



Wayaffe v Toner Holdings Limited & another (Environment and Land Case E112 of 2022) [2026] KEELC 1282 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1282 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E112 OF 2022**

CG MBOGO, J

MARCH 5, 2026

BETWEEN

ALEXANDREE WAYAFFE DECREE HOLDER

AND

TONER HOLDINGS LIMITED JUDGMENT DEBTOR

AND

CORRINE MARIE MADELEINE GENEVIEVE DEFENDANT

RULING

1. Before me is the notice of motion dated 24th January, 2025 filed by the decree holder and it is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 22 Rule 35 and Order 51 Rule 1 as well as Article 159 of *the Constitution* seeking the following orders:-
 1. Summons do issue compelling the judgment debtor's trial witness/director one Joseph Schwartzman, director Doron Oz and Samrat Ebenezer Merybel Jebamoni to attend court on such date as may be ordered or allocated, to be orally examined on oath as to the judgment debtor's means and assets.
 2. The said directors be ordered to produce the judgment debtor's books, papers, documents and/or evidence showing the affairs of the company.
 3. The costs of this application be borne by the 1st defendant/judgment debtor.
2. The application is premised on the grounds inter alia that the judgment debtor is indebted to the decree holder pursuant to the judgment of this court delivered on 20th December, 2023 for the decretal sum of Kshs.31,608,576/- which continues to incur interest.



3. The application is further supported by the affidavit of the decree holder sworn on even date. He deposed that he has attempted to execute the decree against the judgment debtor unsuccessfully, and that the partial attempt has been opposed by objection proceedings filed by Muthaiga Heights which culminated to the ruling delivered on 14th November, 2024.
4. The decree holder deposed that pursuant to the said ruling, the appointed auctioneer attempted to cart away the attached goods but the judgment debtor employed under hand methods to stop the process. He deposed that the decretal sum is in excess of Kshs.31,608,576/- whilst the attached goods have an approximate value of Kshs.750,000/- and that even if the same were to be sold, it would not settle the decretal sum.
5. That on 18th March, 2024 the bank account held by the judgment debtor at Stanbic Bank was suspiciously closed following an attempt to garnishee the said account and as a result, the judgment debtor has no known assets either movable or immovable capable of attachment.
6. The application was opposed vide the replying affidavit of Thomas Masaki the manager of the judgment debtor sworn on 16th October, 2025. The judgment debtor deposed that there are only two directors, i.e. Doron Oz and Ebenezer Merybe Jebamoni and thus, an order compelling Joseph Schwartzman who is not a director to attend court cannot issue.
7. The judgment debtor further deposed that it has no offices or staff at Muthaiga Heights and further, that they did not resist any attempts by the auctioneer on 14th November, 2024. With regard to the bank account details, it was deposed that the opening of a new account where tenants would pay service charge was not done to defeat any court order as it was only informed of the ex parte garnishee decree nisi on 25th March, 2025. It was further deposed that the assertion that the judgment debtor has no known assets is untrue and contradictory to the decree holder's own action.
8. The judgment debtor further deposed that the instant application is premature and res judicata as similar issues were raised and dismissed in the ruling delivered on 16th September, 2024. In addition, that the judgment debtor is a separate and distinct entity, and it has not indicated that it is unable to settle its debts. For this reason, there are no factual or legal grounds to justify the orders sought under Order 22 Rule 35 of the Civil Procedure Rules. That should the court be inclined to allow the application, the two directors are expatriates and the day to day operations are under the supervision of the finance manager who has direct and continuous oversight of the respondent's accounts and financial affairs. It was deposed that it is extremely difficult to coordinate the availability of the expatriate directors for such proceedings. However, the judgment debtor expressed its willingness to comply with any order for security of its accounts through its finance manager to provide accurate and comprehensive information on its financial position.
9. The application was canvassed through written submissions. The decree holder filed his written submissions dated 28th October, 2025. The judgment debtor filed its written submissions dated 17th November, 2025.
10. I have considered the application, the reply thereof and the written submissions filed by the respective parties. The following issues are for determination, namely:
 - i. Whether the instant application is res judicata.
 - ii. Whether the decree holder is entitled to the prayers sought.
11. On the first issue, the judgment debtor argued that this application is res judicata on the grounds that similar issues were previously raised and dismissed by Oguttu Mboya, J in his ruling delivered on



16th September, 2024. More importantly, and as I note, is that the judgment debtor appears to have abandoned this argument as the same was not supported or argued further in its written submissions.

12. Black's law Dictionary 10th Edition defines "res judicata" as:-

"An issue that has been definitely settled by judicial decision...the three essentials are(1) an earlier decision on the issue,(2) a final judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties..."

