



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 55 OF 2013**

**BETWEEN**

**ALFRED KALOKI & 13 OTHERS ..... CLAIMANTS**

**VERSUS**

**SEA FRONT ENTERTAINMENT LIMITED.....  
RESPONDENT**

**RULING**

1. Judgment in this Cause was delivered on 4<sup>th</sup> April 2014. It was ordered the Employer pays the former Employees, the 14 Claimants herein, terminal benefits and compensation for unfair termination, totaling Kshs. 688,973.
2. To-date, the Employees have received nothing from the Respondent in satisfaction of the Judgment.
3. The Employees applied to have the Respondent's Directors Messrs. Venancio Mbae and John Mwandary examined on oath as to Judgment Debtor's means and assets, and produce books of accounts and other documentary evidence showing the same.
4. In default it was sought to have the Directors held personally liable for the decretal sum, costs and interest.
5. John Mwandary is deceased, and summons were directed against his Administrator, and against the surviving Director Venancio Mbae.
6. The Directors failed to participate in the application seeking to have them held liable, and did not answer to the summons, when called upon to appear in Court. Orders compelling they account for their Company's employment liability issued.
7. The Director Venancio Mbae, through the same Advocates who are on record for his Company, made an application dated 18<sup>th</sup> April 2016 seeking to have the orders dated 10<sup>th</sup> March 2015 set aside.
8. The Claimants filed a Replying Affidavit sworn by the 1<sup>st</sup> Claimant. They hold that the Application by Mr. Mbae is meant to continue denying them their terminal dues and compensation, 2 years after the Court gave its judgement.
9. It has been pointed out by the Claimant that Mr. Mbae approached the Court under certificate of urgency on 18<sup>th</sup> April 2016, sought and was granted interim stay of execution, on the condition that he

deposited the entire decretal sum in Court.

10. It was confirmed upon mention in Court on 11<sup>th</sup> May 2016, that the decretal sum had not been deposited. Interim Stay Order, was declared to have lapsed.

11. The Application dated 18<sup>th</sup> April 2016 was heard in the presence of both Parties, on the 20<sup>th</sup> June 2016.

12. Mr. Mbae submits the Employment and Labour Relations Court [E&LRC] does not have jurisdiction to have him involved in execution of decree. He invokes the doctrine of legal separateness, alleging he cannot be made to meet the obligations of his Company. He states that lifting of the corporate veil is a jurisdiction reserved for the High Court under the Companies Act, Cap 486 of Laws of Kenya. Jurisdiction of the E&LRC is restricted under Section 12 of the E&LRC Act. The Claimants should file their Application for lifting of the corporate veil at the High Court.

13. The Claimants affirm the jurisdiction of the E&LRC in ordering proceedings against Mr. Mbae. He failed to honour summons. Claimants did not just base their Application on Companies Act, they cited all the other enabling provisions of the Law. The Company has not paid the ex-Employees since Judgment was delivered. The Directors have not explained why this is so.

### **The Court Finds:**

14. The Application by Mr. Mbae is one, in a series of actions by the Respondent and its Directors, to prolong the non-payment of terminal dues and compensatory award granted by the Court way back in 2014.

15. Ample opportunity was granted by the Court to the Directors to attend Court, and persuade the Court why they should not be involved in meeting the decree. They kept away from the Court. Even when asked to deposit the decretal sum in Court as condition for stay, the Directors ignored the order of the Court.

16. The Applicant's submission that E&LRC has no jurisdiction to grant the orders against Mr. Mbae is incorrect. Article 162(2) (a) of the Constitution provides for creation of the E&LRC, to hear and determine all disputes relating to employment and labour relations. Section 12 of the constitutive Act, extends jurisdiction of the Court to matters listed thereunder, and all related matters. It is a complete misconception of the law, to hold that a decision made by this Court, should be executed by the High Court. That may well have been the case before the enactment of the Labour Institutions Act 2007 and the other Labour and Employment Legislations of 2007/2008. It can no longer be the case today, particularly in view of the grounding of this Court's jurisdiction in the organic law.

17. Documents on record, such as the Memo dated 23<sup>rd</sup> October 2010, show both Directors were engaged in instruction of Employees. They could, under Section 2 of the Employment Act, fit the description of the term 'Employer'.

18. This Court has in the past held that Employers must not be allowed to escape employment liability, through the creation of façade companies and other business vessels of convenience. They cannot be allowed to hide beneath multiple layers of legal and business structures, and fail to pay their Employees' dues.

**19. *There is no merit in the Application filed by Mr. Venancio Mbae. The Application is dismissed with costs to the Claimants.***

Dated and delivered at Mombasa this 29<sup>th</sup> day of July, 2016.

James Rika

Judge