



**Shri Krishana Overseas Limited v Damian Limited (Commercial Miscellaneous Application E373 of 2023) [2025] KEHC 11598 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11598 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E373 OF 2023**

**MN MWANGI, J  
JULY 31, 2025**

**BETWEEN**

**SHRI KRISHANA OVERSEAS LIMITED ..... APPLICANT**

**AND**

**DAMIAN LIMITED ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 10<sup>th</sup> May 2023 filed pursuant to the provisions of Sections 1A, 1B, 3A, 63(c) & (e) of the Civil Procedure Act, Order 22 Rules 35 & 51(1) of the Civil Procedure Rules, 2010 Sections 148, 787, 996 & 1002 of the Companies Act and all other enabling provisions of the law.
2. The applicant prays for orders that Anne Njambi and Daniel Mwanthi Mututo, being the Directors/ shareholders of the respondent company, be summoned to attend Court and be orally examined regarding the respondent's business affairs, assets, and financial capacity to satisfy the decretal sum in Milimani Small Claims Court No. SCCCOMM Case No. E2763 of 2022 – Shri Krishana Overseas v Damian Ltd and upon their attendance, the said Directors/shareholders be ordered to produce the respondent's financial and operational documents from the past five years, including books of accounts, Audited financial statements, Annual returns, VAT returns, Bank statements & cheque books, Title deeds and bank guarantees. The applicant also seeks an order that in the event of non-compliance with the above, this Court lifts the respondent's corporate veil and holds its Directors/ shareholders personally liable for the decretal sum.
3. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Sonvir Singh, a Director of the applicant company. He averred that on 1<sup>st</sup> September 2022, the Milimani Small Claims Court delivered judgment in favour of the applicant in SCCCOMM Case No. E2763 of 2022 for Kshs.391,153.14 plus costs and interest. He deposed that



a decree was issued on 20<sup>th</sup> March 2023, assessing the appellant's costs at Kshs.65,600.00. He stated that the applicant then instructed Mbeki Auctioneers to proceed with execution of the said decree, but despite having warrants of attachment and sale, the said Auctioneers were unable to recover the decretal sum of Kshs.456,253.31, as the respondent and its Directors allegedly closed the business and dissipated its assets to evade execution.

4. Mr. Singh contended that the respondent's Directors are dishonestly hiding and transferring the respondent's assets in a bid to defeat enforcement of the judgment delivered on 1<sup>st</sup> September 2022. He claimed that some of the respondent's Directors have left this Court's jurisdiction to obstruct execution of the said judgment. He stated that the respondent ran a business that involved ordering for goods without the intention or ability to pay for them, thus constituting fraud. He asserted that Ms Anne Njambi and Mr. Daniel Mwanthi Mututo, the Directors of the respondent company used the company as a shield for fraudulent activities, evading their fiduciary obligations, and they should be held personally liable for the judgment debt since the applicant has no alternative means to enforce the judgment.
5. In opposition to the application, the respondent filed a replying affidavit sworn on 15<sup>th</sup> June 2023 by Mr. Daniel Mututo, a Director of the respondent company. He averred that although the respondent was served and entered appearance in a suit filed vide a statement of claim dated 19<sup>th</sup> April 2022 at the Small Claims Court, they discovered the claim was mistakenly filed against Daminian Ltd instead of Damian Ltd, where he is actually a Director. He averred that as a result, they chose not to engage further in the proceedings at the Small Claims Court, as it was against an unrelated entity. In view of the above, he contended that the default judgment and decree being enforced against them were issued against a different entity, Daminian Ltd, hence it has no legal effect on Damian Ltd or its Directors.
6. Mr. Mututo claimed that the instant application seeks to enforce a non-existent decree against the respondent's Directors, which would lead to unjust and irregular outcomes. He asserted that the applicant should have amended its pleadings at the Small Claims to correct the error in the name, to avoid obtaining judgment against the wrong party. Further, that the said error was sufficient cause for not responding to the applicant's claim. Mr. Mututo averred that the respondent acted diligently and would be prejudiced if the instant application is allowed, while the applicant can always file a proper claim against the correct party, if necessary.
7. The application herein was canvassed by way of written submissions. The applicant's submissions were filed on 19<sup>th</sup> November 2024 by the law firm of Bryan Khaemba, Kamau Kamau & Company Advocates, while the respondent's submissions were filed by the law firm of Chege, Odeck & Gachoki Company Advocates on 5<sup>th</sup> November 2024.
8. Mr. Bulowa, learned Counsel for the applicant submitted that despite the respondent claiming misdescription of parties in the suit before the Small Claims Court, it entered appearance and remained on record until judgment. Counsel relied on the case of *EMK Advocates v Rhombus Construction Co. Limited* [2021] eKLR, and the provisions of Order 1 Rule 9 of the *Civil Procedure Rules, 2010* and contended that misdescription of parties should not defeat the applicant's claim against the respondent. He questioned why the respondent did not seek to be discharged from the proceedings at the Small Claims Court if it believed the suit was against another entity. Counsel asserted that the application herein is not for execution, but to investigate the respondent's affairs and possibly lift the corporate veil, matters within the High Court's jurisdiction pursuant to the provisions of Sections 148, 787, 996, & 1002 of the *Companies Act*.
9. Mr. Bulowa cited the provisions of Order 22 Rule 35 of the *Civil Procedure Rules, 2010*, and argued that a decree holder is entitled to apply for the oral examination of a company's Director to determine



