



**Bahari Forwarders Limited v Kassam Hauliers Limited & another;
 Associates (Interested Party) (Miscellaneous Civil Application
 E023 of 2024) [2026] KEHC 5517 (KLR) (29 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5517 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT VOI
 MISCELLANEOUS CIVIL APPLICATION E023 OF 2024
 AN ONGERI, J
 APRIL 29, 2026**

BETWEEN

BAHARI FORWARDERS LIMITED APPLICANT

AND

KASSAM HAULIERS LIMITED RESPONDENT

AND

J MBUGUA MBURU & ASSOCIATES INTENDED INTERESTED PARTY

AND

J MBUGUA MBURU & ASSOCIATES INTERESTED PARTY

RULING

1. The application coming for consideration in this Ruling is the one dated 5th November 2025 brought under Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, and Order 51 Rules 1 and 3 of the Civil Procedure Rules, 2010 seeking the following orders:-
 - i. That this Honourable Court had issued summons against the directors of the Respondent/ Applicant to attend court in person in relation to the present proceedings.
 - ii. That there is an existing declaratory suit concluded before the subordinate court in the Chief Magistrate’s Court At Voi, Civil Suit No. E077 Of 2022; Kassam Hauliers Limited =versus= Trident Insurance Company Limited filed and conducted by J. Mbugua Mburu & Associates on behalf of the Applicant, through which Trident Insurance Company Limited was sued, a consent was entered into and the matter marked as settled, obligating the insurer to settle the decretal sum arising from Voi Civil Suit No. 37 of 2020; Bahari Forwarders Limited v. Kassam Hauliers Limited.



- iii. That it has now emerged that the Applicant's insurer is the proper party responsible for satisfaction of the decree, hence the summons against the directors of the Applicant were issued in error and without full disclosure of these material facts.
 - iv. That the matter has been slated for mention on 6th November 2025 and the Applicant's directors risk unwarranted prejudice, embarrassment and personal exposure yet the liability lies squarely with the insurer.
 - v. That it is in the interest of justice that this application be heard urgently and the orders sought granted forthwith.
2. The application is supported by the affidavit of Mohammed Kassam in which he deposed as follows:-
- i. That I am a Director of the Applicant herein, duly authorized to swear this affidavit on its behalf, hence competent to swear this affidavit.
 - ii. That I have read, had explained to me by my Advocates on record and understood the contents of the Notice of Motion dated 5th November 2025 and I swear this affidavit in support thereof.
 - iii. That the Respondent obtained judgment against the Applicant in Voi Civil Suit No. 37 of 2020 – Bahari Forwarders Limited v Kassam Hauliers Limited, where a decree was extracted and issued on or about the 5th of February 2024.
 - iv. That following the said judgement, the Respondent initiated execution proceedings and this Honourable Court issued summons requiring the directors of the Applicant to personally attend court in connection with the decree.
 - v. That the issuance of such summons is prejudicial and unnecessary, given that the decretal sum is the subject of an insurance cover issued by Trident Insurance Company Limited under Policy No. 020/110/1/001930/2015, which policy covered the very risk that gave rise to the said decree.
 - vi. That further a declaratory suit had earlier been filed and concluded before the subordinate court at Voi; namely Chief Magistrates Court At Voi, Civil Suit No. E077 Of 2022; Kassam Hauliers Limited Versus Trident Insurance Company Limited which was handled on behalf of the Applicant by J Mbugua Mburu & Associates, and a consent was recorded and the matter marked as settled.
 - vii. That I am advised by my advocates on record, which advise I verily believe to be true that it is necessary that the firm of J Mbugua Mburu & Associates be enjoined as interested parties in these proceedings, being the advocates who conducted the declaratory suit on behalf of the Applicant.
 - viii. That in light of the foregoing, it is evident that the participation of the firm of J Mbugua Mburu & Associates is necessary and essential to clarify the status, content, and outcome of the declaratory proceedings, including any consents recorded and correspondence with the insurer, which is material to the proper determination of this application.
 - ix. That the said pleadings and judgment in the aforementioned declaratory suit; Chief Magistrates Court At Voi, Civil Suit No. E077 Of 2022; Kassam Hauliers Limited Versus Trident Insurance Company Limited are crucial to these proceedings, as they directly determine the liability and extent of the insurer's obligation;



