



**Katua & another v Kihingo Village (Waridi Gardens) Limited
(Commercial Miscellaneous Application E207A of 2019)
[2025] KEHC 11631 (KLR) (Commercial and Tax) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E207A OF 2019**

MN MWANGI, J

JULY 30, 2025

BETWEEN

CHEMA MUTYAMBAI KATUA 1ST APPLICANT

PRISCILLA KATUA 2ND APPLICANT

AND

KIHINGO VILLAGE (WARIDI GARDENS) LIMITED RESPONDENT

RULING

1. The applicants filed a Notice of Motion application dated 20th December 2023 pursuant to the provisions of Order 22 Rule 35 & Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#), Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law. The applicants pray for an order that this Court summons Ms Hildah Wangari Gethenji, Mr. Robert Marekia Gethenji, Mr. Fredrick Gitahi Gethenji & Mr. James Ndung'u Gethenji, the last known Directors of the respondent company for oral examination under oath regarding the company's assets, liabilities and means. The applicants also pray for the respondent to produce its financial records at least 14 days before the date fixed for its Directors' examination. The applicants also seek leave to enforce the decree herein directly against the said Directors if the respondent company fails to pay the decretal sum or comply with Court orders issued herein. They also seek an order that the respondent company's Directors personally bear the costs of this application.
2. 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. Chema Mutyambai Katua, the 1st applicant herein. He averred that on 9th February 2022, Hon. Justice J. Mulwa adopted the Arbitral Award dated 5th April 2019 in the sum of KShs.10,163,946.58 in favour of the applicants as a Court decree, but the respondent has to date failed



- to satisfy the said decree. He further averred that the respondent's attachable assets are unknown or untraceable, and its Directors have not disclosed the company's financial status. Mr. Katua stated that Ms Hildah Wangari Gethenji, Messrs Robert Marekia Gethenji, Fredrick Gitahi Gethenji, and James Ndung'u Gethenji were the last known Directors of the respondent company. He claimed that the said Directors are conducting the respondent company's business in a way meant to frustrate execution of the aforesaid decree. In addition, that the said Directors are using the respondent company improperly to evade contractual obligations.
3. In opposition to the application, the respondent filed a replying affidavit sworn on 15th October 2024 by Mr. Ndung'u Gethenji, the respondent company's Chief Executive Officer. He averred that the respondent company owns House 1D located on LR 27754 and that on 25th September 2015, the said company entered into a Kshs.80,000,000/= sale agreement with Ms Anne Waiguru for the sale of House 1D but the sale was not concluded due to a legal dispute. That Ms Anne Waiguru filed ELC No. 256 of 2019 against the respondent company, which suit was later consolidated with HCCC No. 350 of 2012 and HCCC 355 of 2012 as all the suits involved the same property, being House 1D located on LR 27754. Mr. Ndung'u deposed that the respondent company is still the current owner of House 1D and possesses sufficient assets, including the house, to satisfy the decree owing to the applicants.
 4. The instant application was canvassed by way of written submissions. The applicants' submissions were filed by the law firm of Wainaina Ireri Advocates LLP on 25th October 2024, whereas the respondent's submissions were filed by the law firm of Hamilton Harrison & Mathews Advocates on the same day.
 5. Mr. Kabaiku, learned Counsel for the applicants cited the provisions of Order 22 Rule 35 of the Civil Procedure Rules, 2010 and the case of Masefield Trading (K) Ltd v Rushmore Company Limited & another [2008] eKLR, and submitted that the applicants are not seeking to lift the respondent company's corporate veil, but are requesting this Court to summon its Directors for oral examination, with the aim of identifying the respondent company's assets and liabilities that could satisfy the decree owing to the applicants. He noted that the applicants have been unable to trace any of the respondent's attachable assets and require the Court's intervention to enforce the said decree.
 6. Mr. Kabaiku relied on the case of Ng'ang'a v Spero Africa Limited [2024] KEHC 12608 (KLR) and stated that this Court has the power to order oral examination of the respondent's Directors to enforce an unsettled decree. He argued that the applicants have met the necessary criteria to warrant issuance of the said order. Counsel contended that despite the respondent's CEO claiming that the company can settle the decree herein, no financial records had been provided. He contended that while the company claims ownership of House 1D located on LR 27754, the property is under litigation and cannot be relied upon to prove the respondent's ability to settle the decretal sum. He emphasized that only Kshs.4,000,000/= was paid in 2016 from a 2015 Arbitral Award, with the remainder still being unpaid eight years later.
 7. Mr. Mwihuri, learned Counsel for the respondent relied on the case of Frame Consultants Ltd v Kihingo Village (Waridi Gardens) Ltd & another [2021] eKLR, and maintained that the respondent is the current owner of House 1D located on LR 27754, valued above the decretal amount. He submitted that regardless of the ongoing suit between Ms Anne Waiguru and the respondent, the property's value or proceeds would be sufficient to settle the decretal sum owed to the applicants. Counsel cited the case of Ultimate Laboratories v Tasha Bioservice Limited Nairobi HCCC No. 1287 of 2000 quoted by the Court in Masefield Trading (K) Ltd v Rushmore Company Limited & another (supra), and argued that the application for lifting the corporate veil is unnecessary, as there are no allegations of fraud or misconduct against the respondent or its Directors. He also suggested that the applicants can protect their interests by placing a caution on House 1D located on LR 27754.



