.

P.M. MULWA

JUDGE

In the presence of:

Ms. Tarus h/b for Mr. Odoyo for Plaintiff/Decree Holder

Mr. Kiamba h/b for Mr. Mbalu Mutava for Defendant/JD

Court Assistant: *Carlos*