



**Muita v Gachiri & 2 others (Arbitration Cause E033 of 2022)
[2026] KEHC 2618 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E033 OF 2022
JWW MONG'ARE, J
FEBRUARY 19, 2026**

BETWEEN

JAMES KARIUKI MUTTA APPLICANT

AND

JAMES KINIYA GACHIRI 1ST RESPONDENT

SAMUEL MBUGUA GACHIRI 2ND RESPONDENT

PEKENYA GAS SUPPLIERS LIMITED 3RD RESPONDENT

RULING

Introduction and Background

1. Before the court for determination is the Applicant's Notice of Motion dated 4th April 2025 made under sections 148,787,996 and 1002 of the *Companies Act* (Chapter 486 of the Laws of Kenya), section 1A,1B,3A,6 & 34 of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya), and Order 22 Rule 35 of the Civil Procedure Rules seeking orders that the 1st and 2nd Respondents, being the directors of the 3rd Respondent("the Company"), do attend Court and be orally examined as to the Company's business affairs whether it has any property or means of satisfying the decree in this suit and to produce books of account and other documentary evidence showing the status of the business before the Court. Further, that an order be made lifting the veil of incorporation and making the directors personally liable to satisfy the decree, a declaration be made under sections 996 and 1002 of the *Companies Act* that the directors carried on business with intent to defraud the Applicant and that they be committed to civil jail for not less than six months if they fail to comply with the court's orders herein.
2. The application is supported by the grounds on its face and the supporting affidavit of the Applicant sworn on 4th April 2025 and it is opposed by the Respondents through the replying affidavit of



the 1st Respondent sworn on 19th September 2025. The parties canvassed the application by way of written submissions which together with the pleadings I have considered and I will be making relevant references to in my analysis and determination below.

Analysis and Determination

3. From the parties' submissions, the only issue for the court's determination is whether the corporate veil of the Company should be lifted. Whereas I agree with the Respondents' position that a company is a separate legal entity from its members and shareholders and that this position was espoused by the Court in the English case of *Salmon vs Salmon* [1987] AC 78, I am in agreement with the Applicant's submission that this position is not cast in stone as there are instances where the corporate veil of a company may be pierced and/or lifted. The Court of Appeal, in *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR) held that "The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues."
4. The Applicant posits that the decree issued by the court on 17th May 2024 remains unsatisfied despite diligent efforts, that the Company has no known assets, that a letter dated 15th July 2020 from the Respondents' advocates alleged the Company was wound up which was proven untrue by a CR12 showing the Company is still registered and the directors remain shareholders. Further, that the directors have ignored letters from the Applicant's advocates seeking compliance and that it is in the interests of justice for the corporate veil to be lifted to prevent the decree from being rendered useless.
5. In response, the Respondents depone that the decree allows the Applicant rights as a shareholder, not as a personal creditor of the directors and that the directors are also shareholders who suffered losses when the company collapsed and they should not be personally liable. They deny receiving the letters as alleged by the Applicant and that the letter annexed by the Applicant explaining that the Company was wound up and no longer in operation is dated 2020, which is before the arbitration and decree. They aver that the Applicant was aware throughout the proceedings that the Company had no assets, yet still pursued the claim and that the properties in question were sold or disposed of long before the claim was filed. The Respondents state that the Applicant has not demonstrated that he exhausted execution remedies under the *Insolvency Act* against the Company before seeking to pierce the veil and that in summary, the Applicant has failed to satisfy the legal requirements for lifting the corporate veil. That executing against the directors' personal assets would violate their right to property under *the Constitution*, that the application is malicious, frivolous, vexatious, and an abuse of court process and they accuse the Applicant of collusion with auctioneers to illegally acquire the directors' personal property. For these reasons, they urge the court to dismiss the application with costs.
6. Going the pleadings, it is clear that the decree remains unsatisfied. The 1st Respondent admits the Company is defunct and has no assets, but the CR12 shows the Company is still registered, contradicting the claim that it was "wound up." The letter dated 15th July 2020 claimed the Company was wound up, yet no formal liquidation has been proven. This raises an inference that the directors are using the Company's shell to avoid liability. I wonder why the Respondents knew the Company had no assets and that key properties such as the Nakuru property and vehicles had been sold before the arbitration, yet they chose to defend the arbitration, they did not disclose these facts to the tribunal and they allowed the Applicant to obtain a decree for specific performance of obligations that were apparently impossible to perform.



7. In my view, such conduct borders on misleading the court and the arbitrator and imputes improper motives and fraudulent concealment on the part of the Respondents. The Company appears to be an empty shell, kept in existence not for legitimate business, but to shield the directors from personal liability. As stated, the 1st Respondent admits the Company has no assets, no operations, and was allegedly “wound up,” yet no steps have been taken to formally dissolve it, a clear indicator of a corporate veil being used to evade a decree. The Applicant has tried to execute, but it appears that the Company has no known attachable assets. The Respondents have not offered any alternative means of satisfying the decree and I find that the 1st Respondent’s suggestion that the Applicant should pursue *Insolvency Act* remedies is, in this context, procedural evasion and not a good-faith alternative.
8. In summary, I find that the Applicant has demonstrated a valid and unsatisfied decree, a company that is defunct but deliberately kept alive, directors who knew the Company had no assets and that performance was impossible, there is no good-faith effort to satisfy the decree and the directors’ conduct amounts to evasion of a court order and potential abuse of the corporate form. This fits squarely within the factors articulated in *Riccatti*(supra) and I find that the Applicant has made a sufficient case for the court to exercise its discretion and lift the corporate veil.

Conclusion and Disposition

9. In the foregoing, I allow the Applicant’s application dated 4th April 2025 as follows:
 1. James Kiniya Gachiri and Samuel Mbugua Gachiri, being the directors of Pekenya Gas Supplies Limited, the 3rd Respondent are hereby ordered do attend Court on a date to be fixed, to be orally examined as to the 3rd Respondent’s business affairs whether the 3rd Respondent has any property or means of satisfying the decree in this suit and to produce books of account and other documentary evidence showing the status of the business before the court.
 2. Upon the personal attendance and examination of the said directors, should their explanation be unsatisfactory, then based on the evidence presented in the Applicant’s affidavit showing a prima facie case of corporate veil manipulation and fraudulent concealment, this court will order the piercing of the corporate veil of the 3rd Respondent.
 3. James Kiniya Gachiri and Samuel Mbugua Gachiri will then be personally, jointly and severally liable to satisfy the decree issued on 17th May 2024 and a Declaration will be made pursuant to section 1002 as read with section 996 of the *Companies Act* that they were knowingly party to the carrying of the business of the 3rd Respondent with intent to defraud the Applicant and that they are responsible without any limitation of liability for the debt of the above company owed to the Applicant.
 4. In default of the said directors complying with the above orders, they will be imprisoned and committed to civil jail for the period not less than six (6) months.
 5. The costs of this application are awarded to the Applicant and are to be settled by the Respondents.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF FEBRUARY 2026

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J.W.W. MONGARE
JUDGE



In The Presence Of

Ms. Njoroge for the Plaintiff/Applicant.

Ms. Ondaga holding brief for Mr. Mwanza for the Respondent.

Amos - Court Assistant

