



**Njenga v Body Masters Autotech Limited (Civil Suit 645 of 2008)
[2026] KEHC 4820 (KLR) (Commercial and Tax) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 645 OF 2008
BK NJOROGE, J
APRIL 13, 2026**

BETWEEN

FRANCIS KIGO NJENGA PLAINTIFF

AND

BODY MASTERS AUTOTECH LIMITED DEFENDANT

RULING

1. The Plaintiff/Applicant by the Application dated 26th August, 2020 seeks to summon the Directors of the Defendant/Judgement debtor to Court for cross-examination as to the assets of the Company.

Background Facts

2. The Plaintiff/Applicant filed the Notice of Motion dated 26th August 2020 seeking the following orders;
 1. The Court do make an order that the Defendant's directors produce for inspection all the books and documents of accounts of the Defendant company.
 2. The Court do make an order for the oral examination under oath of the Defendant's directors as to the debt owing to the Plaintiff and why the same has not been paid.
 3. The Court to set a date for the oral examination of the Defendant's directors to wit: -
Patrick Wahome Kamangu
Box 33355
Nairobi!
David Kariuki Eston



Box 33355

Nairobi

4. Upon examination, the directors be held personally liable for the amount due under the decree to wit Kshs. 3,789,489.00 passed against the defendant and they should be ordered to pay the same forthwith.
5. Cost of this application be borne by the defendants' directors in any event
3. The Application was supported by the Affidavit of Francis Kigo Njenga. He stated the Plaintiff/Applicant obtained judgment against the Defendant on 4th July 2019 and subsequently extracted a decree and certificate of costs. However, execution has not been successful. It is contended that the Defendant/Judgement debtor company has either relocated to an unknown location or concealed its operations, thereby frustrating enforcement of the decree. The Plaintiff further asserts that the company's directors have deliberately declined to settle the outstanding debt. That they should therefore be compelled to account for and explain the appropriation of the monies that are the subject of the decree.
4. In response, the Respondent vide the Replying Affidavit sworn on 14th November 2024 contended that the application is misconceived and incompetent. It submitted that its directors are separate and distinct legal persons from the company. Thus, they cannot be subjected to execution for liabilities incurred by the company absent a specific decree lifting the corporate veil. It was further deponed that the Judgment Debtor, formerly engaged in motor vehicle body assembly. It has since collapsed and ceased operations due to adverse economic conditions, inflation, and financial distress, rendering it insolvent and without an asset base to satisfy its debts. Additionally, one of its active directors, Patrick Wahome Kamangu, is deceased, while the deponent played only a minimal role in the company's day-to-day management.
5. The Respondent denied having transferred, disposed of, or concealed any assets to defeat the decree and maintains that it will endeavor to settle the decretal sum should business resume. It asserted that the present application is premature and that the allegations of fraud against the directors are false, unsubstantiated, and intended to prejudice the Court. The Respondent further argued that the company's insolvency does not automatically justify execution against its directors, particularly in the absence of any pleaded or proven fraud or corporate impropriety.

Issues for determination

6. The Court has carefully considered the Application, response, and the written submissions and identifies the following issues for determination:
 - a. Whether this Court should issue a summons for the examination of the Directors of the Judgment Debtor.
 - b. Whether the corporate veil should be lifted and the Directors held personally liable for the decretal sum.

Analysis

7. The Applicant who is the Decree Holder herein has moved this Court under Order 22 rule 35 of the Civil Procedure Rules. This is to have the directors of the judgment debtor orally examined and the Judgement Debtor's books of accounts be called for inspection.



Whether this Court should issue a summons for the examination of the Directors of the Judgment Debtor.

