



**Kusimba v Navisat Telematics Limited (Cause E016 of 2021)
[2025] KEELRC 354 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 354 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E016 OF 2021
K OCHARO, J
FEBRUARY 10, 2025**

BETWEEN

CELESTINE KUSIMBA CLAIMANT

AND

NAVISAT TELEMATICS LIMITED RESPONDENT

RULING

1. By an application dated 23rd January 2025, the Claimant/Decree Holder seeks the following orders: -
 - a. That this Honourable Court be pleased to issue summons directed to Amne Abdulrazak Mohammed and Walter Kiilu Mbidyo to attend court on an appointed day to be orally examined as to the business and affairs of the Judgment Debtor or Judgment Debtor's means to satisfy the decretal sum.
 - b. That the Honourable Court proceed to order Amne Abdulrazak Mohammed and Walter Kiilu Mbidyo as lawful Directors of the Respondent to satisfy the entire decretal sum in favour of the Claimant herein.
 - c. That in default of the said Director complying with prayers 2 and 3 above, this Honourable Court be pleased to order that Amne Abdulrazak Mohammed and Walter Kiilu Mbidyo be jointly and severally held personally liable to satisfy the entire decretal sum in favour of the Claimant herein. And in default execution to issue against the above-stated Directors.
2. The application is premised on the grounds obtaining on the face of thereof and fortified by those on the supporting affidavit sworn by the Applicant.
3. The application can be discerned from the forested grounds is primarily premised on the following grounds: -
 - i. The Claimant/Decree Holder has an unsettled judgment and Decree.



- ii. That the Judgment and Decree have not been assailed through any legally known fora.
 - iii. Efforts to execute the Decree and realize the sum thereof have failed to bear fruit as the Judgment Debtor's attachable properties cannot be traced.
 - iv. The Judgment Debtor closed offices at where it was operating from, and to an unknown place.
 - v. The Claimant/Applicant believes that the foregoing is all in a bid to defeat the execution process.
 - vi. In the premises the justice of this matter demands that the orders sought in the application be granted.
 - vii. There is no dispute that the two persons named in the application are the bona fide Directors of the Judgment Debtor company.
4. The Respondent resisted the application through a replying affidavit sworn by Walter Mbidyo on 3rd February 2025. The application is opposed on the following principal grounds: -
- i. That the application improperly seeks to realize outstanding company liabilities against the Directors, an affront on the separate legal entity principle.
 - ii. The separate legal entity principle exists to protect shareholders and Directors from personal liability for the company's debts. The Applicant should not be allowed to breach this protection without proper justification.
 - iii. The Claimant/Applicant has not placed forth sufficient evidence to demonstrate that the Directors have acted outside their legal authority or breached the fiduciary duties.
 - iv. The attempt by the Claimant to have the Directors found liable for the company's liabilities is a testament to an improper application of the piercing of the corporate veil mechanism. Piercing of the corporate veil is only available in situations where the Directors are involved in fraud, illegality, or misuse of the company structure. The Claimant/Applicant has not asserted any of these against the Directors.

Determination

- 5. The orders sought by the Claimant/Decree Holder, if merited, are grantable sequentially, with limb 2 being granted to enable cross-examination of the Directors and the others, limb 3-5 after the cross-examination.
- 6. I have considered the application, the grounds set out on the face thereof, the supporting affidavit and the response affidavit, and the following pivotal matters arise: -
 - a. The respondent has not challenged in any manner, the order sought in limb 1 of the application.
 - b. The Respondent in their response affidavit, has not contended that the decree herein has been settled or stated why in their view the same has not been.
 - c. The fact that the Respondent company is no longer operating from where it used to and that the closure of the office has made it impossible for the auctioneer to levy execution has not been challenged at all.



- d. The Judgment and the decree that followed therefrom have not been assailed by way of an appeal.
 - e. By reason of the premises, I am of the view that the justice of this matter demands that the first limb of this application be granted. it is hereby granted.
7. This Court shall render itself on the other limbs of the application after the cross-examination of the Directors on the date herein appointed, of course, subject to what comes out of the cross-examination.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF FEBRUARY 2025.

OCHARO KEBIRA

JUDGE

