

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E131 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

BENSON MUIA MUTUKUCLAIMANT

VERSUS

KIP PLAST LIMITEDRESPONDENT

RULING

1. Before me for determination is the Applicant's Notice of Motion dated 15th May, 2025. The Applicant seeks the following Orders:-

- (a) That **Dinesh Devji Halai and Vanita Dinesh Halai**, the known Directors of the Respondent, do attend Court on such dates as may be ordered or allocated, to be orally examined on oath as to whether the Respondent has any property or means of satisfying the decree issued in **Milimani CMCC No. 9105 of 2017** and/or produce the

Respondent's audited books, papers, documents and/or other documentary evidence showing the affairs of the company before the Court.

(b) That the said Directors be orally examined on oath as to whether in a bid to evade satisfaction of the said decree and/or defeat the course of justice;

*(i) the Respondent has transferred its entire business to **VINTZ PLASTICS LIMITED**, and is now operating and carrying on business as **VINTZ PLASTICS LIMITED**.*

*(ii) [Whether] the assets, liabilities and employees of the Respondent have since been transferred to **VINTZ PLASTICS LIMITED**.*

*(c) That the Respondent's Directors, **Dinesh Devji Halai** and **Vanita Dinesh Halai** be jointly and severally held personally liable to satisfy the sum of **Kshs.439,658/=** plus further interest due to the Applicant in full, or an order for committal to civil jail be made against them personally.*

*(d) That the Applicant be granted leave to execute the decree in **Milimani CMCC No. 9105 of 2017***

against the Respondent's Directors personally, in default of payment of the sum of **Kshs.439,658/=**, plus further interest claimed herein.

(e) That costs of the application be borne by the Respondent and/or its said Directors in any event, and the same be assessed by the Honourable Court.

2. The application sets out on its face the grounds on which it is brought, which grounds are substantially replicated in the Applicant's affidavit sworn on 15th May, 2025 in support of the application. It is deponed in the supporting affidavit:-

(a) that the Applicant was employed by the Respondent in its operations department at the material time; and filed **Milimani CMCC No. 9105 of 2017** seeking compensation for injuries sustained following an industrial accident that occurred on **9th August, 2016** while he was working for the Respondent.

(b) that the Court delivered Judgment on **26th September, 2024** in the Applicant's favour, and

that a decree was issued for the sum of **Kshs.436,382.16/=**.

(c) that the decretal sum now stands at **Kshs.439,658/=**; and is yet to be paid; and that **M/s Daystar Auctioneers** were commanded by the Court to attach the Respondent/Judgment Debtors movable property in execution of the Court's decree.

(d) that the Auctioneers found that the Respondent had closed its premises, with operations and normal business now being carried on at the premises under the name **VINTZ PLASTICS LIMITED**.

(e) that the Directors of the Respondent company and **VINTZ PLASTICS LIMITED** are one and the same (that is **Dinesh Devji Halai** and **Vanita Dinesh Halai**).

(f) that the Respondent has since transferred all its assets and machinery to **VINTZ PLASTICS LIMITED** in a bid to defeat execution, a perfect example being motor vehicle Registration No. KCD 608A.

(g) that it is manifest that the Directors of the Respondent company are engaged in **fraudulent activities and improper conduct** with a sole aim to use corporate personality to evade satisfaction of the said decree.

3. Documents annexed to the said supporting affidavit include copies of the Court's Judgment and decree in **Milimani CMCC No. 9105 of 2017**, warrants of attachment and sale, searches on **KIP PLAST LIMITED** (the Respondent herein) and **VINTZ PLASTICS LIMITED**, an affidavit sworn by **DINESH DEVJI HALAI** and a copy of records on motor vehicle Registration **No. KCD 608A**.
4. When the application first came up for hearing on **2nd July, 2025**, the Court was informed by Counsel for the Applicant that the application had been served, and that an affidavit of service (dated) sworn on 27th June, 2025 had been filed. There being **no** appearance on the part of the Respondent, and there being no response filed, Counsel asked the Court to first allow **prayers (a) and (b)** in the application.

5. The Court ordered for issuance of summons on the Respondents' Directors, **DINESH DEVJI HALAI** and **VANITA DINESH HALAI**, requiring them **to attend Court virtually on 18th September, 2025** for purposes of being examined on oath on the Respondent's means and property regarding satisfaction of the Court's decree in **Milimani CMCC No. 9105 of 2017**; and to produce the Respondent's audited books and/or documents showing the affairs of the Respondent company.
6. On **18th September, 2025**, Counsel for the Claimant/Applicant informed the Court that service had been effected, and that an affidavit of service **dated 22nd July, 2025** had been filed. There was **no** attendance on the part of the Respondent and/or its aforementioned Directors. The matter was called out twice **(virtually)**, and there was no attendance on the part of the Respondent and/or its said Directors.
7. Counsel for the Claimant/Applicant moved the Court to allow **prayers (c), (d) and (e)** in the application; and relied on

the affidavit sworn in support of the application and documents thereto annexed.

8. The Court fixed the matter for mention on **11th November, 2025** for purposes of fixing a Ruling date, and directed that a Mention Notice be served on both the Respondent and its directors, and that an affidavit of service be filed. On **11th November, 2025**, Counsel for the Applicant informed the Court that service had been effected, and that an affidavit of service **dated 3rd November, 2025** had been filed. A Ruling date was reserved, and the Applicant was ordered to serve a Notice in that regard, and to file an affidavit of service.
9. I have seen on record affidavits of service sworn on **22nd July, 2025, 3rd November, 2025** and **11th December, 2025** respectively.
10. Issues that falls for determination in the application herein, which remains unopposed, are whether the Orders sought by the Applicant are capable of issuing, and whether the same are merited.

