



**Karewa & another v Modern Coast Bus Limited & 2 others (Constitutional
Petition E002 of 2024) [2026] KEELRC 1197 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1197 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CONSTITUTIONAL PETITION E002 OF 2024**

**K OCHARO, J
APRIL 30, 2026**

BETWEEN

BEATRICE WAKUTHI KAREWA 1ST PETITIONER

NANCY NYAWIRA MURIITHI 2ND PETITIONER

AND

MODERN COAST BUS LIMITED 1ST RESPONDENT

**COUNTY OCUPATIONAL HEALTH & SAFETY OFFICER
(MOMBASA) 2ND RESPONDENT**

AND

APA INSURANCE CO LTD INTERESTED PARTY

RULING

1. By the Notice of Motion Application dated 1st April, 2025, the Petitioner seeks the following orders;
 - a. That this application be certified urgent and service of the same dispensed with in the first instance.
 - b. That APA Insurance Co. Ltd be enjoined to these proceedings as an Interested Party.
 - c. That this court does order the Interested Party APA Insurance Co. Ltd to produce proof of settlement of the WIBA Claim involving the 1st Respondent's employee Paul Muruthi Kamau (Deceased), failing which the interested party be held liable for the decree herein.
 - d. That this Honourable Court be pleased to lift the Corporate Veil of the 1st Respondent and declare that Haroon Shahid Butt, Ameera Rahil Butt, Shanaz Aktar Malik, And George Moku Obiria as the Shareholders, Secretary and/or Directors of the 1st Respondent.



- e. That Haroon Shahid Butt, Ameera Rahil Butt, Shanaz Aktar Malik, and George Moku Obiria being the Shareholders, Secretary and/or Directors of the Respondent, do attend court physically and be examined as to whether the 1st Respondent/judgment debtor has any property or means of satisfying the decree herein and to produce in court all the 1st Respondent's books of accounts and other documentary evidence showing the same before the court.
- f. That the said Haroon Shahid Butt, Ameera Rahil Butt, Shanaz Aktar Malik, and George Moku Obiria be ordered to personally pay the decretal amount of KShs 3,320,220/= plus interest due to the Petitioners in the ALTERNATIVE to be imprisoned and committed to civil jail for a period not less than six (6) months and their personal properties be attached in fulfilment of the decree.
- g. That this Honourable court does declare that said Haroon Shahid Butt, Ameera Rahil Butt, Shanaz Aktar Malik, And George Moku Obiria have engaged in fraudulent activities.
- h. That the costs of these proceedings be borne by the judgment debtor.

The Petitioner's Application

2. The Petitioners state that the petition herein arises from the 1st and 2nd Respondents' failure to settle an award made by the Director of Occupational Health and Safety Services pursuant to the provisions of the Work Injury and Benefits Act in favour of the estate of Paul Muruthi Kamau, for which they are the legal representative.
3. The Petitioners further contend that on 27th January, 2025, the parties herein recorded a consent judgment, following which a decree ensued. The decree remains unsatisfied in the sum of Kshs. 3,320,220.
4. On 15th February 2025, the 1st Respondent/ Judgment debtor, in a bid to partially settle the decree, drew a cheque for KShs. 500,000 drawn on a sister company, Modern Truckers Ltd. The cheque was dishonoured upon presentation for insufficient funds.
5. Despite several reminders, the judgment debtor has failed to communicate or settle the decree. The Interested Party has settled the claim in respect of the deceased's estate. However, the directors of the judgment debtor have engaged in fraudulent and criminal conduct, including the diversion and misappropriation of compensation allegedly paid by the Interested Party in respect of the deceased.
6. In the circumstances, it is necessary to lift the corporate veil of the 1st Respondent and hold its directors personally liable for the decree. Further, for the interested party to be present in the proceedings to clarify whether compensation was paid. Replying

The 1st Respondent's Response

7. By a replying affidavit of Caroline Njeri Njuguna, the 1st Respondent contends that by consent of the parties herein, this matter was compromised and further a mode of settlement of the decretal sum agreed on.
8. It was further stated that the 1st Respondent's business was affected by the COVID-19 pandemic, which led to its bus business collapsing, and the 1st Respondent has endeavoured to source funds to settle the amounts that are due and owing to many of its debtors, a fact communicated to the Petitioner.



