

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**HCCOMM SUIT NO. E197 OF 2021**

**ADPACK  
LIMITED.....PLAINTIFF/  
APPLICANT**

**-VERSUS-**

**SHREEJI MERCHANDISING  
COMPANY (K)  
LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

1. This is a Ruling in respect of the Applicant/Judgement Creditor’s Application by way of a Notice of Motion dated 5<sup>th</sup> June, 2023.

**Background Facts**

2. Judgement was entered in favour of the Applicant against the Respondent corporation for Kshs. 29,856,880.37 plus interest and costs. The Respondent failed to satisfy the decree, compelling the Applicant to extract the decree and initiate execution proceedings. However, execution proved futile as the Applicant was unable to ascertain the

Respondent's current place of business or trace any attachable assets to facilitate recovery of the decretal sum.

3. Consequently, the Applicant filed an application under Order 22 Rule 35 of the Civil Procedure Rules, 2010, seeking discovery of the Respondent's assets. The application was allowed in part on 2nd November 2023, unopposed, directing the production of books of accounts and the cross-examination of the Director, **Mr. Harenkumar Damji Mandavia**. Despite proper service of the Court orders and summons, the Director persistently failed to produce the accounts or attend Court for cross-examination, including on the last scheduled date of 29<sup>th</sup> April 2025.

4. Therefore, the Applicant/Judgement Creditor in the Notice of Motion dated 5<sup>th</sup> June 2023 sought the following orders;

*a) Spent;*

*b) Spent;*

*c) In default of such attendance and/or producing before court books of accounts relating to the day to day running of the company, audited financial statements, company's bank statements, cheque books and other statutory documents relating to the operations and transactions of the*

*Respondent/Judgment Debtor and its affiliates for the last three (3) years as prayed in order I & II above, the court to lift the veil of incorporation and order that **Mr. Harenkumar Damji Mandavia** be held personally liable to settle the decree of the court obtaining from this suit together with other sums expressed and or implied therein or be imprisoned and committed to civil jail for a period of not less than 6 months;*

*d) In the event that upon compliance of order I & II above there is evidence of intent to defraud creditors and/or misuse of company's funds, this honorable court be pleased to lift the veil of incorporation and order that **Mr. Harenkumar Damji Mandavia** be held personally liable to settle the decree of the court obtaining from this suit together with other sums expressed and or implied therein or be imprisoned and committed to civil jail for a period of not less than 6 months; and*

*e) Costs of this Application be in the cause.*

5. The Application was supported by the grounds on the face of it and by the Affidavit of **Saheel Shah**. He averred that on 30<sup>th</sup> July 2021, the Court entered judgment against the Respondent/Judgment Debtor in favour of the Applicant/Judgment Creditor for Kshs. 29,856,880.37.

Despite numerous efforts to trace attachable assets and repeated demands for payment, the Respondent has failed to satisfy the decree. The company remains legally in existence, with **Harenkumar Damji Mandavia** continuing to serve as its sole Director.

6. The Applicant further alleged that the Director has acted fraudulently with intent to defeat creditors by issuing cheques that were dishonoured upon presentation and by relocating the company to an unknown location to evade payment. It is contended that the corporate veil is being improperly used to shield fraudulent or reckless conduct, as the company obtained goods on credit while lacking the capacity or intention to pay, thereby leaving the Applicant with a substantial unpaid debt.

7. In the circumstances, the Applicant sought orders to summon the Director for examination on the company's assets and means and to compel production of its books of accounts. The Applicant further prayed that, should the Director fail to comply or if fraud or improper conduct is established upon examination, the corporate veil be lifted,

and the Director held personally liable for the decretal sum in the interests of justice. The Court notes that the prayers seeking the issuance of summons and attendance of the Director of the Defendant for cross examination were issued on 2<sup>nd</sup> November, 2023.

8. No response was filed by the Respondent.
9. Eventually, the Director of the Defendant did appear in Court for cross-examination on 26/10/2025. He confirmed that there existed a decree against the Defendant company that remained unpaid. He acknowledged being served with a Court order to produce the books of accounts of the Defendant in Court. That the Company indeed did keep books of accounts. That it stopped trading four (4) years prior. That he had recently started reviving the company in 2025. He had not tried to settle the decretal sum. The Company had relocated to new offices at GTC Towers but he had not informed the new offices to the creditors.