- x. That I am advised by my advocates on record which advise I verily believe to be true that for the proper and complete adjudication of this matter, it is necessary that;The firm of J Mbugua Mburu & Associates be enjoined as interested parties, being the advocates who handled the declaratory suit and are best placed to clarify its outcome.Trident Insurance Company Limited be summoned and/or directed to confirm its position regarding satisfaction of the decree; andThe lower court file in Voi Civil Suit No. E077 of 2022; Kassam Hauliers Ltd v Trident Insurance Company Limited (declaratory suit) be called for and perused by this Honourable Court.
 - xi. That the matter is listed for mention on 6th November 2025, hence there is imminent risk of prejudice and embarrassment to the Applicant's directors if this application is not heard urgently;
 - xii. That the orders sought are necessary to prevent injustice, secure the ends of justice, and facilitate the expeditious and proper resolution of this matter;
3. The Plaintiff filed a Replying Affidavit opposing the application as follows:-
- i. That I am the Claims Officer at M/s Kenindia Assurance Company (K) Limited, the insurers of the Applicant herein, on whose behest Voi Chief Magistrate Court, Civil Suit No. 37 of 2020 Bahari Forwarders Limited versus Kassam Hauliers Limited was filed under the insurance Doctrine of Subrogation hence competent and authorized to swear the Affidavit herein.
 - ii. That I have read the Respondent/Applicant's Notice of Motion dated 5th November, 2025 together with the Supporting Affidavit sworn by Mohamed Kassam, and I verily believe the same to be misconceived, misleading, an abuse of the court process, and intended to obstruct lawful execution of a valid decree.
 - iii. That the Respondent/Applicant's herein was sued in Voi Civil Suit No. 37 of 2020 - Bahari Forwarders Limited versus Kassam Hauliers Limited, judgment was duly entered on 29th September 2023, and a decree extracted on 5th February 2024, awarding the Plaintiff Kshs. 291,062.00 plus interest and costs totaling Kshs. 550,917.05.
 - iv. That despite repeated demands and execution attempts, the Respondent/Applicant has failed, refused, and/or neglected to satisfy the decree, necessitating the Respondent's application for lifting of the of the corporate entity and or veil of incorporation and for the director's of the Respondent/Applicant to be ordered to settle the decretal sum.
 - v. That on 28th March, 2025 and 1st October 2025, this Honourable Court issued lawful summons requiring the Respondent/Applicant's directors Hussein Kassam Alarakia and Mohamed Kassim Hussein to appear in court for examination as to the Respondent/Applicant's means and to produce books of accounts and documentary evidence.
 - vi. That the Respondent/Applicant's application seeking to lift, vacate and/or suspend the said summons is without legal basis, as the summons were properly issued pursuant to the Civil Procedure Act and Rules, and no sufficient cause has been demonstrated to warrant interference with the court's orders.
 - vii. That the Respondent/Applicant' reliance on an alleged insurance policy and declaratory proceedings between the Respondent/Applicant's and its insurer is irrelevant to the Respondent, who was not a party to the declaratory suit and is not privy to any contract of insurance between the Respondent/Applicant's and Trident Insurance Company Limited.



- viii. That the declaratory suit referred to, namely Voi CMCC No. E077 of 2022; Kassam Hauliers Limited versus Trident Insurance Company Limited, is a separate and distinct suit between the Respondent/Applicant and its insurer, and the Plaintiff herein has no contractual or legal nexus thereto.
- ix. That it is a settled principle of law that an insurance contract does not confer rights upon third parties unless statutory or contractual provisions expressly provide so, and the Respondent/Applicant cannot use its insurer as a shield to avoid satisfaction of a lawful decree.
- x. That the Respondent/Applicant's has not produced any evidence that the decretal sum has been paid, settled, or otherwise satisfied by the insurer, and mere reference to a policy or consent in another suit does not extinguish the Respondent/Applicant primary liability to the Plaintiff.
- xi. That the application to enjoin J Mbugua Mburu & Associates is misconceived, frivolous, and an abuse of the court process, as the said advocates were never parties to the primary suit, never represented the Respondent/Applicant herein, and have no legal interest in these execution proceedings.
- xii. That I am advised by our Advocates on record, which advice I verily believe to be true, that advocates acting for a party in a separate declaratory suit cannot be enjoined as interested parties in execution proceedings in which they have no personal stake, and their joinder would offend the principles governing locus standi and professional privilege.
- xiii. That the Respondent/Applicant's attempt to drag advocates into these proceedings is intended to delay execution and intimidate officers of the court, and should be rejected outright.
- xiv. That the Respondent/Applicant's prayer to summon Trident Insurance Company Limited and to call for pleadings and judgment in the declaratory suit is a fishing expedition, irrelevant to the Respondent's decree, and intended to derail the execution process.
- xv. That the Respondent/Applicant's liability to the Respondent is direct and unconditional, and any dispute between the Respondent/Applicant and its insurer should be pursued separately without prejudicing the Respondent's right to execute the decree.
- xvi. That execution proceedings are not the proper forum to litigate insurance indemnity disputes, and the Respondent/Applicant should not be allowed to convert these proceedings into a collateral trial on insurance liability.
- xvii. That the Respondent's application seeking examination of directors and lifting of the corporate veil was necessitated by the Respondent/Applicant's persistent failure to satisfy the decree and apparent attempts to evade execution.
- xviii. That despite entering appearance and appointing an advocate, the Respondent/Applicant's did not call any witnesses during trial, did not challenge the Respondent's evidence, and has since failed to demonstrate any bona fide intention to satisfy the decree.
- xix. That the directors of the Respondent/Applicant are properly summoned under the law to disclose the Respondent/Applicant's assets and financial status, and the Respondent/Applicant cannot now seek refuge in insurance arrangements to frustrate lawful execution.



