



REPUBLIC OF KENYA



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**Bislex Kenya Limited v Hydro Water Well(K) Limited (Civil Appeal
E520 of 2022) [2025] KEHC 11574 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11574 (KLR)

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

CIVIL

CIVIL APPEAL E520 OF 2022

TW OUYA, J

JULY 31, 2025

BETWEEN

BISLEX KENYA LIMITED APPELLANT

AND

HYDRO WATER WELL(K) LIMITED RESPONDENT

*(Being an appeal against the Ruling of Hon. D.M. Kivuti (PM)
of 20th May 2018 at Milimani in Civil Suit No 5038 of 2018)*

JUDGMENT

1. The suit was initiated by the plaintiff (herein the respondent) against the Defendant (herein the appellant) vide plaint dated 25th May 2018. The claim was for kshs. 13,824,991.09 allegedly owed to the respondent by the appellant for borehole drilling and goods installation services rendered by the respondent. It is alleged that the Defendant failed to pay for the amount owing despite demand and notice of intention to sue.
2. On March 23rd March 2021 the respondent filed a notice of motion application of even date seeking to summon and cross examine the Appellant's directors regarding financial affairs of the Appellant due to the failure of the Appellant to settle the decretal sum since the year 2018 when judgement was entered.
3. Upon the application being compromised by consent of the parties on 1st February 2022 in terms of prayer (1) and (2), the Appellant's principal director Mr. Kangethe Wagathigi was cross examined concerning the financial affairs of the Appellant using the financial documents such as bank statements from DTB Bank provided by the Appellant.
4. The matter was canvassed by way of written submissions and the trial court vide ruling dated 20th June 2022 found in favor of the respondent, holding the directors of the Appellant personally liable for the



- decretal sum after having found that the Appellant had the necessary funds to pay the decretal sum but the directors had deliberately refused to facilitate the payment of the same.
5. The appellant being dissatisfied with the said outcome proffered an appeal to this court, vide a Memorandum of Appeal dated 14th July, 2022.
 6. In the Memorandum of Appeal, the appellant advanced a total of six (6) grounds of appeal, wherein it faulted the learned trial magistrate for finding the directors of the company jointly and severally liable to settle the decree obtained by the respondent contrary to the doctrine of corporate personality; for lifting the veil of incorporation in an application filed under Order XX1 rule 36 of the Civil Procedure rules, that was in place at that time, whereas the purpose of such an application is limited to discovery for purposes of execution; for finding the directors of the company jointly and severally liable to settle the decree obtained against it whereas there was no proof of fraud or wrong doing on the part of the directors; and for finding the director of the company jointly and severally liable to settle the decree obtained against it when there was no iota of evidence that they were its directors at the material time.
 7. The appellant also faulted the learned trial magistrate for failing to consider its explanation that once it lost its drilling machines to the auction by Kenya Revenue Authority, when they are paid for a particular contract it sub-contracts another company and it is left with just a minimal amount. The appellant further faulted the learned trial magistrate for failing to consider that the appellant had on several occasions made payments towards the settlement of the decretal sum.
 8. On the above grounds, the appellant urged this court to set aside the ruling/decision by the trial court and substitute it instead with an order dismissing the respondent's application dated March 2021.
 9. This appeal was canvassed by way of written submissions. Counsel for the Appellant raised two main issues: Whether the court erred in finding the directors of the appellant personally liable or not and whether the trial magistrate failed to consider the appellants' explanation and evidence. The two issues and the appellant's arguments will be addressed in the analysis.
 10. Counsel for the respondent on the other hand raised one issue: Whether, upon consideration of the evidence adduced during the hearing, the learned magistrate erred in finding the directors personally liable for the decretal sum owed to the respondent herein.
 11. Having carefully considered the grounds of appeal, the record of appeal and the parties rival written submissions together with all the authorities cited, I find that the gist of the dispute revolves around 'piercing of the corporate veil' premised in doctrine of corporate personality which was laid down in the case of *Salmon v Salmon* (1897) AC 78 where the House of Lords held that a company is in law separate from its members.
 12. This being a first appeal, the court has a duty to re- consider and re-evaluate the entire evidence before the trial court afresh, and to come to its own independent conclusion on whether or not the findings of the trial court should stand; while bearing in mind that unlike the trial court, this court did not have the advantage of seeing or hearing the witnesses, and to make due allowance in that respect.
 13. This principle was reiterated in the court of appeal case of *Selle –vs- Associated Motor Boat Co.* [1968] EA 123; as follows: "The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the



evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

14. The suit at the trial court was premised on a background that the Plaintiff/Respondent and defendant had a long-standing business relationship from the year 1999 where the plaintiff would drill boreholes for the defendant/Appellant in various locations and provide borehole installation accessories to Defendant while the Defendant on the other hand would carry out pump installation works, borehole testing and other related works for the plaintiff. The plaintiff would at the end of the financial year offset the amount owed by the Defendant against the work done by the Defendant.
15. It is the plaintiff's claim that the defendant over time accumulated an outstanding debt of Kshs.14,818,206.61 as at 31st December 2014. That the plaintiff made a proposal to settle the outstanding amount through a settlement agreement dated 18th September 2015. That the Defendant made payments vide cheque for Kshs. 900,000 and 400,000 respectively leaving a balance of Kshs.13,824, 991.09. Judgement was entered in favour of the Respondent for the claimed amount together with costs and interests thereto on 28th September 2018.
16. The application dated 23rd March, 2021, leading to the impugned ruling was necessitated by the Appellant's failure to settle the decretal amount after a long period. It is pertinent that the said application was compromised by consent of the parties thereby allowing Mr. Kangethe Wagathigi, the Appellant's principal director to be cross examined on the financial status of the Appellant Company. The basis of the appeal is that the evidence adduced during the hearing was not sufficient to warrant the finding by the trial court that the directors were personally liable.
17. In response to the Respondent's application, the Appellant adduced evidence vide a replying affidavit sworn by Kangethe Wagathigi on 9th August 2021 averring inter alia that the defendant company got into financial difficulty in march 2018 hence their accounts were frozen by KRA forcing them to lay off staff and that before the company recovered, KRA took all their equipment leaving the company to its knees. He states that they are praying to be allowed to pay the outstanding amount in monthly instalments of Kshs.120,000 to be reviewed upwards thereafter.
18. From the foregoing, it is evident that the respondent does not deny the outstanding debt. The only issue of contention is whether or not the corporate veil should have been lifted to hold the directors personally liable.
19. In this case, the appellant in its written submissions alleged that the learned trial magistrate was in error for lifting the corporate veil and for finding that the directors of the appellant company should be held personally liable for the debt owed to the respondent as there was no evidence of fraud or improper conduct on the part of the directors that necessitated the lifting of the corporate veil.
20. The respondent on the other hand submitted that since judgement was entered in 2018, the appellant has continued trading and earning significant revenue but has failed to settle the decretal sum. The respondent alleged that the appellant was deliberately committing fraud by failing to facilitate payment of the decretal sum to the respondent despite receiving funds from their operations.
21. The respondent alleged that the deliberate actions by the directors of the appellant's company to avoid payment despite the company's financial capability, constituted sufficient grounds for the trial court to lift the corporate veil and hold the appellant's directors personally liable for the decretal sum.



22. Instances when the court may lift the corporate veil was discussed by the Court of Appeal in *Stephen Njoroge Gikera & another v Econite Mining Company Limited & 7 others* [2018] KECA 25 (KLR); as follows:

“... there are instances when the veil of incorporation may be lifted. In such instances, the law goes behind the corporate personality to attach responsibility to the individual shareholders or directors; thereby ignoring the separate personality of the company in favour of the economic reality prevailing in the circumstance. The Halsbury’s Laws of England, 4thEdn para. 90; addresses the issue of piercing the veil of incorporation and states that; “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 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 lifted”

23. Additionally, the court in *Robert Kinaga Waweru versus Northcorr Enterprises Ltd* [2021] KEHC 6093 (KLR); expressed itself as follows:

“...it is clear that the corporate veil of a company may be lifted and or pierced due to fraudulent activities, improper conduct of the members or directors of a company or where the circumstances of the case warrant in order to do justice.”

24. In the present case, the appellant alleged that whereas the company was still in operation, and whereas it was still making some income from its business, the amount of money they were making is minimal and it is what they were using to pay off the company’s debts including the debt owed to the respondent and the debt that they owe to the Kenya Revenue Authority (KRA). The appellant alleged that with the little it was making, it has continued to slowly settle all its debts. The respondent on the other hand alleged that whereas the appellant gave them cheques of Kshs. 250,000 on diverse dates being 18th November, 2019, 22nd November, 2019, and 18th February 2020, towards satisfaction of the decretal sum, the said cheques bounced.
25. On my part, I have gone through the evidence on record, and it is evident that after the judgement by the trial court against the appellant on 28th September, 2018, the appellant continued with its operations and continued making income from its operations. Whereas it was not disputed by the respondent that the appellant had made some payments totaling to Kshs.1,500,000 towards settlement of the decretal sum from the month of March 2019 to September of the same year, there was evidence on record which was not disputed by the appellant that in the month of November 2019 and February 2020, the appellant issued the respondent with cheques of Kshs. 250,000 which cheques were not honored.
26. There was also no evidence on record that the appellant replaced the dishonored cheques or continued making payments towards the satisfaction of the decretal sum, despite there being evidence of significant amounts of money being deposited in the appellant’s bank account from the month of December 2018 to March 2021.