### **Issues for determination**

10. Having carefully considered the Application and the submissions therein, the Court only has two (2) issues for determination;

*a) Whether the Court should lift or pierce the veil of incorporation and find the director, **Mr. Harenkumar Damji Mandavia**, liable for the decretal sum.*

*b) Whether the Court should commit the director, **Mr. Harenkumar Damji Mandavia** to civil jail for six (6) months in default of settlement of the decretal sum.*

### **Analysis**

11. It is undisputed that the Respondent's Director was cross-examined at a plenary hearing before this Court. It is also notable that during the cross-examination, the Director stated that the books of account were not before the Court which led to the conclusion that the only issue left for determination is whether the corporate veil should be lifted. His excuse given during re-examination was as follows;

*"I have the books of accounts. They are not before the Court because in the year 2020 my office was broken into.*

*I need time to get documents from Machakos High Court. The Auctioneer took my documents wrongly. In Mavoko CMCC 2438 of 2020 Mavoko Law Courts. I kept proper books of accounts. I had 4 Accountants doing so. I have been unwell. All the Debtors refused to pay me so I could not pay my creditors.*

*I could not have an office when my offices were locked down maliciously.*

*I am able to settle the debt. My cousins have helped me. I need to pay 500,000/= from 30/1/2026 and thereafter every month until payment in full."*

**a) Whether the Court should lift or pierce the veil of incorporation and find the director, Mr. Harenkumar Damji Mandavia, liable for the decretal sum.**

12. It was the Applicant's submission that Courts have affirmed that failure to produce books of accounts puts the

legitimacy of an enterprise into question, and upon such failure, an adverse inference has to be made. More particularly, in such cases, the Court has gone ahead to pierce the corporate veil or put differently lift the veil of incorporation and find the director (s) liable for the company's debt. In **Finezza Management Solutions Ltd v Nyakundi (Commercial Appeal E196 of 2023) [2024] KEHC 4571 (KLR) (Commercial and Tax) (15<sup>th</sup> April 2024) (Judgment)**], Magare J, stated as follows;

*“Lifting of the corporate veil is done in circumstances where the directors are unable to show that the company is a legitimate enterprise. One of the things that show legitimacy of an enterprise is its books of account and evidence of assets owned. It is not enough to lift a corporate veil because a company is unable to pay its debts.*

*It is when a company is a shell, sham and meant to defraud creditors that it is said to be a sham. The court lifting the veil should never limit liability of the directors to shareholding. It should be to a fullest extent possible*

*to pay the judgment debt. The appellant did not get any adverse order against them.”*

13. According to the Applicant, the Director has acted fraudulently and is using the corporate veil as a shield, which is not controverted. The fraudulent conduct complained of by the Applicant includes: issuance of bad cheques to the Applicant, relocation of the Respondent company to an unknown location, and incurring liability while aware that the company was not in a position to pay its liabilities as and when the same fell due. All this shows intent to defraud the Applicant from the start.
14. On the other hand, the Respondent submitted that the threshold for lifting the corporate veil has not been satisfied. That there was no evidence of fraud, misuse of the corporate form, dishonesty, or personal enrichment by the Director. The Defendant remains a bona fide trading entity whose present financial distress stems from unlawful actions by third parties, while its director has acted diligently at all material times. Accordingly, the Court should preserve the principle of separate corporate personality and resist any

attempt to erode this doctrine merely for reasons of convenience or expediency.

15. The Respondent emphasized that at no point does the Plaintiff allege that **Mr. Mandavia** diverted company funds for personal use, misrepresented the Company's creditworthiness, or formed the company as a sham.
16. It is settled law that a company is a separate legal entity distinct from its shareholders and directors, as established in **Salomon v Salomon & Co Ltd [1897] AC 22**. The veil of incorporation will only be lifted in exceptional circumstances, such as where the corporate form is used as a façade to perpetrate fraud, evade legal obligations, or defeat justice.
17. However, in certain exceptional circumstances, Courts may pierce the corporate veil, particularly where the company is used to commit fraud, evade obligations, or act as a mere façade. In **Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited [2016] eKLR**, the Court of Appeal reaffirmed 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.”***

18. The Applicant argued that the Respondent/Judgment Debtor's Director issued the Applicant with cheques which were dishonoured upon presentment to the bank for payment. Further, he proceeded to relocate the business to an unknown location without notifying the company's creditors. In essence, the Respondent presented itself as able to pay its liabilities as and when the same fell due, and it's the reason why the Applicant sold the goods to it on credit terms, yet clearly it was not able to pay.
19. The Court is in agreement with the Applicant. It observed that the Respondent was ordered to produce the company's books of accounts. He was also to appear for cross-examination on those records to facilitate discovery of attachable assets for satisfaction of the decree.

Unfortunately, and on several occasions, the Director neither produced the required documents nor attended Court for cross-examination, and in addition, the Respondent failed to file any response to contest the assertions in the Application.

