

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC MISCELLANEOUS APPLICATION NO. E174 OF 2024**  
*(Before Hon. Lady Justice Hellen Wasilwa, J)*

**MONICA WANJIKU MWANGI**

the legal representative of

**WILLIAM IKABA KAGO**  
**(deceased).....APPLICANT**

**VS**

**UPLANDS PREMIUM DAIRIES**

**& FOODS**  
**LIMITED.....RESPONDENT**

**RULING**

1 The Applicant filed a Notice of Motion application dated 25<sup>th</sup> November 2025 seeking ORDERS THAT: -

- a) *The Honourable Court be and is hereby pleased to certify the matter as urgent, and order for its expeditious hearing and determination.*
- b) *This Honourable Court be and is hereby pleased to issue summons directed to MARY WAMBUI NJIHIA and JANE WANJIRU NJENGA who are the directors of the Judgement Debtor, UPLANDS PREMIUM DAIRIES & FOODS LIMITED to attend court on an appointed day to be orally examined as to the business and affairs of the judgement-debtor, including whether any or what debts are owing to the judgement*

*debtor, and whether the judgement-debtor has any and what property or means of satisfying the decretal sum;*

- c) *The Honourable Court be and is hereby pleased issue an order directed to MARY WAMBUI NJIHIA and JANE WANJIRU NJENGA, in their capacity as the Directors of Judgement-debtor to produce before court books of accounts, audited financial statements, cheques books and other statutory documents relating to the operations and transactions of Judgment Debtor from 15<sup>th</sup> June 2023 when the debt was incurred to date, documents of title property of the Company and the said Directors be examined on oath on the said documents;*
- d) *In default of such attendance and/or producing before court books of accounts, audited financial statements, cheques books and other statutory documents relating to the operations and transactions of the Judgement Debtor from 1<sup>st</sup> June 2023 when the debt was incurred to date as prayed in order ii & iii above, this honorable court be pleased to lift the veil of incorporation and order that MARY WAMBUI NJIHIA and JANE WANJIRU NJENGA be held jointly and severally 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;*

- e) The Applicant/Decree Holder be granted leave to execute the decree herein against the said Directors of the Judgement Debtor herein personally, in default of payment of the decretal amount claimed herein; and*
- f) The costs of this application be in favour of the Applicant.*

### **Applicant's Case**

- 2 The Applicant states that she instituted this suit on 11<sup>th</sup> June 2024 seeking, inter alia, judgment in the sum of Kshs. 3,840,000 arising from an award by the Directorate of Occupational Health and Safety (DOSHS), Thika, together with costs of the application for letters of Administration Ad Litem, interest at court rates and costs of the application.
- 3 It is the Applicant's case that on 21<sup>st</sup> November 2024, the application was allowed with costs and judgment entered in her favour, culminating in a decree issued on 6<sup>th</sup> January 2025.
- 4 Thereafter, her advocates filed a Party and Party Bill of Costs dated 5<sup>th</sup> May 2025 which was subsequently taxed, a ruling having been delivered on 28<sup>th</sup> July 2025 in the sum of Kshs. 185,225.

- 5 She asserts that the total decretal sum now stands at Kshs. 5,241,681, which amount remains wholly unpaid to date, and that warrants of attachment of movable property were issued on 25<sup>th</sup> September 2025 in an attempt to enforce the decree.
- 6 The Applicant contends that despite repeated demands, the Respondent has deliberately failed, neglected and/or refused to settle the decretal amount and has made no effort whatsoever to liquidate the same, thereby occasioning prejudice to the deceased's children who have been denied the opportunity to pursue higher education.
- 7 It is her case that she has encountered difficulty in executing the decree issued on 6<sup>th</sup> January 2025, as she has been unable to trace or ascertain any attachable assets belonging to the Judgment Debtor.
- 8 The Applicant avers that in the circumstances, it has become necessary to examine the directors of the Judgment Debtor to establish the company's means and assets for purposes of execution.
- 9 She states that upon conducting a search at the office of the Registrar of Companies as at 23<sup>rd</sup> October 2025, it was established that the directors of the Judgment Debtor are Mary Wambui Njihia and Jane Wanjiru Njenga.
- 10 The Applicant asserts that the said directors ought to be summoned to court for examination on oath as to the

Respondent's means and assets and to produce the Respondent's books of accounts and other relevant documents to facilitate execution of the decree.

