

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

**ENVIRONMENT AND LAND COURT MISCELLANEOUS CASE NO. 10 OF
2024**

**KIPKENEI & COMPANY ADVOCATES.....
APPLICANT**

VERSUS

**PINEAPPLES EDGE LIMITED.....
RESPONDENT**

**ARISING OUT OF NAKURU ENVIRONMENT AND LAND COURT NO. 37 OF
2022**

**ETHICS & ANTI-CORRUPTION
COMMISSION.....PLAINTIFF**

VERSUS

**PINEAPPLES EDGE LIMITED.....1ST
DEFENDANT**

**TROJAN NOMINEES LIMITED.....2ND
DEFENDANT**

**WILSON GACHANJA.....3RD
DEFENDANT**

**THE CHIEF LAND REGISTRAR.....4TH
DEFENDANT**

RULING

1. Coming up for determination is a Notice of Motion Application dated 23rd January, 2026, brought pursuant to the provisions of Order 22 Rule 35 of the Civil Procedure Rules, wherein the Applicant has sought the following orders:

- i. That the Director of the Respondent (Pineapple Edge Limited), namely Hellen Kimooi Kiplagat, be examined on

oath as to the judgement debtor's means and assets and to produce its books of accounts and other documentary evidence showing the same.

- ii. That failure to comply with the above order, the Honourable Court be pleased to order the said director to be held personally liable to pay the Applicant the taxed costs herein in the sum of Ksh. 27,846,050/= plus interest.
 - iii. The costs of the application be provided for.
2. The Application is premised on the ground that, on its face, the Supporting Affidavit, of equal date, sworn by Raymond Kiprop Kipkenei, the Applicant herein and an advocate of the High Court of Kenya, who deposes that the Respondent/Judgement Debtor herein, Hellen Kimooi Kiplagat and her late husband, Hosea Kiplagat Mundui, had issued instructions via her director, Hellen Kimooi Kiplagat. That upon receiving those instructions, they filed the defence and Notice of Preliminary Objection.
 3. Unfortunately, the director herein purported to withdraw their instructions in the said matter. He explained that the said director had initially sought to work with Mr. Brian Mbaabu of Mwaniki Gachoka & Co., Advocate. Subsequently, they filed an application seeking their costs before the taxing master, and a ruling was delivered on 5th September 2024.
 4. That upon the issuance of the said ruling, the Respondent herein filed a Reference against the decision of the taxing master dated 19th September 2024, which was dismissed by the High Court (sic) sitting at Naivasha in a ruling dated 20th March 2025.
 5. Accordingly, he had filed a Notice to Show Cause dated 3rd July 2025, in which he sought the committal of the principal director of the judgement debtor to civil jail after establishing that the company had no attachable assets. Their Application was dismissed vide a ruling dated 20th November 2025.

6. The director who came forward was Hellen Kimooi Kiplagat, identified as the judgment debtor, since the company is registered under her name along with Hosea Kiplagat Mundui (deceased) as shareholders. However, the judgment debtor has no traceable assets, movable or otherwise, for attachment. The only available asset is a parcel of land known as Naivasha Municipality Block 5/285, which is charged to Co-operative Bank for Ksh. 108,000,000/= and has since been deliberately defaulted.
7. The actions of the directors in concealing facts and registering the suit property in the Environment and Land Court, No. 38 of 2022, are considered material facts related to fraudulent activities, corruption, and economic crimes, as alleged by the Ethics and Anti-Corruption Commission (EACC). It is therefore necessary for the court to order a review of the records to compel the Respondent to comply with the decree. The asset identified as the judgment debtor's property, Naivasha Municipality Block 5/285, is currently involved in Naivasha Environment and Land Court No. 73 of 2024 (previously Nakuru Environment and Land Court No. 37 and 38 of 2022). The Ethics and Anti-Corruption Commission has raised serious concerns regarding fraud in the way the asset was acquired and registered, which led to an urgent attempt to recover Ksh. 108,000,000/= from the bank, seemingly with the intention to default and perpetuate the fraud.
8. It was within his knowledge that the judgment debtor's director owns shares in several other family companies and has the capacity to pay the judgment creditor in full. The other family companies linked to the children and directors, the late Hosea Kiplagat Muundui and Hellen Kimooi Kiplagat, are as follows:
 - i. Timber Treatment International, which is involved in both international and local trade, including the bulk supply of treated electricity poles and posts, as well as quality timber. It also supplies steam to the new KCC Dandora, Nyandarua, Sotik, and Eldoret branches. The company's

estimated monthly income from these activities is at least Ksh. 200,000,000/=. The director and shareholders of the company are Hellen Kimooi Kiplagat and the estate of Hosea Kiplagat Mundui (deceased).

