

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 1861 OF 2001

DAVIDSON KARIUKI MAINA T/A

BILL CONSULTSPLAINTIFF/DECREE-HOLDER

-VERSUS-

BOBMILL PROPERTIES LTD ..DEFENDANT/JUDGMENT-DEBTOR

RULING

1. The events leading to the motion dated 24/4/2023 are well within the knowledge of the respective parties. However, to set out the same in brief, **Davidson Kariuki Maina t/a Bill Consults** (*hereafter the Plaintiff/Decree-holder*) filed suit as against **Bobmil Properties Ltd** (*hereafter the Defendant/Judgment-Debtor*) seeking judgment in the sum of Kshs. 7,131,431/-; costs of the suit; and interest on the above. The suit was heard and determined whereinafter, **Sitati, J.** on 01/10/2009, proceeded to dismiss the Plaintiff's suit with costs.
2. Aggrieved with the outcome, the Plaintiff lodged an appeal before the Court of Appeal, vide **Nairobi Civil Appeal No. 188 of 2013**, which was determined on 24/05/2019 his favour, wherein the decision by **Sitati, J.** was substituted with an order entering judgment in favour of the Plaintiff for the sum of Kshs. 7,131,431/- together with interest and costs. Consequently, a decree was issued in the sum of Kshs. 26,628,829/- alongside

warrants of attachment in respect of the Defendant's movable property.

3. The Plaintiff thereafter moved this Court vide the instant motion dated 24/04/2023 pursuant to **Order 22 Rule 35** of the **Civil Procedure Rules (CPR)** seeking among other orders, examination of **Jaimin Vipin Kumar Nathalal Shah, Milan Kumar Nathalal Shah** and **Gita Bharat Shah** (*hereafter the Defendant's directors/shareholders*) as to whether the Defendant/Judgment-debtor company has any property or means of satisfying the decree, costs and interest; and in default the directors of the Defendant/Judgment-debtor be ordered to personally pay the decretal amount plus accrued interest or be committed to civil jail for a period of not less than six (6) months.
4. Vide a ruling delivered on 19/10/2023, **Ongeri, J.** allowed the Plaintiff's motion by ordering that the Defendant/Judgment-debtor's directors/shareholders do file an affidavit of means within thirty (30) days of the ruling; that the Defendant/Judgment-debtor's directors/shareholders be summoned to appear before Court for purpose of cross-examination on the said filed affidavit of means within sixty (60) days of the ruling; and that Defendant/Judgment-debtor's directors/shareholders be personally served with the summons.
5. On 03/03/2025, counsel for the respective parties appeared before this Court. The Plaintiff's counsel took issue with an affidavit filed by one **Milan Kumar Nathalal Shah** dated **17/11/2023**, on the premise that his affidavit of means was in

respect of a company incorporated in Uganda and not the Defendant/Judgment-debtor. Counsel therefore posited that there was non-compliance with **Ongeri, J.'s** orders issued on 19/10/2023 and thus urged the Court to order that the directors/shareholder of the Defendant/Judgment-debtor to personally pay the decretal amount p3 lus accrued interest or be committed to civil jail for a period of not less than six (6) months.

6. On the part of the Defendant/Judgment-debtor, counsel posited that **Milan Kumar Nathalal Shah** was available and ready for cross-examination and that he was one of three of the Defendant's directors/shareholders. Upon consideration of the rival submissions this Court reserved a ruling on the aforestated contestation.
7. On 29/07/2025, this Court rendered itself and directed as follows -;

“19.....

20. Accordingly, the Court orders the surviving shareholders in Bobmil Properties Limited, and in particular Milan Kumar Shah as per the search annexed to the affidavit of means sworn on 17/11/2023 and one Vipin N. Shah, attend Court and be orally examined on whether any or what debts are owing to the company and whether the judgment debtor has any or what property or means of satisfying the decree herein.