Analysis and Determination.

8. 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 the respondent's Directors should be summoned to attend Court for examination on oath and production of the respondent company's financial records; and
 - ii. Whether the said Directors should be held personally liable for the respondent company's debt to the applicants.

Whether the respondent's Directors should be summoned to attend Court for examination on oath and production of the respondent company's financial records.

9. It is not in contest that on 9th February 2022, Hon. Justice J. Mulwa adopted the Arbitral Award dated 5th April 2019 in the sum of Kshs.10,163,946.58 in favour of the applicants as a Court decree. The respondent has however to date failed to satisfy the said decree. The applicants contend that the respondent's attachable assets sufficient to satisfy the decree or otherwise, are either unknown or untraceable, and its Directors have not disclosed the company's financial status. They averred that only Kshs.4,000,000/= was paid in 2016 from the 2015 Arbitral Award, with the remainder still unpaid eight years later.
10. Examination of judgment debtors, officers or any other persons as to property is provided for under Order 22 Rule 35(b) of the [Civil Procedure Rules, 2010](#) which states that –
- Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that in the case of 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, 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.
11. The import of the above provisions was considered in the case of *Ultimate Laboratories v Tasha Bio service Limited* NBI HCCC No. 1287 of 2000 (unreported) cited by the Court in [Tropical Wood Limited v Samilis International Investments](#) [2017] eKLR wherein the Court stated as follows -
- Two things emerge from the above proposition. One, the power of the Court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed within the purpose set out in the Rule. That is;
- ...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.
- I therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery....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, the Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.
12. It is now well settled that this Court has the power to summon any Officer of a judgment debtor company to be examined on oath about the debts owed by the company and to determine whether the



company has property or means to satisfy the decree. See the oft cited case of Masefield Trading (K) Ltd v Rushmore Company Limited & another Civil Suit No. 1794 of 2000 (supra).

13. It is not disputed that Ms Hildah Wangari Gethenji, Messrs Robert Marekia Gethenji, Fredrick Gitahi Gethenji & James Ndung'u Gethenji are the last known Directors of the respondent company as per the respondent's CR-12 dated 18th October 2023, annexed to the applicants' affidavit in support of the application herein.
14. With the respondent having not satisfied the decree in issue, I am persuaded that the applicants have made out a case to warrant this Court to exercise its discretion in their favour and issue an order summoning Ms Hildah Wangari Gethenji, Robert Marekia Gethenji, Messrs Fredrick Gitahi Gethenji & James Ndung'u Gethenji, the respondent company's Directors to be examined orally under oath as to the respondent's assets, liabilities and means, and to produce the respondent company's financial records

Whether the said Directors should be held personally liable for the respondent company's debt to the applicants.

15. Before determining whether the respondent's Directors should be held personally liable for the respondent company's debt, this Court must first determine if there are sufficient reasons to pierce or lift the respondent's corporate veil. This can only be done by examining the respondent company's Directors under oath on the company's affairs, assets, and means of satisfying the decretal sum owing to the applicants, and for the said Directors to produce relevant financial documents for the period in dispute.
16. In the circumstances, I conclude that the second issue shall be addressed after the examination of the respondent company's Directors.
17. It is my finding that the application dated 20th December 2023 is merited. It is allowed in the following terms -
 - i. Summons shall issue to the respondent company's Directors, namely, Ms Hildah Wangari Gethenji, Messrs Robert Marekia Gethenji, Fredrick Gitahi Gethenji & James Ndung'u Gethenji, to attend Court for oral examination under oath as to the respondent's assets, liabilities and/or means of satisfying the decretal sum herein;
 - ii. An order is hereby issued directing the respondent company's Directors, namely, Hildah Wangari Gethenji, Messrs Robert Marekia Gethenji, Fredrick Gitahi Gethenji & James Ndung'u Gethenji to produce the respondent company's financial records;
 - iii. The aforesaid Directors shall be examined on the contents of the said records at a date to be appointed by the Court;
 - iv. Prayers (iii) & (iv) of the instant application are hereby held in abeyance and shall be determined after examination on oath of the respondent's Directors and upon production of the respondent's financial records; and
 - v. Costs are awarded to the decree holders/applicants.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF JULY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI



JUDGE

In the presence of:-

Mr. Ngugi holding brief for Mr. Kabaiku for the decree holders/applicants

Mr. Mwihuri for the respondents

Ms B. Wokabi – Court Assistant.

