

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. 1198 OF 2017

(Before Hon. Lady Justice Hellen Wasilwa, J)

JUSTUS KIMATHI KIOKO.....CLAIMANT/DECREE-HOLDER

VS

IMPEL TOURS &

SAFARIS LIMITED.....RESPONDENT/JUDGMENT-DEBTOR

RULING

1 The Claimant/Decree Holder filed a Notice of Motion dated 29th August 2025 seeking orders: -

1. *THAT the Directors of the Respondent/Judgment-Debtor, namely BETTY ASHA RAJABU of P.O. Box 12986, Nairobi, and NURU RAJABU of P.O. Box 10226, City Square, Nairobi, be summoned to attend Court for examination on oath as to the means and assets of the Respondent Company.*
2. *THAT this Honourable Court be pleased to lift/pierce the corporate veil of the Respondent Company, Impel Tours and Safaris Limited, and hold the said Directors personally liable for the decretal sum of Kshs. 379,140/= together with interest and costs.*

3. *THAT in default of compliance, warrants of attachment and sale do issue against the personal properties of the said Directors to satisfy the decretal sum herein.*
4. *THAT in the alternative, the said Directors be committed to civil jail until full settlement of the decretal sum.*
5. *THAT the costs of this Application be borne by the Respondent and/or its Directors.*

Claimant/Decree Holder's Case

- 2 The Claimant avers that by a judgement dated 19th May, 2025 this Court entered judgment in his favour for unpaid leave, unremitted NSSF contributions, and costs.
- 3 Subsequently, a decree was extracted on 26th March 2024 and a Party-and-Party Bill of Costs taxed at Kshs. 79,450/= as per the ruling delivered virtually on 6th March 2025
- 4 It is the Claimant's case that the decretal sum due, inclusive of judgment award is Kshs. 55,850, taxed costs of Kshs. 79,450, and accrued interest court rates 14% p.a. from date of filing, totaling Kshs. 379,140.
- 5 The Applicant avers that vide a letter dated 13th March 2025 to the court's Deputy Registrar requesting issuance of warrants of attachment to Interfield Auctioneers, execution has been frustrated as the Respondent has claimed to have no attachable assets.

- 6 The Applicant avers that vide a letter dated 25th July 2022, the Respondent admitted that it had shut down operations and expressly indicated that its Directors would personally settle liabilities.
- 7 The Applicant avers that the Respondent's advocates have since disclaimed instructions, confirming deliberate evasion of lawful execution. Additionally, the Directors are using the Respondent Company as a facade to shield themselves from lawful obligations, to the detriment of the Decree-Holder.

Respondent/Judgment-Debtor's Case

- 8 In response to the Application, the Respondent filed a replying affidavit dated 25th November 2025 sworn by Director, Nuru Rajabu.
- 9 The Respondent avers that it is a duly incorporated limited liability company under the Companies Act, Cap 486 (now the Companies Act, 2015), and enjoys a separate legal personality distinct from its shareholders and directors in accordance with the principles in ***Salomon v Salomon & Co. Ltd [1897] AC 22***, which has been consistently upheld by Kenyan courts.
- 10 It is the Respondent's case that Section 19 of the Companies Act reinforces the doctrine of separate legal personality, and consequently, the directors, Betty Asha Rajabu and Nuru Rajabu, cannot be held personally liable

for the company's debts absent proof of circumstances warranting the lifting of the corporate veil.

- 11 The Respondent further avers that piercing the corporate veil is an exceptional remedy, exercised sparingly and only in clear cases of fraud, sham, or improper purpose. A company's inability to meet its financial obligations, even where a *nulla bona* return has been issued, does not of itself justify lifting the corporate veil.
- 12 It is the Respondent's case that the Applicant's application is premised solely on the company's inability to satisfy the decree, which amounts to commercial insolvency and is not a recognised legal ground for piercing the corporate veil. The company was not used as a façade to perpetrate fraud or illegality, and that the cessation of business arose from genuine commercial challenges in the tourism sector.
- 13 The Respondent denied the allegation that the directors abused the corporate veil, and avers that no evidence was tendered to demonstrate impropriety, asset stripping, or unlawful transfer of assets. The directors at all times maintained a clear separation between their personal affairs and those of the company, a position supported by its current CR12 on record.
- 14 It is the Respondent's case that the letter dated 25th July 2022 its former advocates was a without prejudice

settlement proposal made in good faith, and did not constitute an admission that the corporate veil should be lifted. Lifting the corporate veil is a matter of law to be determined by the Court upon satisfaction of the requisite threshold.

- 15 The Respondent further avers that the Applicant has not exhausted the lawful modes of execution against the company under Order 22 of the Civil Procedure Rules, rendering the application premature. The application improperly seeks to convert the directors into guarantors of the company's debt, contrary to law.