- 11 It is the Applicant's position that it is in the interests of justice that the application be allowed so as to enable the Judgment Creditor realize the fruits of the judgment delivered by this Court.
- 12 In her further affidavit dated 2<sup>nd</sup> April 2026, the Applicant reiterates that the Respondent has had ample time since May 2023 when DOSH,Thika made an award of Kshs. 3,840,000 as compensation for the fatal injuries suffered by her deceased spouse, William Ikaba Kago, and that the Respondent neither appealed the award within the statutory 30 days nor settled the same, thereby necessitating the institution of the suit which was determined on 21<sup>st</sup> November 2024, with the decretal sum still remaining unpaid to date.
- 13 She further avers that the warrants of attachment issued on 25<sup>th</sup> September 2025 and executed by Startruck Auctioneers were unsuccessful as no motor vehicles or attachable property were found in the name of the Judgment Debtor, the machinery on site being fixed installations and the staff on the ground being hostile.

- 14 The Applicant contends that all available legal mechanisms of execution against the company have been exhausted without success.
- 15 She asserts that given the decretal sum has remained outstanding for over two years, it is in the interest of justice that the Court invokes Order 22 of the Civil Procedure Rules and compels the Respondent's directors, Mary Wambui Njihia and Jane Wanjiru Njenga, to attend court for oral examination on the Respondent's business, affairs, assets and liabilities, including production of books of accounts, audited financial statements and other statutory documents from 1<sup>st</sup> June 2023 to date.
- 16 It is the Applicant's position that the Respondent has continually deprived her of the fruits of the judgment delivered on 21<sup>st</sup> November 2024, the prolonged non-payment having gravely prejudiced her interests, and that the application ought to be allowed in the interests of justice.

### **Respondent's Case**

- 17 In opposition to the application, the Respondent filed a replying affidavit dated 27<sup>th</sup> February 2026, sworn by its director, Mary Wambui Njihia.
- 18 The Respondent admitted that this Court entered judgment on 21<sup>st</sup> November 2024 in favour of the Applicant for the decretal sum stated and that a decree

was subsequently extracted. However, they denied they deliberately refused and/or neglected to satisfy the decretal sum.

- 19 It is the Respondent's case that it is a limited liability company duly incorporated under the provisions of the Companies Act, 2015 and as such enjoys a separate and distinct legal personality from its directors.
- 20 The Respondent avers that the allegations that its directors are conducting its affairs in a fraudulent manner solely to defeat creditors are false, malicious and unsupported by any evidence.
- 21 It contends that it remains operational and continues to carry on lawful business and has neither concealed nor dissipated its assets with the intention of defeating execution.
- 22 The Respondent asserts that the Applicant has not demonstrated that she has exhausted the legally provided mechanisms of execution against the company prior to seeking to personally pursue its directors.
- 23 It is the Respondent's position that the present application is premature and is intended to intimidate and harass the directors rather than to facilitate lawful execution of the decree.

- 24 The Respondent avers that although this Court has jurisdiction under Order 22 of the Civil Procedure Rules to summon officers of a company for oral examination in appropriate circumstances, such jurisdiction must be exercised judiciously and not as a fishing expedition or as a substitute for proper execution proceedings.
- 25 It further contends that the Applicant's request for production of books of accounts, audited financial statements, cheque books, statutory documents and documents of title from 1<sup>st</sup> June 2023 to date is overly broad, oppressive and amounts to an unwarranted intrusion into the Respondent's confidential corporate records without sufficient basis.
- 26 The Respondent asserts that the Applicant has failed to place before this Court any evidence demonstrating that it has fraudulently transferred or concealed its assets or engaged in any misconduct so as to defeat execution.
- 27 It is the Respondent's case that the application is bad in law, misconceived and does not meet the legal threshold for lifting the corporate veil or imposing personal liability upon its directors.
- 28 The Respondent avers that lifting the veil of incorporation is an exceptional remedy only available in clear cases of fraud or improper conduct, none of which has been demonstrated in the present matter.

29 It is therefore the Respondent's position that the application dated 25<sup>th</sup> November 2025 ought to be dismissed with costs.

### **Applicant's Submissions**

30 The Applicant submitted on two issues: whether the directors of the Respondent should be summoned to appear before this Honourable Court for oral examination on the assets and liabilities of the Respondent company and to produce books of accounts, audited financial statements, cheques books and other statutory documents; and whether in default of the Respondent's directors' appearance before court to produce their books of accounts the corporate veil should be lifted.

