



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
COMMERCIAL MISC. NO. E033 OF 2025

SAWASAWA SUPPLIERS LIMITED.....
APPLICANT

VERSUS

ERINPET ENTERPRISES LIMITED
RESPONDENT

RULING

1. Before me for determination is a Notice of Motion Application dated 5th June, 2025 by which the Applicant seeks the following reliefs:-

- i) Spent**
- ii) Spent**
- iii) That the Honourable Court be pleased to order Peter Muraguri Njogu, Winfred Gathigia Muraguri, Eric Njogu Muraguri, Mercy Nyokabi Muraguri, Samuel Mukeba Njogu and Simon Gatibu Njogu to attend Court in their capacity as the Respondent's directors for examination**

on oath on the status of the Respondent and whether it has property or means of satisfying the decree in Nakuru CMCC E1305 of 2021 and to produce books of accounts and any other documentary evidence on its financial standing.

- iv) That this Honourable Court be pleased to pierce the corporate veil of Erinpet Enterprises Ltd. thereby holding its directors Peter Muraguri Njogu, Winfred Gathigia Muraguri, Eric Njogu Muraguri, Mercy Nyokabi Muraguri, Samuel Mukeba Njogu and Simon Gatibu Njogu personally liable to pay the decretal amount in Nakuru CMCC 1305 of 2021.**
- v) That this Honourable Court be pleased to grant leave to the applicant to execute the said decree in Nakuru CMCC 1305 of 2021 against the Respondent's Directors in their personal capacity.**
- vi) That the costs of this application be settled by the Respondent's Directors in their personal capacity.**

2. The Application is premised on grounds on its face and an Affidavit in support thereof sworn by **Crispin Muthee**, a Director of the Applicant. He deposes that the Applicant is

the decree holder in Nakuru CMCC E1305 OF 2021 following entry of judgement by consent on 27th July, 2022 in his favour as against the Respondent for the sum of Kshs. 11,950,000 it had lent to the latter.

3. The Respondent is said have refused and/or neglected to satisfy the decree. Execution of the decree against the Responder's Director (Peter Muraguri) did not bear fruit since there are no known assets of the Respondent company.
4. It is further averred that on 1st February, 2023, the Respondent was paid Kshs.6,877,146 by the National Land Commission (NLC) but it still failed to make good the debt. It is the Applicant's case that the Respondent's directors are personally benefitting from the company's funds in a fraudulent manner.
5. The Applicant therefore wants the Respondent's directors to be examined on oath and to produce the company's books of account and any other documentary evidence showing its financial standing. It is argued that it is in the interest of justice for the corporate veil of the Respondent to be lifted

in the circumstances in order to hold the Respondent's directors personally liable for the decree.

6. The Respondent opposed the Application by way of a **“Notice of Preliminary Objection and Grounds of Opposition”** dated 5th July, 2025 on the following grounds:

i) That the same is vexatious, misconceived and total abuse of the Court process.

ii) That the Applicant’s director namely Margaret Kagendo Gichuki one of whom is a sister and sister -in-law to Respondents directors namely Mercy Nyokabi Muraguri and Peter Muraguri Njogu is well aware of pending payment from NLC of over Kshs. 87 Million. (as per the NLC letter dated 17th December 2024). (sic)

iii) That there are active execution proceedings in Nakuru CMCC 130 of 2021 filed by the Applicant against the Respondent and its director in which the applicant has sought stay of a ruling and recusal of the judicial

officer handling execution proceedings, over unfounded allegations.

iv) That the application is therefore vexatious and malicious for it is intended to punish and humiliate the respondent's directors.

v) That in Nakuru CMCC E1305 of 2021, director Peter Muraguri Njogu is the 1st Defendant and the Applicants have successfully executed warrants of arrest against him and it's thus vexatious and malicious to require his wife Mercy Nyokabi, children Winfred Gathigia & Erick Njogu and brothers Samuel Mukeba & Simon Gatimu Njogu to appear in Court considering their insignificant shareholding as per CR12 Marked CM4 in the Application's supporting affidavit.

vi) That the Applicant has come to Court with unclean hands as they are not disclosing that;

(i) Out of the 1st payout of around Kshs. 6 million, the respondent paid them I million while the balance settled bits of other business debts and bank loans.

