

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E832 OF 2023

(Before Hon. Lady Justice Agnes Kitiku Nzei)

JOSEPH THEURICLAIMANT

VERSUS

RHOMBUS CONSTRUCTION CO. LTD ..1ST RESPONDENT

FRANK MUCHINA2ND RESPONDENT

E. GITHINJI KINYANJUI3RD RESPONDENT

RULING

1. Vide its Judgment delivered on **25th April, 2025**, this Court awarded the Claimant a total of **Kshs.500,000/=** and costs of the suit, which the Court ordered to be taxed at the lower scale. The Claimant was also awarded interest on the awarded sum, at Court rates. The Court's record shows that on **18th June, 2025**, the Court's Deputy Registrar, sitting as a Taxing Officer, taxed the Claimant's costs at **Kshs.114,755.20**.

2. Subsequently, and after what appears to have been an attempt to execute the Court's decree by attachment of the 1st Respondent's Movable Property, the Claimant filed a Notice of Motion dated **3rd October, 2025** seeking the following Orders:-

(a) That **Carolyn Kirigo Murage** and **E. Githinji Kinyanjui**, being Directors of the 1st Respondent, do attend Court and be examined under oath as to the 1st Respondent's asset status and whereabouts, and to produce the 1st Respondent's books of accounts and other documentary evidence showing the same before the Court.

(b) That in default of **prayer (a)** above, this Court **lift the veil of incorporation** and hold the said Directors personally liable to pay the decretal amount due to the Claimant in **NAIROBI ELRC CASE NO. E832 of 2023** or be imprisoned and committed to civil jail for a period not less than six (6) months; and

(c) That costs of the application be borne by the Respondent.

3. The application sets out on its face the general grounds on which it is brought, and is based on the Applicant's annexed supporting affidavit sworn on 3rd October, 2025. It is deponed in the said supporting affidavit:-

(a) *that upon delivery of the Court's Judgment and taxation of costs, the Claimant/Applicant applied for issuance of warrants of attachment against the 1st, 2nd & 3rd Respondents; but the Respondents failed to pay the decretal sum despite numerous attempts to reach out to them.*

(b) *that through **Jenks Auctioneers**, some movable properties that were in the 1st Respondent's premises were proclaimed and a proclamation notice issued; but a search on the same revealed that **none** of those properties were in the name of the 1st Respondent (**Rhombus Construction Company Limited**). That the properties were registered in the names of the Directors and separate legal entities managed and/or controlled by the Directors.*

(c) that the total outstanding amount owed to the Claimant by the Respondents is **Kshs.632,931.23.**

(d) that there is need to establish the 1st Respondent/Judgment debtor's means and assets to enable the Claimant/Decree holder to establish the most efficient mode of execution.

(e) that **Carolyn Kirigo Murage** and **E. Githinji Kinyanjui** are the directors of the 1st Respondent/Judgment debtor.

(f) that the decree herein remains unsatisfied to-date, and it is in the interest of Justice that orders sought be issued to finalize execution, and allow the decree holder to obtain the decretal sum.

4. Documents annexed to the supporting affidavit include copies of a proclamation of attachment of movable property dated 16th July, 2025, an Auctioneer's Bill of Costs, a Copy of Records on the 1st Respondent's Directorship, and copies of motor vehicle log books, among other documents.

5. The application is **not** opposed, though shown to have been served.

6. When the application came up for hearing on **3rd November, 2025**, Counsel for the Claimant/Applicant prayed for issuance of summons as sought in **prayer (a)** in the application herein (set out at paragraph 2 of this Ruling. The Court ordered for issuance of summons on the 1st Respondent's Directors, **Carolyn Kirigo Murage** and **E. Githinji Kinyanjui**, to attend Court virtually on **4th December, 2025** for purposes of being examined on oath regarding the 1st Respondent's asset status and whereabouts; and to produce the 1st Respondent's books of accounts and other documentary evidence showing the same.