- ii. Emom Tea Estate Limited is a farm spanning over 400 acres, cultivated with both purple and regular tea of well-maintained crops, generating an estimated monthly income of Ksh. 100,000,000/=. The company is registered under the name of Hellen Kimooi Kiplagat and her late husband, Hosea Mundui Kiplagat.
- iii. Integrated Wood Complex Limited's sole directors and shareholders are Hosea Mundui (deceased) and Hellen Kimooi Kiplagat. The company is the exclusive registered owner of all that parcel of land known as L.R NO. 584/281 (I.R 50538), located in Londiani Township, measuring 11.01 hectares. The estimated value per acre is at least Ksh. 20,000,000/=, making the total value of the parcel no less than Ksh. 540,000,000/=(Five hundred forty million).
- iv. Makatiat Limited, which owns assets across Kenya—including a bakery in the industrial area of Kabarnet Township, Baringo County, valued at approximately Ksh. 300,000,000—belongs exclusively to Hellen Kimooi Kiplagat as she is the sole administrator of the estate of Hosea Kiplagat Mundui (deceased).
- v. Kiplabal Farm Limited owns more than 20 acres registered to Hosea Kiplagat Mundui (deceased) and Hellen Kimooi Kiplagat, located at Ngata within Nakuru City. The property's value is estimated to be at least 250,000,000/=.

9. He deponed that the director is completely irresponsible; otherwise, she would have taken the initiative to report to the court. He genuinely fears she might conceal the judgment debtor's assets within other family companies, which could weaken the court and the judgment creditor. The Honourable Court cannot act passively because allowing such a situation would undermine the credibility of the justice system, potentially leading to a loss of public confidence.
10. If they succeed in Naivasha Environment and Land Court No. 73 of 2024 (previously Nakuru Environment and Land Court No. 38 of 2022), the judgment debtor might conceal assets in other companies. The debtor has shown opposition by not proposing any payment plan to settle the due amount. It is clear that the debtor has substantial financial resources, with a monthly income from all listed companies of at least Ksh. 300,000,000/=. Additionally, there are no significant orders preventing the judgment holder from executing the judgment.
11. In response to the Applicant's Application, the Respondent, in her Replying Affidavit dated 10th February 2026, sworn by Hellen Kimooi Kiplagat, deponed that she is the only surviving director of the Respondent following her husband's death. He was the principal director. She argued that the Applicant's Application is misconceived and constitutes an abuse of court process, as it seeks to hold her liable for the Respondent's debts without any lawful or factual basis.
12. The provisions of Order 22 Rule 35 of the Civil Procedure Rules are confined to discovery through examination concerning the property and means of a judgment debtor. In contrast, questions about lifting or piercing the corporate veil involve a separate inquiry under the Companies Act. These issues do not arise in the current application, as the power to lift the veil of incorporation lies with the High Court, not the Environment and Land Court.
13. The Applicant neither alleged nor proved any fraud, impropriety, or misuse of the Respondent's corporate status to justify personal liability of

a director or shareholder. The Respondent does not conduct any business or trading activities, has no movable assets, maintains no active bank accounts, and derives no income. The only assets she disclosed as belonging to the Respondent are the immovable properties known as Naivasha Municipality Block 5/285 and Naivasha Block 5/290.

14. The Applicant claimed that the property is charged to Co-operative Bank of Kenya Limited to secure a Ksh. 108,000,000/= facility, which allegedly defaulted intentionally. However, this is incorrect because in Environment and Land Court Case No 93 of 2024, the court ordered the Land Registrar in Naivasha to cancel the charge entry. These orders were made based on a recorded consent between the bank and the Plaintiff in that case. Therefore, she was unaware of any existing loan that would justify alleging a deliberate default by the Respondent.
15. She deponed that the matters the Applicant mentioned regarding Environment and Land Court No. 73 of 2024 are currently being considered in ongoing court proceedings. The issues have not yet been resolved, so the court should not address the Applicant's concerns about that case, as they are sub judice.
16. Regarding the other companies the Applicant claims are connected to her family, she stated that these entities are separate from the Respondent because each is a distinct legal entity with its own rights and obligations. She further explained that she was unaware of the reasons behind the figures or income attributed to those companies, as no documents had been provided to support such claims.
17. Furthermore, there was no evidence to suggest that the Applicant suspected she might hide assets of the Respondent company or any other entity. According to her knowledge, she only disclosed the asset she was aware of belonging to the Respondent. Additionally, the Respondent failed to demonstrate any actions taken by either the Respondent or herself that aimed to prevent or hinder the fulfillment of the decree.

