



REPUBLIC OF KENYA



KENYA LAW
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**Nyaga v Nyapela & another; Chhabhadiya Enterprises Limited (Third party)
(Civil Suit 13 of 2012) [2025] KEHC 6150 (KLR) (Civ) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT 13 OF 2012

JM OMIDO, J

APRIL 25, 2025

BETWEEN

JOY MERCY MUTHONI NYAGA PLAINTIFF

AND

JACKSON KANYALE NYAPELA 1ST DEFENDANT

KAMPALA COACH 2ND DEFENDANT

AND

CHHABHADIYA ENTERPRISES LIMITED THIRD PARTY

RULING

1. Two applications, both filed by the Plaintiff, are the subject of this ruling:
 - a. The Notice of Motion dated 24th May, 2024, expressed to be brought under Sections 1A, 1B, 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 22 Rule 35 and Order 51 Rule 1 of the *Civil Procedure Rules* and supported by the Plaintiff's affidavit sworn on even date seeks the following orders:
 - i. That the Honourable Court be pleased to order and direct that the corporate veil of the 2nd Defendant be lifted, and its directors be held directly liable for the payment of all outstanding decretal sum owed to the Plaintiff.
 - ii. That Ahlam Basiet Abdul and Nijud Abdallah being the shareholders and directors of the 2nd Defendant do attend court and be examined as to whether they have any property or means of satisfying the decree herein and to produce the books of account and other documenting evidence showing the same before the Honourable Court.



- iii. That in default of the said directors complying with the above court order, they be ordered to personally pay all the decretal amount due from the date of delivery of judgement together with costs to the Plaintiff.
 - iv. That in the alternative, the Honourable Court to order that the said directors and shareholders of the 2nd Defendant be imprisoned and committed to civil jail for a period not exceeding six (6) months.
 - v. That costs be borne by the 2nd Defendant.
- b. The Notice of Motion dated 20th September, 2024 expressed to be brought under that seeks the following orders:
- i. That the Honourable Court be pleased to order and direct that the corporate veil of the 3rd Party be lifted, and its directors Ramji Karsan Visharam And Amratben Ramji Patel be held directly liable for the payment of all outstanding decretal sum owed to the Plaintiff.
 - ii. That the said directors of the 3rd Party namely Ramji Karsan Visharam and Amratben Ramji Patel be ordered to personally pay all the decretal amount due from the date of the delivery of judgement together with costs to the Plaintiff.
 - iii. That costs be borne by the 3rd Party.
2. The two applications were served upon the respective Respondents against whom the orders therein are sought to the satisfaction of the court. The respective Respondents to the applications did not file any responses thereto.
 3. Upon examination of the record and the pleadings filed, including the affidavits in support of the two applications, I deduce the issue that I am tasked to determine to be whether this Court should lift the veils of incorporation over the 2nd Defendant and the 3rd Party and allow the Applicant to execute the decree issued herein against the directors/shareholders of the two companies.
 4. It is clear from the depositions in the two supporting affidavits sworn by the Plaintiff, who is the decree holder herein, that the decree that was issued herein on 2nd March, 2023 jointly and severally against the Defendants and the 3rd Party remains unsatisfied.
 5. It is also clear from her position that execution of the decree by attachment of the assets of the 2nd Defendant and the 3rd Party has failed because no attachable assets belonging to the two parties have been traced or identified by the Plaintiff.
 6. The question that abounds is therefore whether this court should proceed to lift the corporate veils of the 1st Defendant and the 3rd Party so that the directors of the two companies are held personally liable to satisfy the decree.
 7. The English case of *Salomon & Salomon & Co. Ltd v Salomon* [1897] A.C. 22 H.L. established the legal principle that a company is a separate and distinct person from its shareholders and directors.
 8. Nevertheless, in order to prevent the abuse of that principle in Salomon, the law allows, in appropriate cases, and upon examination of the directors of the company, for an order to be issued for the corporate veil of a company be lifted so that the directors and/or shareholders of a company are held personally liable to pay the company's debts.
 9. Under what circumstances then, can a court issue such orders lifting the corporate veil of a company?



