



**Salim v Starways Express Company Ltd & another (Cause
84 of 2015) [2022] KEELRC 1568 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 84 OF 2015**

**AK NZEI, J
JUNE 16, 2022**

BETWEEN

AWADH SALIM CLAIMANT

AND

STARWAYS EXPRESS COMPANY LTD 1ST RESPONDENT

BUSCAR E.A. LTD 2ND RESPONDENT

RULING

1. Judgment in this old matter is shown to have been entered in favour of the Claimant on 13th May 2016, whereby the Claimant was awarded Ksh. 231,000, costs of suit and interest.
2. The application before me is dated 31st August 2017, and the Claimant/Applicant seeks orders: -
 - a. That the Honourable Court be pleased to grant/issue summons upon the 1st Respondent's director, Salim Sheikhan Salim, to appear in Court and answer questions of ownership of the 1st Respondent company and why the judgment debt should not be executed upon them (him).
 - b. Costs of the application.
3. The application is based on the supporting affidavit of Awadh Said (the Claimant) sworn on 31st August 2017. It is deponed in the said supporting affidavit:
 - a. that judgment was on 21st May 2016 entered against the 1st Respondent for ksh.231,000 plus costs and interest.
 - b. that costs were subsequently taxed and certified at ksh.98,750.
 - c. that the 1st Respondent had wound up and the Claimant did not know its owners.



- d. that the Director, Salim Sheikhan Salim, should be summoned to come to Court and answer questions on ownership of the 1st Respondent and why the judgment debt should not be executed against the directors.
4. On 29th September 2020, the Claimant filed a Notice of Motion, dated 28th September 2020 seeking leave to serve the Director, Salim Sheikhan Salim, by substituted service. The application is shown to have been allowed on 4th February 2021. Substituted service is shown to have been effected on 1st March 2021 by advertisement in the Daily Nation Newspaper. There is on record an Affidavit of Service in that regard, filed in Court on 7th June 2021.
5. The Director, Salim Sheikhan Salim, appointed Advocates to represent him in the matter herein, and on 9th November 2021 filed grounds of opposition opposing the Notice of Motion dated 31st August 2017.
6. On 24th November 2021, the said Director (Salim sheikhan Salim) filed a Replying Affidavit and deponed, *inter-alia*:-
- that he, Salim Sheikhan Salim, resigned from the 1st Respondent's directorship on 4th March 2016 and forfeited his one share to the company.
 - that the 1st Respondent was struck off from the register of companies and was dissolved *vide* Gazette Notice Vol. CXVIII-No. 15 of 23rd September 2016.
 - that *vide* Gazette Notice Vol. CXIX No. 114 dated 3rd February 2017, the 1st Respondent was declared bankrupt.
7. I have noted from the two copies of the aforementioned Kenya Gazette Notices that the 1st Respondent is shown to have been struck off and dissolved three (3) months from the date of Kenya Gazette Notice No. 7719 of 4th September 2016. Gazette Notice No. 693 of 3rd February 2017 confirms the dissolution.
8. From the documents annexed to the director's Replying Affidavit, Salim Sheikhan Salim, who told the Court that he is also known as Salim Sheikhan Zein, was the sole director of the 1st Respondent company. No documents have been exhibited to show that the 1st Respondent company ever had other directors. Other than the two gazette notices, all the other documents annexed to the said Directors' Replying Affidavit are signed by himself only, including a document said to be minutes of the meeting of Directors held on 4th March 2016. The other person named in the minutes, Ali Mohammed Abubakar (company Secretary), is not shown to have signed the minutes in confirmation thereof. Further, the documents are not shown to have been received by the Registrar of Companies or registered. The Director did not tell he Court what assets the 1st Respondent company had, and what became of these assets upon dissolution of the company. The director has not shown sufficient cause why the corporate veil should not be lifted, and why the judgment debt herein should not attach to him personally. It is worth noting that the 1st Respondent company was dissolved long after delivery of this Court's judgment on 13th May 2016.
9. Salim Sheikhan Salim, also known as Salim Sheikhan Zein, did not demonstrate that he was not a Director of the 1st Respondent company when judgment herein was entered against the 1st Respondent company on 13th May 2016, and on 3rd February 2017 when the 1st Respondent company was dissolved.
10. The Court in *Jian Nan Xing v COK Fas-st Company Limited* [2018] eKLR stated as follows:-
- “...the law on lifting the veil of incorporation is now settled. The circumstances under which a veil of incorporation would be lifted are, inter alia, where there is no real formal legal



separation between the company and its shareholders' personal financial affairs and/or that the company is just a sham or the company's actions were wrongful and fraudulent, or if the shareholders and/or directors act recklessly in the management of the business of the company and/or design a scheme, to perpetrate financial fraud, and/or if the company's creditors suffer unjust cost, that is, they did business with the company and they are left with unpaid bills or unpaid Court judgment. In all these circumstances, the Court will pierce the veil of incorporation and hold the shareholders and/or directors personally liable."

11. In the present case, the 1st Respondent Company was dissolved after judgment herein was entered against it, leaving the Claimant holding a Court judgment/decreed that he cannot execute. It cannot be said that dissolution of the 1st Respondent Company was not done without an element of intention to defeat justice.
12. It is my finding that this is an appropriate case where the corporate veil must be lifted. Consequently, I lift the corporate veil and impose personal liability on Salim Sheikhan Salim, also known as Salim Sheikhan Zein, regarding the decretal sum herein. Warrants of attachment and sale of his property in execution of this Court's decree or any other form of lawful execution of this Court's decree shall issue against the said person/Director.
13. Costs of the application are awarded to the Claimant/Applicant.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16TH DAY OF JUNE 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... for Claimant

..... for Respondent