18. There are other lawful methods available to a decree holder for recovering debts, such as proceedings under the insolvency framework, which allows for the orderly management of a company's affairs and assets. Given that the Respondent does not engage in trade, has no cash flow, and only holds the previously disclosed immovable property, she was unsure of what further information an examination could reasonably reveal.

19. The Application was disposed of by way of written submissions summarized as herein under.

Applicant's Submissions.

20. The Applicant vide his Submissions dated 18th February, 2026 framed his issues for determination as follows:

- i. Whether Hellen Kimooi Kiplagat is the sole director of the judgement debtor, hence liable for the debts and liabilities.
- ii. Whether the application is misconceived, an abuse of court process and not anchored in law.
- iii. Whether the application is limited to discovery through examination regarding the property and means of judgement debtor
- iv. Whether the court can lift or pierce the corporate veil, and whether it is an issue arising from the present application.
- v. Whether the Environment and Land court is equivalent to the high court, as such, it can undertake duties and roles of the high court arising from applications filed in it.
- vi. Whether the issue of fraud, impropriety or misuse of corporate personality is a prerequisite to enable the court order satisfaction or otherwise settlement of its decree.
- vii. Whether the admission by the director of judgement debtor Hellen Kimooi Kiplagat that the judgement debtor

does not carry on business or trading activity, not having moveable assets and does not maintain an active account, is a good reason for the court to hold her responsible for the judgment debtor's debts and liabilities.

- viii. Whether the application is sub-judice.
 - ix. Whether the respondent's sister companies are an imminent danger in the sense that they will render the orders of the honourable court unenforceable by the fact that the director may conceal properties and attachable assets and cite a distinct corporate personality.
 - x. Whether the respondent's director has shown reasonable apprehension that she is not willing to settle the decretal sum.
 - xi. Whether the judgement debtor's director, Ms Hellen Kimooi Kiplagat, be examined on oath and render the true account as to the examination of the judgment debtor's accounts.
 - xii. Who is entitled to costs?
21. Regarding the first issue, the Applicant stated that Ms. Hellen Kimooi Kiplagat had sworn an oath admitting she is the sole director of the judgement debtor following her husband, Hosea Mundui Kiplagat (deceased), passing away. She argued that Order 22 Rule 35 of the Civil Procedure Rules permits parties to request that the court examine a judgement debtor company's officer under oath regarding the company's property, debts, and inability to satisfy a decree. Since the director claimed the judgement debtor has no bank accounts, assets, or movable property, the court has no choice but to hold her personally liable for the debts and liabilities. He explained that the purpose of record examination is to uncover the truth, not to confirm what is already known. A decree holder is entitled to ascertain whether the judgement debtor is unwilling

to satisfy a decree, making such examination a lawful aid in execution. He cited the case of **Doshi & Company Limited vs. Unibee Construction Company Limited and two others (Civil suit E241 of 2021)** in support.

22. Regarding the second issue—whether the application is misconceived, an abuse of court process, or not based in law—the Applicant relied on Order 22 Rule 35 of the Civil Procedure Rules, arguing that the application falls within its provisions. Additionally, they cited the case of **Wahome v Nguire (2024) (Environment and Land Court 146 of 2013)**, specifically paragraph 7, which held that the general principle is that a successful party is entitled to the benefits of their judgment.
23. Regarding whether the application is limited to discovery through examination of the property and means of the judgment debtor, he explained that the current application aims to examine the judgment debtor and its director to determine what property and methods can satisfy the decree, under Order 22 Rule 35 of the Civil Procedure Rules. He added that after the judgment, the court may pierce the corporate veil of the judgment debtor to hold the director personally liable for the debts owed to the judgment holder. He argued that the Respondent cannot pressure the court into restricting its powers. Since the Environment and Land Court is equivalent to the High Court, it has authority to conduct oral examinations, require documentary evidence, seek clarifications, and ask follow-up questions.
24. In this application, the court may treat the judgment debtor as being equivalent to its director and can utilize its three coercive powers: issuing a notice to the director to explain why they have not settled the decretal sum, especially since it was argued that the director should be personally liable for the Respondent's liabilities and debts.
25. On whether the court can lift or pierce the corporate veil if the issue arises from a course of action within its jurisdiction, he submitted that the Environment and Land Court has the same status as the High Court.

