



REPUBLIC OF KENYA



Agrotech and Input Supplies Ltd v Imexia Ltd (Miscellaneous Application E1009 of 2024) [2025] KEHC 9008 (KLR) (Civ) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9008 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E1009 OF 2024

JN MULWA, J

JUNE 26, 2025

BETWEEN

AGROTECH AND INPUT SUPPLIES LTD APPLICANT

AND

IMEXIA LTD DEFENDANT

RULING

1. The Applicant Agro Tech and Input Supplies Ltd Decree Holder by a Motion dated 7/10/2024 sought orders compelling the defendant's judgment debtor's known directors namely Benson Wesonga Ouma, John Munyiri Mugane and Hilary Omondi to:
 - a. Attend court to be orally examined on oath as to the J/D's means and assets;
 - b. To produce the J/D's books, documents and or evidence showing the affairs of the company, and providing suitable means and assets for the satisfaction of the decree.
 - c. In default, the Directors be jointly and or severally be held personally liable to satisfy the decree issued by the court in full and
 - d. This court do grant to the decree holder leave to execute the decree against the said Directors personally to satisfy the decree.
2. The motion is premised upon Section 140 and 148(1) of the *Companies Act* of 2015, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 22 Rule 35 of the Civil Procedure Rules in addition to the Supporting Affidavit sworn by one Samir Kumar a Director of the Decree Holder Company sworn on 11/10/2024.



3. Despite being served with the motion and an affidavit of service filed the Respondent Imexia Limited no response has been filed. The motion therefore stands unopposed.
4. The Applicant relies fully on the underpinning legal provisions as stated, the supporting affidavit and annexures thereto.
5. The decree subject of this motion was issued by the court on 21/12/2023 in Nairobi Small Claims Commercial No. E5301 of 2022, a matter between the two parties in the sum of Kshs. 27,600/=. It is averred by the applicant that upon the decree being issued, the decree holder in execution proceedings proclaimed upon the Judgment Debtors property through Agunja Traders Auctioneers for a sum of Kshs.111,773.50 as stated in the warrants of attachment and sale dated 13/06/2024.
6. The applicant posits that the Judgment debtors' attachable assets could not be traced and or the Directors of the Judgment debtor have hidden the proclaimed assets necessitating filing of the present motion.
7. The Applicant has annexed as exhibit CR12 of the defendant Company showing the current directors of the company as "SK3" whose names are stated at prayer No. 1 of the motion, and to whom the motion was served and affidavit filed showing that the CEO of the company one Omondi Otieno telephone mobile No. 0729458478 was physically served with the motion on 3/12/2024 at 11.38am by the process server at Simba Villa Resort adjacent to Embakasi Barracks Nairobi.
8. Order 22 Rule 35 of the Civil Procedure Rules is couched in the following terms:-
 - 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"
9. By the above legal provisions, the question arises as to whether this court has original jurisdiction to entertain and or issue the orders sought by the Applicant.
10. As stated above, the decree sought to be executed was issued in the small claims court. Is it that the said court has no powers to execute its own decrees?
11. Section 18 of the *Civil Procedure Act*, in respect of execution of decrees ought to be read with Section 34(1) thereof: thus:-

"All questions arising between the parties to the suit which the decree was passed, or their representatives and relating to the execution discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit." (Emphasis added)
12. The expression of "Court that passed the decree" at Section 34(1) of the Act except where the context otherwise requires includes:-



- a. Where the decree to be executed has been passed in exercise of appellate jurisdiction, the court of first instance
 - b. Where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for execution of the decree would have jurisdiction to try such suit.
13. Although the High Court has original jurisdiction and inherent powers, in respect of the application before the court, its jurisdiction should be exercised on appeals only and within its procedural boundaries as held in the case of *Jepkemoi Vs. Zeburi Enterprises Company Ltd & 2 Others* [2024] eKLR.

Where a very similar application for the lifting of the veil of incorporation of the judgment debtors by order for examination of the judgment debtors directions was made in the High Court whereas the Court that issued the decree was the Magistrates Court.

14. Here, this court has not been told that the court that issued the decree sought to be executed has no jurisdiction no has ceased to exist or for whatever reason it is unable to issue orders in the execution process including orders touching on the *Companies Act*, Section 140 and 148 thereof; lifting of the veil of incorporation of a limited liability companies.
15. Part V of the *Small Claims Court Act*, and particularly Section 36, 39 – 42 thereof provides for the manner of execution of its decrees.
- Section 39 provides the procedure for execution including attachment and sale of the judgment debtors movable immovable property; attachment of salary of the judgment debtor.
16. The manner of execution is also provided at Section 40 thereof, wherein the court may order execution to issue against the judgment debtor’s immovable property or any other of his or her assets.
17. The small claims court like every other claims court may examine directors of a limited liability company to lift the veil of incorporation and hold the directors personally liable for the company’s debts as held in the case of *Kabatia & Co. Advocates vs. Kings Group of Schools Limited* [2024] eKLR.
18. It is therefore the courts finding that the present motion must fail for failure only that the motion was not filed in the court that issued the decree but in a separate court, the High Court. Let the Applicant/ Decree Holder make a similar applicant before the Court that issued the Decree, the Small Claims Court.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

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JANET MULWA.
JUDGE

