



**Unda v Pentagon Security Services Limited (Cause E102 of 2018)
[2025] KEELRC 2365 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2365 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E102 OF 2018**

**K OCHARO, J
JULY 31, 2025**

BETWEEN

KAHINDI KARISA UNDA CLAIMANT

AND

PENTAGON SECURITY SERVICES LIMITED RESPONDENT

RULING

1. By a Notice of Motion Application dated 26th September 2024, the Claimant/Applicant sought the following orders:
 - a. That summons to issue compelling Nazir Hussein Ahmed and Azmna Farid Ahmed, being Directors and shareholders of the Respondent / Judgment Debtor, to attend court and be examined under oath as to the Respondent/Judgment Debtor's books of accounts and other documentary evidence showing the same before the Court;
 - b. That upon examination of Nazir Hussein Ahmed and Azmna Farid Ahmed, being the Directors and shareholders of the Respondent/Judgment Debtor, this Honourable Court be pleased to lift the veil of incorporation and hold the said Directors and shareholders personally liable to pay the decretal sum of KShs. 185, 551.92 being the decretal sum, taxed costs and interest at 12% from the date of judgment or to be imprisoned and committed to civil jail for a period not less than six months; and
2. By its ruling dated 16th January 2025, this Court allowed the first limb of the application but deferred ruling on the second and third, pending examination of the Directors of the Respondent Company regarding its books of account. On 20th May 2025, noting that the Directors, despite being served with court process, were not present in court, this Court directed the Claimant/Applicant to file written submissions on the outstanding limbs of the application mentioned above.



3. Pursuant to the Court's directions, Counsel for the Claimant/ Applicant filed her submissions dated 29th May 2025. Counsel identified two issues for determination on the application, thus;
 - a. Whether the Claimant/Decree-holder has satisfied the legal requirements for lifting the corporate veil?
 - b. Who should bear the costs of the Application?
4. She submitted that, while the corporate nature of a company as a legal personality and a separate entity from its shareholders and directors was established in the case of *Salomon & Co. Ltd v Salomon* [1897] A.C. 22 H.L., there exists an exception to the rule to prevent abuse of the protection accorded to companies. The circumstances under which the veil can be lifted are where the veil is used to perpetrate fraud, defeat justice, or evade legal obligations.
5. It was further submitted that the provisions of Order 22 Rule 35 of the Civil Procedure Rules allow for the filing of an application like the present one, and for the grant of the orders sought herein. The Rule provides as follows:

“Where a decree is for the payment of money, the decree holder may apply for an order that:-

 - a. the judgment debtor;
 - b. in case of a corporation, any officer thereof; or
 - c. any person, be orally examined as to whether any or what debts are owing to the judgment debtor, and whether the decree holder 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 document.”
6. The Claimant/Applicant holds a money decree 4 years post judgment, but is unable to execute the same, despite frantic efforts. The Respondent have deliberately frustrated his efforts to realise the fruits of the judgment.
7. This Honourable Court is seized with the jurisdiction to determine all questions arising from or incidental to the satisfaction or enforcement of a decree emanating from its judgment, as is provided for under Section 34(1) of the *Civil Procedure Act*.

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree, and not by a separate suit.”
8. The matters raised in this application are within this Court's jurisdiction as outlined in Order 22 Rule 35, including a consequential order for lifting the corporate veil to facilitate execution.
9. The Respondent's Directors' non-responsiveness in settling the decretal sum that the Respondent genuinely owes, and their deliberate failure to attend court, are actions intended to defeat the cause of justice. This Court should, in the circumstances, direct that they shoulder the liabilities of the Respondent, personally.



