



REPUBLIC OF KENYA



**Maiga v Kampala Coach Limited (Cause 571 of 2013)
[2023] KEELRC 109 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 109 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 571 OF 2013
L NDOLO, J
JANUARY 26, 2023**

BETWEEN

GEORGE GITHAE MAIGA CLAIMANT

AND

KAMPALA COACH LIMITED RESPONDENT

RULING

1. On January 29, 2016, this court entered judgement in favour of the claimant as against the respondent in the sum of Kshs 77,971 plus costs and interest.
2. It appears that the claimant was unable to recoup his award from the respondent. He therefore filed a notice of motion dated August 24, 2022, seeking orders to lift the corporate veil and pave way for execution against the respondent's directors.
3. The motion is supported by the claimant's own affidavit and is based on the following grounds:
 - a. That the claimant obtained judgment against the respondent on January 29, 2016;
 - b. That the respondent has closed down and there are no known assets capable of attachment;
 - c. That it is only prudent that the known director of the respondent be made a party to pave way for execution;
 - d. That unless the court lifts the corporate veil in this matter, the decree will be rendered nugatory;
 - e. That justice demands grant of the orders sought.
4. Service was effected upon Ahlam Basiet Abdul, one of the named directors of the respondent but there was no response.



5. In his submissions before the court, the claimant stated that the respondent had shut down operations in 2013. He was however not aware whether the company had been wound up.
6. By his motion, the claimant asks the court to lift the respondent's corporate veil to allow him to proceed against the directors of the company.
7. The law on lifting of the corporate veil was settled a long time ago in *Salomon v Salomon & Co Ltd* (1897) AC 22 HL to the effect that the veil of incorporation will only be lifted in the face of fraud or some other misconduct of equal gravity on the part of directors or shareholders. Lifting of the corporate veil is thus not a common place practice.
8. In *Corporate Insurance Co Ltd v Savemax Insurance Brokers Ltd & another* (HCCC No 125 of 2002) Ringeral J (as he then was) stated the following:

“The veil of incorporation is not to be lifted merely because the company has no assets or it is unable to pay its debts and is thus insolvent. In such a situation, the law provides for remedies other than the directors of the company being saddled with the debts of the company.”
9. More recently in *Kolaba Enterprise Ltd v Shamsudin Hussein Varvani & another* [2014] eKLR Gikonyo J stated thus:

“...[the] separate legal personality of a company can never be departed from except in instances where the statute of the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities.”
10. In *Michael Kyambati v Principal Magistrate, Milimani Commercial Courts, Nairobi & another* [2016] eKLR Odunga J (as he then was) restated this principle in the following terms:

“...the decision to lift the corporate veil will not be lightly undertaken. In the present case there is no allegation that the applicant has attempted to execute against the defendant company and such attempts have failed. The only allegation made is that the applicant is not aware of the assets of the respondent. Whereas that may be a ground for invoking order 22 rule 35....that does not necessarily satisfy the conditions stipulated for the lifting of the corporate veil of incorporation.”
11. In the present case, all the claimant states is that the respondent has no known assets. There is no explanation as to any attempts made towards recovery of the decretal sum from the respondent nor is there any evidence of fraud on the part of the named director(s).
12. Further, there is no proper explanation as to why the claimant took close to ten years before moving the court for assistance towards crystallisation of his award.
13. In the circumstances of this case, I find and hold that the conditions for lifting of the respondent's corporate veil have not been met and the motion dated August 24, 2022 is declined with no orders for costs.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF JANUARY 2023.

LINNET NDOLO



JUDGE

Appearance:

George Githae Maiga (the Claimant in person)

No appearance for the Respondent

