



**Mutua & AMP & 19 others v Habo Group of Companies (Employment and Labour Relations Cause 724 of 2016) [2025] KEELRC 2421 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2421 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 724 OF 2016**

**K OCHARO, J  
JUNE 12, 2025**

**BETWEEN**

**PATRIK MWANZIA MUTUA & AMP & 19 OTHERS & 19  
OTHERS ..... CLAIMANT**

**AND**

**HABO GROUP OF COMPANIES ..... RESPONDENT**

**RULING**

1. By the Notice of Motion application dated 14th October 2024, the Claimants/Applicants sought;
  - a. That the Directors of the Respondent Habo Group Of Companies Limited, Namely Augustine Omondi Awiti, Hezron Awiti Bollo & Monica Anyango Awiti, be examined on oath as to the judgment debtor's means and assets and to produce books of account and other documentary evidence showing the same.
  - b. That in the default of the said directors complying with the above order, this court be pleased to order that the said Directors be held personally liable to pay the Claimant the decretal sum in the decree herein, taxed costs plus interest at court rates.
  - c. Costs of the application will be provided for.
2. The application is anchored on the grounds set out on the face of the application, and the supporting affidavit and further affidavit sworn by Patrick Mwanzia Mutuas, herein filed.
3. The Respondents vehemently oppose the application through a replying affidavit sworn by Hezron Awiti Bollo, on 24th December 2024.



## **The Application**

4. The Applicants contended that they obtained judgment against the Respondent herein; however, their attempts to execute the decree that flowed from the judgment have been unsuccessful due to legal hurdles erected by its Directors.
5. The foregoing premise has necessitated the instant application, which essentially seeks to lift the corporate veil and have the Directors held personally liable to settle the decree.

## **The Response.**

6. It was asserted that the Respondent company was dissolved and the dissolution was gazetted. As the company has been dissolved and deregistered, no proceedings such as those initiated by the Claimants can legally proceed. In the circumstances, no Directors can be summoned for cross-examination concerning the company's assets or affairs. The company has not been restored to the register of companies.

## **The Applicant's Submissions**

7. The Applicants argue that the judgment herein was obtained, and all execution proceedings commenced, before the alleged dissolution of the Respondent Company around 29th January 2021. In this case, the dissolution was fraudulently initiated solely to prevent and obstruct the enforcement of the decretal sum in this matter and in numerous other judgments against it.
8. It was further submitted that, in any event, the dissolution was reversed by order of the Court in *Reph Opiyo Ojwang v Habo Group of Companies Ltd & others* when it became apparent that it was solely to defeat justice.
9. Therefore, it isn't true that the Respondent Company was dissolved. As a result of the order in the above-stated matter, it is still a registered company in Kenya.
10. In *Jian Nanxing v Cok Fast Company Limited* [2018] eKLR, the Court elaborated on the circumstances under which a corporate veil can be lifted, thus;

“The law on lifting the veil of incorporation is now 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 where 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 if 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.”
11. The Claimants assert they have undoubtedly satisfied the conditions necessary to lift the corporate veil. The instant application should be allowed.
12. Faced with an application like the present one, which involved the Respondent in this matter, Lady Justice Nzei held;

“It is my finding that the present case is an appropriate one where the Respondent company's veil of incorporation must be pierced and lifted. Consequently, I lift the Respondent's veil



of incorporation and impose personal liability on Augustine Omondi Awiti, Hezron Awiti Bollo & Monica Anyango Awiti regarding the decretal sum herein. Warrants of attachment and sale of their property in execution of this court's decree herein shall issue against the directors." 13 This court should make a finding, as did the Court in the abovementioned matter, lift the corporate veil, and hold the Directors personally liable to settle the decretal sum herein.

### **The Respondent's/ Director's Submissions.**

13. The Respondent and its Directors submitted that the jurisdiction of this court has not been properly invoked. It isn't disputed that the Respondent Company was dissolved through the Gazette Notice dated 29th January 2021. There is no proof that the company has been restored to the register per the provisions of Section 918[2], which provides;

“If the Court orders the company to be restored to the Register, the restoration takes effect when a copy of the order is lodged with the Register for registration.”

14. Further, there is no proof that the Registrar has recorded the company's restoration to the Register and published it in the Gazette as a notice of Restoration, as dictated by Section 918[3] of the *Companies Act*.

15. It was further argued that to allow the Directors of the Respondent company to be cross-examined on the assets of the Respondent Company shall, in the circumstances, be an affront to the provisions of section 905[1], which provides;

“Property that immediately before the dissolution of the company had not been distributed or disclaimed vests in the state with effect from the date of dissolution of the company.” Since the Respondent company's assets were vested in the state upon dissolution, it would be illogical to summon its Directors to be cross-examined on the company's assets. The South African case of *G. Walker Engineering cc t/a Atlantic Steam Services v First Garment Rental [pty]* was cited to support this argument.

