



REPUBLIC OF KENYA



**Devnarayan Enterprises Ltd v Rotice & 6 others (Environment & Land  
Case 315 of 2019) [2024] KEELC 1806 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1806 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 315 OF 2019**

**OA ANGOTE, J**

**APRIL 11, 2024**

**IN THE END, THE COURT FINDS THAT THE APPLICATION DATED 5TH FEBRUARY,  
2023 IS MERITED AND PROCEEDS TO MAKE THE FOLLOWING ORDERS;**

**I.**

**PATEL RAVJI LALJI AND DEVRAJ RAVJI LALJI BEING DIRECTORS/SHAREHOLDERS  
OF THE PLAINTIFF COMPANY (JUDGEMENT DEBTOR) DO ATTEND COURT ON  
AND BE EXAMINED ON THE RESPONDENT/JUDGMENT DEBTOR'S PROPERTY  
AND/OR MEANS OF SATISFYING THE DECREE HEREIN AND TO PRODUCE  
THE RESPONDENT'S BOOKS OF ACCOUNTS AND OTHER DOCUMENTARY  
EVIDENCE SHOWING THE RESPONDENT'S CURRENT FINANCIAL POSITION.**

**II.**

**THE COSTS OF THE APPLICATION SHALL BE  
BORNE BY THE PLAINTIFF/RESPONDENT.**

**BETWEEN**

**DEVNARAYAN ENTERPRISES LTD ..... PLAINTIFF**

**AND**

**HENRY KIMAITO ROTICE ..... 1<sup>ST</sup> DEFENDANT**

**MUSA K CHEPTOO ..... 2<sup>ND</sup> DEFENDANT**

**TITUS KASUVE ..... 3<sup>RD</sup> DEFENDANT**

**THADDEUS NDEGWA GACII ..... 4<sup>TH</sup> DEFENDANT**

**VERNON MARK GACII ..... 5<sup>TH</sup> DEFENDANT**

**BRIAN & FREDRICK JAMES GACII ..... 6<sup>TH</sup> DEFENDANT**

**NAIROBI COUNTY GOVERNMENT ..... 7<sup>TH</sup> DEFENDANT**



## RULING

1. Vide a Notice of Motion application dated 5<sup>th</sup> February, 2023 brought pursuant to the provisions of Order 22 Rule 35 of the Civil Procedure Rules, the 1<sup>st</sup>-3<sup>rd</sup> Defendants/Applicants seek the following reliefs;
  - i. Patel Ravji Lalji and Devraj Ravji Lalji being Directors/Shareholders of the Plaintiff Company (Judgement Debtor) be ordered to attend this Court on a set date.
  - ii. Upon their attendance, the said individuals be orally examined as to the assets of the Judgement Debtor which may be applied to the satisfaction of the decree herein.
  - iii. Upon their examination, the said individuals be ordered to disclose information relating to the bank accounts held by the Judgement Debtor and to produce such account statements as shall disclose the current financial status of the Judgement Debtor.
  - iv. The Costs hereof be paid by the Plaintiff/Judgement Debtor.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Arthur Ingutya, Counsel on record for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants of an even date.
3. The Defendants' counsel deposed that the auctioneers went to Masai Road where the offices of the Judgement Debtor are located; that the auctioneers met the Directors of the Judgement Debtor who maintained that the Plaintiff does not have assets and that the auctioneers advised that an inquiry should be made to establish the Plaintiff's assets.
4. It was deposed that the application is informed by the search which revealed that the persons sought to be examined are Directors of the Company.
5. In response to the application, the Plaintiff/Respondent, through one of its Directors, Patel Ravji Lalji filed a Replying Affidavit on 11<sup>th</sup> September, 2023. He produced the Company's income tax returns filed at the Kenya Revenue Authority from the years 2015-2019 and acknowledgement receipts for the years 2020 & 2021, as well as financial statements and annual reports from 2015-2020.
6. He deposed that the income tax for year 2015/2016 indicates that the Company made a loss and had fixed assets of Kshs 5,834, 514.52; that in 2016/17, the Company's fixed assets were valued at Kshs 4, 922, 861/12 and generated a taxable income of Kshs 640,000 and that in 2017/2018, the Company's fixed assets were valued at Kshs 4,171, 042 and it made a loss of Kshs 4,622,221.
7. The Plaintiff's Director deposed that in 2018/2019, the value of the fixed assets was Kshs 3,547, 521.27 and the Company made a taxable income of Kshs 5,001,192 from which losses brought forward amounting to Kshs 4,622,22 were deducted and that in 2019/2020, the Company assets were valued at Kshs 3,101,706 and the generated taxable income was Kshs 559, 354/=.
8. According to the deponent, in the annual report and financial statement, the fixed assets are listed at net value to include motor vehicles, office computers, machinery and furniture; that the motor vehicles were valued at Kshs 3,709, 187/= as at December 2015; 1, 411, 767/= as at 30<sup>th</sup> September, 2016; 1,058, 825/= as at 30<sup>th</sup> September, 2017 and 595, 589/= as at 30<sup>th</sup> September, 2019.
9. It is the Plaintiff's position that the machinery, office furniture and fittings were valued at Kshs 8, 340, 852 as at December 2015; 4, 389,213 as at 30<sup>th</sup> September, 2016; 3, 840, 561 as at 30<sup>th</sup> September,



