

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 440 OF 2010

ELIJAH OKENYE KENYANYA T/A

**BONO
AGENCIES.....PLAINTIFF/DECREE
HOLDER**

-VERSUS-

**CITY COUNCIL OF NAIROBI.....1ST
DEFENDANT**

MOCO AFRICA

**LIMITED.....2ND DEFENDANT/JUDGMENT
DEBTOR**

RULING

The Application

1. Under determination is the Notice of Motion dated 30/10/2025 (the Motion) filed by Elijah Okenye Kenyanya T/A Bono Agencies (the Decree Holder). The Motion is anchored on Sections 1A, 1B and 3A of the Civil Procedure Act (CPA); Order 22, Rule 18(1)(a) and Order 51, Rule 1 of the Civil Procedure Rules (CRR); and Article 23 of the Constitution, 2010. The Motion seeks the orders that:

- (i) THAT this Honourable Court issues a notice to show cause compelling the 2nd Respondent/Judgment Debtor to show cause why the decree issued on 3/11/2023 should not be executed against it.**
- (ii) THAT upon issuance of the notice to show cause, the 2nd Respondent/Judgment Debtor, MOCO AFRICA LIMITED, be examined as to whether it has any property or means of satisfying the decree herein and to produce its books of accounts and other documentary evidence relevant to revealing the assets of the said MOCO AFRICA LIMITED.**
- (iii) THAT this Honourable Court be pleased to lift the corporate veil of the 2nd Respondent/Judgment Debtor should the 2nd Respondent not have any property to which the Applicant/Decree Holder can attach to satisfy Kshs. 3,453,674.96 plus costs and interest duly owed to the Applicant.**
- (iv) THAT this Honourable Court grants any other orders that it may deem fit to grant.**
- (v) THAT costs of the application be provided for.**

2. In support of the Motion, the Decree Holder has filed an Affidavit in which he has stated that following delivery of judgment in the suit on 3/11/2023, a decree was extracted and warrants of attachment and sale obtained; that despite being

aware of the judgment and resulting decree, **Moco Africa Limited** (the Judgment Debtor) has not taken any steps, to date, in settling the decretal sum awarded.

3. The Decree Holder has also stated that there is no way of ascertaining whether the Judgment Debtor has any known means and assets to satisfy the decree, thereby necessitating the instant Motion.

The Replying Affidavit

4. The Judgment Debtor has opposed the Application through the Replying Affidavit sworn by Mr. Milton Gitahi on 28/11/2025, a Director of the Judgment Debtor, who has deposed that he is not actively involved with the management of the Judgment Debtor; that save for a property situated along Mombasa Road and which triggered the present suit, he has no knowledge of any existing assets and/or properties belonging to the Judgment Debtor or being held by it.

5. It is further deposed that since the institution of the suit, he has not been in possession of the books of accounts or other relevant documentation that would disclose or ascertain the

financial status of the Judgment Debtor; that he has neither concealed nor transferred any attachable assets of the Judgment Debtor in order to warrant a lifting of its corporate veil and that in the absence of any indication of fraud or impropriety by or on behalf of the Judgment Debtor, the instant Motion is unmerited and therefore ought to be disallowed and costs awarded to the Judgment Debtor.

6. The Decree Holder filed a Supplementary Affidavit sworn on 10/12/2025 in which it was deposed that the averments made in the Replying Affidavit are dishonest, misleading, mere denials and are aimed at frustrating his enjoyment of the fruits of his judgment; that given the deponent's position as a Director, he owes a fiduciary duty to the Judgment Debtor and is further responsible in ensuring that all records pertaining to the Judgment Debtor are well kept and accounted for and that his lack of willingness to produce the said records speaks to a lack of transparency and a deliberate concealment on his part.
7. In compliance with the directions of the Court, Mr. Milton Stanley Gitahi was cross-examined on 15/12/2025. He stated

that he is a Director of the Judgment Debtor and that his wife, Christine Mugai is also a director. He stated that he is also a Secretary and a majority shareholder owning 900 shares in the Judgment Debtor while his wife holds 100 shares therein and that the Judgment Debtor constitutes a family business. Mr. Milton Gitahi reiterated the contents of his Replying Affidavit that he plays no active involvement in the Judgment Debtor or possess any books of account for the said Judgment Debtor and that the Judgment Debtor has been inactive since 2009 and is currently not engaged in any business operations.

