



**Kisali v Ultimate Engineering Limited (Cause 16 of 2016)  
[2022] KEELRC 1763 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1763 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 16 OF 2016  
AN MWAURE, J  
JUNE 9, 2022**

**BETWEEN**

**HENRY KAVERENGE KISALI ..... APPLICANT**

**AND**

**ULTIMATE ENGINEERING LIMITED ..... RESPONDENT**

**RULING**

1. The application dated February 4, 2022 the applicant prays that orders be issued to allow the him to pursue the directors of Ultimate Engineering Company Ltd.
2. They also pray to be granted order to allow the applicant to substitute or add or amend the respondent to include Janet Asambo Omido and Wilfred Masiga Omido. He finally pray that the costs be provided for.
3. The claimant in his supporting affidavit dated February 4, 2022 avers that he obtained an order from Justice O Makau on May 6, 2021 which was in his favour. He says he instructed Bemac Auctioneers to proceed to execute the said judgement. He says that he learnt thereafter that the respondent is no longer in existence. Unfortunately he refers the auctioneers Bemac Auctioneers as the respondent instead of Ultimate Engineering Ltd. The court takes that as a typographical error.
4. He says that the directors of this company relocated to America even though they are aware of the orders hereto. He avers that the directors are working to ensure he does not enjoy the fruits of his judgement.
5. He further avers that he has learnt that the directors are in the process of disposing the only property in Kenya. He says if the court does not grant this order the applicant will be rendered destitute.



6. Respondent was ordered on February 28, 2022 to put a response within 14 days upon service of the application. The court record shows the respondent was served with the hearing notice and affidavit of service was filed in Court dated March 16, 2022.
7. When the case was mentioned on March 28, 2022 the respondent had not filed his replying affidavit and so court proceeded to give a date for ruling.

#### Decision

The issue for determination is whether the court can order at this point that the directors for the respondent Ultimate Engineering Company Limited be pursued to satisfy the judgement entered in favour of the applicant herein.

8. Order 1 rule 10(2) of the [Civil procedure Rules](#) provides:

“The court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit be added”

9. It has been held that in certain circumstances, a party may be enjoined to a suit at appeal stage. In the case of [David Kiptugen -vs- Commissioner of Lands, Nairobi & 4 Others](#) [2016] eKLR the applicant filed an application before the Court of Appeal to be enjoined as an interested party to the appeal and for remission of the matter back to the trial court for hearing de novo. The court allowed the applicant and held:

” We agree with Ms Kirui that whatever outcome of the appeal, if the applicant is not joined in this appeal, he will be deprived of an opportunity to be heard on his claim of ownership of the suit land. That will of course be unconstitutional and against the rules of natural justice.”

10. The court can also allude to the fact that the law condones lifting of the corporate veil where it deems that doing so will serve the ends of justice. There is a document which is an exhibit produced by the applicant from the companies registry and in particular from Business Registration Service. It informs that Janet Asambo Omido is a director and shareholder of Ultimate Engineering Limited and is shown to hold 51,100 shares. The nominal share capital is shown as 100,000/-. There is no other shareholder indicated therein.
11. I am emboldened by the finding of various authorities on “piercing the corporate veil” in order to enable justice be done by treating a particular company, for purposes of litigation before it as identical with the person or persons who control the company (The [Halsbury’s Laws of England](#), 4<sup>th</sup> Edition paragraph 90).
12. In the Civil Appeal No 5 of 2017 [Stephen Njoroge Gikera & Punit Dipak Vadgama t/a Gikera & Vadgama Advocates Vs Econite Mining Company Limited & Others](#) the Court held:

”it is precisely this kind of situation that the principle of lifting corporate veil seeks to obviate. The corporate persona of a company will be dispensed with in cases where it is apparent that the company is being used as “A Creature of (the Controlling Director) a device and a sham, a mark which he holds before his face in an attempt to avoid recognition by the eye of equity”



13. In view of the above and various other authorities and the provision of order 1 rule 10(2) of the Civil Procedure Rules, I am inclined to pierce the corporate veil of the Ultimate Engineering Company Limited and add Janet Asambo Omido the sole shareholder and director as per the document from the registrar of companies as 2<sup>nd</sup> respondent to the suit and so allow the applicant to pursue her for the purposes of satisfying the judgment hereto.
14. The court however did not find any evidence to the effect that Wilfred Masiga Omido is a shareholder and director of the same company. So the court declines to add him in the suit.
15. So in conclusion the court allows the applicant to pursue the director of Ultimate Engineering Company Limited and in particular Janet Asambo Omido.
16. The court also grants leave to the applicant to add Janet Asambo Omido as a respondent herein.
17. The costs of the suit are awarded to the applicant.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the Constitution and the provisions of section 1B of the Procedure Act (chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

