



John Ogada & Compnay Advocates v Copitex Knitwear Mills Ltd (Miscellaneous Application E035 of 2022) [2025] KEHC 11555 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E035 OF 2022**

PM MULWA, J

JULY 31, 2025

BETWEEN

JOHN OGADA & COMPNAY ADVOCATES APPLICANT

AND

COPITEX KNITWEAR MILLS LTD RESPONDENT

RULING

1. This ruling pertains to a Notice of Motion dated 31st March 2023, brought under Order 22 Rule 35 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*. The application is supported by the grounds set out on its face and an affidavit sworn on even date by Beth Njeru.
2. The Applicant is seeking for orders that:
 - a. Summons do issue compelling one Bhagubhai Bhailal Ranchod the Director of the Judgment Debtor to attend Court on such date as may be ordered or allocated, to be orally examined on oath as to the Judgment Debtor's means and assets, to produce the Judgment Debtor's books of accounts and other documentary evidence showing the financial status of Gopitex Knitwear Mills Limited.
 - b. That the court be pleased to lift the corporate veil and Bhagubhai Bhailal Ranchod be held personally liable and be ordered to settle the decretal sum od Kshs 3,531,974.16.
 - c. In default of such attendance andor providing suitable means and assets for the satisfaction of the decree of the Honourable Court, the said Director be held personally liable to satisfy the decree of the Court plus costs in full;



- d. The Decree-holder be granted leave to execute the decree herein against the said Director of the Judgment-Debtor herein personally, in default of payment of the decretal amount claimed plus further costs and accrued interest herein;
 - e. The costs of this Application be borne by the Judgment Debtor and/or its said Director in any event.
3. The factual background giving rise to the application is that the Applicant obtained a certificate of taxed costs dated 17th May 2022 in HCCC No. 1414 of 1998, which was subsequently adopted as a judgment of the Court on 26th September 2022. Despite issuance of a decree and attempted execution through Moran Auctioneers, the Judgment Debtor has failed and/or neglected to settle the decretal sum. The Applicant now seeks further recourse through examination of the Director and lifting of the corporate veil.
 4. Despite service, the Judgment Debtor did not file any response to the application and did not attend Court. The application is therefore unopposed.

Issues for determination

5. The Court identifies the following issues for determination:
 - a. Whether this Court should issue a summons for the examination of the Director of the Judgment Debtor.
 - b. Whether the corporate veil should be lifted and the Director held personally liable for the decretal sum.
6. Order 22 Rule 35 of the Civil Procedure Rules provides:

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. where the judgment-debtor is a corporation, any officer thereof; 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.
7. This provision empowers the Court to compel officers of a corporate judgment-debtor to appear for oral examination as to the financial position of the company, to aid in execution. The Applicant has demonstrated that despite a valid and subsisting decree, the Judgment Debtor has failed to satisfy the same. I find merit in the request for oral examination.
8. Further, the Judgment Debtor has failed to satisfy a valid decree, and its means remain undisclosed. I am therefore satisfied that a proper basis has been laid for the issuance of summons under Order 22 Rule 35. Accordingly, the application succeeds to this extent, and I hereby direct that Mr. Bhagubhai Bhailal Ranchod, a Director of the Judgment Debtor, do attend Court for oral examination on the company's means and financial status.

Lifting the Corporate Veil

9. It is trite that a company is a legal entity separate from its shareholders and directors. This foundational principle is enshrined in *Salomon v Salomon & Co Ltd* [1897] AC 22, where the House of Lords held that a company has its own legal personality, distinct from those who compose it.



9. However, in exceptional circumstances, courts may pierce the corporate veil, particularly where the company is used to commit fraud, evade obligations, or act as a mere façade. In *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] eKLR, the Court of Appeal reaffirmed that:

“The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.”
10. This Court is empowered, even at the execution stage, to examine directors and, upon sufficient evidence, lift the corporate veil to hold directors personally liable where warranted by the facts and the law.
11. In this case, the decree holder has a decree that was issued against the judgment debtor, the sum accrues interest. It is not disputed that the judgment debtor has not yet settled the aforesaid sum. As a result, the decree holder filed the instant application seeking this Court to piercelift the judgment debtor’s corporate veil and hold its Directors personally liable for satisfying the said decree, and for leave to execute the said decree against the judgment debtor’s Directors personally. The Applicant contends that the Director is deliberately shielding himself behind the corporate personality of the Judgment Debtor to frustrate execution of a valid decree. This assertion has not been controverted.
12. Having taken all factors into consideration, and the absence of any rebuttal from the Respondent I am persuaded that there has been improper conduct on the part of the judgment debtor’s Director, and the corporate veil is being used to shield the said director from execution of the decree by the decree holder. In the circumstances, I am persuaded that I should exercise my discretion in favour of the decree holder by piercing the judgment debtor’s corporate veil, thus holding its Directors personally liable for satisfying this Court’s decree.
13. Accordingly, I hereby pierce the corporate veil of Gopitext Knitwear Mills Limited and hold its Director, Mr. Bhagubhai Bhailal Ranchod, personally liable for the decretal sum of Kshs. 3,531,974.16. The Applicant is granted leave to execute the decree against him in his personal capacity.
14. The costs of this application are awarded to the Applicant and shall be borne personally by Mr. Bhagubhai Bhailal Ranchod.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Njeru for Applicant

NA for Respondent

Court Assistant: Carlos

