



**Maalim v Kima Health International Services Limited (Cause 25 of 2019)
[2022] KEELRC 13238 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13238 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 25 OF 2019
AK NZEI, J
NOVEMBER 17, 2022**

BETWEEN

BIYE MOHAMED MAALIM CLAIMANT

AND

KIMA HEALTH INTERNATIONAL SERVICES LIMITED RESPONDENT

RULING

1. The application before me is the Claimant's Notice of Motion dated 16th May 2022. The Claimant/Applicant seeks the following orders:-
 - a) that Rose Maison Kirgotty, Careen Nanjala, Stephen Makhokha and Edward Lekaichu Ole Kateiya, being the Shareholders 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 to produce the Respondent's books of accounts and other documentary evidence showing the same before the Court.
 - b) that in default of the said Directors namely: Rose Maison Kirgotty, Careen Nanjala, Stephen Makhokha and Edward Lekaichu Ole Kateiya complying with the above Court order, they be ordered to personally pay the balance of the decretal amount due to the Claimant or to be imprisoned and committed to civil jail for a period of not less than six (6) months.
 - c) that service of the application herein upon the Respondent's Directors Rose Maison Kirgotty, Careen Nanjala, Stephen Makhokha and Edward Lekaichu Ole Kateiya be effected through their last known postal address as indicated in the Respondent's CR-12 Form issued by the Registrar of companies.
 - d) that costs of the application follow cause.



2. The application is predicated on the Claimant/Applicant's supporting affidavit sworn on 16th May 2022. It is deponed in the said affidavit:-
 - a) that by a consent adopted by the parties in Court on 13th April 2021, judgment was entered in favour of the Claimant/Applicant in the sum of Ksh. 1,488,861.75, all inclusive.
 - b) that the Respondent has so far paid Ksh. 150,000 and a sum of ksh. 1,338,861.75 remains unpaid by the Respondent.
 - c) that attempts by the Claimant to execute the decree has not yielded any fruit because the Respondent has no known attachable assets and has closed down its business premises.
 - d) that the Respondent has further declined to settle the balance of the decretal sum.
3. When the application came up for directions on 15th June 2022, Counsel for the Respondent informed the Court that the Respondent was willing to resume payment of the decretal sum by instalments. Counsel sought to be given fourteen days to talk to the Respondent instead of filing a Replying Affidavit. The Court fixed the application for mention on 30th June 2022, to record settlement. On 30th June 2022 the Respondent's Advocate informed the Court that the Respondent had resumed payments (of the decretal sum) and had paid a sum of ksh. 100,000, and would pay another ksh. 100,000 by 4th July 2022, and that thereafter, monthly instalments would continue as before. The matter was fixed for mention on 21st September 2022 for further directions on the application now before me. On 21st September 2022, I put the Respondent at liberty to file response to the application within ten days of the said date; and I fixed the application for hearing on 24th October 2022. The Respondent did not file any response to the application, and the Claimant/Applicant moved the Court, on 24th October 2022, to allow the unopposed application.
4. It is stated in the application before me that the Claimant's efforts to execute the decree issued by this Court has not yielded any fruit because the Respondent's directors have transferred all the Respondent's assets to third parties in an attempt to defeat justice, and that the Respondent has no known attachable assets.
5. The foregoing allegation by the Claimant/Applicant has not been denied and/or controverted by the Respondent.
6. The Court held as follows in the case of *Jian Nan Xing v Cok Fast-st Company Limited* [2018] eKLR:-

“...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.”
7. I make a finding that the Claimant/Applicant has demonstrated that the present case is an appropriate one whereby the Respondent's veil of incorporation must be pierced and/or lifted. Consequently, I allow the Notice of Motion dated 16th May 2022 to the extent that the Respondent's veil of incorporation is hereby lifted, and personal liability regarding this Court's decree herein is hereby



imposed jointly and severally on the Respondent's shareholders and Directors: - namely Rose Maison Kirgotty, Careen Nanjala, Stephen Makhokha and Edward Lekaichu Ole Kateiya. 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.

8. Costs of the application are awarded to the Claimant/Applicant.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MOMBASA THIS 17TH DAY OF NOVEMBER 2022

AGNES KITIKU NZEI

JUDGE

Appearance:

N/A for Claimant/Applicant

N/A for Respondent

