

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISC APPLICATION NO. E252 OF 2024

**DORMANS COFFEE LIMITED.....APPLICANT/
DECREE HOLDER**

VERSUS

**JOYLAND MINIMART LIMITED.....RESPONDENT/JUDGMENT
DEBTOR**

AND

**DANIEL KIBUNJA KAMAU.....DIRECTOR OF JUDGMENT
DEBTOR**

RULING

1. This Ruling is in respect of a post Judgement Motion by the Judgement Creditor/Applicant seeking to have the Director of the Judgement Debtor Company summoned to appear in Court for cross examination.

Background Facts

2. The Applicant filed the Notice of Motion dated 23rd March, 2024 seeking the following orders;
 - a) *Notice to Show Cause and for summons to issue compelling the Director of the Judgment Debtor, Joyland*

Minimart Limited, namely Daniel Kibunja Kamau to personally attend Court on such date as may be ordered or allocated and be examined on oath as to the Judgement Debtor's means and assets and to produce its books of the account and other documentary evidence relevant to revealing the assets of the said Joyland Minimart Limited.

b) The costs of this Application be provided for.

3. This Application was supported by the grounds on the face of it and by the Affidavit of **KIIO MUMO**, Advocate for the Decree Holder. He stated that the Decree Holder obtained a monetary judgment on 26th October 2023. That a decree issued on 14th February 2024 remains unsatisfied. This is despite service upon the Judgment Debtor, who has allegedly refused or neglected to comply.
4. It was contended that the Judgment Debtor has no known attachable assets within the jurisdiction. That he has deliberately acted to obstruct or delay execution. Consequently, the Applicant seeks orders compelling the production of the company's books of accounts and the

examination of its director to ascertain the company's means. He depones that the director is using the company as a shield to evade liability and may be held accountable for its conduct.

5. Further, that this is the only viable avenue to realize the decretal sum and enable the Decree Holder to enjoy the fruits of the judgment. It was therefore urged that the Court grant the Application and issue summons for examination of the director, in the interest of justice and to facilitate execution of the subsisting decree.
6. There was no response to this Application by the Respondent.

Issues for determination

7. The Court has considered the Applicant's Application alongside its submissions and finds that there is only one issue for determination;
 - a) *Whether the Court should issue summons compelling the Respondent's Director to appear for oral examination regarding the Judgment Debtor's affairs.*

Analysis

8. The Applicant obtained a default judgment on 26th October 2023 against **Joyland Minimart Limited** in **SCCCOMM/E6706/2023** for Kshs. 58,464.00, with interest and costs. That a decree issued on 14th February 2024 confirmed the total amount at Kshs. 87,120.65. Despite service of the decree and subsequent notices, the Respondent has failed and refused to settle the decretal sum or disclose any attachable assets.
9. In addition, a Companies Registry search (CR12) identifies **Mr. Daniel Kibunja Kamau** as the sole director and shareholder of the Respondent. That this makes him the person best suited to provide information on the company's financial position. However, despite being duly served with hearing notices and summons, the Respondent has failed to appear in Court or file any response. Thus, demonstrating continued non-compliance.
10. **Order 22 Rule 35 of the Civil Procedure Rules** grants the Court discretion to order a Judgment Debtor, or in the case of a corporation, any officer thereof, to be orally

examined as to their means of satisfying the decree, and for the production of relevant books or documents. **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.”

11. The purpose of examination proceedings is to enable the Court and the decree holder to ascertain the assets and means of the judgment debtor. This prevents the corporate form from being used to defeat lawful decrees. That discovery in aid of execution is an essential tool to ensure

that decrees are not rendered nugatory by deliberate opacity on the part of a judgment debtor.

12. In **Devnarayan Enterprises Ltd vs Rotice & 6 Others (2024) eKLR** the Court stated:

“The purpose of issuing summons under Order 22 Rule 35 of the Civil Procedure Rules is to ascertain the financial position of a Judgement Debtor after a Decree Holder’s attempts to execute a decree have been unsuccessful. This is to ensure that the Decree Holder is not left financially frustrated.”

13. Further, the Court in **Robert Kinaga Waweru v Northcorr Enterprises Ltd [2011] eKLR** observed that directors of a Judgment Debtor company must give a full account of the company’s assets. That it would be inequitable for the Court to close its eyes to possible concealment of such assets.

14. It is undisputed that a valid decree exists and has remained unsatisfied. The Applicant has shown, through unchallenged affidavit evidence, that the Judgment Debtor has failed to disclose its assets. The Defendant’s failure to respond to the application leaves the factual averments in

the supporting affidavit uncontested. **Trust Bank Limited v Paramount Universal Bank Limited & 2 Others,** affirmed that where no response is filed, uncontroverted affidavit evidence may be accepted as true unless it is inherently implausible.

15. The Court is satisfied that the Applicant has established a proper basis for invoking **Order 22 Rule 35 of the Civil Procedure Rules**. The examination sought is confined to ascertaining the assets and means of the Judgment Debtor and is necessary to facilitate execution.
16. In these circumstances, it is both fair and necessary for the director named in the CR12 to be summoned for oral examination. This process will allow the decree holder, and ultimately the Court, to determine the true financial position of the judgment debtor and identify any available means of satisfying the decretal sum.
17. That would ordinarily bring this matter to an end.
18. However, a perusal of the Court file reveals that on 5th February, 2025, **Hon Mr. Justice Aleem Visram** granted the orders now sought herein in the following terms;

“The Application dated 23rd march, 2024 allowed as prayed for. No opposition has been filed to date. The same seeks oral examination of the Judgement debtor. Mention before the DR for directions in relation to examination under oath. 11th March, 2025”

19. The Court cannot grant the same orders twice.
20. It is not clear whether the Director of the Respondent was ever served with Summons to attend Court for cross examination. It is upon the Applicant to follow up and ensure those orders issued by the Court earlier, were acted upon.
21. Perhaps what the Applicant has in mind now is the piercing or lifting of the corporate veil of the Respondent/Judgement Debtor to hold the Director personally liable. If that be the case, then the Court is unable to grant such a prayer for the simple reason that it has not been sought in this Application.
22. The Application is thus marked as spent.
23. As to costs, the same lie at the discretion of this Court. The same are awarded to the Applicant.

Determination

24. The Applicant's application by way of a Notice of Motion dated 23rd March, 2024 is marked as spent, in view of the earlier orders made by **Hon Mr. Justice Aleem Visram** on 5th February, 2025 allowing the same.
25. The Applicant is awarded the costs of the Application.
26. It is so ordered.
27. The file is marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 21ST DAY OF APRIL, 2026.

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of;
Mr. Mumo for the Applicant.
N/A for the Respondent.
John Paul - Court Assistant.