21. They will also be required to produce any relevant documents or copies thereof on the assets of the Ugandan

registered Bobmil Properties Limited, and any books of accounts, company title documents, if any, which they may have obtained as shareholders of the Judgment-Debtor herein”

- 8.** It is on the premise of the above directions, that on 29/09/2025, when parties appeared before this Court, counsel for the Plaintiff/Decree-holder proceeded to cross-examine **Milan Kumar Nathalal Shah** in respect of his affidavit of means **dated 17/11/2023**.
- 9.** The gist of his evidence **on cross-examination** was that he was aware of the matter however it was his late brother who was handling the Defendant’s business. He stated that the subject of the suit concerned services offered by the Plaintiff over a building that was to be constructed in Uganda wherein the property upon which the construction was to take place belonged to Bobmil Properties Ltd – Uganda. However, he stated that the said property was dormant and he had no idea who owns the property or what transpired. He confirmed being a director of the Defendant/Judgment-debtor, as registered in Kenya, and that the latter owns assets, but he had no knowledge as to their whereabouts. In summation, he maintained that the Plaintiff’s claim concerns Bobmil Properties Ltd - Uganda and that his evidence was in no way an attempt to protect the Defendant/Judgment-debtor.
- 10.** In **re- examination**, he stated that Bobmil Properties Ltd – Uganda has a share capital of Ushs. 1 million, it has no assets, does not trade whereas two (2) out of its three (3)

directors/shareholders are deceased. He maintained that the Defendant has no relationship with Bobmil Properties Ltd – Uganda and that he is unaware as to what transpired with the latter property in Uganda.

11. Directions were taken thereafter on filing of submissions. The parties complied. That said, the Court has duly considered **Milan Kumar Nathalal Shah** affidavit, his oral evidence and submissions on record from which the **following issues are flagged for determination:**

- 1. Whether Milan Kumar Nathalal Shah has established any debts owing to the Defendant/Judgment-debtor or whether the latter has any property or means of satisfying the decree of this Court?*
- 2. Whether the directors and or shareholder of the Defendant/Judgment-debtor ought to be ordered to personally pay the decretal sum together with costs and interest standing at Kshs. 26,628,829/- as at 05/08/2022 and all accrued interest?*
- 3. Whether the directors and or shareholder of the Defendant/Judgment-debtor ought to be committed to civil jail for a period of not less than six (6) months?*

Whether Milan Kumar Nathalal Shah has established any debts owing to the Defendant/Judgment-debtor or whether the latter has any property or means of satisfying the decree of this Court?

12. The proceedings of 29/09/2025 anchor on the provision of Order 22 Rule 35 of the Civil Procedure Rules (CPR) which 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.

13. The purport of the above provision was sufficiently addressed by this Court in its earlier rulings of 19/10/2023 and 29/07/2025, as such, I wish not revisit the same. That said, Kimaru, J. (as he then was) in the case of **Masifield Trading (K) Ltd vs Rushmore Company Limited & another [2008] KEHC 798 (KLR), addressing himself to (Order XXI Rule 36) now Order 22 Rule 35 of the CPR** observed that-;

“By examining such an officer, the court may or may not lift the veil of incorporation.”

14. Pertinent, to the above, is the duty of this Court, which was extensively discussed in the of-cited decision of Ringera, J. (as

he then was) in **Ultimate Laboratories v Tasha Bioservice Ltd: Nairobi HCCC No. 1287 of 2000** (unreported) as follows:

“The court’s duty under the Order and Rule in question is limited to ensuring that the person being examined answers all the questions which are fairly, pertinent and properly asked and it is thereafter up to the decree holder to use the said information to proceed with execution where the examination unearths assets or other means of satisfying the decree..... While I agree with the defendant’s/judgment debtor’s advocate 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 judgment debtor and whether the judgment-debtor has any and what property or means of satisfying the decree, I don’t agree that the court does not have the power in an application in execution which is grounded under the above provisions as well as the inherent power of the court and all other provisions of the law to lift the corporate veil of the company and order the director to personally discharge the debts of the company”.

15. Here, it is not in dispute that judgment and or decree was issued in favour of the Plaintiff as against the Defendant/Judgment-Debtor. Subsequently, vide a motion brought pursuant to **Order 22 Rule 35 of the CPR**, the former sufficiently demonstrated to the Court that **Milan Kumar**

Nathalal Shah is a director/shareholder of the latter thereby leading to the filing of an affidavit of means and attendant cross-examination. By his affidavit, **Milan Kumar Nathalal Shah, confined his evidence, on Bobmil Properties Ltd – Uganda,** while failing to explain whether any or what debts are owing to the Defendant/Judgment-Debtor and whether the Defendant/Judgment-Debtor has any or what property or means of satisfying the decree herein. On cross-examination, **he hinted** that the Defendant/Judgment-Debtor owns assets and that he knew the whereabouts however fell short of setting out the same.