10. To support the submissions, Counsel placed reliance in the case of *Kenagen Contractors Kenya Ltd v Abong'o, Church of Christ in Africa & 4 others* [2024] KEELC 5111 (KLR) where the Court in granting orders to lift the Plaintiff's corporate veil stated as follows:

"As mentioned earlier, the court made an order on 5th March 2020 for the plaintiff's director and shareholder, John Kennedy Ageng'o to attend court and be examined on the status of the plaintiff as a company and whether the plaintiff had property or means of satisfying the decree. ... From the record, the said director of the plaintiff neither attended court nor produced the documents he was required to produce under Order 22 Rule 35 of the Civil Procedure Rules. ...the 1st and 2nd defendants have averred that the plaintiff does not exist at its registered physical address. The 1st and 2nd defendants have also averred that the plaintiff has no known assets.... I am satisfied from the material before me that the 1st and 2nd defendants have discharged the burden of proof that was upon them. I am also satisfied that a case has been made for the lifting of the plaintiff's corporate veil and holding John Kennedy Ageng'o personally liable for the judgment debt due to the 1st and 2nd defendants herein."

11. Further reliance was placed on the case of *Kepkemoi V Zaburi Enterprises Company Ltd & 2 Others* (miscellaneous Civil Application 43 Of 2023) [2024] Kehc 2343 (klr) (8 March 2024) (ruling), the Court in its analysis stated as follows:

"It is therefore evident that in a case such as the instant one, the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smacks of bad faith and that the corporate veil is being used as a mask to fraudulently shield such directors or shareholders from The execution of a decree can involve piercing the corporate veil. The veil may be pierced when it appears that the business was carried out with the intent to defraud creditors or for any fraudulent purpose. When this is the case, the corporate veil is disregarded and lifted.

The proper procedure for a court to determine whether to lift the veil of an incorporation is to first summon the directors to be orally examined. The purpose of this examination is to determine whether the company has any property or means of satisfying the decree. Directors may also be called upon to produce any books of accounts or documents for scrutiny.

During this process, the Court may determine whether the directors are guilty of bad faith or willful acts intended to avoid the settlement of the decree or even outright fraud. If such circumstances are established, the court may go ahead to lift the corporate veil and hold the directors or shareholders personally liable to settle the decree."

12. To further buttress her submissions, Counsel cited the holding in *Petrol Oil (K) Ltd Vs Hosborne Arunga & 2 Others* [2013] eKLR, thus:

"There being no evidence to the contrary, I am satisfied that this application has merit. Having failed to provide proper accounts in respect of the Judgment/debtor's assets, I accordingly lift the veil of incorporation and hold the Directors personally liable to the claim."

13. Submitting on costs, Counsel stated that costs follow the event. The Claimant was compelled to file the present application owing to the Respondent's failure to satisfy a valid court decree. The application



has necessitated additional legal expenses and delayed the realisation of the fruits of his judgment. The Respondent's directors should bear the costs of this application.

Analysis and Determination.

14. Undeniably, as the Court that issued the decree is seized of matters related to the controversy that may arise from it, under the provisions of section 34 of the *Civil Procedure Act*, such issues may include whether the realisation of the fruits of the decree has been or is being obstructed by the Judgment Debtor's Directors [if it is a legal person], whether the Directors should be summoned to produce books of account and explain the assets and means of the entity, and whether, in the circumstances of the case, the Directors should be held personally liable for the liabilities of the entity arising from the decree.
15. 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 to fix liability elsewhere for what are ostensibly acts of the company.
16. The circumstances under which the corporate veil can be lifted are countless. The law has not established a comprehensive list of them, nor is it close to doing so. Each case must be examined based on its facts, which, once determined, can be of crucial significance.
17. I have carefully considered the Claimants' application, which the Respondent and or the Directors have not opposed, the assertion that the execution of the decree and the realisation of the fruits thereof, which remain undiscounted following the Director's failure to present themselves for examination regarding the Respondent's means and assets, and production of the Respondent's documents, and see that making an adverse inference against them would be the most appropriate thing to do in the circumstances. Thus, had they appeared before this Court as directed in the earlier ruling, their examination could have revealed the Claimant's assertion as accurate.
18. In the upshot, I find the Claimants' application meritorious. Consequently;
 - a. The corporate veil of the Judgment Debtor Company is hereby lifted. The Directors of the Company named in the notice of motion application shall be liable jointly and severally to settle the decretal sum of Kshs 185,551.92 and the costs of this application.
19. Orders accordingly.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 31ST JULY 2025.

OCHARO KEBIRA

JUDGE

