



**Mbiti v Ready Consultancy Limited (Cause 51 of 2017)
[2022] KEELRC 3807 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3807 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 51 OF 2017**

**AK NZEI, J
JULY 28, 2022**

BETWEEN

CHRISTOPHER MULI MBITI CLAIMANT

AND

READY CONSULTANCY LIMITED RESPONDENT

RULING

1. The application before me is the claimant’s notice of motion dated December 7, 2021. In it, the claimant seeks the following orders:-
 - “1. That Mr Mohamed Issa Ducale, Ms Muna Farah Mumin and Mr Arthur Konye, all being the shareholders and directors of the judgment debtor/respondent herein, be summoned to attend the honourable court for their examination on whether the judgment debtor/respondent herein has properties or means to satisfy the decree herein; and for their examination on the judgment debtor/respondent’s assets; and to produce all the judgment debtor’s books of accounts including, but not limited to the judgment debtor’s annual financial records.
 2. That should Mr Mohamed Issa Ducale, Ms Muna Farah Mumin and Mr Arthur Konye fail to provide the necessary information required to satisfy the decree herein in full, then the directors/shareholders of the judgment debtor be ordered to personally pay the decretal amount in full within 14 days of the order.
 3. That costs be provided for.”



2. The application is supported by the claimant/applicant's supporting affidavit sworn on December 7, 2021, wherein he deponed, *inter-alia*:
 - a. That judgment herein was delivered on May 6, 2021, whereby Kshs 254,254 was awarded, and costs were subsequently taxed at Kshs 140,722. (copies of the decree and certificate of costs are annexed to the supporting affidavit).
 - b. That the decretal sum continues to accrue interest, and the respondent has refused to pay the same.
 - c. that the respondent's directors operate several businesses and commercial rental premises within Mombasa County, and have transferred properties registered in the respondent company's name to themselves so as to defeat justice.
 - d. that during pendency of the suit herein, the respondent's directors took out charges of colossal amounts. (A companies search dated September 29, 2021 is annexed to the supporting affidavit).
3. Although the application was served on the respondent's counsel, who was subsequently given an opportunity by the court to file response to the application, no response was filed. The application is therefore unopposed.
4. When the application came up for hearing on May 23, 2022, counsel for the claimant/applicant moved the court on the unopposed application and asked the court to grant prayers no. 2.
5. The claimant/applicant has demonstrated that he holds a valid decree of this court, which the respondent has refused to settle despite notice. The Respondent's directors have not denied the claimant/applicant's averments that they have transferred properties of the respondent company to themselves in order to defeat justice.
6. The respondent's directors have also not denied that they have, during the pendency of the suit herein, taken charges of colossal amounts. Indeed, a companies search dated September 29, 2021 and annexed to the applicant's supporting affidavit confirms that position.
7. In the case of *Jian Nan Xing v Cok Fast-St Company Limited* [2018] eKLR the court held 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.”
8. In view of the foregoing, it is my finding that the case herein is an appropriate one where the corporate veil must be lifted. Consequently, I lift the respondent's corporate veil and impose personal liability on Mohamed Issa Ducale, Muna Farah Mumin and Arthur Konye regarding the decretal sum herein. Warrants of attachment and sale of their 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 persons/directors.
9. Costs of this application are awarded to the claimant/applicant.



10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF JULY 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/applicant.

..... for respondent.