31 On the first issue, the Applicant submitted that she has no other means to realize her lawfully obtained judgment and therefore invokes the provisions of Order 22 Rule 35 of the Civil Procedure Rules to compel the attendance of the Respondent's directors for oral examination regarding the company's means to satisfy the decree and to produce the relevant books of accounts and statutory documents for the period 1<sup>st</sup> June 2023 to date.

32 She submitted that under Order 22 Rule 35 of the Civil Procedure Rules, this Court is clothed with jurisdiction to summon officers of a company for purposes of discovery in aid of execution. Reliance was placed on **Robert**

***Khamala Situma v Afrikon Limited [2022] eKLR*** where the Court held: *“Having regard to the clear provisions of Order 22 Rule 35 of the Civil Procedure Rules, and owing to the fact that the Judgment Debtor’s indebtedness to the Applicant for the decretal sum herein is not disputed, the Applicant is justified and well within his rights to seek the orders of this court to summon the Judgment Debtor’s Director and/or former director to be examined on oath over the state of affairs of the Company.”*

33 Further reliance was placed in ***Ultimate Laboratories V Tasha Bioservice Ltd HCCC No. 1287 of 2000 (unreported)*** the learned Judge stated that: *“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 judgement debtor and whether the judgement-debtor has any and what property or means of satisfying the decree”*

34 The Applicant submitted that vide the judgment dated 21<sup>st</sup> November 2024, this Court ordered the Respondent to pay Kshs. 3,840,000 plus interest from 1<sup>st</sup> June 2023 and costs, which remains unpaid to date.

35 She argued that the Respondent’s failure to settle the decretal sum necessitated issuance of warrants of attachment in execution of the decree issued on 16<sup>th</sup>

January 2025, but the auctioneers have been unable to trace any attachable assets, rendering execution futile.

36 It was therefore submitted that in the circumstances, the Respondent's directors ought to be summoned to appear before this Court for oral examination on the company's assets and liabilities.

37 On whether the corporate veil should be lifted, the Applicant submitted that the doctrine of separate legal personality is not absolute. Reliance was placed on Halsbury's Laws of England, 4<sup>th</sup> Edition which provides: *"Piercing the corporate veil. 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 persons who control 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"*

38 The Applicant further relied on **Kolaba Enterprises Ltd vs. Shamsudin Hussein Varvani & Ano (2014) eKLR** that: *“It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of SALOMON & CO LTD v SALOMON [1897] A.C. 22 H.L that a company is different person altogether from its subscribers and directors. Although it is a fiction of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities.”*

39 She submitted that in **Jocelan Consultantants Ltd v County Developers Limited [2019] eKLR** the court stated: *“Gathering from the judicial decisions on the subject, I should state the following. a. First, this provision is in the nature of discovery for purposes or in aid of execution of a decree against the defendant company. It would be inappropriate to invoke it where execution against the defendant company should be easy and direct. b. Second, the applicant needs only to show that the person sought to be examined under the said rule is in a*

*position to provide information in the nature of discovery for purposes of execution of the decree against the defendant company, more specifically; 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. The standard therefore is not as high as that of proving the case. c. Third, the person to be examined may be the judgment-debtor or officer, or other person. d. Fourth, the court may order attendance of the person for purposes of examination, and for the production of any books or documents.”*

### **Respondent’s Submissions**

- 40 The Respondent submitted on two issues: whether the directors of the Respondent should be summoned to appear before this Honourable Court for oral examination on the assets and liabilities of the Respondent company; and whether this Honourable Court should lift the corporate veil of the Respondent company and hold the directors personally liable for settlement of the decretal sum.
  
- 41 On the summoning of directors for oral examination, the Respondent submitted that whereas Order 22 Rule 35 of the Civil Procedure Rules permits a decree holder to apply for oral examination of an officer of a corporation as to its

assets and means of satisfying a decree, such orders are not automatic and must be justified.

- 42 It was submitted that the Applicant must demonstrate that reasonable steps have been taken to execute the decree and that such examination is necessary for discovery of the judgment debtor's assets. The Respondent argued that the summoning of directors is not application as of right, the same must be justified taking into consideration that the company is a separate and distinct entity from the directors and its shareholders.
- 43 The Respondent argued that no case has been made by the Applicant to warrant summoning of the Respondent's directors, maintaining that the Respondent company is a distinct entity and has not indicated that it is unable to settle its debts.
- 44 It was further submitted that the Applicant has neither demonstrated genuine difficulty in tracing the Respondent's assets nor exhaustion of the lawful mechanisms of execution, and that the application is speculative and unsupported by evidence of actual execution efforts. In the absence of such evidence, the Respondent submitted that the threshold for summoning the company's directors has not been met.
- 45 The Respondent submitted that examination of company officers should only be allowed where the decree holder

has demonstrated genuine difficulty in tracing assets and where the application is not speculative.