Accordingly, upon hearing and determining a dispute relating to land, the environment, or land use, it has full jurisdiction to enforce its judgement and decrees. He further submitted that, in any event, piercing or lifting the corporate veil is part of the execution proceedings, which are a continuation of the suit. He further submitted that, since the director of the judgement debtor has sworn that there is no record of the judgement debtor's accounts, assets, bank account, or cash flow, she could not appear in court in relation to the judgement debtor's accounts, but the court could hold the director of the judgement debtor personally liable. Reliance was placed on the decided case of **Barclays Bank of Kenya Limited v/s Abdi Abdi Warsame and another**,(sic) where the Court had cited the case of **Mugenyi & Company Advocates and the Attorney General (1999) E.A 199**, to list circumstances under which the corporate veil may be lifted, to submit that sufficient reasons exist to pierce the Respondent's corporate veil.

26. Regarding whether issues of fraud, impropriety, or misuse of corporate identity are necessary to justify this court order or settlement, he argued that since they have shown the judgement debtor is either a holding or subsidiary company, there is potential abuse of law in situations like failing to pay the decretal sum. Furthermore, the judgement debtor company was used to transfer and register a disputed land currently subject to court proceedings. Additionally, the private company was established based on personal relationships, with Ms. Hellen Kimooi Kiplagat and the late Hosea Mundui Kiplagat serving as co-directors. For these reasons, there are grounds to pierce the corporate veil and hold the director personally responsible.
27. That stated that the judgement debtor has no account, moveable or immovable assets, and the judgement debtor had blatantly admitted that she is unwilling, refusing or blatantly rejecting to pay the decretal sum owing to the decree holder. Thus, the court should hold the judgement debtor's director personally liable.

28. He argued that the current application is not sub judice, clarifying that it is not pending before any other court. He then requested the court to order Ms. Hellen Kimooi Kiplagat to personally appear and provide an accurate account of the judgment debtor's examination, and to be examined on oath, and that they be awarded the costs of the Application.

Respondent's Submission

29. The Respondent, on the other hand, vide its submissions dated 4th March, 2026, framed two (2) issues for determination as follows; -

- i. Whether the court can lift the corporate veil pursuant to the provisions of Order 22 Rule 35 of the Civil Procedure Rules.
- ii. Whether the director of the Respondent ought to be examined on oath on the Judgement Debtor's means and assets.

30. On the first issue, namely whether the court can lift the corporate veil pursuant to Order 22 Rule 35 of the Civil Procedure Rules, the Respondent placed reliance on the provisions of Order 22 Rule 35 of the Civil Procedure Rules to submit that a plain reading of the same reveals that it is a procedural mechanism intended to facilitate discovery in aid of execution. That it permits oral examination of a judgement debtor or an officer of a corporation regarding the existence of debts, property or means of satisfying a decree. That, however, the provision does not expressly provide for lifting of the corporate veil, nor confer power upon the court to impose personal liability upon a director. Further reliance was placed on the decided case of **Peter O. Ngoge T/A O P Ngoge & Associates V Ammu Investment Company Limited [2012] KEHC 1133 (KLR)**.

31. It was thus its submission that adhering to due process when pursuing a decree is not a miscarriage of justice. Further, it submitted that the mere fact that one is a director or shareholder of a company does not ipso

facto render that person liable for the company's debts, unless circumstances exist that justify lifting the corporate veil, which circumstances are not lightly to be inferred and must be exercised within a particular legal framework. It placed reliance on the decided case of **Regal Press Kenya Limited v Oakland Media Services Limited & another [2024] KEHC 1638 (KLR)** to submit that the remedy of lifting the corporate veil could not be pursued under the provisions of Order 22 Rule 35 of the Civil Procedure Rules, as the Applicant has urged the court. That it is a remedy that can only be pursued in the High Court under the framework of the Companies Act.

32. Although the High Court and the Environment and Land Court are courts of equal status, they have distinct jurisdictions. Reliance was placed on the Supreme Court's decision in the case of **Republic v Chengo & 2 Others [2017] KESC 15 (KLR)**. That the Companies Act defines the court as the High Court. That in the **Karisa Chengo's** case (supra), the Supreme Court held that the Environment and Land Court and ELRC could not hear matters reserved for the jurisdiction of the High Court. That accordingly, the court lacks the requisite jurisdiction to lift the veil of incorporation, as no statute or law grants the court such jurisdiction. Further reliance was placed on the Supreme Court's holding in the case of **Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR)**.

33. The Respondent thus urged the Honourable Court to decline the Applicant's invitation to lift the veil of incorporation, since not only had the Applicant brought that prayer improperly before the court, but he had also failed to satisfy the very high threshold required before a court can lift the veil. Indeed, the veil of incorporation is not to be lifted merely because a company is unable to pay its debts.