7. The aforesaid Directors of the 1st Respondent did **not** obey the aforesaid summons, though shown to have been served. They did **not** attend Court on 4th December, 2025. The matter is **now** before me for determination of **prayers (b) and (c)** in the application dated **3rd October, 2025**; which prayers are set out at paragraph 2 of this Ruling.

8. The decree herein **is against the 1st Respondent company**; and the Claimant has demonstrated that the said company's Directors/Shareholders are **Carolyn Kirigo Murage** and **E. Githinji Kinyanjui**. A copy of the said company's copy of records (dated 1st October, 2025) is among the documents filed with the application, as already stated in this Ruling.
9. Having considered the application, which is **not** opposed, and all the documents thereto annexed, the single issue falling for determination is whether the orders sought by the Claimant/Applicant are merited.
10. The doctrine of separate legal personality is the cornerstone of company law. Upon incorporation, a company acquires a legal personality that is distinct from that of its shareholders and directors. This principle underpins the concept of limited liability, and ordinarily shields directors from personal liability for debts and obligations of the company. In Kenya, however, Courts have consistently recognised the fact that a corporate veil is **not** absolute.

11. The Court of Appeal stated as follows in the case of **Githunguri Diary Farmers Co-operative Society - vs - Ernie Campbell & Co. Ltd & Githunguri Diary Plant Company Limited [2018] eKLR:-**

“. . . the circumstances under which a Court ought to disregard the veil of incorporation are as stated in paragraph 90 of Halsbury’s Laws of England 4th Edition Volume 7(1) as:-

“90. Piercing the 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 a 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."

12. The Court of Appeal further stated as follows in the

Githunguri case (Supra):-

"In its deliberation, the High Court found that the faces behind the two legal entities were the same, which necessitated the piercing of the veil of incorporation. In VTB Capital PLC - vs -

Nutritek International Corp & Another & 3 Others
(Supra), the Court of Appeal (UK) observed that;

“ . . . if the corporate veil is to be pierced, “the true facts” must mean that, in reality, it is the person behind the company, rather than the company, which is the relevant actor or recipient (as the case may be).”

13. It was stated as follows in the case of **Jian Nanxing - vs - COK Fast Company Limited [2018] eKLR:-**

“ . . . the law on lifting of the veil is settled. The circumstances under which a veil of incorporation would be lifted are, *inter alia*, where there is no real formal legal separation between the company and its shareholders’ personal financial affairs and/or that the company is just a sham, or the company’s actions were wrongful and fraudulent, or if the shareholders and/or directors act recklessly in the management of the business of the company, and/or design a scheme to perpetrate financial fraud, and/or if the company’s creditors suffer unjust cost, that is,

they did business with the company and they are left with unpaid bills or unpaid Court Judgment. In all these circumstances, the Court will pierce the veil of incorporation and hold the shareholders and/or directors personally liable.”

14. In the present case, the Claimant/Applicant’s averments that movable properties found by the Auctioneers at the 1st Respondent/Judgment debtor’s premises are registered in the names of the Judgment debtor’s Directors and of entities managed and controlled by the said directors; and could therefore not be sold in execution of the Court’s decree herein, have not been controverted. Documents of ownership of the said movable properties filed with the application herein attest to the foregoing fact. The Claimant/Applicant has demonstrated that there is no real formal legal separation between the 1st Respondent Company and its Shareholders’ personal business affairs; and that the Notice of Motion dated 3rd October, 2025 is merited.

15. I allow the said application in the following terms:-

(a) The 1st Respondent's corporate veil is hereby pierced and lifted, and personal liability regarding this Court's decree herein is hereby imposed on the 1st Respondent's Directors/Shareholders, Carolyn Kirigo Murage and E. Githinji Kinyanjui.

(b) Execution proceedings shall issue herein against the said Directors/Shareholders, jointly and severally, in accordance with the Civil Procedure Rules.

(c) Costs of the application, assessed at Kshs.10,000/=, are awarded to the Claimant/Applicant, and shall form part of the decretal sum herein.

16. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
24TH DAY OF APRIL 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Oduor for the Claimant/Applicant

No appearance for the 1st Respondent

No appearance for the 2nd Respondent

No appearance for the 3rd Respondent