



**Kioko v A-Z Data Solutions Limited (Cause 1289 of 2014)  
[2025] KEELRC 2272 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2272 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1289 OF 2014**

**L NDOLO, J  
JULY 31, 2025**

**BETWEEN**

**KANINI KIOKO ..... CLAIMANT**

**AND**

**A-Z DATA SOLUTIONS LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. On 30<sup>th</sup> August 2016, I delivered judgment in favour of the Claimant in the sum of Kshs. 3,116,667.
2. The decretal sum was not satisfied and by a Notice of Motion dated 16<sup>th</sup> January 2025, the Claimant moved the Court, seeking the following orders:
  - a. That the Directors of the Respondent namely; Simon Ndirangu and Peter Ndete Mwangi be examined on oath as to the Respondent's means and assets;
  - b. That the said Simon Ndirangu and Peter Ndete Mwangi do produce the judgment debtor's books of account and other documentary evidence not later than 14 days before the date fixed for their examination;
  - c. In default of the Directors complying with the above orders, warrants of arrest do issue against them.
3. The application is supported by an affidavit sworn by the Claimant's Counsel, Elvis Oyare and is premised on the grounds that:
  - a. Judgment was entered against the Respondent on 30<sup>th</sup> August 2016, for the sum of Kshs. 3,116,667 plus interest at court rates until payment in full;
  - b. A copy of the decree was served on the Respondent on 29<sup>th</sup> July 2024;



- c. The Respondent has not made any payments towards the judgment debt;
  - d. The Claimant does not know what assets, if any, are owned by the Respondent;
  - e. The examination of the above named Directors is necessary to establish the means and assets of the Respondent and to determine the mode of execution.
4. The Respondent's response is contained in a replying affidavit sworn by one of the directors, Simon Ndirangu on 18<sup>th</sup> March 2025.
  5. Ndirangu depones that in the month of August 2014, the directors and shareholders of the Company had a major disagreement on operations of the Company, leading to loss of its highly rated client, the Nation Media Group.
  6. He further depones that the effect of this was a major fall out between the shareholders/directors, which led to every one walking away from the Company and all the assets in terms of office equipment being auctioned.
  7. According to Ndirangu, the Company ceased operations in the year 2014, pointing to the fact that the Company had not been linked in the e-Citizen platform and the Business Registration Service had no updated records of the Company. He adds that the company bank account held at Equity Bank had been closed.
  8. Ndirangu asserts that he had not engaged in the affairs of the Respondent Company for over ten years and concludes that the Company has no assets in its name and has no money in the bank, to satisfy any decree held by the Claimant.
  9. On 26<sup>th</sup> May 2025, the Claimant swore her own affidavit in response to Ndirangu's replying affidavit.
  10. The Claimant states that the fact that the Respondent Company had not been linked on the e-Citizen platform is not evidence that it had ceased to exist or been lawfully dissolved. She maintains that a company remains a legal person until it is formally struck off the register by the Registrar of Companies.
  11. The Claimant contends that as a director, Ndirangu has a duty to act in the Company's best interest; adding that if indeed the Respondent had ceased operations, it was incumbent upon him to take steps to regularise its status to ensure it was dissolved.
  12. The Claimant counters the averment by Ndirangu that he had not engaged in the affairs of the Respondent for over ten years. She states that she had received a total of Kshs. 250,000 from Ndirangu, paid on 5<sup>th</sup> May 2022 and 9<sup>th</sup> August 2022, as part payment towards satisfaction of the decree.
  13. The Claimant's application is brought under Order 22 Rule 35 of the Civil Procedure Rules, which provides that:
    35. 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; or
      - 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 of documents.

14. In her written submissions dated 26<sup>th</sup> May 2025, the Claimant cites the decision in *Ultimate Laboratories v Tasha Bio Service Limited* Nairobi HCCC No. 1287 of 2000 (unreported) where Ringera J (as he then was) held that as long as a party moving the Court under the foregoing provision demonstrates that the party sought for examination is in a position to provide information in the nature of discovery, the court should summon the person to attend and be examined.
15. The Claimant further relies on the decision in *Peter O. Ngoge t/a O.P Ngoge & Associates v Ammu Investment Company Limited* [2012] eKLR where it was held that being an artificial person, a company must of necessity act through its agents, usually the Board of Directors.
16. In his affidavit in response to the Claimant's application, Simon Ndirangu, who admittedly is an officer of the Respondent Company, discloses that he is in a position to provide information in the nature of discovery as to the Respondent's capability to settle the debt owed to the Claimant.
17. I must at this stage clarify that what is before the Court is not a plea for lifting of the corporate veil; but rather a process towards establishment of the reason why the Respondent has not satisfied the decree of this Court. This can only be achieved through examination of the known directors of the Respondent.
18. I therefore direct that Simon Ndirangu and Peter Ndete Mwangi, being Directors of the Respondent Company, shall appear before the Court in person on 1<sup>st</sup> October 2025, for the purpose of examination on oath as to the Respondent's means and assets.
19. I further direct that the said Simon Ndirangu and Peter Ndete Mwangi shall file and serve the Claimant with the Respondent's books of account and any other relevant document(s) not later than fourteen (14) days before the date fixed for their examination.
20. The costs of this application will be in the cause.

**DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Oyare for the Claimant

Mr. Wesonga for the Respondent

