



Kenya Engineering Workers v Guru Mechanical Engineering Ltd (Cause 11 of 2017) [2025] KEELRC 874 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 874 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 11 OF 2017
MN NDUMA, J
MARCH 13, 2025**

BETWEEN

KENYA ENGINEERING WORKERS APPLICANT

AND

GURU MECHANICAL ENGINEERING LTD RESPONDENT

RULING

1. The Applicant in the application dated 17/5/2024, seeks an order in the following terms;
 1. “Spent
 2. That the Court be pleased to issue an interim order against the Respondent Managing Director M/S Surinder Ssingh Guru And Jovinder Singh
 3. That SURinder Ssingh Guru Stays At South B Kapindi Road Nairobi and Jobinder Singh stays off juju Road along Chai Road.
 4. That, Surinder Singh Guru & Jovinder Singh to be formally responsible. The debts owed to their former employees who were formally employed by the Respondent’s Company Guru Mechanical Engineering Nairobi.
 5. The judgment in Nairobi ELRCC No.11 2017 was delivered at Nairobi on 16th Day of December 2021 in favour of the grievant herein
 6. That Court to issue interim orders to the OCS of the nearest police station to arrest the said former directors namely Mr. Surinder Singh Guru and Mr. Jovinder Singh to be produced before the honourable court at Nairobi (ELRC) Employment & Labour Relations Court for the law to prevail
 7. Costs of the Application be met by the named (Directors) Respondents. “



2. The Application is premised on grounds (a) to (f) set out on the face of the Application which may be summarised that upon the delivery of judgment of the Court on 16/12/2021 in favour of the claimant, the two named persons closed the business premises of the Respondent in order to defeat the judgment of the court.
3. That the two named persons decided to hide company property to unknown place. That the named M/s. Surinder Singh Guru and Jovinder Singh are directors of the Respondent. That the two be held responsible for the judgment sum.
4. The application is buttressed by the supporting affidavit of Wycliff A Nyamwata who does not disclose his relationship to the claimant in the said affidavit. The deponent prays for the Court to issue orders to attach the personal property of the said persons to offset the judgment debt

Replying Affidavit

5. The Respondent vide the affidavit of Surinder Singh Guru deposes, inter alia, that there are no proceedings towards execution against the Respondent that have been undertaken by the claimants since the dismissal of the Respondent's application on 7/12/2023. That it is therefore totally false that they have hidden assets of the company/Respondent to avoid attachment and no evidence has been adduced before Court.
6. There are no submissions on record on behalf of the Claimant/Applicant. The court has looked at the submissions filed by the Respondent and will consider the same in reaching a determination in the matter before court.
7. Order 22, rule 35 of the Civil Procedure Rules 2010 provides that;
Where a decree is for the 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;
 - 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.
8. What this Court makes of the above passage of the Civil Procedure Rules is that in cases where the Applicant is seeking for the lifting of the veil of incorporation, there has to be a call for the examination of the persons said to be the directors of the Company as to whether the Company has any property or the means of satisfying the decree and to produce any other evidence showing the same before Court. The standard procedure is that the Applicant asks for this examination in the form of an interim prayer. It is the evidence obtained from this examination that is afterwards used by Court to decide whether on the basis of the celebrated case of Salomon versus Salomon and Co Ltd (1897) AC 22, the conditions for the lifting of the veil of incorporation have been satisfied.
9. In the application before Court, the prayers have been drafted in such a fashion that even with the overriding objectives in mind, it is hard for the Court to discern the actual intention of the Applicant. And at any rate, there is no certificate of incorporation or any other document proving that the named persons are Directors of the said company.



10. The Application therefore fails, and is dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13TH DAY OF MARCH, 2025.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Haraka for the Claimant/Applicant

Mr. Okeyo for the Respondent

Court Assistant; Kemboi

