



**Ghani v Rural Housing Estates Limited (Environment and Land Miscellaneous Application E021 of 2024) [2024] KEELC 14191 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 14191 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E021 OF 2024**  
**JM ONYANGO, J**  
**OCTOBER 29, 2024**

**BETWEEN**

**MOHAMMED GHANI ..... APPLICANT**

**AND**

**RURAL HOUSING ESTATES LIMITED ..... RESPONDENT**

**RULING**

1. By a Notice of motion dated 18<sup>th</sup> May, 2024 and filed under Certificate of Urgency, the Applicant sought the following orders That; -
  - a. Spent.
  - b. The honourable court be pleased to order that Eleshikumar Chandrakani Gheewala and Mukta Chadrakani Gheewala being the directors of Rural Housing Estates do attend court and be examined as to whether the Respondent has any property or means of satisfying the Applicant's taxed costs in Eldoret Environment and Land Court Case No.. 237 OF 2012 and to produce the Respondent's books of account and other documentary evidence showing the status of the business before the court.
  - c. The honourable court be pleased to order that the veil of incorporation of the Respondent be lifted and the Directors Eleshikumar Chandrakani Gheewala and Mukta Chadrakani Gheewala be made personally liable and be ordered to settle the taxed costs in Eldoret Environment and Land Court Case No.. 237 OF 2012 to the tune of Kshs.12,882,501.70 with interest thereof from 16<sup>th</sup> June, 2021 jointly and severally until payment in full.
  - d. The honourable court be pleased to order that a Declaration be made pursuant to Section 1002 as read with section 996 of the *Companies Act* that the Directors of the Respondent namely Eleshikumar Chandrakani Gheewala and Mukta Chadrakani Gheewala are responsible without any limitation of the liability for the debt of the above company owed to the Applicant



in relation to taxed costs in Eldoret Environment and Land Court Case No.. 237 OF 2012 with interest from 16<sup>th</sup> June, 2021.

- e. The honourable court be pleased to order that the said Directors Eleshikumar Chandrakani Gheewala and Mukta Chadrakani Gheewala do immediately settle the said Applicant's taxed costs of Kshs. 12,882, 501.70/= with interest from 16.6.2021 payable within 30days.
  - f. In default of the said Directors complying with the above orders, the Honourable Court be pleased to order that the said Directors be imprisoned and committed to civil jail for a period of not less than six (6) months.
  - g. Costs of the Application be provided for.
2. The Application is premised on the 21 grounds thereon and on the Applicant's Supporting Affidavit sworn on even date. It is the Applicant's contention that the Respondent instituted a suit against him for an alleged trespass; the same was heard and determined vide a Judgment issued on the 16.6.2021, whose effect was to dismiss the respondent's claim with costs.
  3. Dissatisfied with the said judgment, the respondent lodged an appeal and sought stay of execution which was granted vide an order dated 5<sup>th</sup> October, 2021 but which lapsed on 5<sup>th</sup> November, 2021 and has never been extended.
  4. He subsequently filed his Party & Party Bill of Costs dated 31/5/2023 and which was taxed off at Kshs.12,882,501.70 vide a Taxation Ruling dated 18/8/2023. Aggrieved with the taxed amount; the Respondent filed a Reference contesting the award, the Reference was also dismissed vide a Ruling dated 25.1.2024 which upheld the decision of the Taxing Master.
  5. He avers that the respondent has never settled the said taxed amounts despite being fully aware of the same, he thus urged the court to lift the corporate veil so that the directors of the respondent are made personally liable to settle the decretal sum.
  6. He contends that unless the orders sought are granted, he stands to be gravely prejudiced, given the prolonged delay in settling the outstanding dues owing to him. He urged the court to allow the application as prayed.
  7. The Application was opposed; the Respondent filed a Replying Affidavit sworn by Shrikesh Gheewala on the 2<sup>nd</sup> September, 2024. He dismissed the application for being incompetent for the reason that the respondent's directors are separate and distinct legal entities from the respondent and execution cannot therefore issue against them for liability accrued by the respondent.
  8. He stated that they filed a suit against the applicant; the suit was heard and determined in favor of the applicant, the effect of the judgment was to nullify the respondent's title to the suit land. Aggrieved by the said judgment, the respondent appealed against the decision to the Court of Appeal, which appeal is yet to be heard and determined.
  9. He contends that respondent filed an application for stay of execution in the Court of Appeal and consequently, an order for status quo was issued whose effect is to preserve the subject matter as it existed at the time of issuing the order. That the said order was specific and direct, that the process of execution that had commenced was to be stopped where it had reached. He maintained that at the time of issuing the status quo orders, the taxation process had not been commenced.
  10. Be that as it may, the applicant commenced the taxation process, his Bill of Costs was taxed at Kshs.12,882,501.70. The respondent being dissatisfied with the said ruling, filed a reference. Vide a ruling dated 25<sup>th</sup> January, 2024, the said reference was also dismissed.



