



REPUBLIC OF KENYA



**Ellat-Agua Limited v Armstrong & another (Miscellaneous Application E072 of 2021)  
[2026] KEHC 2804 (KLR) (Commercial and Tax) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2804 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E072 OF 2021  
FG MUGAMBI, J  
FEBRUARY 27, 2026**

**BETWEEN**

**ELLAT-AGUA LIMITED ..... APPLICANT**

**AND**

**ARMSTRONG & DUNCAN ..... RESPONDENT**

**RULING**

1. For determination is an application dated 17<sup>th</sup> February 2026, brought under Order 22 Rule (35)(b), Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 635 of The *Companies Act* as well as Section 1A, 3A, 6 and 63 of the *Civil Procedure Act*.
2. The applicant seeks leave of the court to summon Stanley Karuthai Murage and Mwangi Murage, in their capacity as the directors of the judgment debtor company, for oral examination under oath regarding the company's business and affairs, and to compel them to produce the company's books of account, with the aim of ascertaining the company's means of satisfying the decretal sums and costs.
3. Although the application was duly served and directions on responses issued, the judgment debtors have not filed any response to the application. Nevertheless, it remains the obligation of this Court to examine the application on its merits and to assess the truthfulness of the averments presented.

**Analysis and Determination**

4. The purpose of an application brought under Order 22 Rule 35 is to assist the decree-holder in uncovering the assets and financial means available for satisfying a lawful decree. The provision acknowledges that execution may be hindered not only by the apparent lack of visible assets, but also through concealment, dissipation, or the deliberate withholding of information concerning the judgment debtor's financial position.



5. 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.”

6. From the evidence placed before me, it is not in dispute that an Arbitral Award was issued by the Honourable John Olago on 18<sup>th</sup> December 2020, in favour of the applicant, against the respondent. The said Arbitral Award was subsequently adopted as a judgment of this Honourable Court on 2<sup>nd</sup> March, 2021 and a Decree issued on 17<sup>th</sup> March, 2021. I have not been shown any evidence to prove that the decretal amount has been satisfied.

7. The two directors have not controverted the applicant’s assertion that they are both directors of the judgment debtor company. Being agents of the company, they are best placed to provide crucial information as required by the applicants. It is therefore just and necessary that the said directors 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**

8. Accordingly, the application dated 17<sup>th</sup> February 2026 is allowed. The following orders do hereby issue:

- i. Leave is hereby granted to the applicant to examine on oath Mr. Stanley Karuthai Murage and Mr. Mwangi Murage as the directors of the respondent to ascertain the assets and affairs of the respondent.
- ii. Summons be and are hereby issued, directed to Mr. Stanley Karuthai Murage and Mr. Mwangi Murage the directors of the respondent company to attend court on an appointed day to be orally examined as to the business and affairs of the respondent judgment debtor and/or the property or properties of the respondent judgment debtor and/or the respondent judgment debtor’s means of satisfying the decretal sums and costs.
- iii. An order is hereby issued, directed to Stanley Karuthai Murage and Mwangi Murage in their capacity as the directors of the judgment debtor to produce before court, books of accounts, audited financial statements, annual returns, bank statements, cheque books and other statutory documents relating to the operations and transactions of the judgment debtor for the last eight (8) years and the said directors to be examined on oath on the said documents.
- iv. In default by the said directors to comply with the orders under prayers 2 and 3 above, warrants for their arrest be issued.
- v. Prayers 5 and 6 seeking to lift the corporate veil of the Company as well as costs of the application shall await the outcome of the directors’ examination.

**DATED, SIGNED AND DELIVERED IN NAIROBI**

**THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUGAMBI**

**JUDGE**



Delivered in presence of:

Ms Gitonga HB for Mr Odhiambo for the JD

Ms Obiri for the applicantDH

Court Assistant: Lillian