34. On the second issue, namely whether the director of the Respondent ought to be examined on oath as to the Judgement Debtor's means and assets, the Respondent submitted that the discretion conferred on the

Honourable Court under Order 22 Rule 35 of the Civil Procedure Rules must be exercised judiciously and for a legitimate purpose.

35. It first reiterated the content of its Reply Affidavit, to the effect that the Respondent's director had already disclosed the only known asset of the judgement debtor, and then explained that the purpose of examination under Order 22 Rule 35 is to enable a decree holder to ascertain whether any debts are owing to the judgement debtor and whether the judgement debtor has property or means of satisfying the decree. That, nonetheless, the examination was not intended to serve as a coercive mechanism or as a substitute for substantive proceedings aimed at lifting the corporate veil.
36. That the Applicant had not demonstrated any factual basis to suggest the existence of undisclosed assets, concealed income streams, or fraudulent dealings that would warrant the instructive step of summoning the director for oral examination. That, in any event, the allegation that the said property is charged to Co-operative Bank of Kenya Limited to fraudulently secure a facility of Ksh. 108,000,000/=, allegedly in deliberate default, had not been substantiated by any documentary evidence. That, on the contrary, it has been deponed that in Environment and Land Court Case No. 93 of 2024 the court had issued orders directing the Land Registrar, Naivasha, to cancel the entry relating to the alleged charge pursuant to a consent recorded between the Bank and the Plaintiff in that matter.
37. Further, the Applicant relied on allegations forming part of Environment and Land Court No. 73 of 2024 to allege fraud, yet those matters remain pending before a competent court; hence, they could not form the basis of coercive execution measures in the present proceedings.
38. Further, the Applicant had sought, in the alternative, that failure to comply with an order for examination should result in the director being held personally liable for the decretal sum. However, such a consequence

would amount to lifting the corporate veil through the back door under Order 22 Rule 35. Reliance was placed on **Peter O. Ngoge's** case (supra), where the Court had cautioned that lifting the corporate veil is not to be undertaken lightly and that mere lack of knowledge of a company's assets did not, without more, satisfy the conditions for lifting the corporate veil.

39. It thus submitted that, in the absence of substantiated allegations or proof of fraud, impropriety, sham incorporation or misuse of corporate identity, and in light of the disclosure already made on oath regarding the Respondent's financial position, an order for examination would serve no useful purpose. It further submitted that the Applicant retains other lawful avenues available to a decree-holder under the law, including proceedings under the insolvency framework, should it consider them appropriate.

40. In conclusion, it was submitted that the Applicant seeks to invoke the provisions of Order 22 Rule 35 of the Civil Procedure Rules not merely for examination as to means, but as a vehicle for imposing personal liability upon the director of the Respondent company. That the law draws a clear and deliberate distinction between examination in aid of execution and the substantive remedy of lifting the corporate veil. That the authorities cited herein unequivocally establish that lifting the corporate veil is not a remedy available under Order 22 Rule 35 but is a distinct and substantive process governed by a separate statutory and legal framework. That, in any case, jurisdiction to grant such a remedy must be expressly conferred by the Constitution or statute. It cannot be implied, inferred, or assumed.

41. It thus urged the Honourable Court to dismiss the Applicant's application with costs.

Determination.

42. I have considered the Applicant's Application, the Respondent's response thereto, the parties' submissions, the authorities cited and the applicable law. Briefly, the Applicant brings his application seeking an

order directing the Respondent's Director, Hellen Kimooi Kiplagat, to be examined under oath regarding the company's financial means and to be compelled to produce books of account and documentary evidence of assets. Should she fail to comply, she will be held personally liable to pay the taxed costs of Ksh. 27,846,050/= plus interest.

43. His application rests on the claim that the Respondent is indebted to him for legal fees (taxed costs) arising from a dispute in which the Respondent's directors initially instructed the Applicant to act for them but later withdrew those instructions. A ruling on the costs was delivered on 5th September 2024 and confirmed by the High Court (sic) in Naivasha in its ruling of 20th March 2025.
44. A previous attempt to commit the director to civil jail was dismissed. The company has no traceable movable assets available for attachment, and the only identified property, Naivasha Municipality Block 5/285, is heavily charged to Co-operative Bank for Ksh. 108,000,000/= and is currently under fraud investigations by the EACC.
45. That although the Respondent (Pineapple Edge Limited) claims to have no assets, the Director (Hellen Kimooi Kiplagat) and the estate of her late husband (Hosea Kiplagat Mundui) control several high-value family entities, which together generate a combined monthly income of approximately Ksh. 300,000,000/=. These include:
 - i. Timber Treatment International whose estimated monthly income of Ksh. 200M.
 - ii. Emom Tea Estate Limited, a 400-acre farm generating Ksh. 100M monthly.
 - iii. Integrated Wood Complex Limited, a land in Londiani valued at Ksh. 540M.
 - iv. Makatiat Limited, a bakery and assets valued at Ksh. 300M.
 - v. Kiplabal Farm Limited in Nakuru valued at Ksh. 250M.