- 46 On the issue of lifting the corporate veil, the Respondent submitted that the present application is in substance an attempt to lift the corporate veil under the guise of seeking oral examination of the Respondent's directors.
- 47 It was submitted that the Applicant seeks that in default of attendance or production of documents, this Court should lift the corporate veil and hold the directors personally liable for the decretal sum. However, they argue that a company is a separate legal entity distinct from its shareholders and directors as established in ***Salomon v A Salomon & Co Ltd (1897) AC 22 HL***.
- 48 It was further submitted that the remedy of lifting the corporate veil is only available where there is clear and cogent evidence of fraud, illegality or abuse of the corporate form.
- 49 The Respondent argued that the Applicant has made bare and unsubstantiated allegations of fraud and has not adduced any evidence of fraud, misrepresentation or misuse of the corporate structure. Reliance was placed on ***Multichoice Kenya Limited v Mainkam Limited & another [2024] KEHC 13215 (KLR)***.

- 50 The Respondent further submitted lifting of the corporate veil cannot be invoked merely because a company is unable to pay its debts. It cited ***Corporate Insurance Co. Ltd v Savemax Insurance Brokers Ltd & Anor. HCCC No. 125 of 2002 (unreported)*** when Ringera J stated: *“The veil of incorporation is not to be lifted merely because the company has no assets or it is unable to pay its debts and is thus insolvent. In such a situation, the law provides for remedies other than the director of the company being saddled with the debts of the company.”*
- 51 It was submitted that a company’s inability to satisfy a decree does not of itself constitute fraud or justify piercing the corporate veil, and that no concrete evidence of fraudulent or improper conduct by the Respondent’s directors has been presented.
- 52 The Respondent submitted that the Applicant seeks to leapfrog the lawful procedures of execution and impose personal liability on the company’s directors without legal justification, and that allowing such an application would set a dangerous precedent where directors would be exposed to personal liability merely because a company has an unsatisfied decree.
- 53 It is therefore the Respondent’s submission that the application lacks merit and ought to be dismissed with costs.

54 I have examined all the averments and submissions of the parties herein. The applicant seeks to examine the directors of the respondent asserting that her attempt to execute against the respondent has failed to yield any positive results.

55 The respondents object to the application averring that it is premature in addressing this application. I refer to established principles in law on lifting of the corporate veil. In **Ukwala Supermarket vs Jaideep Shah & Another (2022) eKLR**, the court emphasized two conditions that must be met before a corporate veil could be lifted.

(1) that the company is a mere instrumentalist or alter ego of the shareholders or directors and

(2) that adherence to the separate legal entity would promote fraud or injustice.

The claimant must prove both conditions before a court will lift the veil.

56 In **Jepkemoi vs Zaburi Enterprise Co Ltd and 2 Others (Misc C.A. No. 43 of 2023) (2024) eKLR**, the court emphasized that lifting the corporate veil is an exceptional remedy that requires clear evidence of bad faith or fraudulent conduct. The court emphasized that “the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smack of bad faith and that corporate veil is

being used as a mask to fraudulently shield such directors and shareholders from execution of the decree....”

57 In the current application, the applicant has merely asked for the lifting of the corporate veil. There is no indication as to the attempts made to execute against the respondents which failed and any fraudulent dealings the company is engaged in to defeat the rights of their creditors.

58 I will therefore decline the invitation to lift the veil as prayed and order the applicants to proceed and execute against the respondents as they may wish. However, as concerns the application to examine the company directors under order XXI Rule 36, the purpose is to obtain discovery for the purpose of execution of a decree against the company. This was as held in **Ultimate Laboratories** case (supra).

59 The applicant has averred that they are unable to trace the respondent’s property for execution purposes. This would therefore be apt to allow examination of the directors for purpose of execution to ascertain whether or not there are any debts, owing to the JD or whether the JD has any kind of property or means of satisfying the decree.

60 The application is therefore allowed to the extent that the directors shall be summoned to court for examination as prayed by the applicants. Costs in the cause.

**Dated, Signed and Delivered Virtually at Nairobi  
this 29<sup>th</sup> Day of April, 2026.**

**HELLEN WASILWA**

**JUDGE**