8. He admitted owing the Decree Holder; that he is in the process of reviving the Judgment Debtor and that once the Judgment Debtor becomes active, he will take steps to settle the sums owed to the Decree Holder.
9. Mr. Milton Gitahi stated further that he owns and runs a separate company which is engaged in the oil business and in which he owns 6000 shares, while his wife owns 1600 shares, though he mentioned that he sold some shares about two (2) years; that he also owned a motor vehicle registration number

KCR 784J which he acquired in April, 2025 but later sold. It is his evidence that the Judgment Debtor does not own any properties which would be applied in satisfying the decree, and that **City Council of Nairobi** (hereafter the 1st Defendant) destroyed the books of accounts belonging to the Judgment Debtor during the demolition process.

10. In re-examination, the deponent reiterated his earlier testimony that the books of accounts pertaining to the Judgment Debtor were destroyed and its properties stolen during the course of the demolition process and that the land known as NAIROBI/BLOCK/93/1418 (the suit premises) is still in the name of the Judgment Debtor and remains occupied by hawkers. He stated that Judgment Debtor has no properties on the suit premises.

11. After the examination of Mr. Milton Gitahi, counsel for parties made their oral submissions. **Ms. Morara**, counsel for the Decree Holder, submitted that it is not disputed that the Judgment Debtor owes the decretal amount pursuant to the judgment which was delivered in the present suit; that

contrary to the averments made by the Director of the Judgment Debtor during cross-examination above, the Judgment Debtor is still in operation and has not been declared insolvent; that the directors of the Judgment Debtor also have shares in a separate company as indicated during cross-examination, in addition to owning the motor vehicles registration numbers KCR 784J and KYF 593 and therefore, it has not been demonstrated that the said directors lack the resources to satisfy the decree herein, nor have they shown any willingness or interest in settling the decretal sum owed.

12. It is counsel's submission that in the absence of the relevant books of accounts, there is no way of ascertaining the status of the Judgment Debtor; that nevertheless, it was never pleaded that the books of accounts belonging to the Judgment Debtor were ever destroyed, as is now being alleged; that no evidence has been tendered to support the averment that the motor vehicle referenced during cross-examination, has been sold and therefore, it is apparent that the directors of the Judgment Debtor are being evasive.

13. It was submitted, further, that the testimony by **Milton Stanley Mugai Gitahi** cannot be verified since the remaining director(s) of the Judgment Debtor did not attend court; that no clarification has been offered as to who is the current acting Manager of the Judgment Debtor and that the Judgment Debtor is still active necessitating an order lifting its corporate veil, as prayed in the Motion.

14. **Mr. Wepoh**, advocate for the Judgment Debtor, submitted that no notice to show cause has been served upon them in respect of the judgment and that the figures sought differ from what was awarded in the judgment; that the prayers sought cannot be granted since the Judgment Debtor has no property; that the Judgment Debtor is not in operation and that the liabilities against it cannot be transferred to another company in any event.

15. He submitted that the relevant documents as pertains to the Judgment Debtor were previously destroyed during the demolition process and therefore this Court should not deem any failure to avail the books of accounts, as a deliberate act;

that the Judgment Debtor has satisfied the conditions under Order 22, Rule 35 of the CPR through cross-examination of its director on the means of satisfying the decree and that the circumstances of this case are not suitable for lifting of the corporate veil.

16. In her rejoinder, **Ms. Morara** contended that the notice to show cause issued in the suit was extended by the court; that costs and interest awarded are only specified in the warrants of attachment and that this is a proper case for lifting of the Judgment Debtor's corporate veil.

Analysis and Determination

17. I have considered this application, evidence provided during cross-examination of Mr. Milton Gitahi and submissions by both counsel. As the record shows, the prayers seeking issuance of Notice to Show Cause and cross-examination of the director of the Judgment Debtor are spent, the same having been issued.

18. The only substantive prayer left is prayer (iii) which seeks lifting of the corporate veil of the Judgment Debtor.

19.The record of the court shows that judgment in this matter was delivered on 3/11/2023 in favour of the Decree Hold in the sum of Kshs.1,072,000/- plus costs and interest thereon. It is not in dispute that the decree resulting therefrom has not been settled to date.