- xx. That the Respondent/Applicant's Notice of Motion dated 5th November, 2025 is an abuse of the court process, lacks merit, and is calculated to delay, obstruct, and defeat the Plaintiff's right to enjoy the fruits of its judgment.
- i. That it is in the interest of justice that the Respondent/Applicant's application be dismissed with costs and that the directors do comply with the summons and be examined as ordered by this Honourable Court.
4. The parties filed written submissions as follows:-
5. The respondent, Kassam Hauliers Limited, in their submissions stated that the execution proceedings against its directors are premature and an abuse of process because a company has a separate legal identity from its directors.
6. They contend that the corporate veil can only be lifted in exceptional circumstances such as fraud or improper conduct, none of which have been pleaded or proved in this case, and that mere inability to pay debts does not justify piercing the veil.
7. They further submit that since the decree arises from a motor vehicle accident, the primary statutory liability falls upon Trident Insurance Company Limited under Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*, Cap 405, which obligates an insurer to satisfy third-party decretal sums where valid compulsory insurance exists.
8. The respondent notes that a declaratory suit was filed, a consent recorded, and the matter marked as settled, and argues that executing against directors without disclosing these facts amounts to procedural impropriety.
9. They seek to enjoin J. Mbugua Mburu & Associates as an interested party to clarify the status of the consent, scope of settlement, and correspondence with the insurer, arguing that the firm meets the legal threshold for joinder because its presence is necessary for effective adjudication.
10. Finally, they request that Trident Insurance be summoned to confirm its position regarding satisfaction of the decree and that the lower court file be called for, as these records are material for proper adjudication. In conclusion, the respondent prays that all orders sought in their Notice of Motion dated 5th November 2025 be granted.
11. The issues for determination in the application dated 5th November 2025 are as follows;
- i. Whether the application to enjoin J. Mbugua Mburu & Associates as an interested party is merited and;
- ii. Whether the directors of the Respondent/Applicant should be protected from personal examination and liability on account of the existence of an insurance policy and a declaratory suit.
12. I have carefully considered the application dated 5th November 2025, the supporting affidavit, the replying affidavit by Bahari Forwarders Limited and the submissions filed.
13. The first issue relates to the joinder of J. Mbugua Mburu & Associates as an interested party.
14. The law on joinder of interested parties is well settled. An interested party is one who has a stake in the proceedings, or one who will be adversely affected by a decision of the court, or whose presence is necessary to enable the court to effectively and completely adjudicate upon all matters in dispute.