- 16.** Further, his veil attempts to rope in Bobmil Properties Ltd – Uganda, as being the rightful Defendant/Judgment-Debtor in the instant proceedings, in my estimation was late in the day, misguided and short of a mischievous attempt to avoid the purport of the proceedings on 29/09/2025. Meanwhile, by dint of this Court's directions on 29/07/2025, it was obligatory of Milan Kumar Nathalal Shah, to avail books of accounts either by way of the Defendant's audited accounts or title documents, if any, towards assuaging the Plaintiff's attempts at piercing the Defendant/Judgment-Debtor corporate veil.
- 17.** Further, Milan Kumar Nathalal Shah alongside Jaimin Vipin Kumar Nathalal Shah failed to pick up the gauntlet on the forestated when they eschewed to demonstrate any debts owing to the Defendant/Judgment-debtor, or whether the latter has any property or means of satisfying the decree of this Court.

Whether the directors and or shareholder Defendant/Judgment-debtor ought to be ordered to personally pay the decretal sum together with costs and interest standing at Kshs. 26,628,829/- as at 05/08/2022 and all accrued interest?

- 18.** In addressing the above question, the Court has been called upon to pierce the Defendant/Judgment-Debtor corporate veil. Concerning the aforesaid, the Court of Appeal in *Victor Mabachi & another v Nurtun Bates Limited* [2013] KECA 204 (KLR) concisely stated that “[A company] as a body corporate, is **persona** juridica, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil” See also-; *Salomon v Salomon* (1897) AC 22 HL.
- 19.** The same **Court in *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR)**, addressing itself to the above question of piercing of the corporate veil, went to quote with approval Para. **402 of *Halsbury’s Laws of England 4th Edition Vol. 7(1)*** where the learned authors stated that-;

“.....or where the court will ‘pierce (or lift) the corporate veil’, not because it considers it just to do so but because special circumstances exist indicating that it is a mere façade concealing the true facts. In identifying what is a mere façade, the motive of those behind the company will be relevant. The court will go behind the 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. The device of a corporate structure will often have been used to evade limitations imposed on conduct by law and rights of relief which third parties already possess against a defendant, so justifying the court's 'piercing' (or 'lifting') the veil. Additionally, the court stated:

20.Where, however, 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. Nor is the court entitled to lift the veil as against a company which is a member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the company will fall on another member of the group rather than the defendant company.

21. The court continued to say:-

It may be that liabilities or obligations will arise without piercing the corporate veil because there is an agency relationship between a parent company and subsidiary, or between a company and its shareholders, but this may not be inferred merely from control of the company or ownership of its shares or from the level of paid up capital. It will depend on an investigation of all aspects of the relationship between the parties and there is no presumption of such agency."

22. The Court in **Riccatti Business College of East Africa Limited** (supra) went on to observe that-;

“The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.

Ringera, J (as he then was) in Corporate Insurance Company Limited v Savemax Insurance Brokers Limited [2002] EA 41 found that:

“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.”

It is obvious, then, from all the issues we have considered that a court can lift the corporate veil subject to strict conditions being satisfied for such action to be taken.

23. In **Salomon** (supra), it was held that piercing of the corporate veil, such as in the instant matter, would entail an examination of the directors of the company to have them personally liable for the decretal sum in favour of the Plaintiff, that remains unsatisfied. However, it must be recalled that such veil may only

be lifted in the face of apparent adversity such as fraud or other misconduct of similar gravitas.

To the above end, this Court concurs with the rendition of **Gikonyo, J. in Kolaba Enterprise Ltd v Shamsudin Hussein Varvani & another [2014] eKLR**, wherein the judge addressed himself as follows -;

“... [the] separate legal personality of a company can never be departed from except in instances where the statute of 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.”