(ii) On 30th November 2021, the respondent deposited Kshs. 500,000 into applicant's Absa bank account which the applicant returned and director Margaret Kagendo said she does not want to be paid in installments.

(iii) That in 2021 over Kshs. 1.3 million was sent through M-Pesa to the Applicant's bank account.

vii) That this application is totally misconceived and the better option would have been to Garnishee or enjoin National Land Commission which has admitted in writing to owing the Respondents Kshs. 87,488,167 since none of the respondents has ability or resources to pay the decretal amount in Nakuru CMCC E1305/2021 in one installment.

viii) That Court orders are never made in vain hence the application herein is a total abuse of this Court's process.

ix) That the application should thus be struck out with costs to the respondent.

7. The Respondent also filed a **Replying Affidavit** sworn on 16th July 2025 by its director Peter Muraguri Njogu. He

deposes that he is a director of the Respondent and in 2021 the Government through the National Land Commissions compulsorily acquired land where his business was located to pave way for road construction. He was promised compensation by the end of the year 2022 and on the strength of the promise he undertook to clear his business debts. Unfortunately, he was paid a meager figure of only Kshs 6 million, the NLC promising to pay a balance of over Kshs. 87,000,000.

8. By letter dated 17th December, 2024 the NLC Confirmed that that Kshs. 87, million was still unpaid, adds the deponent. He further states that he has been arrested over the same debt which he promised to pay once the National Land Commission compensates him for his closed business.
9. The witness argues that having him appear for cross examination is *res judicata* and vexatious since the lower court is already dealing with execution. He states that he has no control over government expenditure.

10. He added that following frustrations from the government, he sought to be allowed to settle the decretal amount by installments but the Applicant filed an Application to stay the lower Court proceedings on grounds that the judicial officer handling the proceedings is biased, which Application is pending determination.
11. It is also contended that the Applicant has not disclosed that the Respondent paid Kshs. 500,000 which she declined and reversed it saying she does not want to be paid in installments.

Applicant's Submissions

12. The Applicant submits that the Preliminary Objection does not raise any point of law but the same is merely statements of facts that need proof by way of evidence.
13. Counsel relied on the case of **Jamii Bora Kenya Limited vs Esther Wairimu Mbugua & another [2019] eKLR** where it held that the Court ought not to entertain a Preliminary Objection that deals with disputed facts and must not derive its foundation from information.

14. It is further submitted that Respondent's document labeled "notice preliminary objection and grounds of opposition" is not provided for in law under **Order 50 Rule 14** of the **Civil Procedure Rules 2010**. Reliance is placed in **Oraro vs Mbaja [2005] KEHC 3182 (KLR)** where the court held that;

"...Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed"

15. On the claim that the Application is *res judicata*, the Applicants relied on **Dar Iman Limited vs Clasico Builders (K) Limited [2024] KEHC 8562 (KLR)** to submit that no ruling, order, decree or judgment has been presented before this court indicating that a similar application has been heard and determined by a Court of competent jurisdiction and therefore the Application cannot be *res judicata*.

16. It is also submitted that this Court has jurisdiction to determine the matter under **Section 2** of the **Companies Act** and relied on the case of **Jiang Nan Xiang vs Cok Fast Company Limited; Miscellaneous Application [2018] eKLR** where the Court laid out the circumstances where the veil of incorporation may be lifted.

Respondent's submissions

17. The Respondent argues that the Application is an abuse of the court process. It is contended that the application is motivated by personal vendetta between relatives rather than genuine legal grounds.
18. The Respondent further submits that the matter is *res judicata*, since its director (Peter Muraguri Njogu) is already subject to execution proceedings in Nakuru CMCC E1305 of 2021. That the Applicant has successfully executed warrants of arrest against him, making the current application unnecessary and malicious, particularly as it seeks to target the director's family members.