46. The Applicant argues that the Director is acting irresponsibly and deliberately concealing assets within the family's corporate web to frustrate the execution of the court decree. He contends that, without the court's intervention to pierce the corporate veil or compel an examination of means, the judgment remains paper-thin and unenforceable, thereby undermining the credibility of the justice system.
47. In opposition to the Application, the Respondent's response was that the Application was an abuse of the court process, on the basis that Order 22 Rule 35 of the Civil Procedure Rules is strictly for the discovery of a debtor's assets, not for piercing the corporate veil. She also contends that the power to lift the corporate veil rests with the High Court under the Companies Act, not the Environment and Land Court (ELC). She maintains that the other companies mentioned by the Applicant are distinct legal entities whose assets and income cannot be used to satisfy the Respondent's debts.
48. The Respondent's director deposes that the company does not trade, has no movable assets, no active bank accounts, and generates zero income. She denies the allegation of deliberate default on the loan, clarifying that the Ksh. 108,000,000/= charge on the Naivasha property was ordered cancelled by the court in Environment and Land Court Case No. 93 of 2024, pursuant to a consent between the bank and a third party. Accordingly, there was no deliberate default on the loan.
49. The Respondent's director argues that matters in Environment and Land Court No. 73 of 2024, which involve allegations of fraud, remain pending in court and should not be determined or used against her in the present application. She further asserts that the Applicant has failed to prove any fraud or impropriety warranting her personal liability for the company's debt.
50. That she has already disclosed the only known assets, namely Naivasha Municipality Blocks 5/285 and 5/290, arguing that an examination would reveal no further useful information. She also suggests

that if the Applicant believes the company cannot pay, the appropriate legal route is through the insolvency framework, rather than seeking personal liability orders against her as a director.

51. She maintains that she has not hindered the execution of the decree and that the Applicant's claims regarding her family's other business interests are speculative and unsupported by documentary evidence.

52. Given the summary of the matter in issue, I find the issues arising for determination as;

- i. Whether an Order under Order 22 Rule 35 of the Civil Procedure Rules is warranted to compel the Respondent's director to be examined on oath as to the means and assets of the Company.
- ii. Whether the Environment and Land Court (ELC) has the jurisdiction to lift the corporate veil

53. Order 22 rule 35 of the Civil Procedure Rules provides 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."

54. Order 22 Rule 35 of the Civil Procedure Rules provides a vital mechanism for discovery in aid of execution. This allows a decree holder to compel a judgment debtor or an officer of a corporation to disclose their financial status, ensuring that a court's judgment does not remain a mere paper decree.

55. The rule explicitly provides that where a decree is for the payment of money, the court may order the judgment debtor or an officer of a corporation to be orally examined on oath, or the production of books of account or other documentary evidence, or an inquiry into whether any debts are owing to the debtor and what property or means they have to satisfy the decree. Courts have, however, held that this is a discretionary power, to be exercised to further the Overriding Objective of a just and expeditious resolution, and that its purpose is discovery, not punishment.
56. In the case of **Post Bank Credit Limited (In Liquidation) v Nyamangu Holdings Limited [2015] KEHC 5964(KLR) (Persuasive)**, it was held that:

“Order 22 Rule 35(c) of the Civil Procedure Rules allows the court to order any other person to attend court and 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. A former director could also be called upon to attend court and be examined under Order 22 Rule(sic) as long as it is shown he is appropriate in an inquiry to establish 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.”

57. In **Sea Breezes Tours and Travel v Bett & another (Miscellaneous Application E1077 of 2025) [2026] KEHC 2015 (KLR) (Commercial and Tax) (20 February 2026) (Ruling) (persuasive)**, the Court observed as follows:

“The object of this provision is clear. It is intended to aid the decree-holder in discovery of assets and means of satisfaction of a lawful decree. It recognizes that execution may be obstructed not merely by the absence of assets in plain sight, but also by concealment, dissipation, or the

*withholding of information regarding the financial position of the judgment debtor. This position was aptly captured by Ringera J. (as he then was) in **Ultimate Laboratories V Tasha Bioservice Ltd, [HCCC No. 1287 of 2000]**, where the learned Judge stated:*

“The objective of an examination of a company’s director or officer under Order XX1 Rule 36 is to obtain discovery, for the purpose of execution of a decree against the company, 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.”

