



**Gachoka v Ndege (Cause 1516 of 2014)**  
**[2023] KEELRC 2314 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2314 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 1516 OF 2014**  
**NJ ABUODHA, J**  
**SEPTEMBER 29, 2023**

**BETWEEN**

**PETER MUCHA GACHOKA ..... CLAIMANT**

**AND**

**JOB MAXWELL OCHIENG NDEGE ..... RESPONDENT**

**JUDGMENT**

1. This ruling is in respect to the Claimant's Notice to show cause issued on November 16, 2022 where the Claimant seeks personal arrest and committal to civil jail of the Respondent herein for failure to pay the decretal sum of Kshs 5,401,808.20.
2. The Respondent was served with the Notice to show cause on November 25, 2022 as per Affidavit of service sworn on November 28, 2022 by Noel M.N. Munyithya.
3. The Notice to show cause was dispensed off by written submissions.

**Determination**

4. I have considered the different applications filed in this matter and most specifically the ruling by Hon. Hellen Wasilwa of June 19, 2019 where she found out that the Respondent had perpetuated an act of fraud by tampering with the directorship of the Judgment debtor Company with the sole purpose of obstructing the enforcement of the judgment
5. I have also looked at paragraph 8 of the said ruling where the court lifted the corporate veil of the Judgment Debtor Company holding Mr. Job Maxwell Ochieng Ndege and his Co-director, Mr. Tony Ketter personally accountable or liable for the payment of the decretal sum to the Claimant.
6. The Respondent's counsel has repeatedly raised this issue of corporate identity in his submissions which in my view I find that the same was dispensed with by the said ruling and if the Respondent was aggrieved by the said ruling he could have appealed.



7. In addition the Respondent's argument that the said ought to have been lifted by express application goes to the merits of the ruling which can only be challenged on appeal. This court is not sitting as an appeal court to overturn decisions made by a judge of coordinate jurisdiction.
8. The Court has perused the Affidavit of service and it is clear the Respondent was served with this Notice to Show Cause on November 25, 2022 and he has refused to make good the decretal sum to the Claimant.
9. It is noteworthy that this is an old matter and litigation must come to end. The Respondent from the records has used all tricks to obstruct enforcement of the decretal sum and it is high time he be committed to civil jail until he pays.
10. The Respondent raised issues of the Claimant not exercising other options of execution under Section 38 of the Civil Procedure Act and Order 22 of the Civil Procedure Rules.
11. The committal of judgment debtor to civil jail is provided for under section 38 of the Civil Procedure Act and the fact that the Respondent was served on November 25, 2022 with the Notice to Show cause and he has not paid the decretal sum and from records he has always evaded paying by being dishonest, it is proper he be put to civil jail.
12. In the case of Innocent G. Ondieki v Julius Nakaya Kabole [2019] eKLR the court held as follows;  

“ A person is not liable to be committed to civil jail for inability to pay a debt but a dishonest and fraudulent debtor is liable to be punished by way of arrest and committal.
13. In conclusion the Claimant's Notice to Show Cause issued on November 16, 2022 is found merited and is hereby allowed with costs.
14. It is so ordered.

**Dated at Nairobi this 29<sup>th</sup> day of September, 2023**

**Delivered virtually this 29<sup>th</sup> day of September, 2023**

**Abuodha Jorum Nelson**

**Judge**

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