



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
MISC APPLN NO. E1077 OF 2025

BETWEEN

**SEA BREEZES TOURS AND TRAVEL
APPLICANT**

VERSUS

**JOHN KIPKORIR BETT 1ST
RESPONDENT**

**RADEECAL COMMUNICATIONS 2ND
RESPONDENT**

RULING

Background and Introduction

1. The application dated 23rd October 2025 was brought by the decree holder, seeking that this Court issues summons compelling the directors and shareholders of the 2nd respondent/judgment debtor, namely **Edwin Masivo Luyali, Sanyalkumar Sukeshbhai Desai, and Neeraj Mahendra Shah** to personally attend court and be

examined on oath regarding the 2nd respondent's means and assets.

- 2.** The decree holder further seeks that the said directors be ordered to produce books of accounts and other documentary evidence relevant to revealing the assets and financial status of Radeecal Communications.
- 3.** In default of such attendance or failure to provide suitable means and assets for satisfaction of the decree, the applicant seeks to have this Court lift the corporate veil of the 2nd respondent and hold its directors and shareholders personally liable for payment of the decretal sum of KSHS 6,074,523/= together with interest and that warrants of attachment and sale of the directors' and shareholders' personal assets be issued in execution of the decree. Finally, in the event of non-compliance with the above orders, the decree holder further seeks that the directors be committed to civil jail.
- 4.** Despite service of the application upon the 2nd respondent as evidenced by the Affidavit of Service

sworn on 3rd November 2025, I note that there has been no response to the application. I have however considered the written submissions filed by the applicant.

Analysis and Determination

5. The issue that falls for determination at this stage is whether the decree holder has made out a case for the oral examination of the directors of the judgment debtor under **Order 22 Rule 35 of the Civil Procedure Rules**. It provides that:

“Where a decree is for the payment of money, the decree-holder may apply to the court for an order that—

(a) the judgment-debtor;

(b) in the case of a corporation, any officer thereof; or

(c) any other person,

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, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”

6. The object of this provision is clear. It is intended to aid the decree-holder in discovery of assets and means of satisfaction of a lawful decree. It recognizes that execution may be obstructed not merely by the absence of assets in plain sight, but also by concealment, dissipation, or the withholding of information regarding the financial position of the judgment debtor. This position was aptly captured by Ringera J. (*as he then was*) in ***Ultimate Laboratories V Tasha Bioservice Ltd, [HCCC No. 1287 of 2000]***, where the learned Judge stated:

“The objective of an examination of a company’s director or officer under Order XX1 Rule 36 is to obtain discovery, for the purpose of execution of a decree against

the company, 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.”

7. I entirely adopt that reasoning. The Court’s jurisdiction under **Order 22 Rule 35** is not contingent upon proof of fraud or the lifting of the corporate veil. Those are separate and weightier issues that may arise later, depending on the evidence elicited during such examination. At this stage, the only threshold is whether there exists an unsatisfied money decree and whether the decree-holder has demonstrated difficulty in tracing assets available for execution.
8. From the evidence presented before me, it is not in dispute that judgment was entered against the judgment debtor on 2nd October 2023 and a decree issued on 21st November 2023, which remains unsatisfied. It is clear that attempts at execution have been frustrated going by the warrants that have gone unexecuted and also the execution

proceedings before this and other Courts, which is an uncontested fact.

9. Accordingly, the preconditions for granting the orders sought are satisfied: there is an unsatisfied monetary decree and there is no dispute as to the indebtedness of the judgment debtor. In these circumstances, it is both just and necessary that the directors identified in the CR12 be summoned to attend court for oral examination. This will enable the decree holder, and ultimately the Court, to ascertain the true financial posture of the judgment debtor and the means, if any, by which the decretal sum may be settled.

Disposition

10. In light of the foregoing, I am satisfied that the application has merit. I accordingly allow it to the extent that:

i. Summons be and are hereby issued compelling the directors and shareholders of the 2nd respondent/judgment debtor namely, EDWIN MASIVO LUYALI, SANYALKUMAR SUKESHBHAI DESAI

and NEERAJ MAHENDRA SHAH to personally attend Court on such date as may be ordered or allocated and be examined on oath as to the 2nd respondent's /judgment debtor's means and assets.

ii. The said directors be and are hereby ordered to produce books of accounts and other documentary evidence relevant to revealing the assets and financial status of RADEECAL COMMUNICATIONS.

iii. The question of whether the corporate veil should be lifted, and whether the directors may ultimately be held personally liable, is a distinct issue that will only fall for consideration upon completion of the examination and upon proper evidential foundation being laid.

iv. The costs of the application shall await the final outcome.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 20TH DAY OF FEBRUARY 2026.

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Korir HB for Mr Kiplagat for the respondent/decreed holder
Mr Otwal for the applicant
Court Assistant: Lillian

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