

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**

**ELRC CAUSE E016 OF 2021**

**CELESTINE KUSIMBA.....CLAIMANT**

**VS**

**NAVISAT TELEMATICS LIMITED.....RESPONDENT**

**RULING**

1 The Decree Holder, by her application dated 23rd January 2025, sought the following orders:

- i. THAT this Honourable Court be pleased to issue summons directed to Abdulrazak Mohammed and Walter Kiilu Mbidyo to attend Court on an appointed day to be orally cross-examined as to the business and affairs of the Judgment Debtor's means to satisfy the decretal sum. In default of the said Directors complying with the above order, this Court be pleased to order that the said Directors be held personally liable to pay the Claimants the decretal sum in the decree herein, taxed costs plus interest at court rates.
  - ii. THAT the Honourable Court proceed to order Amne Abdulrazak Mhammed and Walter Kiilu Mbidyo as lawful Directors of the Respondent to satisfy the entire decretal sum in favour of the Claimant herein.
  - iii. THAT in default of complying of the Directors complying with prayers II and III above, this Honourable Court be pleased to order that Amne Abdulrazak Mohammed and Walter Kiilu Mbidyo be jointly and severally held personally liable to satisfy the entire decretal sum in favour of the Claimant herein. And, in default of execution, to issue against the above-stated Directors.
- 2 By its ruling dated 9th February 2025, this Court rendered itself on limb one of the application. The same was allowed. Subsequently, one of the Directors, Walter Mbidyo, appeared before this Court and was cross-examined on the various aspects mentioned in limb one of the applications.
- 3 During cross-examination, the Director testified that he is currently the sole Director of the Respondent Company. Furthermore, at all relevant times, the Claimant Decree/Holder was an employee of the Respondent, who initiated legal proceedings against the Respondent and secured judgment in her favour in 2022.

- 4 4 Additionally, he is aware that after the judgment and taxation of the party and party costs, a decree was issued for a sum of KShs. 1,337, an amount that he found difficult to comprehend.
- 5 He further stated that they had not paid anything on the decretal sum. However, since the Respondent is now under new management, they are willing to negotiate and pay the amount that is rightfully owed.
- 6 He further stated that the Respondent settled the decretal sum through various cheques, via Counsel Apollo, and that the only cheque dishonoured upon presentation was for the amount of KShs. 67,000. Consequently, he is perplexed as to how the decretal sum escalated to KShs.

1,333,895.

- 7 The Respondent has not duly settled the decretal sum, as the parties are expected to collaborate and agree on the exact amount owed. Consequently, the Respondent has not refused to satisfy the decree. Once an agreement is reached, he will initiate settlement payments.
- 8 During his re-examination testimony, the Director asserted that it is only after he assumed directorship of the Respondent Company, from the previous Directors, that the existence of the decree against the Company dawned on him. The Company is willing to settle the decree.

Analysis and Determination.

- 9 Considering the Court's ruling herein on the 1st limb of the current application and the remaining limb to be decided, I am of the view that the singular issue for determination at this stage is whether, given the circumstances of this matter, the corporate veil of the Respondent should be pierced in order to hold its Directors personally liable for the company's debts.
- 10 The purpose for which this Court permitted the examination of the Respondent's Director under oath and to testify on the matters outlined in limb one of the application, as well as the order resulting from my earlier ruling, was to give the Directors an opportunity to demonstrate to the court that this is not a proper matter in which the corporate veil of the Respondent Company should be pierced. Equally, it was to provide an opportunity for cross-examination, to elicit information from the Directors that could form the basis for an order to lift the veil. The Directors failed while the Decree holder succeeded.
- 11 Generally, it is of paramount importance to distinguish clearly between the property rights of a company and those of its shareholders, even if the shareholders are a single entity. The only permissible exception to this rule, as recognised by our law, occurs in rare circumstances where the justification for "piercing" or "lifting" the corporate veil is present. An exhaustive enumeration of such circumstances is not feasible. It suffices to state that these circumstances would typically involve elements of fraud or other improper conduct related to the formation, utilisation, or management of the company.
- 12 In the case of Central Mining South Africa [Pty] Ltd v Clote Murray N O and Others [Case no

1334/ 2022[2024] ZASCA 34[28 March 2024], the Supreme Court of Appeal of South Africa, stated; “..... Two matters arising from the quoted passage merit further comment. First, reference is made to “those [in practice] rare cases where the circumstances justify ‘piercing’ or ‘lifting’ the corporate veil. ‘It is undoubtedly a salutary principle that our Courts should not lightly disregard a company’s separate personality, but should strive to give effect to and uphold it. To do so otherwise would negate or undermine the policy and principles that underpin the concept of separate corporate personality and the legal consequences that attach to it. But where fraud, dishonesty or improper conduct [and I confine myself to such situations]is found to be present, other considerations will come into play. The need to preserve the separate corporate identity would, in such circumstances, have to be balanced against policy considerations which arise in favour of piercing the corporate veil. ....A Court would then be entitled to look for substance rather than form in order to arrive at the true facts, and if there has been a misuse of the corporate personality, to disregard it and attribute liability where it should rightly lie. Each case should obviously be considered on its own merit.”

- 13 It was clearly evident from the Director’s testimony that they acknowledge the existence of the decree herein and that the decree has not been duly settled. However, I hold the strong view that the Director’s explanation for why the Respondent has not settled the decree over the years was unconvincing, despite his continuous assertions before this Court that the Respondent is willing to settle.
- 14 If, indeed, the impediment has been the lack of understanding regarding how the judgment amount increased to the amount specified in the issued decree, or the precise sum due and payable as per the decree, then it would have been straightforward for the Respondent to invoke the appropriate legal mechanisms—inter alia, Section 34 of the Civil Procedure Act—to seek suitable orders from the Court.
- 15 The Director did not make a sufficient effort to demonstrate that this matter should not be an exception to the general rule stated above, considering that they are blowing hot and cold. They contend that the Respondent is willing to settle the decree on the one hand, while, on the other hand, they attach insufficiently explained and justified reasons for the non-settlement.
- 16 In the upshot, I am satisfied that this is a proper case where the veil of incorporation should be lifted to hold the Directors of the Respondent Company/ Judgment Debtor liable for its debts. Consequently, limbs [2] and 3 of the application dated 14th October 2024 are hereby allowed with costs.
- 17 Orders accordingly.

**Read Signed and Delivered this 9th Day of April 2026.**

**OCHARO KEBIRA**

**JUDGE**