



**Okoyo v Whitty Wash Limited (Miscellaneous Application  
E026 of 2022) [2023] KEELRC 1145 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1145 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E026 OF 2022**

**AK NZEI, J  
MAY 11, 2023**

**BETWEEN**

**MORRIS OTIENO OKOYO ..... APPLICANT**

**AND**

**WHITTY WASH LIMITED ..... RESPONDENT**

**RULING**

1. The application before me is the Applicant's Amended Notice of Motion dated September 30, 2022. The Applicant seeks orders: -
  - a. that the Court be pleased to lift the corporate veil of the Respondent and to declare that Mehul Suryakant Govind Vaja, Victor Arara Were and Yogesh Suryakant Govind Vaja as Shareholders, secretary and/or Directors of the Respondent.
  - b. that Mehul Govind Vaja, Victor Arara Were and Yogesh Suryakant Govind Vaja being the Shareholders, secretary and/or Directors of the Respondent do attend Court and be examined as to whether the Respondent/judgment debtor has any property or means of satisfying the decree herein and or produce the Respondent's books of accounts and other documentary evidence showing the same before the Court.
  - c. that the said Directors, Mehul Suryakant Govind Vaja, Victor Arara Were and Yogesh Suryakant Govind Vaja be ordered to personally pay Ksh 1,023,741 plus interest due to the Applicant, (and) in the alternative they be imprisoned in civil jail for a period not less than six months.
  - d. that this Court do declare that the said Directors, Mehul Suryakant Govind Vaja, Victor Arara Were and Yogesh Suryakant Govind Vaja have engaged in fraudulent activities.
  - e. costs of the application.



2. The application is expressed to be brought under Section 3 of the *Companies Act* and other provisions of the law, and is supported by the Applicant's supporting affidavit sworn on September 30, 2022. It is deponed in the said affidavit:-
  - a. that the Applicant sued the Respondent for his terminal dues in Mombasa CMC ELR case No. 106 of 2018 following an unfair termination, and that a Notice of Entry of Judgment was subsequently issued on the Respondent.
  - b. that attempts to execute the decree have been in vain, despite the Applicant having obtained an order for police assistance to the Applicant's appointed auctioneers.
  - c. that the Respondent, through its Directors, has engaged in fraudulent activities to evade satisfying the decree, and has since incorporated another company and changed her trade name to Zero Zero One Launderers Limited in a bid to avoid her liability in the said case.
  - d. that the Directorship and/or shareholding of the said companies are more or less the same; and that it is only fair and just that the corporate veil be lifted to ensure that the Respondent and her Directors do not evade settling the decree.
3. Documents annexed to Applicant's said supporting affidavit include copies of pleadings filed in Mombasa CM ELR Case No. 106 of 2018, warrants of attachment issued for recovery of Ksh 1,023,741 and copies of CR12 on the Respondent company and Zero Zero One Launderers Limited issued on February 24, 2022 and March 3, 2022 respectively.

The Respondent is shown to have been registered on October 19, 2000, with Mehul Suryakant Govind Vaja and Yogesh Suryakan Govind Vaja as Shareholders/Directors and Victor Arara Were as Secretary.
4. Regarding Zero Zero One Launderers Limited, Yogesh Suryakant Govind Vaja is shown to be the sole Director/Shareholder, and the postal address for both companies is the same (PO Box 84903, Mombasa GPO)
5. The Respondent filed grounds of opposition and stated:-
  - a. that the application is misconceived, incompetent and bad in law.
  - b. this Court only has appellate jurisdiction on matter filed in Courts subordinate to it, and cannot be asked to execute the decree of a subordinate Court.
6. The Respondent has not filed any affidavits, either controverting the averments made in the Applicant's supporting affidavit or denying the serious allegations of fraud made against the Respondent and its directors. Indeed, the Respondent and/or its Directors have not denied the claimant's averments that they have incorporated another company and have changed the Respondent's business to the new company with a view to evade satisfaction of the decree in issue and/or to defeat the course of justice.
7. The Respondent's Directors/named in the application, Mehul Suryakant Govind Vaja, Victor Arara Were and Yogush Suryakant Govind Vaja, who are also Shareholders in the Respondent company, have not filed any affidavits on finances and assets of the Respondent company, and have not shown cause why they should not be ordered to personally pay the decretal sum in Mombasa CM ELR Cause No 106 of 2018.
8. Counsel for the Applicant referred the Court to order 22 Rule 35 of the *Civil procedure Rules* and submitted that the Respondent's Directors should be ordered to appear in Court personally and



show cause why the Respondent's corporate veil should not be lifted and execution issued against the Directors personally.

9. I hereby direct that the Respondent's Directors namely, Mehul Suryakant Govind Vaja, Victor Arara Were and Yogesh Suryakant Govind Vaja, do attend Court personally and be examined on the Respondent's property and means of satisfying the decree in Mombasa CM ELR No 106 of 2018, failing which the Court shall make further and/or other orders which may include piercing and/or lifting the Respondent's corporate veil and allowing execution of the decree in issue against the Directors personally.
10. A date for such examination shall be fixed at the Court's Registry, and the Deputy Registrar shall issue summons for service on the Respondent's Directors named in this Ruling.
11. In the meantime, the Applicant shall, within 14 days of this Ruling, file certified copies of the Court's Judgment and decree in Mombasa CM ELR Case No 106 of 2018.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 11<sup>TH</sup> MAY 2023**

**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:**

.....for Applicant

..... for Respondent