20. Notably, when the Director eventually attended Court for examination under oath, there was no documentary evidence tendered on the affairs of the company. The Director stated that the books of account were not before the Court, the basis upon which he was to be examined. He appeared casual about the whole business of production of the books of accounts despite the indulgences given to him by the Court to do so.

21. Eventually those books were uploaded on the Case Tracking System (CTS) long after the Court had reserved this date for this Ruling. Filing the documents outside the timelines set by the Court denied the Applicant an opportunity to cross-examine the Director. Yet this was the purpose of the Court attendance that is the subject matter of this Ruling. The Court as expected has not place any reliance on those documents as to do so would prejudice the

Applicant who would not be heard, yet he complied with the Court's directions.

22. The Court decries the creeping practice of ignoring Court's directions and timelines on filing documents. Court directions are valid Court orders and must mean something. In default, certain consequences may arise, such as in this case where the Court is unmoved by the documentation file out of time.

**23.** This matter was last in Court on 6<sup>th</sup> October 2025. Subsequent thereto and over four months later, vide the letter dated 20<sup>th</sup> February 2026 to the Deputy Registrar, the Respondent seeks to have the books of account admitted out of time. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court; A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the Court. Whether the Court should exercise the discretion to extend time is a consideration to be made on a case-by-case basis; Whether there is a reasonable reason for the delay, the delay should be explained to the

satisfaction of the Court. The Court should also consider whether there will be any prejudice suffered by the Respondents if the extension is granted; see ***Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling).***

24. In the exercise of the Court's discretion, the Court finds that the Respondent has not given any satisfactory reason for the delay. Therefore, the Respondent is not a party deserving the relief for grant of extension of time in the manner in which the discretion is invoked herein. All through the process, the Respondent has shown little to no regard for the Court process. It is also doubtful whether the Court ought to be moved to issue substantive reliefs by way of letters to the Deputy Registrar. Letters to the Deputy Registrar ought to be restricted to administrative matters. Where the rules and regulations provide the manner for moving the Court (*such as an application for extension of time*) the Applicant ought not to deviate from the laid down procedures.

25. Upon considering all relevant factors and noting the Respondent's failure to offer any rebuttal, the Court is satisfied that the judgment debtor's Director has shown improper conduct and is improperly invoking the corporate personality to evade execution of the decree.

**b) Whether the Court should commit the director, Mr. Harenkumar Damji Mandavia to civil jail for six (6) months in default of settlement of the decretal sum.**

26. The Court is of the view that the recovery of the debt, personally against the Director of the Defendant is a post judgement process that should follow the provisions of **Order 22 of the Civil Procedure Rules**. The rule deals with execution processes. The Director should be called upon to settle the debt. If he does so, that brings the recovery process to an end. If he fails to pay, the Applicant may then exercise the various modes of recovery of a civil debt set out in **Order 22 of the Civil Procedure Rules**. Arrest and committal to civil jail is but one of the processes. In any

event there are strict procedures such as issuance of a Notice to Show Cause why a Debtor should not be committed to civil jail that have to issue. As matters stand, to issue such an order at this point in time is to jump the gun. That relief is declined at this point in time as it is premature.

27. Accordingly, the Court finds it appropriate to exercise its discretion in favour of the decree holder by lifting the corporate veil and holding the director, **Mr. Harenkumar Damji Mandavia**, personally liable for satisfaction of the Court's decree.

28. As to costs, the same ordinarily follow the event. The Applicant prays that they be in the cause and it is so ordered.

### **Determination**

29. The Plaintiff/Applicant's application by way of a Notice of Motion dated 5<sup>th</sup> June, 2023 is allowed in the following terms;

(a) *THAT in default of the Director of the Judgement Debtor/Respondent one **Mr. Harenkumar Damji***

**Mandavia** producing before Court books of accounts relating to the day to day running of the company, audited financial statements, company's bank statements, cheque books and other statutory documents relating to the operations and transactions of the Respondent/Judgment Debtor and its affiliates for the last three (3) years as prayed for, the Court **HEREBY** lifts the veil of incorporation and orders that **Mr. Harenkumar Damji Mandavia** be and is **HEREBY** held personally liable to settle the decree of the Court obtaining from this suit together with other sums expressed and or implied therein within the next Thirty (30) days from the date of this Ruling and in default, execution to issue against him

(b) The costs of this Application be in the cause.

30. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 28<sup>TH</sup> DAY OF APRIL, 2026.**

**NJOROGE BENJAMIN K.  
JUDGE**

In the presence of:

Miss Munjogu holding brief for Miss Kendi for the Plaintiff/Applicant.

Mr. Ayuo for the for the Defendant/Respondent.  
Mr. John Paul - Court Assistant.