11. He contends that being aggrieved by the ruling of 2<sup>nd</sup> January, 2024; he obtained leave of the court and lodged an appeal to the Court of Appeal, which he argues has a high chance of appeal. That the said appeal is still pending for hearing and determination.
12. On the orders sought of lifting the corporate veil; it was his assertion that the same can only be done where there is no real formal legal separation between the company or where the company's actions were wrongful or fraudulent. He averred that no allegation has been made by the applicant that his attempts to execute against the respondent have failed nor has he demonstrated the steps taken to execute the decree or the taxed costs.
13. He further contends that in the event that the corporate veil is lifted and the respondent is compelled to pay the taxed costs and the respondent ends up being successful in its appeal, he stands to be prejudiced and further that the action would render the appeal nugatory.
14. It was also his claim that the application is premature as it seeks execution of a decree against the directors and shareholders which jurisdiction is not provided under Order 22 Rule 35 of the Civil Procedure Rules. He thus urged the court to hold the issue of costs in abeyance pending the hearing and determination of the appeal.
15. The Application was canvassed by way of written submissions; the Applicant filed his written submissions dated 4<sup>th</sup> October, 2024 together with authorities while the Respondents filed their submissions dated 9/10/2024 together with authorities, which I have read and considered in arriving at my determination as hereunder;

### **Analysis and Determination**

16. I am of the considered view that the main issue arising for determination is whether the instant application is merited and I will discuss the same on account of;
  - i. Whether the applicant has met the threshold of lifting the corporate veil,
  - ii. Whether the orders sought are tenable Lifting the Corporate Veil
17. The Applicant has urged this court to disregard the separate legal entity of the respondent by piercing/ lifting the veil of incorporation so that the directors of the respondent are made personally liable to settle the decretal sum of Kshs.12,882,501.70. It is his claim that the entire conduct of the respondent and its directors has been tainted with dishonesty, mala fides and delaying tactics which has been demonstrated by filing numerous unnecessary pleadings. He is therefore of the view that the directors are using the corporate personality to shield the applicant from enjoying the fruits of his judgment.
18. The Respondent on the other hand emphasized on the separate and distinct legal nature of the respondent and maintained that execution should not issue against them for liability accrued by the respondent. He averred that the orders sought of lifting the corporate veil can only be done where there is no real formal legal separation between the company and its directors or where the company's actions were wrongful or fraudulent. Further, it was his claim that no allegation has been made by the applicant that the respondent is engaging in any fraudulent activities.
19. It is a well-established principle that a company is a separate and distinct legal person from its directors and shareholders; See *Salomon & Co. Ltd v Salomon* [1897] A.C 22. However, this separate entity nature may be disregarded and the veil of incorporation lifted in exceptional circumstances.



20. Circumstances under which the corporate veil may be lifted have been outlined in Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 7 (1), Paragraph 90 states as follows:-

“Notwithstanding the effect of a company's incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced”. (emphasis added)

21. Further, the court in the case of *Jayden Limited v Bradley Limited* (Miscellaneous Application E202 of 2019) [2021] KEHC 127 (KLR) (Commercial and Tax) (30 September 2021) (Ruling) cited with approval the case of *Jones and Another v Lipman & Another* [1962] IWL 833 where it was held: -

“Whereas a registered company is a legal person separate from its members, the veil of incorporation may, however, be lifted in certain cases for instance, where it is shown that the company was incorporated with or was carrying on business as no more than a mask or device for enabling the directors to hide themselves from the eyes of equity. Corporate vehicle has been used to commit serious and mega frauds and corruption. And that realization has impelled the courts, in the interest of the law, the members in general, or in public interest to identify and punish the persons who misuse the medium of corporate personality for fraudulent, or improper or illegal acts. This act of removing the façade of corporate personality to identify the persons who are really guilty is what is known as lifting or piercing the corporate veil.”