the company's ability to satisfy an unsatisfied Court decree. He referred to the case of *Frank Saenger v Afrikon Limited* [2022] eKLR, and asserted that an application such as the instant one only requires proof of an unsatisfied decree, and that it is in the interest of justice to examine the judgment debtor or its Officers regarding their ability to satisfy the decree in question. Mr. Bulowa submitted that the respondent's Directors engaged in fraudulent conduct including scaling down operations, closing offices, and removing company assets to frustrate execution, therefore the instant application is both legally and factually justified.

10. Mr. Odeck, learned Counsel for the respondent submitted that the High Court lacks jurisdiction to hear the instant application since no enforceable judgment or decree exists against the respondent, and the applicant is improperly seeking to enforce a Small Claims Court decree in the High Court. Counsel referred to the provisions of Sections 36 to 41 of the *Small Claims Court Act* and asserted that it is only Section 38 of the said Act that allows matters from the Small Claims Court to proceed to the High Court, by way of appeal on matters of law, and does not extend to execution of money decrees. He relied on the case of *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others* (Miscellaneous Civil Application 43 of 2023) [2024] KEHC 2343 (KLR), and argued that the *Companies Act*'s jurisdictional scope applies only to matters initiated under it, such as liquidation or insolvency. He stated that since the decree in this case was issued by the Small Claims Court, it can only be enforced by that Court.
11. Mr. Odeck submitted that a company's corporate veil can only be lifted where there is clear evidence of fraud or negligence by the company's Directors, which is not the case herein. He further submitted that the mere fact that a company is insolvent or that it lacks assets sufficient to satisfy a decree is not sufficient to warrant lifting of a company's corporate veil. He contended that the applicant has failed to meet conditions precedent to justify lifting of the respondent's corporate veil, as no wrongdoing by the respondent's Directors has been demonstrated. Mr. Odeck relied on inter alia, the case of *Ali Mohamed Mwinzagu & others v Kaingu Mangi & others* [2019] eKLR, and contended that since the respondent is a separate legal entity from the company that was sued in the Small Claims Court suit, and was not a party to that suit, the decree issued by the Small Claims Court cannot be enforced against it.

### **Analysis And Determination**

12. I have considered the instant application, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavit by the respondent and the written submissions by Counsel for the parties. The issues that arise for determination are -
  - i. Whether this Court has the requisite jurisdiction to hear and determine the instant application;
  - ii. Whether the respondent's Directors, Ms Anne Njambi and Mr. Daniel Mwanthi Mututo, should be examined on oath, as to the respondent's means and assets to satisfy the decretal sum in issue and produce the respondent's financial and operational documents from the past five years; and
  - iii. Whether the defendant's corporate veil should be lifted and the respondent's Directors, Ms Anne Njambi and Mr. Daniel Mwanthi Mututo, held personally liable for the respondent's debt to the applicant.