9. As a show of commitment, the 1st Respondent issued the Petitioners' Counsel with several postdated cheques which he was to bank on several nominated dates and on instructions of the 1st Respondent, depending on the availability of funds. Inexplicably, the Advocate proceeded to bank the cheques without instructions from the 1st Respondent, even though the accounts were without funds, leading to their dishonour.
10. It is further stated that the 1st Respondent sought to replace the said cheques with new ones or to cause a direct deposit into the petitioners' advocate's accounts, but the current application was filed before the cheques were collected.
11. The consent having been recorded as a judgment of the court, the Petitioners were free to commence the execution process for realisation of the decretal sum, but have not done so; as such, the instant application is premature. The orders sought cannot be granted at this point, as the Petitioners have not exhausted execution mechanisms.

Response by the Interested Party.

12. It was stated on behalf of the Interested Party, through a replying affidavit sworn by Caroline Njeri Njuguna on 8th May 2025, that it had issued a policy on insurance under the *Work Injury Benefits Act* to safeguard and indemnify the 1st Respondent and its sub-contractors and associated companies from claims arising under the Act.
13. Sometime in 2024, the 1st Respondent lodged a claim under the said policy in respect of a fatal accident involving the deceased. After considering the claim and the assessment made by the Director, the Interested Party processed the claim and issued a Discharge Voucher for execution by the first Respondent for a sum of KShs. 3,245, 320. Subsequently, the Interested Party remitted the sum to the 1st Respondent's nominated Bank account at Habib Bank AG Zurich on 23rd October 2024, by a funds transfer. The 1st Respondent was notified of the remittance.

Analysis and Determination

14. This Court has not lost sight of the fact that it issued a comprehensive ruling herein dated 26th February 2026, regarding the 1st Respondent's preliminary objection. Additionally, numerous issues requiring determination in the current application, having regard to the affidavits filed and the parties' submissions, were addressed and resolved in the aforementioned ruling. This Court shall refrain from re-evaluating these issues.
15. In my view, pursuing lifting of the corporate veil is normally seen as a post-judgment proceeding, which, in those exceptional circumstances recognised by the law, is geared towards achieving enforcement of the judgment. In light of this, the question that must be answered at this juncture is whether any of those circumstances are available in this matter to enable this court to allow the Petitioners to pursue that route.
16. In the case of *Multichoice v Mainkam Ltd & Another* [2013] eKLR, the Court held;

“I agree that directors are generally not personally liable on contracts purporting to bind their company. If the Directors have authority to make a contract, then only the company is liable on it. To my mind, there is no doubt that ever since the famous case of *Salmon vs Salmon* [1897] A.C. 22, Courts have applied the principle of corporate personality strictly. But exceptions to the principle have also been made where it is too flagrantly opposed to justice or convenience. Other instances include when a fraudulent and improper design by



scheming directors or shareholders is imputed. In such exceptional cases, the law either goes behind the corporate personality to the individual members or regards the subsidiary and its holding company as one entity.”

17. No doubt, the Interested Party, as the 1st Respondent’s insurer in matters contemplated under the *Work Injury Benefits Act*, and as legally obliged to do so under the Act, paid the 1st Respondent an amount that would fully settle the Petitioners’ claim. Inexplicably, the 1st Respondent did not transmit the sum to the Petitioners, the legal representatives of the deceased’s legal estate. This act by the 1st Respondent easily passes for a fraudulent scheme that has unnecessarily and inhumanely deprived the estate of what it was entitled to under the law.
18. By reason of the foregoing premise, I come to the conclusion that this is a proper matter and juncture in which the Petitioners should be allowed to pursue the piercing of the corporate veil. Consequently;
 - a. The persons named in prayer 5 of the application, namely, Haroon Shahid Butt, Ameera Rahil Butt, Shanaz Aktar Malik, and George Mokua Obiria, shall appear before this Court on 20th May 2026, to be examined as to whether the 1st Respondent / Judgment Debtor has any property or means of satisfying the decree herein and to produce in court all the 1st Respondent’s books of accounts and other documentary evidence showing the same.
 - b. Consideration of prayers 4, 6, 7, and 8 of the application shall be subject to the proceedings in relation to prayer 5 and the outcome thereof.

READ SIGNED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

OCHARO KEBIRA

JUDGE.