- 24.** Here, the directors of the Defendant/Judgment-debtor, opted to deflect **Order 22 Rule 35** of the **CPR** through Milan Kumar Nathalal Shah affidavit. As earlier noted, his affidavit and examination fell short of establishing any debts owing to the Defendant/Judgment-debtor or whether the latter has any property or means of satisfying the decree of this Court. Further, it would appear that he mischievously opted for avail company information with respect to **Bobmil Properties Ltd – Uganda**, rather than the Defendant/Judgment-Debtor, in an attempt to hoodwink the Court that the latter is insolvent. Equally, on being pressed whether the Defendant/Judgment-Debtor has any assets, he affirmed the same however fell short of disclosing their particulars and whereabouts.

25. While fraud or criminal activity was not demonstrated by the Plaintiff, here I concur with Odero, J. in **PCEA Tumu Tumu Hospital v Medicomp Techno Services [2025] KEHC 3053 (KLR)** wherein the judge observed that the main purpose of cross-examination was enable the Plaintiff establish whether the Defendant/Judgment-Debtor owned assets which could be sold to satisfy the decretal sum.

26. Notably, **Milan Kumar Nathalal Shah** either by design or default deliberately failed to divulge such necessary information. The latter's evidence was in bad faith and cautious towards aversion of the real issue in controversy or under inquiry. Further, acquiescing to knowledge of Defendant/Judgment-debtor assets and failing to disclose the same, manifestly portends mischief. In any event, Milan Kumar Nathalal Shah and Jaimin Vipin Kumar Nathalal Shah failed to avail books of accounts and thus ought to be held personally liable, jointly and severally, to pay the decretal sum together with costs and interest standing at Kshs. 26,628,829/- as at 05/08/2022 and all accrued interest.

Whether the directors and or shareholder of the Defendant/Judgment-debtor ought to be committed to civil jail for a period of not less than six (6) months?

27. On the above, Section 38 of the Civil Procedure Act (CPA) specifically provides that-;

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

(a)

(b)

(c)

(d) by arrest and detention in prison of any person;

(e)

(f)

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—

(i) is likely to abscond or leave the local limits of the jurisdiction of the court; or

(ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of

the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law, for the time being in force, is exempt from attachment in execution of the decree; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

28. The above provision as read with relevant provisions of **Order 22 of the CPR** provide for the procedure of execution. Earlier, in this ruling, the Court arrived at the determination that both **Milan Kumar Nathalal Shah and Jaimin Vipin Kumar Nathalal Shah**, be held personally liable, jointly and severally, to pay the decretal sum together with costs and interest standing at Kshs. 26,628,829/- as at 05/08/2022 and all accrued interest. Nevertheless, it is trite that execution towards satisfaction of a money decree, the edicts of **Section 38 of the CPA** must first be exhausted.

While arrest and detention in prison of a judgment-debtor is duly recognized as a mode of execution by dint of **Section 38 of the CPA** and **Order 22 Rule 26 of the CPR**, the Act and Rules contemplate the due procedure to be followed before committing a person to civil jail. Odunga, J, (as he then was) in **Elizabeth Munge & another v Elizabeth Mazibo Kiberenge & 2 others [2021] KEHC 9610 (KLR)** purposefully observed that *“...the*

course of committal to civil jail will only be resorted to in appropriate cases and the guidelines for determining whether a particular case is appropriate for such course must necessarily depend on whether the conditions stipulated under **Section 38 of the Act** have been fulfilled.”

29. The Court in **Braeburn Limited vs. Gachoka and Another [2007] 2 EA 67** intricately addressed itself to the question of arrest, detention, committal to civil jail and contempt of Court by stating as follows -;

“Rules 18 and 32 of Order 21 of the Civil Procedure Rules do meet and in a very special way in relation to a debtor surpass the standard laid down in the Constitution for the deprivation of a person’s liberty. This is so because the deprivation of a person’s liberty whether for contempt of court (under section 72(1)(b) of the Constitution), or for default to pay a money decree, is in the nature of criminal proceedings and for a person to suffer the loss of liberty, it must be in the words of that hackneyed phrase, be proved beyond reasonable doubt, that he has the means to pay but that he has refused and/or neglected to pay...To Conform with that high standard proof, the discretion conferred upon the court to either issue a warrant of arrest and instead issue a notice calling upon the judgement to appear before the court on a day to be specified in the notice and show cause why he should not be committed to prison, must be construed, strictly, that is to say mandatorily, that upon an application by a decree holder