- 16 It is the Respondent's case that where a company is unable to pay its debts, the Insolvency Act provides the appropriate statutory framework, including liquidation, and that the Applicant is at liberty to pursue remedies thereunder. Seeking to pierce the corporate veil on account of insolvency was described as an attempt to circumvent this sidestep this structured legal process.

- 17 The Respondent avers that the application is devoid of merit and ought to be dismissed with costs, the Applicant having failed to demonstrate any legal basis for lifting the corporate veil or for holding the directors personally liable.

Claimant/Decree Holder's Submissions

- 18 The Claimant submitted on four issues: Whether the Claimant has established a basis for lifting/piercing the Respondent's corporate veil; Whether the Directors should

be summoned and examined on oath as to the Respondent's assets and means; Whether the Respondent's Replying Affidavit discloses any valid defence to defeat execution; Whether the orders sought ought to be granted.

- 19 On the first issue, the Claimant submitted that the Respondent has failed to satisfy a lawful decree, has ceased operations, and has rendered execution futile. Courts have consistently intervened in similar circumstances to prevent abuse of the corporate form and to ensure that decree-holders are not denied the fruits of judgment through technical reliance on corporate personality.
- 20 The Claimant placed reliance on ***Kibatia & Company Advocates v Kings Group of Schools Limited & another [2024] KEHC 5464 (KLR)***, where the High Court, at the execution stage, allowed an application seeking summons and examination of directors and personal execution against them. The Court expressly granted orders summoning the directors for examination on oath as to the company's assets and means, and further ordered that in default, execution would issue personally against the directors. It was submitted that the said decision demonstrates that the court's jurisdiction to intervene is properly exercisable where execution against the company has been frustrated.

- 21 Similarly, the Claimant relied on ***PCEA Tumu Tumu Hospital v Medicomp Techno Services [2025] KEHC 3053 (KLR)***, where the High Court lifted the corporate veil at the execution stage and held a director personally liable for the decretal sum after finding that the corporate shield was being used as a tool to evade satisfaction of the decree.
- 22 It was submitted that the Respondent's continued reliance on corporate personality in the face of failed execution amounts to an abuse of the corporate form, warranting the Court's intervention.
- 23 On the second issue, the Claimant submitted that Order 22 Rule 35 of the Civil Procedure Rules empowers this Court to summon officers of a judgment-debtor corporation for examination as to its assets and means of satisfying a decree. This power is intended to aid execution and to prevent judgment-debtors from hiding behind corporate structures.
- 24 The Claimant cited ***John Ogada & Company Advocates v Copitex Knitwear Mills Ltd [2025] KEHC 11555 (KLR)***, where the High Court compelled a director of a judgment-debtor company to attend court for examination on oath regarding the company's financial status. Further reliance was placed on ***Njuguna & Partners Advocates v Publi-Craft International Limited [2025] KEHC 13987 (KLR)***, where the Court granted orders identical to

those sought herein, summoning the directors for examination on oath and directing that, in default, the directors be held personally liable for the decretal sum.

- 25 The Claimant submitted that the Respondent's directors have failed to produce audited accounts, bank statements, or any credible evidence of solvency, and that their bare denials do not discharge the burden placed upon them under Section 112 of the Evidence Act.
- 26 On the third issue, the Claimant submitted that the argument that alternative remedies such as insolvency proceedings should be pursued does not constitute a defence to execution where a lawful decree exists and execution has failed. He cited ***Mbarak v Vyas Hauliers Ltd [2025] KEHC 1770 (KLR)***, where the High Court rejected similar attempts to resist execution and found that the corporate veil was being used as a shield against satisfaction of the decree, proceeding to lift the veil and order personal execution against the director.
- 27 It is the Claimant's submission that settlement proposals which are never honored do not extinguish a lawful decree and cannot bar execution, particularly where they are deployed to delay or frustrate satisfaction of the judgment. ***In Bislex Kenya Limited v Hydro Water Well (K) Limited [2025] KEHC 11574 (KLR)***, the Court found that *"the appellant's failure of paying off the decretal sum despite being financially capable of doing so,*

amounted to improper conduct that necessitated the lifting of the corporate veil”, and consequently upheld the decision holding the directors personally liable.

- 28 The Claimant submitted that the Replying Affidavit does not dispute the existence of the decree, the failure to satisfy it, or the frustration of execution.
- 29 On whether the orders sought ought to be granted, the Claimant submitted that the present matter mirrors the cited authorities, and warrants similar relief.