.....I entirely adopt that reasoning. The Court’s jurisdiction under Order 22 Rule 35 is not contingent upon proof of fraud or the lifting of the corporate veil. Those are separate and weightier issues that may arise later, depending on the evidence elicited during such examination. At this stage, the only threshold is whether there exists an unsatisfied money decree and whether the decree-holder has demonstrated difficulty in tracing assets available for execution.”

58. The court adopts the holding set out above because the threshold for an examination is not proof of fraud, but simply the existence of an unsatisfied money decree and difficulty in tracing assets. The objective of such an examination is to obtain discovery. It is not a penalty but a means of establishing a company's true financial position when a creditor hits a brick wall. An applicant does not need to prove that the debtor has money; they only need to show that they are having difficulty in identifying assets to satisfy a decree.
59. Whereas the Applicant's position is that their Notice to Show Cause was dismissed and that the only known asset, the Naivasha land, is entangled in litigation and bank charges, the Respondent’s position is that

the company does not trade, has no movable assets, has no active bank accounts, and generates zero income

60. Courts have a proactive duty to ensure that litigation reaches a meaningful conclusion and must not remain passive when a decree-holder is unable to enjoy the fruits of their judgment. The examination of a director is the court's mechanism for transforming a paper judgment into actual recovery, and, as affirmed in **Postbank Credit Limited** (supra), Order 22 Rule 35 is a legitimate investigative tool. Its purpose is to dispel corporate ambiguity and establish a debtor's true financial means. It is not for the debtor to unilaterally declare insolvency; rather, it is for the court to verify that claim through the oral examination of its officers and the scrutiny of its books. The debtor's claim of having no money is the very justification for the order, not a defence against it. An allegation of lack of assets is a factual claim that must be tested under oath and supported by documentary evidence. Consequently, the court's power to compel a director to provide this information is absolute where a decree remains unsatisfied.
61. The law recognises that a company is an artificial person that can speak only through its directors. In this case, Hellen Kimooi Kiplagat is the sole surviving director. She is the only person who can explain the disappearance of funds or the absence of bank accounts for a company capable of charging Ksh. 108,000,000/= for land.
62. Indeed in **NBI HCCC NO 1287 OF 2000 Ultimate Laboratories v Tasha B. Loservice Ltd (unreported)** Ringera J (as he then was) held that:

".....The court's duty under the Order and Rule in question is limited to ensuring that the person being examined answers all the questions which are fairly, pertinent and properly asked and it is thereafter up to the decree-holder to use the said information to proceed with

execution where the examination unearths assets or other means of satisfying the decree.

.....While I agree with the defendant's/judgment debtor's advocate that the objective of an examination of a company's director or officer under Order XXI Rule 36 is to obtain discovery, for the purpose of execution of a decree against the company, 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, I don't agree that the court does not have the power in an application in execution which is grounded under the above provisions as well as the inherent power of the court and all other provisions of the law to lift the corporate veil of the company and order the director to personally discharge the debts of the company''.

63. The holding herein clarified that a debtor's claim of having no money is the very justification for the order, not a defence against it. As long as the Applicant has shown that the Respondent is in a position to provide information, the Court should summon the person to attend and be examined as to what debts are owing to the judgment-debtor, and whether the judgment-debtor has any property or means of satisfying the decree. The Applicant has shown that he has a valid decree for taxed costs of Ksh. 27.8M, and that the company is non-responsive or claims to have no assets. I find that an Order under Order 22 Rule 35 of the Civil Procedure Rules is warranted.

64. Lastly, the Respondent argues that the Environment and Land Court (ELC) cannot lift the corporate veil under this rule. The traditional view, cited by the Respondent, is that the Companies Act governs the internal affairs of corporations. Since Article 165(3) of the Constitution grants the

High Court unlimited original jurisdiction, and the Environment and Land Court is a court of specialised jurisdiction under Article 162(2)(b), strictly limited to disputes concerning the environment and the use and occupation of, and title to, land, the Environment and Land Court cannot delve into company law matters such as piercing the veil, which is the preserve of the High Court.