20.The question is whether the Decree Holder has demonstrated sufficiently that the circumstances in the instant matter are suitable for lifting the corporate veil of the Judgment Debtor. The courts have explained the instances under which the corporate veil of a company ought to be lifted. In the case of **Ahmed Shakeel Shabbir v Samuel Musaa Ndolo [2016] eKLR** held the following on this subject:

“In Masefield Trading (K) Ltd v Rushmore Company Ltd & Another [2005] eKLR, it was stated that the corporate veil of a corporate body may be lifted if it is found that the oral examination uncovers wrongdoing by an officer of the corporate body. During the oral examination, the witness clearly pointed out that the Defendant Company was

wound up due to failure by the Company to pay its rent. This amounts to wrongdoing and improper conduct on the part of the Defendant. The Court therefore used its power to lift the corporate veil donated to it under Order 22 rule 35 Civil Procedure Rules as read with Section 323 of the Companies Act, Cap 486.”

21.A similar position was taken by the Court of Appeal in **Githunguri Dairy Farmers Co-operative Society v Ernie Campbell & Co. Ltd & another [2018] eKLR** when it rendered itself thus:

“In our view, the learned Judge was right to lift or pierce the veil of incorporation to ensure justice and equity to all parties prevails. Further, the law is that courts will disregard the veil of incorporation where it is apparent that the device of incorporation is used for some illegal, fraudulent or improper purpose. See Mugenyi & Company Advocate v The Attorney General (1999) 2

EA 199. In the present instance, Mr. Baiya claimed that the liabilities accrued by the 2nd respondent including the decretal sum and the costs of suit, were to be paid from the 2nd respondent's account. Why would Mr. Baiya, a director in the 2nd respondent and who definitely had full knowledge of its affairs (that it had no attachable assets or financial means to satisfy the decree) insist that the decree be settled by it? We draw the same inference as the 1st respondent that the same was meant to defeat the satisfaction of the decree, an improper purpose warranting the court to go behind the veil of incorporation.

...

In the absence of any reasonable excuse or justification from the appellant for its conduct, then we find it safe to draw an improper and fraudulent purpose necessitating lifting the 2nd

respondent's veil of incorporation for purposes of ensuring justice to both parties."

22. In the present instance, **Milton Stanley Mugai Gitahi**, a Director of the Judgment Debtor, was cross-examined on matters pertaining to the said Judgment Debtor. Upon my consideration of the averments during the course of his testimony hand in hand with the contents of his Replying Affidavit to the Motion, a number of issues became apparent.

23. Firstly, the Director stated that he is a Nominal Director of the Judgment Debtor Company but not an active participant in the management of the Company. It remains unclear whether the Judgment Debtor has additional directors. Suffice it to say that the deponent did not shed light on who has been running the affairs of the Judgment Debtor Company at any material time.

24. Secondly, the Director, whilst stating that he did not possess the books of accounts and other relevant records relating to the Judgment Debtor and further stating that the same had been destroyed during the course of the demolition process

which triggered the present suit, did not tender any material to support such averments.

25.Thirdly, I have taken into account the Director's testimony and assertions that the Judgment Debtor is not in operation and has not been engaged in any form of business since the year 2009, no cogent material whatsoever, was tendered to support these assertions, especially taking into account the fact that the cause of action in the present suit occurred in the year 2010, at a time when the Judgment Debtor is allegedly said to have been inactive.

26.I have, likewise, considered the Director's testimony and averments that the Judgment Debtor has no assets available to satisfy the decree. There is nothing to indicate the existence of insolvency proceedings or a declaration to that effect. This leaves this court with uncertainty in respect of whether the Judgment Debtor has any existing assets.

27.In view of all the foregoing circumstances, I am of the opinion that there is an apparent non-disclosure and/or concealment of material facts and a sense of evasive conduct on the part of

the Director(s), as concerns the status and assets/means of the Judgment Debtor. I find that the Director(s) of the Judgment Debtor cannot purport to hide behind the corporate veil in a bid to evade liability in this instance.

28. Upon my consideration of the nature of circumstances before me and in the absence of any evidence to the contrary therefore, I am persuaded that the Decree Holder has reasonably established that the present situation necessitates a lifting of the corporate veil. Consequently, I allow prayer (iii) of the Notice of Motion dated 30/10/2025 in the following terms.

a) An order be and is hereby issued lifting the corporate veil of the 2nd Defendant/Judgment Debtor to enable the Plaintiff/Decree Holder attach the assets/properties of the Director(s) of the 2nd Defendant/Judgment Debtor in satisfaction of the decree plus costs and interest duly owed to the Plaintiff/Decree Holder.

b) Costs of this application shall be borne by the 2nd Defendant/Judgment Debtor and/or its Director(s).

29. It is so ordered.

Dated, signed and delivered this 25th day of February 2026.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Ms Mumbi for the Decree Holder
2. Ms Werimo for Judgment Debtor