16. Relying on the case of *Barclays National Bank Ltd v Ballcock* 1981[4] AS 291[W], the Respondent further submitted that the effect of deregistration was that the debt was not extinguishable but unenforceable.

17. As the Respondent company stands dissolved by operation of the law, there are no standing Directors in respect of the company. Order 22 Rule 35 & 36 only relates to companies duly registered in Kenya. In the circumstances, there are no Directors to be summoned.

### **Analysis and Determination.**

18. The Respondent raises a jurisdictional issue, which this Court must determine at the outset. Jurisdiction is everything; where there is none, the Court must put down its tools and proceed no further.

19. 21 There is no dispute that the Respondent company was dissolved and the dissolution was gazetted. Furthermore, in the Mombasa High Court, Miscellaneous Application No. E030 of 2023, *Reph Opiyo Ojwang v Habo Group Companies Limited*, the Applicant sought orders, among others;

- a. That this Honourable Court be pleased to issue an order restoring the 1st Respondent, HABO Group of Companies Limited, to the Registrar of Companies.



- b. That this Honourable Court issue a mandatory injunction compelling the 4th Respondent to restore the 1st Respondent, HABO Group of Companies Limited, to the Companies register.

**The Court granted these two orders.**

20. It is imperative to note that the Registrar of Companies was a party to the Application as the fourth Respondent. In my view, the service of the order on him was therefore unnecessary. The order that flowed from limb two of the application was explicitly directed to the 4th Respondent [The Registrar of Companies], and it was compelling. Without any assertion or proof that the Registrar defied the order, this Court safely presumes that the order was adhered to.
21. The technical arguments raised by the Respondent and its Directors on the premise of section 918[2] and [3], in my view, in the circumstances of this matter, are not available as a reasonable defence against the grant of the orders sought by the Claimants/Applicants.
22. In ELRC Cause No. 279 of 2015- James Gitau & Others v HABO Group of Companies, the Court held, and I am persuaded, thus;
- “According to the Gazette Notice, the Respondent was dissolved under Section 879[4] of the Companies Act}}, which provides for the dissolution of companies pursuant to own application. Under Section 897[6], however, directors and other officers of the dissolved company may be pursued to settle liability as if the company had not been dissolved.
- It follows, therefore, that the dissolution of a company does not in any way extinguish accrued liabilities, such as the decretal sum owed to the Claimants in this case.”
23. It is the view of this Court that once an order for the restoration of a company to the register is issued, the position ante the dissolution reverts.
24. The Respondents argued that under section 905 of the Act, the company’s properties and assets vest in the state upon dissolution; therefore, the Directors cannot be summoned for cross-examination regarding properties and assets that are no longer theirs. This argument does not hold. Accepting it would undermine the good purpose for which the doctrine of piercing/lifting the corporate veil has existed for over a century. Furthermore, whether the assets and properties have vested in the state is a matter that is reasonably expected to emerge during the cross-examination. 26 In the upshot, I decline the Respondent’s arguments as having merit. This Court has the jurisdiction to entertain the current application.
25. It is trite law that a registered company is a legal persona distinct from the members who compose it. Equally trite is the fact that a court would be justified in certain circumstances in disregarding a company’s separate personality in order to fix liability elsewhere for what are ostensibly acts of the company.
26. The circumstances under which the corporate veil can be lifted are infinite. The law has not settled on an exhaustive catalogue for them, and it is far from so doing. Each case should be considered in its facts, which, once determined, may be of decisive importance.
27. I have carefully considered how the Claimants’ application has been couched. I hold rightly so, and conclude that whether there exist circumstances in this matter that can justify piercing of the corporate veil depends on the outcome of the cross-examination contemplated under limb [2] of the Application.
28. In the upshot, I find the Claimants’ application dated 14th October 2024 meritorious.



Consequently, it is hereby allowed in the following terms;

- a. The Directors of the Respondent Company, namely Augustine Omondi Awiti, Hezron Awiti Bollo, & Monica Anyango Awiti, shall appear before this Court on 26th June 2025 to be cross-examined on oath as to the Judgment debtor's means, assets and to produce books of accounts and other documentary evidence showing the same.
- b. Limb [b] of the Application shall be subject to the proceedings and/or cross-examination and attendant orders that may flow therefrom, on the matters mentioned in [a] above.

31 Orders accordingly.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 12TH JUNE, 2025.**

**SIGNED BY: HON. MR. JUSTICE OCHARO KEBIRA**

**THE JUDICIARY OF KENYA.**

**MOMBASA ELRC**