15. An applicant must demonstrate their relevance to the proceedings and why their submissions would be different from those of the existing parties.
16. The firm of J. Mbugua Mburu & Associates, being advocates who formerly represented Kassam Hauliers in a separate declaratory suit against Trident Insurance, has no personal legal interest in the execution proceedings arising from the decree in Voi Civil Suit No. 37 of 2020.
17. Advocates act as agents of their clients, and once their retainer in a particular matter concludes, they have no independent stake in the subsequent litigation between the parties.
18. To enjoin the advocates as an interested party in this execution file would be to fundamentally misunderstand the nature of legal representation and the doctrine of privity.
19. The firm has no liability to satisfy the decree, no contractual nexus with the decree-holder Bahari Forwarders Limited, and no personal interest that would be affected by this court's ruling.
20. Accordingly, the prayer to enjoin J. Mbugua Mburu & Associates is rejected as it is frivolous and constitutes an abuse of the court process aimed at delaying the execution.
21. The second issue concerns whether the Directors of Kassam Hauliers Limited should be shielded from the summons issued by this court for examination on their means.
22. The court issued summons on 28th March 2025 and 1st October 2025 requiring the directors to appear for examination pursuant to Order 22 Rule 35 of the Civil Procedure Rules.
23. The power of the court to summon directors of a judgment debtor company for examination is discretionary and is designed to assist the decree-holder to discover assets and means of satisfaction of the decree.
24. Kassam Hauliers has advanced the argument that its directors should not be exposed to personal liability because the company is a separate legal entity from its directors.
25. This court agrees entirely with the general principle of separate legal personality and piercing the corporate veil is an exceptional remedy applied only in cases of fraud, impropriety, or where the company is a mere façade.
26. However, the summons issued in this matter are for examination of the directors regarding the company's assets and means, not for an order piercing the corporate veil and attaching personal assets.
27. The two remedies are distinct and therefore, the directors' argument that they are protected from examination because the company is a separate legal entity is misguided.
28. The examination is aimed at the corporate entity through its officers, and does not, without more, constitute an attack on the corporate veil.
29. The respondent's argument that the insurance policy with Trident Insurance Company Limited and the declaratory suit in Voi CMCC No. E077 of 2022 absolve it of liability is also rejected.
30. First, the decree in Voi Civil Suit No. 37 of 2020 was issued against Kassam Hauliers Limited, not against Trident Insurance.
31. A judgment debtor cannot avoid its primary liability to a decree-holder by pointing to an indemnity agreement or an insurance contract with a third party.
32. The law is clear that an insurance contract does not confer direct rights upon third parties unless statutory or contractual provisions expressly so provide.



33. A declaratory suit against the insurer is a separate and distinct cause of action, and the fact that an insurer exists does not relieve the insured judgment debtor from satisfying the decree,
34. The decree-holder, Bahari Forwarders Limited, was not a party to the declaratory suit between Kassam Hauliers and Trident Insurance, and therefore is not bound by any consent recorded therein.
35. The consent allegedly settling the declaratory suit against the insurer operates only between the parties to that suit.
36. Until the decretal sum is actually paid into the hands of the decree-holder, the judgment debtor Kassam Hauliers remains fully liable.
37. This court takes judicial notice of the fact that Trident Insurance has been placed under statutory management.
38. This development fatally undermines the entire basis of Kassam Hauliers' application, which was predicated on the assertion that Trident Insurance is the proper party responsible for satisfaction of the decree.
39. An insurer that is under statutory management and subject to a payment moratorium cannot, as a matter of practical reality and law, satisfy the decree at this time.
40. The statutory manager may eventually, after the moratorium period, make payments to eligible claimants in accordance with the *Insurance Act*, but there is no guarantee of payment, and certainly no payment can be compelled by this court in the short term.
41. Therefore, the argument that the directors should not be examined because the insurer is liable collapses entirely in light of the regulatory intervention.
42. In conclusion, this court finds that the application dated 5th November 2025 is devoid of merit.
43. The application by Kassam Hauliers Limited is fundamentally an attempt to halt the lawful execution process by shifting blame to its insurer and its former advocates.
44. The attempt to shield the directors from examination on the company's assets fails because examination under Order 22 Rule 35 is a lawful and necessary tool of execution.
45. The reliance on an insurance policy and a declaratory suit does not discharge the judgment debtor's primary liability.
46. The judgment creditor, Bahari Forwarders Limited, is entitled to enjoy the fruits of its judgment obtained lawfully in Voi Civil Suit No. 37 of 2020.
47. The directors of Kassam Hauliers Limited, namely Hussein Kassam Alarakia and Mohamed Kassim Hussein, shall comply with the summons issued by this court on 28th March 2025 and 1st October 2025 and appear for examination on oath as ordered.
48. The application for joinder of J. Mbugua Mburu & Associates is dismissed.
49. The application to summon Trident Insurance Company Limited and call for the lower court file in Voi CMCC No. E077 of 2022 is declined as these are not necessary for the adjudication of the execution proceedings, and in any event, Trident Insurance is now under statutory management.
50. The costs of this application shall be borne by the Respondent/Applicant, Kassam Hauliers Limited, payable to the Applicant/Respondent, Bahari Forwarders Limited.



51. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF APRIL 2026 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Mabishi/Millicent

.....for the Applicant/Respondent

.....for the Respondent/Applicant

.....for the Interested Party