Respondent’s Submissions

- 30 The Respondent submitted that the sole issue for determination is whether the Applicant has satisfied the high legal threshold required for this Honourable Court to pierce the corporate veil of the Respondent company. It is the Respondent’s submission that the Applicant has failed to do so, both in law and in evidence.
- 31 It was submitted that Section 19 of the Companies Act firmly establishes the principle that a company is a body corporate with a legal personality separate and distinct from its members. The Respondent urged the Court to reaffirm the foundational doctrine set out in ***Salomon v Salomon & Co. Ltd [1897] AC 22***, which remains the cornerstone of corporate law and has consistently been upheld by Kenyan courts.

- 32 The Respondent submitted that while Order 22 Rule 35 of the Civil Procedure Rules empowers the Court to summon a judgment-debtor or its officer for examination as to means, the said provision does not provide for automatic personal liability of directors.
- 33 Reliance was placed on ***Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd [2002] 1 EA 41***, as cited with approval in ***Kibatia & Co. Advocates v Kings Group of Schools Ltd [2024] eKLR***, where the Court held that the corporate veil is not to be lifted merely because a company has no assets or is unable to pay its debts, as the law provides other remedies. The Respondent further cited ***Kenagen Contractors Kenya Ltd v Abogno & others [2024] KEELC 5111 (KLR)*** for the proposition that the corporate veil may only be pierced where a company is used as a vehicle for fraud, improper conduct, or as a mere façade, none of which has been proved in the present case.
- 34 It was the Respondent's submission that in order for the corporate veil to be lifted, the applicant must prove a company is used as a vehicle for fraud, improper conduct or as a mere façade. None of these grounds have been pleaded and proved by means of evidence before this court. In failing to do so, the applicant has based his application on a *nolla bona return*.

- 35 The Respondent submitted that the Applicant's case rests entirely on a *nulla bona return*. In ***Kibatia & Co. Advocates v Kings Group of Schools Ltd [2024] eKLR***, the Court reaffirmed that the veil of incorporation is not to be lifted merely because the company has no assets or is unable to pay its debts and is thus insolvent. The Respondent argued that the Applicant has failed to allege or demonstrate any fraud, improper conduct, sham or façade, or commingling of assets that would warrant piercing the veil.
- 36 It was submitted that there is no evidence of asset stripping, unlawful transfers, or treatment of company assets as personal assets of the directors, and that the cessation of business arose from genuine commercial challenges.
- 37 The Respondent further submitted that the letter dated 25th July 2022 relied upon by the Applicant was a without-prejudice settlement proposal made in good faith. It was argued that construing such a voluntary offer to assist as an admission of personal liability is prejudicial and contrary to established principles of law, and that the application improperly seeks to convert the directors into guarantors of the company's debt, a role they never assumed in law or contract.

- 38 It is the Respondent's submission that where a company is unable to pay its debts, the Insolvency Act provides a comprehensive statutory framework, including liquidation, for addressing such circumstances. The Applicant's attempt to bypass this framework and directly target the directors is misconceived in law.
- 39 The Respondent submitted that the Applicant has not exhausted the remedies available under Order 22 of the Civil Procedure Rules, including the examination of an officer of the company as to means, which ought to precede any consideration of personal liability. It contends that the directors have not demonstrated any unwillingness to be examined and that the Applicant has prematurely *"jumped the gun"*.
- 40 The Respondent submitted that the Applicant has failed to discharge the heavy burden of demonstrating that this is one of the rare and exceptional cases warranting the piercing of the corporate veil. The Respondent urged this Court to find that the high legal threshold has not been met and to dismiss the application seeking to lift the corporate veil.
- 41 I have considered the averments and submissions of the parties herein. Under the Kenyan law, courts can only lift a corporate veil of a company if the company is being used to commit fraud or evade tax, avoid legal obligation or perpetrate illegality.

- 42 It is indeed true as submitted by the respondent that a company is a separate entity from the directors. But is also true that the company has an obligation to pay the debts. It is however incumbent upon the applicant to demonstrate that the respondents have committed some fraud, improper conduct, sham, façade or commingling assets. The respondents submitted that there is no evidence of unlawful transfer of assets or treatment of company assets as personal.
- 43 From the submissions on record, the applicants stated that the respondents are evading their responsibility after admitting that the company closed its operations. Vide their letter of 25th July 2022 the respondents even promised to pay the debt. From this account, it is my finding that the respondents are deliberately evading their legal obligations in not settling the debt. It would therefore be in the interest of justice to allow the application and order lifting of corporate veil of the respondents and cross-examine the directors to ascertain assets of the company. Costs of this application to the applicant.

Dated, Signed and Delivered Virtually at Nairobi this 25th Day of February, 2026.

**HELLEN WASILWA
JUDGE**