



REPUBLIC OF KENYA



**Maina t/a Bill Consult v Bobmil Properties Limited (Civil Suit
1861 of 2001) [2025] KEHC 11486 (KLR) (Civ) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11486 (KLR)

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

**CIVIL
CIVIL SUIT 1861 OF 2001**

**JN MULWA, J
JULY 29, 2025**

BETWEEN

DAVIDSON KARIUKI MAINA T/A BILL CONSULT PLAINTIFF

AND

BOBMIL PROPERTIES LIMITED DEFENDANT

RULING

1. The Court in its ruling on Motion dated 24th April 2023 allowed the application in the following terms;
 - i. That the directors/shareholders of the defendant company to file affidavit of means within 30 days of this date.
 - ii. That the directors/shareholders of the defendant company be summoned to appear before this court to be cross examined on the said affidavits within 60 days of this date.
 - iii. That the said directors/shareholders named in the prayers to be personally served with the summons.
2. On 3rd March, 2025 parties counsel appeared before this court when the Defendants directors/ shareholders were to be examined pursuant to court dated 19/10/23. Defendant's counsel Mr. Mwangi informed the court that no affidavit of means had been filed by the Defendants Director despite the orders of the court save one affidavit had been filed on 17/11 2023, but that it was in respect of a Ugandan company with similar name with the Defendant herein.
3. Defence counsel further informed the court that the Kenyan Defendant Company had three Directors including one Millan Kumar Shah and that one died in 2004 and therefore urged that judgment was against the Kenyan Defendant company not the Ugandan company adding that there was no compliance with the Court orders issued on 19th October,2023 and prayed that the Court do grant



order number two of the motion dated 24/4/2023 for the directors to pay the decretal sum personally as there was nothing upon which the Director could be examined on.

4. Having listened to the Advocates' rival arguments to advance their clients positions, the Court flagged only one issue for determination, thus-

Whether the Director, Milan Kumar Shah, the deponent of the Affidavit of Means dated 17th November, 2025 should be examined as per court order dated 19/10/2023.

5. Order 22 Rule 35 of the Civil Procedure Rules provides as follows:

35. 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.

6. The above provision grants the court power to summon any officer of a company to attend before it and be examined on whether any or what debts are owing to the judgment debtor, and whether the judgment debtor has any means of satisfying the decree.

7. The duty of the court in this respect was aptly stated by Ringera J. in Nairobi HCCC No. 1287 of 2000 ultimate Laboratories v Tasha Bioservice (unreported) Ltd as follows:

“The court's duty under the Order and Rule in question is limited to ensuring that the person being examined answers all the questions which are fairly, pertinent and properly asked and it is thereafter up to the decree-holder to use the said information to proceed with execution where the examination unearths assets or other means of satisfying the decree.....”

8. What emerges from the above proposition is that the power of the court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed with 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.

9. The court takes 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.

10. The court does not agree with the Defendant that the rule places such a high and onerous standard as it has been argued by the defendant that the applicant must establish; 1) the debtor's debts and properties; and 2) that the person to be examined has knowledge of or interest in or connection with the judgment-debtor's identified debts and properties which are subject of investigation.



11. In the courts view, that approach will defeat the entire purpose of the rule because the rule enables an applicant to seek for information in the nature of discovery to assist the decree - holder to follow through on the execution.
12. Further any person may be summoned under the rule, and such person need not have any or direct connection with the issues in the case whatsoever as urged by the respondent. What needs to be satisfied is the threshold mentioned above.
13. In the instant case, what the Decree Holder is seeking is what has been referred to as discovery in aid of execution as it seeks to have the company directors, officers and/or managing director summoned to appear in court for cross examination and production of the judgement debtor's records together with the company bank statements and director's personal bank statements.

In the case of *Masefield Trading (K) Ltd v Rushmore Company Limited & Another* [2008] eKLR, the court held that:

“I think the above rule grants this court jurisdiction to summon an officer of a company to attend court so that he may be examined on the assets and means of the company to settle the sum decreed to be paid by the company. By examining such an officer, the court may or may not lift the veil of incorporation.”

14. Milan Kumar Shah swore an Affidavit of Means and annexed to it a search report with names of shareholders of Bobmil Properties Limited registered in Uganda. A perusal of the record reveals the following salient and undisputed facts;
 - a. That Bobmil Industries Limited (objector/applicant) is a sister company to the judgement debtor Bobmil Properties Limited.
 - b. The Deceased was director to the Bobmil Properties Limited registered in Uganda and since his demise the company is dormant and that Milan Kumar Shah is a shareholder and that through Windsor & Partners CPA, it is in the process of reactivating the same and winding it up.
 - c. That Bobby Shah was a director of all the companies in the Group of Companies including the Defendant.
 - d. The shareholders and directors of the companies are related.
15. From the foregoing, it emerges that the Directors of Bobmil Industries Limited (objector/applicant) are well-versed with the goings-on in Bobmil Properties Limited(Uganda) having had Milan Kumar Shah and Vipin N. Shan as shareholders as per the search report from the Uganda Registration Service Bureau annexed to the Affidavit of Means.
16. Flowing from the above, the Court finds that the directors and shareholders of the Bobmil Industries Limited are in a position to know all the available assets of the company, if any, and it would foolhardy to cross examine Millan Kumar Shah as a shareholder of the Ugandan registered company and leave out the directors of the Kenyan registered Bobmil Industries Limited, where he is also a director.
17. Bearing in mind that a company is a separate legal entity distinguishable from its directors, and further taking into account the fact that the Plaintiff has a decree in its favour that is overdue for execution, it would only be fair and just that the officials of Bobmil Industries Limited who are shareholders in Bobmil Properties Limited be called upon to shed light on the company's assets, if any, in order to assist in the execution.



18. The deponent of the Affidavit of means did not tender any bank statements or records from the Registrar of Companies in Uganda, nor any evidence of the status of Bobmil Properties Limited in Uganda. In essence, this court has nothing to go by in determining either the existence or the financial health of the company.
19. While coming to this decision, this court is guided by the Court of Appeal decision in the Appeal of this matter from the superior, court vide Civil Appeal No. 188 of 2013 between these two parties, and its judgment rendered on 24/5/2013, when the learned Judges of Appeal discussed in length the relationship between the two companies, the Defendant herein, Bobmil Properties Limited and Bobmil Industries Limited.
20. Accordingly, the Court orders the surviving shareholders in Bobmil Properties Limited, and in particular Milan Kumar Shah as per the search annexed to the Affidavit of Means sworn on 17/11/2023 and one Vipin N. Shah attend court and be orally examined on whether any or what debts are owing to the company and whether the judgment debtor has any or what property or means of satisfying the decree herein.
21. They will also be required to produce any relevant documents or copies thereof on the assets of the Ugandan registered Bobmil Properties Limited, and any books of accounts, company title documents, if any, which they may have obtained as shareholders of the Judgment Debtor herein.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 29TH JULY, 2025

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JANET MULWA.

JUDGE