8. According to the Applicant, the Judgement Debtor Company owes a decretal sum of Kshs. 3,789,489.55 inclusive of costs and interest as at the date of filing the application under consideration. The same remains unsatisfied and the Plaintiff is unable to trace the assets of the Defendant Company. Additionally, the Replying Affidavit of the Defendant's director, Eston David Kariuki, alleges that the Judgement Debtor has no asset base and is unable to satisfy its debt
9. In contrast, the Respondent stated that one of the directors has since passed on. The deceased director was the one involved in the running and managing the affairs of the company. Therefore, on his part, he was enlisted as a director for the sole purpose of complying with the law at the time, which required a company incorporated to comprise of at least two directors. In addition, the company has been inoperational and closed shop long time ago. Thus, there are no known assets of the company and no books of accounts are available to the Respondent by the time this matter came to Court.
10. It is trite that this 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 owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree. This is pursuant to the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010 which states that -

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.
11. This provision empowers the Court to compel officers of a corporate judgment-debtor to appear for oral examination as to the financial position of the company, to aid in execution. The Applicant has demonstrated that despite a valid and subsisting decree, the Judgment Debtor has failed to satisfy the same. The Respondent has also stated that there are no known assets of the company.
 12. The Court follows the decision of Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited [2015] KEHC 5964 (KLR). F. Gikonyo J. clearly clarified that this summoning of directors of a Company assists the Judgement creditor in discovery of the assets of a company post judgement. The Court stated as follows;

“The main reason for the application is to call upon the Defendant Company's directors to be orally examined as to whether any or what debts are owing to the company, and whether the judgment-debtor has any and what property or means of satisfying the decree herein. This is what is called in law Discovery in Aid of Execution.”
 13. The Court finds that the order sought is useful in assisting a Judgement Debtor in tracing any hidden assets of the Company. Thus, the Court is satisfied that a proper basis has been laid for the issuance of summons under Order 22 Rule 35 of the Civil Procedure Rules. The Court has been informed of the



demise of one Patrick Wahome Kamangu who was a Director of the Respondent. No evidence of his demise has been placed before the Court. As to whether the Applicant is able to reach the said Director for purposes of service, in view of this information remains to be seen. Accordingly, the application succeeds to this extent, that the Directors of the Respondent named are hereby directed to attend Court for oral examination on the company's means and financial status.

Whether the corporate veil should be lifted and the Directors held personally liable for the decretal sum.

14. With regard to lifting of the corporate veil, the Respondent maintained that a Company has a separate personality from the personalities of its shareholders and directors and they are protected from being personally liable for the Company's debts and other obligations. Further, that the Applicant had not demonstrated the ingredients for lifting of the corporate veil.
15. On this issue, it was the Applicant's position that upon examination and in the absence of evidence to show how the money was used, the directors be held personally liable for the company's debt and be ordered to settle the decretal sum together all accrued interest and cost of this application.
16. The Court declines to determine this issue at this point as it is premature. The Directors of the Defendant are yet to appear and be cross-examined. To lift or pierce the corporate veil at this point in time without hearing them or giving them an opportunity to appear to appear and be heard is contrary to the rules of natural justice.
17. In light of the above, prayers (1), (2) and (3) of the Application are allowed. Prayers (4) and (5) to await further hearing of the application.

Determination

18. The Plaintiff's Application dated 20th August, 2020 is allowed in the following terms;
 - (1) The Court hereby does make an order that the Defendant's directors produce for inspection all the books and documents of accounts of the Defendant company.
 - (2) The Court hereby does make an order for the oral examination under oath of the Defendant's directors as to the debt owing to the Plaintiff and why the same has not been paid.
 - (3) The Court hereby proceeds to issue Summons and sets a date for the oral examination of the Defendant's directors to wit:-

Patrick Wahome Kamangu

Box 33355

Nairobi

David Kariuki Eston

Box 33355

Nairobi
19. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 13TH DAY OF APRIL, 2026.

NJOROGE BENJAMIN K.

JUDGE



In the presence of;

Miss Nini for the Plaintiff/Applicant.

Mr. Gakaria for the Defendant/Respondent.

Mr. John Paul – Court Assistant.

