



**Owino v Carewatch Security Limited (Cause 2049 of 2017)  
[2025] KEELRC 1507 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1507 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2049 OF 2017**

**AK NZEI, J  
MAY 23, 2025**

**BETWEEN**

**EPHRAIM OWINO ..... CLAIMANT**

**AND**

**CAREWATCH SECURITY LIMITED ..... RESPONDENT**

**RULING**

1. The application before me is the Claimant’s Notice of Motion dated 13<sup>th</sup> June, 2024, expressed to be brought under Order 22 Rule 35 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Rules. The Claimant/Applicant seeks the following Orders:-
  - a. That Carolyne Kimudi Jumba and Nelson Kavagi Kimiya, being directors of Carewatch Security Limited, the Judgement debtor herein, be ordered to attend Court in person and to be examined severally and jointly as to the assets and finances of Carewatch Security Limited.
  - b. That upon attendance and examination of Carolyne Kimudi Jumba and Nelson Kavagi Kimiya, this Court do find the said directors personally liable for payment of the decretal sum herein on account of the Company’s clandestine and fraudulent operations, and be pleased to lift the corporate veil of the defendant herein, Carewatch Security Limited, and order that the said directors, Carolyne Kimudi Jumba and Nelson Kavagi Kimiya be held liable to pay the decretal sum as ordered herein, now totalling to Kshs.375,427/=.
  - c. That the said directors, Carolyne Kimudi Jumba and Nelson Kavagi Kimiya, do immediately settle the decretal sum herein, with interest from 19<sup>th</sup> September, 2022.
  - d. That in default of the said directors complying with the above orders, they be committed to civil jail for a period not exceeding six (6) months, and/or their personal assets be attached to settle the outstanding decretal amount.



- e. That costs of the application be borne by the directors jointly.
2. The application sets out on its face the grounds on which it is brought, and is based on the supporting affidavit of the Claimant/Applicant sworn on 13<sup>th</sup> June, 2024. It is deponed in the said affidavit:-
    - a. that the Court's Judgment was delivered on 19<sup>th</sup> September, 2022, and that the Respondent never followed up on an intended appeal, having filed a Notice of Appeal.
    - b. that Auctioneers instructed by the Claimant/Applicant could not trace the Respondent's assets, save for some few attachables which could not even cover the Auctioneer's charges.
    - c. that the Court should lift the Respondent's corporate veil to enable the Claimant/Applicant to execute the decree herein, in the interest of justice.
  3. Documents annexed to the Claimant/Applicant's supporting affidavit include a copy of the Respondent's CR 12; which shows that the two directors named herein are also shareholders of the Respondent company.
  4. On 22<sup>nd</sup> July, 2022, the Respondent filed a replying affidavit sworn on 20<sup>th</sup> July, 2024 by Nelson Kavagi Kimiya, a director of the Respondent Company. The said director of the Respondent company deponed:-
    - a. that he had made efforts to satisfy the decree by paying Kshs.50,000/=, and by paying Kshs.70,000/= to the Auctioneer.
    - b. that delay in satisfying the decree was due to challenging economic times and low business; which adversely affected the deponent's ability to fulfil the payment obligation in a timely manner.
  5. The said deponent/director further deponed as follows:-
    8. I hereby undertake, on behalf of the company, to make payments of at least Kshs.5,000/= or more each month.
    9. That I deeply regret the initial delay in fulfilling the payment commitment, and assure the Court that such delays will not recur.”
  6. It is to be noted that the Respondent's said director did not exhibit any documents on the Respondent's financial status; or the Respondent's asset base. Instead, he committed to pay the decretal sum by monthly instalments of Kshs.5,000/= or more. It was not denied that Carolyn Kimudi Jumba is also a director of the Respondent Company.
  7. In view of all the foregoing, the only issue that falls for determination is whether the Respondent's corporate veil should be lifted and/or pierced and personal liability regarding settlement of the decretal sum herein and/or the balance thereof imposed on its directors/shareholders.
  8. It was stated as follows in the case of Jian Nan Xing – vs Cok Fast-St Company Limited [2018] eKLR:-
 

“ . . . the law on lifting of the veil is settled. The circumstances under which a veil of incorporation would be lifted are, inter alia, where there is no real formal legal separation between the company and its shareholders' personal financial affairs and/or that the company is just a sham, or the company's actions were wrongful and fraudulent, or if the shareholders and/or directors act recklessly in the management of the business of the company, and/or design a scheme to perpetrate financial fraud, and/or if the company's



creditors suffer unjust cost, that is, they did business with the company and they are left with unpaid bills or unpaid Court Judgment. In all these circumstances, the Court will pierce the veil of incorporation and hold the shareholders and/or directors personally liable.”

9. It was stated in the case of Lucy Mukembura Kimani – vs – Nzuri Feeds Suppliers Limited [2021] eKLR that Courts in Kenya will only allow for the piercing of the corporate veil when the following requirements are met:-
  - a. Where the Company is a mere instrumentality or alter ego for the shareholders or directors in question, such that there is such unity of interest and ownership that one is inseparable from the other, and
  - b. the facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote an injustice.
10. In the present case, the replying affidavit filed herein by Nelson Kavagi Kimiya, a director and shareholder of the Respondent Company, demonstrates a tight and inseparable unity of interest between the Respondent company and its directors/shareholders such that one would not locate the demarcation line between the two, if at all it exists in reality.
11. The said director deponed to having paid Kshs.50,000/= in part-liquidation of the decretal sum, and to having paid the Auctioneer’s charges in the sum of Kshs.70,000/=. He did not allude to having paid the said amounts out of the Respondent company’s resources. He further deponed that he was ready to pay the balance of the decretal sum by instalments.
12. Taking into account the fact that piercing of a corporate veil is an equitable remedy usually given by the Courts in exercise of their inherent jurisdiction towards achievement of justice and fairness, it is my finding that the present case is an appropriate one where the veil of incorporation must be pierced and/or lifted.
13. Consequently, the Notice of Motion dated 13<sup>th</sup> June, 2024 is hereby allowed in the following terms:-
  - a. The Respondent’s corporate veil is hereby lifted, and personal liability is hereby imposed on the Respondent’s directors/shareholders, Carolyne Kimudi Jumba and Nelson Kavagi Kimiya, regarding the sum decreed herein and/or the outstanding balance thereof; plus interest as decreed.
  - b. Execution proceedings shall issue against the said directors/shareholders, Carolyne Kimudi Jumba and Nelson Kavagi Kimiya, jointly and severally, in accordance with the law governing execution of this Court’s decrees.
  - c. Each party shall bear its own costs of the application.
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**



## **JUDGE**

Appearance:

Miss Ameba for the Claimant/Applicant

No appearance for the Respondent

