



**Muthoga v Devkan Enterprises (Cause E935 of 2023)
[2026] KEELRC 1208 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E935 OF 2023**

CN BAARI, J

MAY 7, 2026

BETWEEN

NANCY WAMBUIT MUTHOGA CLAIMANT

AND

DEVKAN ENTERPRISES RESPONDENT

RULING

1. This ruling relates to the Claimant's Motion dated 28th January, 2026, brought pursuant to Section 12 of the *Employment and Labour Relations Court Act*. The Claimant/Applicant seeks the following reliefs:-
 - i. That this Honourable Court do issue an Order for lifting of the veil of the Judgment debtor and for the Directions to personally settle the decree jointly and severally.
 - ii. That this Honourable Court do issue an Order for lifting of the veil of the Judgment debtor and for the Directors, namely Shantal Khimji Shah, Rajan Devchand Shah, Meehir Deuchabd Punja, Mamta Rajan Shah, and Sejal Meehir Shah, to personally settle the decree herein.
 - iii. That this Honorable Court do issue an Order that the directors of the Respondent namely Shantal Khimji Shah, Rajan Devchand Shah, Meehir Deuchabd Punja, Mamta Rajan Shah and Sejal Meehir Shah, do personally appear in court for oral examination on the assets and liabilities of the Respondent company and/or the said directors should be held personally liable for payment of the outstanding decretal sum of Kshs. 3,124,001 together with costs of interest Kshs. 272,755 at the court rate as from 29th September, 2025, until payment in full.
 - iv. That this Honorable Court do issue an Order directing the Respondent, namely, Shanta Khimji Shah, Rajan Devchand Shah, Meehir Deuchabd Punja, Mamta Rajan Shah, and Sejal Meehir Shah, to produce all books of accounts, bank statements. annual returns, tax payment, record/declarations, list of past and present assets, cheques, audited accounts, and any other



information relating to the past and present status of the respondent company from 2025 to date.

- v. That the costs of this application be provided for.
2. The application is supported by the grounds on the face thereof and the affidavit sworn by the Applicant on 28th January, 2026.
3. The Applicant contends that the decree holder obtained judgment against the Respondent on 29th September 2025, but the decree remains unpaid despite unsuccessful attempts to execute through debt attachment.
4. The Applicant further argues that the Respondent's directors may be holding assets in their personal names and therefore seeks to lift the corporate veil so that the directors can be held personally liable for the outstanding sum. Additionally, the Applicant avers that it is only fair that the said directors appear in court for an oral examination of the company's assets and liabilities and produce financial and corporate records from 2025 to date.
5. The Respondent opposed the Motion vide a Replying affidavit sworn by one MEEHIR SHAH, a director of the Respondent's company, on 16th February, 2026.
6. The deponent states that the Respondent Company is a separate legal entity from its directors and shareholders, as established in the case of *Salomon v. Salomon & Co. Ltd.* (1897), which it contends remains good law. It is further stated that the Respondent Company obtained various credit facilities from Bank of Baroda, which secured the lending through an all assets debenture dated 25th February 2020, granting the bank a charge over all the Company's assets.
7. The deponent further avers that under the debenture, the directors/shareholders also provided personal security in the form of immovable property, being Town House No. TH4 on L.R. No. 209/7826, Mugumo Crescent, Kyuna Estate, Nairobi, listed in Schedule II of the agreement.
8. The Respondent states that the Company later experienced severe financial hardship following the COVID-19 pandemic, which disrupted operations and rendered it unable to service its debts, and that despite efforts by the directors to revive the business, including seeking the Bank's consent in December 2022 to sell the charged property to offset liabilities, the proposed sale was unsuccessful.
9. The deponent states that the directors and shareholders have made all possible efforts to salvage the Respondent Company's financial position without success. He avers that the Company and its directors were served on 30th September 2025 with a 45 day redemption notice by auctioneers acting on instructions of Bank of Baroda Kenya Limited, due to outstanding debts exceeding Kshs.29.6 million and EUR 526,927.99, which indicates that the Company is financially distressed and unable to meet its obligations, especially since all its assets are secured under the debenture.
10. On legal advice, the deponent maintains that courts only lift the corporate veil in exceptional circumstances, and financial hardship alone is insufficient, and that the Applicant has not demonstrated any such special circumstances, relying merely on the fact that directors own personal property, which is not unlawful.
11. It is further argued that the Company's financial difficulties should not be transferred to the directors personally.
12. The deponent argues that the application is fatally defective as it fails to provide valid grounds for lifting the Respondent Company's corporate veil and improperly seeks to transfer the company's debts to its directors/shareholders personally.



13. Parties canvassed the motion by way of written submissions, which have been duly considered.

Analysis and Determination

14. I have considered the motion, the replying affidavit in opposition, and the submissions by both parties. The issues that arise for my determination are: -

- i. Whether the Applicant has established a legal basis for lifting the corporate veil of the Respondent company.
- ii. Whether the directors can be held personally liable for the decretal sum.

Whether the Applicant has established a legal basis for lifting the corporate veil of the Respondent company

15. In *Jepkemoi v. Zaburi Enterprises Company Ltd & 2 others* (Misc. Civil Application 43 of 2023) [2024] eKLR, the court had this to say on the lifting of the corporate veil: -

“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 the corporate veil is being used as a mask to fraudulently shield such directors or shareholders from execution of the decree. ... The veil may therefore be pierced where it appears that the business of the company has, for instance, been carried on with intent to defraud creditors or for any fraudulent purpose. Only where justice of the case demands should the corporate veil be disregarded and lifted.”

16. Further, in the often-cited case of *Salomon v. Salomon & Co. Ltd.* (1897), the court affirmed that a company is a distinct legal entity separate from its shareholders and directors, and that the liabilities of the company are not automatically transferable to its directors.
17. This principle has been consistently applied in Kenya, including in *Victor Mabachi & Another v Nurtun Bates Ltd*, where the Court of Appeal reaffirmed that directors are not personally liable for company debts unless exceptional circumstances are demonstrated.
18. Similarly, in *Multichoice Kenya Ltd v Wananchi Group Kenya Ltd & 2 Others*, the Court emphasized that lifting the veil is a remedy of last resort.
19. The Respondent has demonstrated that its assets are charged under a debenture to the Bank of Baroda Kenya Limited, that it is under significant financial distress arising from the COVID-19 period, and that recovery efforts are ongoing, including enforcement by secured creditors.
20. This court is alive to the fact that the corporate veil can be pierced or lifted in situations where the company is used to commit fraud, evade legal obligations, or for other improper purposes.
21. There is, however, no evidence that the directors of the Respondent company acted outside their authority, engaged in fraud, or are guilty of any wrongdoing as to warrant the lifting of the veil of incorporation.
22. Further, the Applicant has not demonstrated specific concealment of assets or any deliberate obstruction of execution.
23. In my view, the mere existence of personal assets or prior securities given to a bank does not render directors liable for unrelated company debts.



24. In the end, I find and hold that the Applicant has not established exceptional circumstances justifying the lifting of the corporate veil or the holding of the directors personally liable for the decretal sum.
25. The application lacks merit and is dismissed with no orders on costs.
26. It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 7TH DAY OF MAY, 2026.

C. N. BAARI

JUDGE

Appearance:

Mr. Ojienda present for the Claimant/Applicant

Mr. Mwangi present for the Respondent

Ms. Esther S - C/A