for execution of a money decree by way of arrest and committal to prison the court to which an application is made for issue of a warrant of arrest shall in the instance first issue a notice to the judgement debtor to appear in court and show cause why he should not firstly be arrested, and secondly, committed to prison. That is the first step towards the execution of a decree for payment of money...The second step is the examination of the judgement debtor when he appears in court. Of course if he does not appear, the court issuing the notice in the first instance is at liberty to issue a warrant of arrest and if arrested, the judgement debtor may be detained in prison pending his appearance in court and may be released upon provision of security to ensure his attendance or appearance in court...If however the debtor appears to the notice to show cause, which is mandatory, in terms of the said Order 21, rule 35, or pursuant to his arrest and appearance before he can be committed to prison, it is the duty of the decree holder (who has sought the arrest and committal of the judgement debtor to prison) to satisfy the court that the judgement debtor is not suffering from poverty or any other sufficient cause and is able to pay the decretal sum that: (i) the judgement debtor, with the object or effect of obstructing or delaying the execution of the decree: (a) is likely to abscond or leave the local limits of jurisdiction of the Court; (b) has, after the institution of the suit, in which the decree was passed, dishonestly transferred, concealed or removed any party of his property

or committed any other act of bad faith in relation to his property; or (ii) the judgement-debtor has or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof and refuses or neglects or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempted from attachment, in execution of the decree; or (iii) that the decree is for a sum for which the judgement-debtor was bound in a fiduciary capacity to account (trustees or persons holding moneys in a professional capacity or in trust)...In essence, the judgement debtor should be examined in the manner envisaged in Order 21, rule 36 as to the debtor's total wealth and indebtedness to determine the judgement debtor's total ability or inability to pay and whether such inability to pay is from poverty or other sufficient cause. It is only after the court is satisfied of these matters, after subjecting the judgement-debtor to due process in the manner construed, the requirements of mandatory notice, before a warrant of arrest may be issued for his arrest and compulsion to attend or appear before a court can decree for payment of a money debt be executed upon a judgement debtor by way of arrest and committal to prison...The execution of a judgement decree by way of arrest and committal to prison is extreme in nature. It deprives a citizen of his liberty, to do so, the highest standards, that is to say, the constitutional safeguards as to due process by way of notice of intended execution of

the decree by way of arrest and committal be given to the judgement debtor as a first step and as a second step, a due inquiry and satisfaction to the court, by the decree holder, as to judgement debtor's ability to pay and refusal and/or neglect to pay, and therefore the necessity to punish him for contempt of a court order by depriving him of his liberty...It is clear under both **section 38 of the Civil Procedure Act and Order 21, rule 35(1)** that no judgement-debtor will, on account of his inability from poverty or other sufficient reason, be arrested and committed to prison...The section is not vindictive and the Court, in the exercise of its discretion would not order the imprisonment of a defaulting trustee unless it was likely to be productive of payment..."

30. With due regard to the above rendition, the Court reasonably believes it has addressed itself on the above question on whether the directors and or shareholder of the Defendant/Judgment-debtor ought to be committed to civil jail for a period of not less than six (6) months.

While it is not in dispute that there is a decree of the Court that is yet to be settled, the exhortation in Braeburn Limited (supra) requires that committal towards realization of the decree be exercised as a matter of last resort upon establishing that the Judgment/Debtor has willfully refused and or neglected to settle the decretal sum.

31. In the end, the commending orders in light of the above findings is that -;

- a) *The application dated 24/4/2023 is merited and is accordingly allowed in terms of prayer 2 and 3 thereof.*
- b) *Milan Kumar Nathalal Shah and Jaimin Vipin Kumar Nathalal Shah as directors/shareholders of the Defendant are jointly and severally held personally liable to pay the decretal sum together with costs and interest standing at Kshs. 26,628,829/- as at 05/08/2022 and all accrued interest in respect of the decree of this Court.*
- c) *Notice hereby issues to Milan Kumar Nathalal Shah and Jaimin Vipin Kumar Nathalal to attend court in person on an appointed date to show cause why they should not be committed to civil jail for a period of not less than six (6) months.*
- d) *Costs of the application shall be borne by the Defendant, Bobmill Properties Limited.*

It is so ordered.

Delivered Dated and Signed at Nairobi this 30th Day of April 2026.

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JANET MULWA.

JUDGE