22. From the above, the three exceptional grounds outlined are; fraud, improper conduct and lastly where the character of the company or the nature of the persons who control the company is a relevant feature. In the instant suit, there has been no allegation of fraudulent activities or improper conduct on the part of the respondent.
23. However, it is the applicant's contention that the directors of the respondent have acted dishonestly by avoiding and delaying execution by filing numerous unnecessary pleadings. The question that therefore follows is whether the said conduct by the directors of the respondent is a relevant feature to warrant the lifting of the veil of incorporation.
24. I have carefully looked at the application, the Replying Affidavit and the annexures thereto and it is important to point out that the “unnecessary numerous pleadings” alleged by the applicant are appeals lodged to the Court of Appeal and the reference against the decision of the taxing master on the taxed costs. The right of appeal is a constitutional right and the respondent is equally entitled to exercise the same against any decision of the court that they are dissatisfied with. The same cannot therefore be dismissed as being “unnecessary pleadings” as alleged by the applicant.
25. In view of the foregoing, it is the finding of this court that the applicant has not satisfactorily met the threshold to warrant the lifting of the corporate veil of incorporation.



## Whether the orders sought are tenable

26. As outlined above, the applicant urged the court to hold the directors of the respondents personally liable for the debts of the respondent and to compel them to pay the taxed costs. It is his contention that the respondent being aggrieved by the judgment of this court, differently constituted, lodged an appeal and sought stay of execution which was granted vide an order dated 5/10/2021 but which lapsed on 5/11/2021 and has never been extended. He thus maintained that there is no order stopping them from executing the decree issued in their favor.
27. The Respondent in their Replying Affidavit stated that the respondent being dissatisfied with the judgment of M. Odeny J. lodged an appeal to the court of appeal; the said appeal is still pending for hearing and final determination. That the respondent also filed an application for stay of execution and consequently, an order for status quo was issued; at the time of issuing the said orders, the taxation process had not been commenced.
28. That the applicant, in contravention of the orders of status quo, went ahead and filed a Bill of Costs, which was taxed at Kshs.12,882,501.70. A reference was filed against the said decision and vide a ruling dated 25<sup>th</sup> January, 2024, the decision of the taxing master was upheld. He contends that leave was sought and the respondent has since lodged an appeal against the said ruling.
29. On the allegation by the applicant that the orders for stay of execution issued on 5<sup>th</sup> October, 2021 lapsed on 5<sup>th</sup> November, 2021 and the same was never extended, I have carefully looked at the respondent's annexures in the Replying Affidavit. What emerges is that the application for stay of execution before the Court of Appeal was compromised by an order of status quo which has never been set aside, varied or reviewed. The allegations by the applicant are therefore not true that there are no orders stopping them from executing the decree issued in their favor.
30. It is therefore clear that there exists an Order of Status quo in respect of the appeal lodged against the judgment of my predecessor M. Odeny J. An order for status quo technically means that things be left as they are until the determination of certain facts, in this case, the final determination of the appeal.
31. In the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”
32. Having established that there exists an Order of status quo, it therefore follows that the orders sought by the applicant seeking to execute the decree and the certificate of costs in his favor are not tenable at this juncture.
33. Allowing the orders would be more prejudicial to the Respondent than the applicant. While I acknowledge that the applicant has had to wait long to enjoy the fruits of the judgment, it is not lost to this court that there is an order for status quo issued by the Court of Appeal and the appeal lodged against the judgment of this court, differently constituted, is still pending for determination.



**Conclusion**

34. In view of the foregoing, I find that the application dated 18<sup>th</sup> May, 2024 is not merited and the same is hereby dismissed the same with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024.**

.....

**J. M. ONYANGO**

**JUDGE**

In presence of; -

No appearance for the 1<sup>st</sup> Plaintiff/ Applicant

No appearance for the 1<sup>st</sup> Defendant/ Respondent

No appearance for the 2<sup>nd</sup> Defendant/ Respondent

Court Assistant – Brian