2017 and 2,940,430 as at 30<sup>th</sup> September, 2019, while the computers were valued at Kshs 47,907 as at December, 2015, Kshs 33, 535 as at 30<sup>th</sup> September, 2016; Kshs 23,474 as at 30<sup>th</sup> September, 2017 and Kshs 11, 503/= as at 30<sup>th</sup> September, 2019.

10. He deponed that the format of the 2020 financial statements was updated to comply with the current recommended guidelines and the net book value of the fixed assets owned by the Company are not categorized in the same manner as in other financial statements and that the fixed assets are valued at Kshs 3,101, 706 and trade and other receivables were valued at Ksh 35, 405, 136 in the year 2020.

### Submissions

11. The Defendants/Applicants filed submissions on 23<sup>rd</sup> August, 2023. Counsel submitted that the objective of Order 22 Rule 35 is essentially to ensure that decrees and orders issued against corporate bodies are perfected and executed and that where the assets of a limited liability Company cannot be traced or where execution against a Company is otherwise frustrated, the Court has jurisdiction to summon the Directors of the Company to be taken through scrutiny/examination to ensure that the ends of justice are achieved.
12. Counsel submitted that as affirmed by the Court of Appeal in *Joseph Nyamamba & 4 Others v Kenya Railways Corporation* [2015]eKLR, the imperatives of Article 48 of *the Constitution* which enshrines the right to access justice includes the right to execute decrees issued by the Courts and realize the fruits of judgment and that the Court ought not to allow the Directors of the Plaintiff to hide behind the corporate veil while actively frustrating the orders of the court, a state of affairs that will promote impunity.
13. Counsel submitted that the nature of the orders sought is not prejudicial to the Plaintiff or its Directors; that the dictates of Section 1A (3) of the *Civil Procedure Act* mandates the Plaintiffs' Directors to assist and comply with all the orders of the Court and that the Plaintiff's Directors need to only appear and make such disclosure as shall aid the enforcement of the Courts' Judgment.
14. The Plaintiff's/Respondent's counsel filed submissions on 8<sup>th</sup> September, 2023. Counsel submitted that the Applicants have forfeited their right to have the named Directors attend Court for oral examination as they have opted to argue their application by way of written submissions.
15. It was submitted that the Respondent has produced in Court the income tax returns for the year 2015-2021, annual reports and financial statements for 2015-2020, bank statements from their Guardian Bank account from 2015-August, 2023 and that the production of the foregoing documents means that they have complied with the provisions of Order 22 Rule 35, having produced full records of accounts before the Court and fully disclosed the Plaintiff's financial status.