### **Whether this Court has the requisite jurisdiction to hear and determine the instant application.**

13. The respondent submitted that this Court lacks the jurisdiction to determine this application in view of the fact that the decree sought to be executed was issued by the Small Claims Court and the instant application ought to have been filed before the Small Claims Court. The applicant on the hand contended that the instant application is not for execution, but to investigate the respondent's affairs



and possibly lift its corporate veil, which falls within the High Court's jurisdiction pursuant to the provisions of Sections 148, 787, 996 & 1002 of the Companies Act.

14. In the case of the Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, Nyarangi, JA., held that -

...Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

15. Examination of a judgment debtor as to his means and/or assets to satisfy a decree is provided for under Order 22 Rule 35 of the Civil Procedure Rules, 2010 which provides that -

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.

16. It is noteworthy that in invoking this Court's jurisdiction to hear and determine the instant application, the applicant relied on the above provisions and the provisions of Sections 148, 787, 996 & 1002 of the Companies Act. On perusal of the aforesaid provisions, I note that in as much as Sections 148 & 996 could be indirectly relevant to this case if the applicant demonstrates that the company's Directors are guilty of fraud, non-compliance, or misconduct and can support a broader application to the High Court to investigate or obtain orders that may expose wrongdoing by company Directors, the aforesaid Sections do not directly grant High Courts the power to lift and/or pierce a company's corporate veil in the context of enforcing an unsatisfied decree.

17. In order to successfully move the Court to lift and/or pierce a company's corporate veil and hold the company's Directors personally liable for its debts, one needs to move the Court under the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010. In the premise, I am not persuaded that the provisions of Sections 148, 787, 996 & 1002 of the Companies Act are of relevance to these proceedings and therefore, the applicant cannot rely on them in support of its argument that this Court has the requisite jurisdiction to hear and determine the instant application.

18. Going back to the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010, on perusal of the same, there is no evidence and/or indication that it divests the Small Claims Court with the jurisdiction to hear an application made pursuant to the provisions thereunder. Further, Section 34(1) Civil Procedure Act provides that -

All questions arising between the parties to the suit in 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.



19. Section 29 of the Civil Procedure Act on the other hand defines the expression “Court which passed a decree” as hereunder -

The expression “Court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include -

- a. where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance; and
  - 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 the execution of the decree, would have jurisdiction to try such suit.
20. This Court is in agreement with the finding by the Court in the case of Jepkemoi v Zaburi Enterprises Company Ltd & 2 others (*supra*) cited by the respondent herein, where the Court explained the provisions of Section 29 of the Civil Procedure Act and held that -

Explanation (a) above points to the trial Court as the Court to oversee execution of its decree and the situation cited in (b) above does not arise in the instant situation since the trial Court has not ceased to exist nor has it been alleged or demonstrated that it has since been divested of jurisdiction. In the circumstances, I find that this Court has no original jurisdiction to deal with matters arising out of execution of the decree of the Magistrate’s Court. This Court’s jurisdiction is only on appeals. Although the High Court has inherent powers, the same has to be exercised within procedural boundaries.

21. In view of the foregoing, this Court finds that there is no reason and/or justification, as to why the application herein was not filed in the Small Claims Court where it ought to have been filed, as this Court does not have original jurisdiction to deal with matters arising out of execution of decrees, issued and/or passed by the Small Claims Court. Additionally, this Court’s jurisdiction in regard to matters arising from the Small Claims Court, can only be invoked on appeal, pursuant to the provisions of Section 38 of the Small Claims Court Act. Further, the circumstances herein do not provide for a scenario where this Court’s inherent jurisdiction as provided for under Section 3A of the Civil Procedure Act can be invoked.
22. Following the findings that this Court has made in this Ruling, the other issues that had been identified for determination become moot and do not call for further consideration.
23. In the circumstances, it is this Court’s finding that the applicant’s application dated 10<sup>th</sup> May 2023 is fatally defective. For that reason, it is hereby struck out with costs to the respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF JULY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Ms Namukulu holding brief for Mr. Bryan Khaemba for the applicant

No appearance for the respondent



Ms B. Wokabi - Court Assistant.

