



**Tarmal Wire Products Limited v Aberdare Steel & Hardware Ltd; Aberdare
Top Investment Ltd & 2 others (Interested Parties) (Civil Case 254 of 2016)
[2025] KEHC 1026 (KLR) (Commercial & Admiralty) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL CASE 254 OF 2016
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

TARMAL WIRE PRODUCTS LIMITED PLAINTIFF

AND

ABERDARE STEEL & HARDWARE LTD DEFENDANT

AND

ABERDARE TOP INVESTMENT LTD INTERESTED PARTY

SOLOMON NDIBUI NGECHU INTERESTED PARTY

PETER NGECHU MWAURA INTERESTED PARTY

RULING

1. The Plaintiff/Decree Holder filed a Notice of Motion dated 20th July 2023, brought under Order 22 Rule 35, Order 51 Rule 1 of the [Civil Procedure Rules](#) and Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), seeking the following orders:
 - i. That the 2nd Interested party be ordered to attend court and produce books of accounts and all bank statements of the Defendant for the years 2016 and 2017, and be examined as to the Defendant's means to satisfy the decree of the court.
 - ii. That the 3rd Interested Party be ordered to attend court to produce the books of account and all bank statements of the 1st Interested Party from January 2023 until the date of the order of the Court, as well as the 1st Interested Party's beneficial ownership register for the years 2021 and 2022, and to be examined on the said documents and the Defendant's means of satisfying the decree of the court.



- iii. That the 1st, 2nd and 3rd Interested Parties be held personally liable, whether jointly or severally, for satisfying the decree of the Court;
 - iv. That the application costs be borne, jointly or severally by the Defendant and the Interested Parties.
 2. The application is based on the grounds presented in the record and the affidavit of Ebrahim Ali Omar, the financial controller of the Plaintiff, sworn on 20th July 2023. He states that the Plaintiff filed a suit against the Defendant on 30th June 2016, seeking judgment for a debt owed. Judgment on admission was entered on 11th December 2019. However, the decree remains unsatisfied, and the Plaintiff has been unsuccessful in attaching the Defendant's property. To evade the judgment, Solomon Ndibu (2nd Interested Party) and the majority shareholder in the Defendant company, caused Aberdare Top Investment Limited (1st Interested Party) to be registered in order to continue the Defendant's business. The Plaintiff claims the 1st Interested Party was created to shield the Defendant from the judgment while continuing operations. The Plaintiff seeks to hold the 2nd and 3rd Interested Parties personally liable for the decree.
 3. In opposition, Solomon Ndibu Ngechu filed a replying affidavit sworn on 2nd February 2024. He states that Aberdare Top Investment Limited was registered by Peter Ngechu (3rd Interested Party), and its operations are independent of the Defendant's business. That he is assisting the 3rd Interested Party in running the business. He argues that the application is unmerited because the Plaintiff has failed to lift the veil of incorporation of the Defendant company and has not provided evidence of fraudulent dealings by the Defendant to justify piercing the corporate veil. He urges that the application be dismissed, claiming the Plaintiff did not seek the court's leave to enjoin the Interested Parties to the suit.
 4. The application was heard through written submissions, with the Plaintiff/Decree Holder submitting on 15th July 2024 and the Defendant submitting on 9th October 2024.
 5. I have duly considered the application, the supporting and opposing affidavits, and the parties' submissions. The primary issue for determination is whether the corporate veil of the Defendant company should be pierced to compel Solomon Ndibu and Peter Mwaura to personally attend court for examination regarding whether the Defendant has any property or means to satisfy the decree.
 6. Order 22, rule 35 of the Civil Procedure Rules states:

“Where a decree is for the payment of money, the decree-holder may apply to the court for an order that—

 - a. the judgment-debtor;
 - b. in the case of a corporation, any officer thereof; or
 - c. any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”
 7. The decree holder seeks to have Solomon Ndibu and Peter Mwaura examined in court as directors of Aberdare Steel & Hardware Ltd and Aberdare Top Investment Limited respectively. The decree holder argues that Solomon caused Aberdare Top Investment Limited to be registered to continue the business of the judgment debtor in an attempt to defeat the execution of the judgment.



8. From the record, Aberdare Top Investment Ltd was incorporated on 17th August 2017, with Peter Ngechu Mwaura listed as the sole director. However, the registration details of the company reveal that Solomon Ndibu's personal contact information, including his email address and phone number, are associated with the company's registration. This suggests that, despite Peter being the official sole director, Solomon had significant involvement with the company, as his personal details are linked to its formation and operation.
 9. To support this claim, the decree holder has provided critical evidence, including the business registration certificates for both Aberdare Top Investment Limited and Aberdare Steel & Hardware Ltd. These documents show the connection between Solomon and the company, lending weight to the assertion that Solomon played a key role in the creation and management of Aberdare Top Investment Ltd, potentially as a way to shield assets from the Plaintiff's judgment. The inclusion of Solomon's personal information in the registration details indicates that he was not merely an external advisor, but likely had substantial control or influence over the company's operations, despite Peter's designation as the sole director.
 10. The judgment debtor challenges the application, arguing that the decree holder failed to apply for lifting the veil of incorporation. However, I find that Order 22, Rule 35 grants the court the power to summon an officer of a corporation for examination to determine the corporation's means of satisfying the decree.
 11. The judgment in this case was entered on 11th December 2019, confirming the Plaintiff's claim for the debt owed by the Defendant. Despite the clear judgment, it remains unsatisfied, as the Defendant has failed to take any steps to fulfil the terms of the decree. In response, the Defendant argues that the company is not doing well financially and denies that any judgment has been entered against it.
 12. The Defendant has failed to make any efforts to settle the debt as directed by the court. The Plaintiff's attempts to attach the Defendant's assets to satisfy the decree have been unsuccessful, indicating that the Defendant may be attempting to shield its assets, despite claims of business prosperity. The defendant's actions undermine the judicial process and suggest a deliberate attempt to evade responsibility for the debt.
 13. Given the circumstances of the case, I find it is in the interest of justice to have Solomon and Peter summoned to court for examination, as provided under Order 22, Rule 35 of the *CPR*. In *Postbank Credit Limited (in Liquidation) v Nyamangu Holdings Limited* (2015) eKLR, the court held that:

“A person to be summoned under Order 22 Rule 35 (c) of the *Civil Procedure Rules*, to provide information on the property of the Company will also be required to produce any relevant documents or copies thereof on the assets of the Company or books of accounts including but not limited to the Judgment Debtor's annual financial statement, documents of title property of the Company in his possession and which he may have obtained as a director and/or shareholder of the judgment-debtor.”
 14. The upshot is that I grant prayers 1 and 2 of the application. Costs are awarded to the Plaintiff/Decree Holder.
- It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA



JUDGE

In the presence of:

N/A for Plaintiff/Decree Holder

Mr. F. Onyango h/b for Mr. Mwae for Defendant/respondent

Court Assistant: Carlos