### Analysis and Determination

16. Having considered the Motion, responses and submissions, the sole issue that arises for determination is whether the Respondents' Directors, Patel Ravji Lalji and Devraj Ravji Lalji should be orally examined on the state of affairs of the Respondent?
17. Order 22 Rule 35 of the *Civil Procedure Rules* provides that;  

“where a decree is for 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.”
18. The foregoing provision is a jurisdiction donated to the Court to assist decree holders to discover information from officers of a corporation whose assets are unknown. The above provisions were considered by the Court in NBI HCCC No. 1287 of 2000 *Ultimate Laboratories v Tasha Bioservice Limited* (unreported) cited by the Court in [Tropical Wood Limited v Samilis international Investments](#) [2017] eKLR thus;
- “(a) Two things emerge from the above proposition. One, the power of the Court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed within the purpose set out in the Rule. That is;
  - (b) ...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.
  - (c) I therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery....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 Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.”
19. In the case of [Postbank Credit Limited \(in Liquidation\) v Nyamangu Holdings Limited](#) (2015) eKLR, the Court persuasively stated thus;
- “A person to be summoned under Order 22 Rule 35 (c) of the Civil Procedure Rules, to provide information on the property of the Company will also be required to produce any relevant documents or copies thereof on the assets of the Company or books of accounts including but not limited to the Judgment Debtor’s annual financial statement, documents of title property of the Company in his possession and which he may have obtained as a director and/or shareholder of the judgment-debtor.”
20. In the present case, the decree that the Applicants seek to enforce arises from the Judgement on Costs entered in favour of the Applicants taxed at the sum of Kshs 2, 428, 210 on 24<sup>th</sup> February, 2022. This is not disputed and neither is it disputed that the aforesaid sum is outstanding.
21. The Applicants assert that their efforts to execute for the same by attachment has not yielded any fruits because the Respondent has no known attachable assets.
22. In response to the application, the Respondent adduced copies of the Company’s income tax returns filed at the Kenya Revenue Authority from the years 2015-2019, acknowledgement receipts for the years 2020 & 2021, as well as financial and annual Reports from 2015-2020. The Respondent asserts that a result thereof, it is fully compliant with the provisions of Order 22 Rule 35.



23. The purpose of issuing summons under Order 22 Rule 35 of the *Civil Procedure Rules* is to ascertain the financial position of a Judgement Debtor after a Decree Holder's attempts to execute a decree have been unsuccessful. This is to ensure that the Decree Holder is not left financially frustrated.
24. Vide their Replying Affidavit, the Respondent has adduced copies of financial reports, audit statements and bank accounts. The Court has considered the adduced reports. They are substantially in respect of the Company's financial position between the years 2015-2020. However, the relevant time period is post 2022 after the decree against them was obtained.
25. In this respect, the Respondent has only adduced the KRA return acknowledgement receipt for the year 2021-2022 in respect of the period between 1<sup>st</sup> October, 2021 and 30<sup>th</sup> September, 2022. This, is admittedly still un-processed and is in the deponent's words not yet an "official document."
26. The Plaintiff/Respondent has also adduced the bank statements for their Guardian Bank Account as at 30<sup>th</sup> August, 2023. The Respondents' deponent however states that they were advised to stop depositing money in that account as soon as they made public its details.
27. Ultimately, the Court is not convinced that the Respondent has through its director's depositions and documents sufficiently demonstrated its current financial position. There are unanswered questions such as the nature and value of the assets currently held by the Respondent. These can only be answered during the oral examination of the Respondent's Directors.
28. It is also noted that the Respondent's deponent has indicated that the Respondent is "functioning and has assets." Despite this assertion, no mention has been made as to how the Respondent intends to settle the outstanding decree.
29. In the end, the Court finds that the application dated 5<sup>th</sup> February, 2023 is merited and proceeds to make the following orders;
  - i. Patel Ravji Lalji and Devraj Ravji Lalji being Directors/Shareholders of the Plaintiff Company (Judgement Debtor) do attend court on and be examined on the Respondent/Judgment Debtor's property and/or means of satisfying the decree herein and to produce the Respondent's books of accounts and other documentary evidence showing the Respondent's current financial position.
  - ii. The Costs of the Application shall be borne by the Plaintiff/Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11<sup>TH</sup> DAY OF APRIL, 2024.**

**O. A. ANGOTE**

**JUDGE**

In the presence of

Ms Wangui for 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants

Mr. Waigara for Plaintiff

Mr. Mwangi for Ingutia for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court Assistant: Tracy

