

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**MISCELLANEOUS CIVIL APPLICATION NO. E718 OF 2022**

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF**  
**KENYA**  
**AND**  
**IN THE MATTER OF THE ADVOCATES REMUNERATION**  
**ORDER**  
**BETWEEN**

**MUSYOKI BENSON & ASSOCIATES**  
**ADVOCATES.....APPLICANT**  
**VERSUS**  
**RUDUFU LIMITED.....RESPONDENT**

**RULING**

**Introduction**

1. Before this Court are two interrelated applications arising from the taxation of an Advocate-Client Bill of Costs.
2. The first is the **Notice of Motion dated 15th April 2024** by the Client/Respondent seeking, inter alia, to set aside the taxation proceedings, stay execution, and be granted an opportunity to be heard on merit.

3. The second is the **Notice of Motion dated 13th June 2024** by the Advocate/Applicant seeking orders to summon and examine the directors of the Respondent company and, in default, to lift the corporate veil so as to satisfy the decretal sum.
4. The material facts are largely undisputed. The Advocate rendered legal services to the Respondent and subsequently filed an Advocate-Client Bill of Costs dated 3rd October 2022 for Kshs. 15,961,187.80.
5. The Bill of Costs was taxed on **11th August 2023** at **Kshs. 7,111,049.79**, and a Certificate of Taxation issued on **27th September 2023**. Judgment was thereafter entered in favour of the Advocate for the taxed sum together with interest at 14% per annum.
6. The Client contended that it was never served with the Bill of Costs, the taxation proceedings, or the application for judgment, and only became aware of the matter after execution steps were initiated.
7. The Advocate, on the other hand, maintained that service was properly effected, but the Respondent failed to oppose the Bill of Costs, nor file a reference under Paragraph 11 of the Advocates Remuneration Order. The Advocate asserts

that the application is incompetent and intended to delay settlement of a lawful decree.

8. The Advocate further contended that the Client has frustrated execution by concealing its operations, thereby necessitating the present application for production of the company's records and lifting of the corporate veil to enable recovery from the directors personally in the interests of justice.
9. The Client company, through its director, **Simon Ngigi Kimani**, filed a replying affidavit sworn on 27 June 2025 opposing the Advocate's motion to lift the corporate veil.
10. Mr. Kimani stated that the Respondent is a limited liability company with a separate legal personality under section 16(2) of the Companies Act, and that no exceptional circumstances, fraud, misrepresentation, or improper conduct by the directors had been established to justify piercing the corporate veil.
11. He denied the allegations of office closure, relocation, or evasion, and asserted that the Respondent was not served with the bill of costs application and was unaware of the decree. The Respondent argued that the directors cannot be held personally liable absent evidence of dishonesty or breach of duty under section 1002 of the Companies Act.

12. The affidavit further contended that the documents sought by the Applicant-books of account, title deeds, audited reports, and other confidential records-are protected by law, and that the application was oppressive, misconceived, speculative, and an abuse of court process.
13. The Respondent maintained willingness to engage on lawful execution or settlement mechanisms and requested dismissal of the application with costs.

### **Analysis and Determination**

14. The Court has duly considered the pleadings, affidavits, and submissions, and identifies the following two main issues for determination:
  - i. Whether the taxation proceedings should be set aside on account of non-service and denial of the right to be heard.
  - ii. Whether the application to examine directors and lift the corporate veil is merited

### **Whether the taxation proceedings should be set aside**

15. The law governing service of court process is clear. Under **Order 5 Rule 22B of the Civil Procedure Rules**, service by email is only effective where it is sent to the correct address, and a delivery receipt confirming service is produced. Rule 22B provides for electronic mail service as follows:

“(1) In addition to any other method of service provided under these Rules, a court may direct that service of summons be effected through electronic mail (email).

(2) Service through email shall be deemed to have been effected when the sender receives a delivery receipt.

(3) An affidavit of service shall be filed attaching the electronic mail sent and delivery receipt as proof of service.”

16. The Respondent has challenged service, specifically stating that the email used did not belong to it, and that no delivery receipt was provided.

17. The burden of proving service lies with the party asserting it, pursuant to **Section 107 of the Evidence Act**. Further, courts have consistently held that where service is disputed and not satisfactorily proved, proceedings conducted ex parte cannot stand.

18. The decision in **Sifuna & Sifuna Advocates v Patrick Simiyu Khaemba [2021] eKLR**, relied upon by the Respondent, emphasizes that mere sending of an email without proof of delivery is insufficient.
19. In the present case, the Advocate has not demonstrated, by cogent evidence, that proper service was effected in compliance with the law.
20. More fundamentally, Article 50(1) of the Constitution guarantees every party the right to be heard. Denial of that right renders proceedings liable to be set aside *ex debito justitiae*.
21. Accordingly, this Court finds that the Respondent was not properly served. The taxation proceedings were conducted without affording the Respondent a hearing, and the resultant certificate of taxation and consequential orders cannot stand.
22. Given the finding above, it follows that the substratum of execution (the taxation and judgment) is in question. It therefore follows that it would be unjust to allow execution to proceed.

23. Stay of execution is therefore warranted pending fresh taxation proceedings.

**Whether the application to examine directors and lift the corporate veil is merited**

24. The Advocate seeks to lift the corporate veil. The principle in **Salomon v Salomon & Co. Ltd [1897] AC 22** remains that a company is a separate legal entity. Courts will only lift the veil in exceptional circumstances, such as fraud, improper conduct, or where the company is used as a façade.

25. In this case, the decree upon which the application is anchored has now been impugned. There is no conclusive evidence of fraud or misuse of the corporate form. Consequently, the Court finds that the threshold for lifting the corporate veil has not been met.

26. In the result, the Court allows the Notice of Motion Application dated 15 April 2024, and issues the following orders: -

- i. The taxation proceedings, ruling of 11th August 2023, and the Certificate of Taxation dated 27th September 2023 are hereby **set aside**.

- ii. The Advocate-Client Bill of Costs dated 3rd October 2022 shall be heard afresh before a different taxing officer.
- iii. Stay of execution is hereby granted pending fresh taxation.
- iv. The Notice of Motion dated 13th June 2024 seeking examination of directors and lifting of the corporate veil is dismissed.
- v. Costs of the application dated 15th April 2024 shall be in the cause, while the application dated 13th June 2024 is dismissed with costs to the Respondent.

27. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI  
THIS 10<sup>TH</sup> DAY OF APRIL 2026**



**HON. MR. JUSTICE MOSES ADO**  
*Judge of the High Court*

**In the presence of: -**

*C/A - Moses*

*Ms. Arum.....for the Applicant*

*Ms. Simiyu h/b for Ongoto.... for the Plaintiff/Respondent*