27. The appellant did not however give sufficient explanation as to why it had stopped and/or failed to pay off the decretal amount of money despite earning an income. Had the appellant been keen on clearing the said debt, it would have taken some steps to continue paying off the same.
28. On my part, I associate myself with the decision of the court in Robert Kinaga Waweru versus Northcorr Enterprises Ltd [2021] KEHC 6093 (KLR); where the court held as follows:
- “It will be a travesty of justice for a court of equity to close its eyes where it is clear that a person incorporates a company, enters into agreements through it, derives benefits therefrom and leaves the parties to such agreements licking financial wounds while he continues to enjoy the benefits therefrom. The directors and shareholders must give full account of the assets of the company or its whereabouts..... This is a Court of equity and such mischief cannot be ignored. The court finds that the actions of the two directors amounts to improper conduct, which is one of the grounds for piercing the corporate veil.”
29. Similarly, the court of appeal in Githunguri Dairy Farmers Co-operative Society versus Ernie Campbell & Co. Ltd & another [2018] KECA 721 (KLR); held as follows:
- “In our view, the learned Judge was right to lift or pierce the veil of incorporation to ensure justice and equity to all parties prevails. Further, the law is that courts will disregard the veil of incorporation where it is apparent that the device of incorporation is used for some illegal, fraudulent or improper purpose. See Mugenyi & Company Advocate v The Attorney General (1999) 2 EA 199. In the present instance, Mr. Baiya claimed that the liabilities accrued by the 2nd respondent including the decretal sum and the costs of suit, were to be paid from the 2nd respondent’s account. Why would Mr. Baiya, a director in the 2nd respondent and who definitely had full knowledge of its affairs (that it had no attachable assets or financial means to satisfy the decree) insist that the decree be settled by it? We draw the same inference as the 1st respondent that the same was meant to defeat the satisfaction of the decree, an improper purpose warranting the court to go behind the veil of incorporation. This is especially since the benefit of the works carried on by the 1st respondent was realized and continues to be enjoyed by the appellant. Surely in the circumstances of this case, the appellant did not expect a court of equity to shut its eyes to the 1st respondent’s plight and leave it without a remedy. The appellant incorporated the 2nd respondent and then had it enter into an agreement with the 1st respondent knowing well that it had no financial means or assets to meet the obligations related with the contract. In the absence of any reasonable excuse or justification from the appellant for its conduct, then we find it safe to draw an improper and fraudulent purpose necessitating lifting the 2nd respondent’s veil of incorporation for purposes of ensuring justice to both parties.”
30. In my considered view the learned trial magistrate was not wrong in lifting the corporate veil and directing that the appellant’s directors should be held liable for the payment of the decretal sum. I say because, it is evident from the records of the court, that the appellant despite receiving funds from its operations, deliberately failed to satisfy the decretal sum due and owing to the respondent to the detriment of the respondent. In my view, the appellant’s failure of paying off the decretal sum despite being financial capable of doing so, amounted to improper conduct that necessitated the lifting of the corporate veil.



31. That being said, instances when an appellate court can interfere with trial court's decision were enumerated by the court in Attorney General of Kenya v Anyang' Nyong'o & 10 Others (2010) RC 1 (KLR), as follows:

“That the court

- i. Took into accounts some irrelevant factor(s)
- ii. Failed to take into account some irrelevant factor(s)
- iii. Did not apply a correct principle to the issue (such as misdirection on a point of law, or misappropriation of facts)
- iv. Taking into account all the circumstances of the case, the judge's decision is plainly wrong”

32. Similarly, in Mohammed Eltaff & 3 Others v Dream Camp Kenya Limited (2005) Eklr, it was observed that the appellate court has mandate to interfere where a trial court has left certain issues unresolved.

33. Flowing from the foregoing, I find that the trial court arrived at a sound determination having taken into account the relevant facts and law. I do not find any error or omission by the trial court warranting interference by this court.

34. This court therefore determines that the appeal herein lacks merit and should be dismissed with costs to the respondent.

Final Orders:

35.

- i. Appeal dismissed. Ruling of the trial court delivered on 20th May 2018 is hereby upheld.
- ii. Costs to the Respondent

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST JULY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant...No appearance

For Respondent.....Muchiri

Court Assistant.....Brian