Analysis and determination

19. I have considered the pleadings, the written submissions and the authorities cited herein. The court had directed that the Respondent's preliminary point would be determined before the Application is disposed of on merits, if it would be necessary. The first issue for determination is whether the Respondent's pleading styled as a *Preliminary Objection and Grounds of Opposition* meets the legal threshold of a preliminary objection.
20. The Applicant's Counsel contend that the Respondent's document filed under the title "*Preliminary Objection and Grounds of Opposition.*" is not recognized in law.
21. **Order 51 Rule 14** of the **Civil Procedure Rules**, provides that anyone a who wishes to oppose an application may file a notice of preliminary objection, a statement of grounds of opposition , a replying affidavit or a combination of such documents.
22. A Preliminary Objection is a pure point of law raised at the outset with the potential of disposing of a matter without going into the merits, if it is upheld. By contrast, Grounds of

Opposition are substantive responses to an application, often addressing the merits or factual basis of the case. They are not confined to points of law and may involve contested evidence or procedure. Putting the two in one document mixes two distinct procedural concepts that normally stand alone.

23. The Respondent's objection raises various matters of fact thereby failing to meet the threshold set out in the famous case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696.**

24. **Section 7** of the **Civil Procedure Act** bars the re-litigation of issues already decided by a competent Court between the same parties. There is, however, nothing showing that a similar application has been heard and determined by a Court of competent jurisdiction. The mere existence of execution proceedings in the lower Court does not bar this Court from considering whether or not to lift the Respondent's corporate veil. The doctrine of *res judicata* is therefore inapplicable.

25. In the result preliminary objection is not based on a pure point or points of law and is not therefore properly taken.
26. Pursuant to **Order 22 Rule 35 (b)** of the **Civil Procedure Rules**, a decree holder may apply to Court have directors or officers of a company attend court for cross-examination on the company's assets or means to satisfy the decree.
27. In **Masefiled Trading (K) Ltd vs Rushmore Company Limited and Another** [2008] KEHC 798 (KLR), the Court held concerning Order 22 Rule 35 *supra*:
- “I think the above rule grants this court jurisdiction to summon any officer of a company to attend court so that he may be examined on the assets and means of the company to settle the sum decreed to be paid by the company. By examining such an officer, the court may or may not lift the veil of incorporation.”**
28. Ringera J. in **Corporate Insurance Company Ltd vs Savemax Insurance Brokers Ltd** [2002] 1EA 41 emphasized that the veil of incorporation is not to be lifted simply because a company is facing financial difficulties or has acted in a way that is questionable, unless it is a sham designed to perpetrate fraud.

29. The import of the above is that, it is upon examination of the Respondent's directors that this Court may lift the veil of incorporation and/or hold the directors of the Respondent personally liable to satisfy the decree or decline to lift the veil of incorporation. This prayer in the Application shall be determined by this court.
30. Pursuant to **Order 22 Rule 35 of the Civil Procedure Rules 2010**, the trial court may order examination of a corporation's officers to inquire into the question as to whether the corporation has the means to satisfy a judgement debt. Examination of the Corporation's directors as per prayer 3 of the Application may therefore be undertaken by the lower court and this relief is accordingly rejected.
31. The upshot is that the preliminary objection is dismissed. For avoidance of doubt, this court shall only consider Prayer Nos. 4, 5 and 6 of the Application and the parties are at liberty to make submissions thereon. The costs of the Application shall abide determination of the remaining prayers.

32. Ruling accordingly.

J. M. NANG'EA - JUDGE.

Ruling Delivered Virtually this 14th day of April, 2026.

In the presence of:

Applicant's Advocate, Mr. Chirchir

Respondent's Advocate, Absent

Court Assistant (Ng'eno)

J.M. NANG'EA - JUDGE.

ORIGINAL