13. The substantive law on res judicata is found in Section 7 of the Civil Procedure Act Cap 21 which provides that:-

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

14. From the above provision, the court is barred from dealing with an issue that was previously raised between the same parties, litigating under the same title where the said issue was determined by a court of competent jurisdiction. I have looked at the ruling delivered by the court on 16th September, 2024. The same was premised on the notice of motion dated 25th April, 2024 which was anchored on the provisions of Sections 1A, 1B, 3A and 94 of the Civil Procedure Act; Order 1 Rule 10(2); Order 23 Rules (1) (2) & (3); Order 51 and Order 50 of the Civil Procedure Rules and Article 159(2) (a) & (d) of the Constitution. The application sought seven prayers and in particular, prayer v. was seeking that the court be pleased to lift the corporate veil of the 1st defendant/judgement debtor and that aristocrats concrete limited be held personally liable to pay to the decree holder the sum of Kshs.30,307,046.40 being the decretal sum pursuant to the ruling of the court delivered on 20th December, 2023.

15. In the instant application, and as I understand it, the decree holder is seeking that the books of accounts be made known through cross examination of the specified directors to establish why the decretal sum has not been paid. This in my view is completely a separate and distinct issue from the prayer in the former application which sought for personal liability of the directors to settle the decretal sum. This application is therefore not res judicata.

16. On the second issue, it is not disputed that judgment was entered in favour of the decree holder, and that the decretal sums remain unsettled. The decree holder has also expressed difficulty in executing the decree in settlement of the sums due thus necessitating the filing of this application including former applications as can be seen on record.

17. Order 22 rule 35 of the Civil Procedure Rules provides as follows:-

"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.”

18. Under the above provision of the law, the court has the power to summon any officer of a company to attend before it to be examined on whether any or what debts are owed by the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree. This is a lawful process provided by law.
19. According to the records held by the company’s registry as at 20th May, 2024 which is annexed to the replying affidavit of Thomas Masaki, Joseph Schwartznan whose nationality is Kenyan is listed as a director/ shareholder of the judgment debtor. Doron Oz, is listed as a Kenyan as well as a shareholder. The citizenship status of Samrat Ebenezer Merybel Jebamoni has not been disclosed save as stated that he is an expatriate. There were no recent records of the judgment debtor indicating that Joseph was not a director of the judgment debtor. The allegations that the directors of the judgment debtor are expatriates have also not been supported by any evidence. Except for Samrat Ebenezer Merybel Jebamoni, the rest are listed as Kenyans. To that extent and in view of the fact that the judgment debtor needs to explain through demonstration of its books of account why the decretal sums should or has not been paid, there is need for the persons listed to appear in court for cross examination.
20. In the case of Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited [2015] KEHC 5964 (KLR), Gikonyo, J held as follows:-

“However, despite the jurisdiction the court, the decision to lift the corporate veil should not be undertaken lightly as it opens the directors or members of the company to personal liability. There should be sufficient circumstances provided in statutory law or judicial precedents which allow the court to do so. In the present case, there is no formal request for the lifting of the veil, and also, there is not any material to support lifting of the veil at the moment. The only allegation made in the submissions and on shallow pitch is that the Plaintiff is not aware of the assets of the Defendant Company; in my view, that is a good ground for invocation of the jurisdiction of court under Order 22 rule 35 of the CPR for purposes of examination of Mr. Peter Karing’u rather than lifting of the corporate veil. I have already ordered attendance of Mr. Peter Karing’u for examination. And I quickly, add that, information which may be provided in the examination of a person summoned under Order 22 rule 35 alone or together with other relevant evidence which the judgment-holder may command, could be a basis for the lifting of the veil as long as it satisfies the threshold of the law.” With emphasis

21. From the above, I find merit in the notice of motion dated 24th January, 2025 and the same is allowed in the following terms:
 - i. The deputy registrar is directed to issue summons to Joseph Schwartzman, Doron Oz and Samrat Ebenezer Merybel Jebamoni to appear in court on 22nd April, 2026 at 2.30 p.m. in open court for examination as to the judgment debtor’s means and assets.
 - ii. The said directors are hereby ordered to produce the judgment debtor’s books, papers, documents and/or evidence showing the affairs of the company.
 - iii. In default of orders (i) and (ii) above, warrants of arrest to issue.
 - iv. The decree holder is awarded the costs of this application, the same to be borne by the judgment debtor.



It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 5TH DAY OF MARCH, 2026.

HON. MBOGO C.G.

JUDGE

05/03/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Hans Oichoe for the Plaintiff/Decree holder

Mr. Omunyo for the Defendant /Judgement Debtor