10. *Halsbury's Laws of England*, 4th 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”.

11. My brother Wananda J. in the case of *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others* (Miscellaneous Civil Application 43 of 2023) [2024] KEHC 2343 (KLR) (8 March 2024) (Ruling) cited the case of *Mugenyi & Company Advocates v the Attorney General* [1999] 2 EA 199, in which the Court, while quoting *Palmers Company Law* Vol. 1 (22nd Ed) listed 10 instances in which the veil of corporate personality may be lifted, as follows:

- “ 1. Where companies are in the relationship of holding and subsidiary companies;
2. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
3. In certain matters relating to taxation;
4. In the law relating to exchange control;
5. In the law relating to trading with the enemy;
6. In the law of merger control in the United Kingdom;
7. In competition of the European Economic Community;
8. In abuse of law in certain circumstances;
9. Where the device of incorporation is used for some illegal or improper purpose; and
10. Where the private company is founded on personal relationship between the members.”

12. The court in *Jepkemoi* (*supra*) then went on to observe as follows while considering the text in *Palmers Company Law* Vol. 1 (22nd Ed) and as discussed in the case of *Mugenyi & Co. Advocates* (*supra*):

- “ 22. It is therefore evident that in a case such as the instant one, the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smacks of bad faith and that the corporate veil is being used as



a mask to fraudulently shield such directors or shareholders from execution of the decree. The veil may therefore be pierced where it appears that the business of the company has for instance been carried on with intent to defraud creditors of any other person or for any fraudulent purpose. Only where justice of the case demands should the corporate veil be disregarded and lifted.

23. The proper procedure before a Court determines whether to lift the veil of incorporation is to first summon such directors to Court to be orally examined as to whether it has any and/or what property and/or means of satisfying the decree. The directors may in the process be also called upon to produce any books of accounts or documents, for purposes of scrutiny. It is during this process that the Court may then determine whether the directors are guilty of bad faith, or willful acts meant to avoid settlement of the decree or even outright fraud. Should the existence of such circumstances be established, then the Court may go ahead to lift the corporate veil and hold the directors or shareholders personally liable to settle the decree.”
13. The jurisprudence that emerges from the decision above is that before a party seeks for an order for the lifting of the corporate veil of a company, the party must first apply to the court to summon the directors of the company for purposes of being orally examined as to whether the company has any assets and/or means of satisfying the decree. The other purpose of such examination is to determine whether the directors are guilty of bad faith, or willful acts meant to avoid settlement of the decree or even outright fraud.
14. If the existence of such bad faith or willful acts of avoidance of settlement of the decree or fraud is established upon examination, only then can the court proceed to consider ordering for the lifting of the corporate veil of the company and holding the directors and/or shareholders thereof personally liable to settle the decree.
15. The foregoing being the position, the prayers in both applications seeking the lifting of the corporate veil of the 2nd Defendant and the 3rd Party are premature as no such examination of the directors of the two entities has been sought or conducted.
16. Thus then, I proceed to determine the two motions as follows:
 - a. With respect to the application dated 24th May, 2024, I will grant only prayer 2 thereof and order that summons shall issue to Ahlam Basiet Abdul and Nijud Abdallah, the directors of the 2nd Defendant to attend court on a date that the court will issue for purposes of being orally examined as to whether the company has any assets and/or means of satisfying the decree that was issued herein and that the Plaintiff shall be at liberty, with reasonable notice, to call upon the said directors to produce any books of accounts or documents, for purposes of scrutiny.
 - b. With respect to the application dated 20th September, 2024, the same is ordered struck out as it does not seek an order for the directors of the 3rd Party to be summoned for purposes of examination and is therefore premature.
 - c. The matter to be mentioned before the Deputy Registrar, Milimani High Court Civil Division on 15th May, 2025 for purposes of fixing a date for the examination of the above-named directors of the 2nd Defendant and/or for further orders/directions.
 - d. I make no order as to the costs of the two applications as no responses thereto were filed.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 25TH DAY OF APRIL, 2025.



JOE M. OMIDO
JUDGE