11. The doctrine of separate legal personality is a corner stone of company law. Upon incorporation, a company acquires a legal personality distinct from that of its shareholders and directors. This principle underpins the concept of limited liability, and ordinarily shields directors from personal liability for debts and obligations of the company. Notwithstanding this, Kenyan Courts have consistently recognised the fact that a corporate veil is **not** absolute.

12. While addressing the foregoing issue in the case of **Githunguri Diary Farmers Co-operative Society - vs - Ernie Campbell & Co. Ltd & Githunguri Diary Plant Company Limited [2018] eKLR**, the Court of Appeal stated as follows:-

“ . . . the circumstances under which a Court ought to disregard the veil of incorporation are as stated in paragraph 90 of Halsbury’s Laws of England 4th Edition Volume 7(1) as:-

“90. Piercing the veil.

Notwithstanding the effect of a company’s incorporation, in some cases

the Court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it is a relevant feature. In such a case, the Court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individuals connection with a company may cause a transaction with that company to be subjected to strict

scrutiny, the corporate veil will not be pierced.”

13. The Court of Appeal went further and stated as follows:-

“In its deliberation, the High Court found that the faces behind the two legal entities were the same, which necessitated the piercing of the veil of incorporation. In VTB Capital PLC - vs - Nutritek International Corp & Another & 3 Others (Supra), the Court of Appeal (UK) observed that;

“. . . if the corporate veil is to be pierced, “the true facts” must mean that, in reality, it is the person behind the company, rather than the company, which is the relevant actor or recipient (as the case may be).”

14. In the case of **Jian Nanxing - vs - COK Fast Company Limited [2018] eKLR**, the Court stated as follows:-

“. . . the law on lifting of the veil is settled. The circumstances under which a veil of incorporation would be lifted are, *inter alia*, where there is no real formal legal separation between the

company and its shareholders' personal financial affairs and/or that the company is just a sham, or the company's actions were wrongful and fraudulent, or if the shareholders and/or directors act recklessly in the management of the business of the company, and/or design a scheme to perpetrate financial fraud, and/or if the company's creditors suffer unjust cost, that is, they did business with the company and they are left with unpaid bills or unpaid Court Judgment. In all these circumstances, the Court will pierce the veil of incorporation and hold the shareholders and/or directors personally liable."

15. In the present case, and based on matters deponed to in the Applicant's supporting affidavit and documents annexed thereto, Judgment was **on 26th September, 2024** entered in favour of the Applicant against the Respondent/Judgment Debtor in **Milimani CMCC No. 9105 of 2017**, shown to have been **an employment suit**. Directors of the Respondent company as at the date of the said Judgment

are shown to have been **Dinesh Devji Halai** and **Vanita Dinesh Halai**.

16. The Applicant has deponed that when Auctioneers went to the Respondent's business premises for purposes of executing the said Court's decree, they found that the Respondent/Judgment Debtor had closed operations, and that its usual business was being carried on at the premises under the name **VINTZ PLASTICS LIMITED**.
17. The Applicant has demonstrated herein that the Directors and Shareholders of **VINTZ PLASTICS LIMITED** are **Vanita Dinesh Halai** and **Dinesh Devji Halai**, the same individuals who are the Directors and Shareholders of the Respondent/Judgment Debtor herein.
18. The Applicant's deposition that the Respondent/Judgment Debtor has since transferred all its assets and machinery to **VINTZ PLASTICS LIMITED** in a bid to defeat execution of the Court's decree has not been controverted and/or denied.

19. **Vintz Plastics Limited** is shown to have been incorporated/registered on **5th July, 2010**, while the Respondent/Judgment Debtor (**KIP PLAST LIMITED**) is shown to have been registered/incorporated on **17th December, 2014**. The facts and documents presented by the Applicant show, and indeed suggest, that the Directors and Shareholders of the two aforesaid companies use the names of the said two companies **alternately** in the running of their business with a view to defeat the cause of Justice. If this be the case, then there is improper conduct on the part of the said Directors and the aforesaid two companies. The Applicant has deponed to –

“Manifest fraudulent activities and improper conduct by the Directors with the sole aim to use the corporate personality to evade satisfaction of the said decree and/or to defeat the course of justice and/or defeat execution. That the said directors are avoiding liability by hiding in the veil of a different company - *VINTZ PLASTICS LIMITED*”.

20. The foregoing position being uncontroverted, I entirely agree with the Applicant.

21. Consequently, the Notice of Motion dated **15th May, 2025** is hereby allowed in the following terms:-

(a) The Respondent's corporate veil is hereby pierced, and personal liability is hereby imposed on the Respondent's Directors and Shareholders, Dinesh Devji Halai and Vanita Dinesh Halai, regarding the sum of Kshs.439,658/= decreed in MILIMANI CMCC NO. 9105 of 2017 (Benson Muia Mutuku - vs - Kip Plast Limited), plus interest as decreed.

(b) Execution proceedings shall issue in the aforesaid suit (MILIMANI CMCC NO. 9105 of 2017) against the said Directors and Shareholders, Dinesh Devji Halai and Vanita Devji Halai, jointly and severally, in accordance with the Civil Procedure Rules.

(c) Costs of the application herein are awarded to the Applicant, to be agreed or taxed; and shall be

paid by the Respondent's said Directors and Shareholders, jointly and severally.

22. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
24TH DAY OF MARCH 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Momanyi for the Claimant

No appearance for the Respondent

ORIGINAL