



**Unda v Pentagon Security Services Limited (Cause 102 of 2018)
[2025] KEELRC 617 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 617 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 102 OF 2018
K OCHARO, J
JANUARY 16, 2025**

BETWEEN

KAHINDI KARISA UNDA CLAIMANT

AND

PENTAGON SECURITY SERVICES LIMITED RESPONDENT

RULING

1. Before this Court is the Claimant's/Decree Holder's application dated 26th September 2024, wherein he seeks the following orders: -
 - a. That summons to issue compelling Nazir Hussein Ahmed and Azmna Farid Ahmed, being Directors and shareholders of the Respondent/Judgment Debtor, to attend court and be examined under oath as to the Respondent/Judgment Debtor's books of accounts and other documentary evidence showing the same before the Court;
 - b. That upon examination of Nazir Hussein Ahmed and Azmna Farid Ahmed, being the Directors and shareholders of the Respondent/Judgment Debtor, this Honourable Court be pleased to lift the veil of incorporation and hold the said Directors and shareholders personally liable to pay the decretal sum of KShs. 185,551.92 being the decretal sum, taxed costs and interest at 12% from the date of judgment or to be imprisoned and committed to civil jail for a period not less than six months; and
 - c. That costs of this application be borne by the Respondent.
2. The application is anchored on the grounds set out on the face thereof and those obtaining on the Applicant's supporting affidavit sworn on 26th September 2024.
3. The Respondent have not opposed the application in any of those ways known in law.



4. The Applicant states that he instituted the suit herein seeking for terminal and contractual dues. Subsequently, the matter was heard and determined in his favour on 13th May 2021. The Court awarded him a sum of KShs. 70,200.
5. The Respondent/Judgment Debtor's Counsel on record was served with a notice of entry of Judgment through a letter dated 20th May 2021, which they duly received.
6. It is stated further that a decree and certificate of costs were extracted on 30th September 2021 in the sum of KShs. 70,200,00 being the judgment sum and taxed costs of KShs. 87,300.00, respectively. The decretal sum has accrued interest at court rates and at the time of filing the instant application, interest accrued stood at KShs. 28,051.92, therefore, bringing the decretal sum to KShs. 185,551.92.
7. The Claimant/Applicant contends that the Respondent appears to be no longer in business and as such it is necessary to establish its means and assets to enable him establish its means and assets to enable him establish the most efficient mode of execution.
8. Following the Respondent's failure to settle the sum of the decree, he took out warrants on 18th February 2022 and instructed Auctioneers to execute the same. Despite frantic efforts by the Auctioneers, no attachable property belonging to the Judgment Debtor was found. The decretal sum remains unsettled therefore.
9. The Claimant/Applicant asserts further that Nazir Hussein Ahmed and Azmna Farid Ahmed are Directors and shareholders of the Respondent Company.
10. The justice of this matter demands that the orders sought in the application be granted.
11. Should the two Directors named above fail or refuse to attend Court, and disclose the assets of the Respondent/Judgment Debtor, they should be held personally liable to settle the Decree herein.

Analysis and Determination

12. Undoubtedly, judgment obtains herein in favour of the Claimant/Applicant which hasn't been settled by the Respondent now approximately four years down the lane. Following an application for execution of decree dated 3rd February 2022, warrants of attachment dated 18th February 2022 were issued to Port Way Auctioneers to execute. The warrants were unexecuted as the Auctioneers found nothing belonging to the Judgment Debtor to attach.
13. Faced with this situation and desirous to realize the fruits of it judgment, the Claimant/Decree Holder could reasonably be expected to engage other ways of execution of the decree for instance garnisheeing the Debtor's accounts or pursue its Directors in the manner the Decree Holder is doing in the instant application as a last resort.
14. Order 22 Rule 35[b] and [c] of the [Civil Procedure Rules](#) entitles the Court to order for examination of a Director of a Judgment Debtor company or any officer thereof in Court for the purposes of providing answers in respect of the company's ability or means to satisfy the decree. The Order is couched in the following terms:

“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 case of a corporation, any officer thereof; or



- c. Any other person, be examined orally as to whether the judgment -debtor has any and what property or means of satisfying the decree, and the court may make an order for attendance and examination of such debtor or officer, or other person, and for production of any books or documents.”

15. The Court in *Postbank Credit Limited [in liquidation] v Nyamangu Holdings Limited* [2015] eKLR, held: -

“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 of property of the Company in his possession and which he may have obtained as a Director and or shareholder of the Judgment -Debtor.”

16. In the circumstances of this matter, its justice demand that the instant application be allowed. However, for now, I allow prayer [i] and [iii], thereof.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 16TH DAY OF JANUARY, 2025.

OCHARO KEBIRA

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