65. I beg to differ on this point. Section 13 of the Environment and Land Court Act provides that the Environment and Land Court has the status of the High Court and inherent power to execute its own orders. Paragraph 10 of the Advocates' Remuneration Order provides as follows:

“The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.”

66. Section 51 of the Advocates Act on the other hand provides that;

(1)Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2)The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

67. Paragraph 10 of the Advocates' Remuneration Order and Order 22 Rule 35 of the Civil Procedure Rules create a powerful legal bridge, allowing the Environment and Land Court (ELC) to assume full jurisdiction over the enforcement of legal fees. Indeed, paragraph 10 of the Advocates' Remuneration Order, which is often read alongside Section 51 of the Advocates Act, provides that a Certificate of Costs is conclusive evidence of the amount due to an advocate. This provision effectively liquidates the debt by moving the advocate's claim from a mere dispute over services to a fixed, judicially recognised sum of money. Once a Taxing Master issues this certificate, it becomes final, and Order 22 Rule 35 applies the moment a decree is for the payment of money.
68. Order 22 Rule 28 of the Civil Procedure Rules provides that all rules for the execution of decrees apply equally to the execution of orders. As the Certificate of Costs is a formal order of the court, Rule 35 (Examination of the Director) is fully available to enforce it. The Environment and Land Court is of equal status to the High Court. If the legal fees (the debt) arose from a matter involving the use and occupation of land, as the taxed costs did, the Environment and Land Court remains the parent court of that dispute.
69. Under Rule 2 of the Advocates Remuneration Order (ARO), the Taxing Officer includes the Registrar or Deputy Registrar of the Environment and Land Court. Accordingly, when the Deputy Registrar of the Environment and Land Court taxes a bill and issues a Certificate of Costs, they exercise the statutory power of a Superior Court. The debt of Ksh. 27,846,050/= was a liquidated debt of the Environment and Land Court itself, as confirmed and adopted by the Court upon the dismissal of a Reference on 20th March 2025. Once a DR of a Superior Court issues a Certificate of Costs, and it is not set aside on reference, it is executable as a decree of that court. Under Rule 11 of the ARO, the Certificate of Costs constitutes the final adjudication of the debt. By operation of Order 22 Rule 28, that

adjudication is executable exactly like a decree. Therefore, the jurisdictional requirements of Order 22 Rule 35 were fully met.

70. In **Bruce Odeny & Co. Advocates v Pride Kings Security Services Ltd [2024] KEHC 5005**, the court held that the Environment and Land Court and the ELRC Deputy Registrars have exclusive jurisdiction to tax bills arising from their courts, and that such results are superior court orders capable of the full range of execution.
71. Because the subject matter is a land-related debt, the Environment and Land Court has all the tools, including company law principles, to resolve it. If the Environment and Land Court could not lift the corporate veil, a person could commit massive land fraud through a shell company, and the Environment and Land Court would be powerless to stop them. That would make the Environment and Land Court a lesser court, which is unconstitutional. The Doctrine of Ancillary Powers presupposes that if a company is used as a vehicle to frustrate a land-related decree, the Environment and Land Court must be able to look behind the company to find the truth.
72. Having said this, the circumstances under which the corporate veil can be pierced were discussed in Paragraph 90 of Halsbury's Laws of England 4th Edition Volume 7 (1) as follows:

“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 person who controls it, it is a relevant feature. In such 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 individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced".

73. It follows that if a company is used as a cloak for fraud, to evade land-related legal obligations, or to frustrate the execution of a land-related decree, the Environment and Land Court, which has the same status as the High Court, can and should pierce that veil to identify the perpetrators. Because the Environment and Land Court has the power to enforce its own decrees, if lifting the veil is the only way to satisfy an Environment and Land Court decree, that power is implied. Indeed, courts are increasingly willing to lift the veil during execution where there is evidence that directors are using the separate legal entity shell to defraud creditors or conceal wealth in family companies. The debt (taxed costs) arose from an Environment and Land Court matter and involves allegations of land-related fraud (the Naivasha property). Therefore, the Environment and Land Court is perfectly placed to exercise this power.

74. In the end, I hereby make the following orders:

- i. The Director of the Respondent, Hellen Kimooi Kiplagat, is hereby ordered to attend this Court to be orally examined on oath regarding the Respondent's property, means, and any debts owing to it.
- ii. The Court shall exercise its discretion to stay the specific prayer to hold the Director personally liable (the lifting of the corporate veil) pending the outcome of the aforementioned oral examination.
- iii. The Applicant is granted costs of the application dated 23rd January, 2026

Dated and delivered via Teams Microsoft at Naivasha this 30th day of April 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE